

1999 BILL 25

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 25**

**INSURANCE ACT**

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MS GRAHAM

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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## **BILL 25**

1999

### **INSURANCE ACT**

*(Assented to , 1999)*

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

**Interpretation**

**Definitions**

**1** In this Act.

- (a) “adjuster” has the meaning set out in section 2;
- (b) “affiliate” has the meaning set out in section 3;
- (c) “agency contract” means a contract between an insurance agent and an insurer in which the insurance agent agrees to act as an insurance agent in respect of insurance issued by the insurer, but does not include the arrangement that an insurance agent has with an insurer that is the service carrier for the Government approved industry plan under section 650;
- (d) “automobile” includes a trolley bus and a self-propelled vehicle, and the trailers, accessories and equipment of automobiles, but does not include watercraft, aircraft or railway rolling stock that runs on rails;
- (e) “base capital” means base capital as defined in the regulations;
- (f) “beneficial ownership” has the meaning set out in section 4;
- (g) “body corporate” means any body corporate with or without share capital, wherever or however formed;
- (h) “certificate of authority” means an insurance agent’s certificate of authority or an adjuster’s certificate of authority;
- (i) “chief agency” means,

- (i) in respect of a provincial company, the head office of the company, and
  - (ii) in respect of an insurer that is not a provincial company, the main office of the company in Alberta;
- (j) “contract of insurance” includes any policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;
- (k) “control” has the meaning set out in section 5;
- (l) “Court” means the Court of Queen’s Bench;
- (m) “debt obligation” means a bond, debenture, note or other evidence of indebtedness whether secured or unsecured;
- (n) “deposit-taking institution” means
  - (i) the Alberta Treasury Branches or a bank, credit union, loan corporation or trust corporation, or
  - (ii) a member institution of the Canada Deposit Insurance Corporation or of any other deposit insurance or guarantee plan prescribed under section 1(1)(m) of the *Loan and Trust Corporations Act*;
- (o) “director” means an individual occupying the position of director of a body corporate regardless of the name given to the position, and “directors” refers to the directors of a body corporate as a body;
- (p) “electronic media” means electronic media as defined in the regulations;
- (q) “entity” means a body corporate, an unincorporated body, the Crown in right of Canada or in right of a province, an agency of the Crown, a foreign government and any agency of a foreign government, but does not include an individual;
- (r) “examiner” means an examiner appointed under section 793;
- (s) “extra-provincial company” means an insurer that is incorporated in a province other than Alberta and that is authorized by that province to carry on the business of insurance in that province;

- (t) “federally authorized company” means an insurer that is a company, society or foreign company as defined in the *Insurance Companies Act* (Canada) approved by order under that Act to carry on business or to insure risks in Canada;
- (u) “financial institution” means
  - (i) a bank,
  - (ii) the Alberta Treasury Branches,
  - (iii) a loan corporation or trust corporation incorporated by or under an Act of Canada or a province,
  - (iv) a credit union incorporated by or under an Act of Canada or a province,
  - (v) a federally authorized company, an extra-provincial company or a licensed provincial company, and
  - (vi) any other prescribed entity;
- (v) “fraternal society” means a body corporate that is a not for profit society, order or association formed for the purpose of making, with its members only, contracts of life, accident or sickness insurance in accordance with its constitution, by-laws and rules and this Act;
- (w) “head office”, in respect of an insurer, means the place where the chief executive officer of the insurer transacts business;
- (x) “holding body corporate” has the meaning set out in section 6;
- (y) “incorporator”, in respect of a provincial company, means a person who applies for the incorporation of the company;
- (z) “instrument of incorporation” means the certificate, special Act, charter, letters patent or other document incorporating, amalgamating or continuing a body corporate, and includes all amendments to it;
- (aa) “insurance” means the undertaking by one person to indemnify another person against loss or liability for loss in respect of certain risk or peril to which the object of the insurance might be exposed or to pay a sum of money or other thing of value on the happening of a certain event and, without limiting the generality of the foregoing, includes life insurance;

- (bb) “insurance agent” means a person who, for compensation,
- (i) solicits insurance on behalf of an insurer, insured or potential insured,
  - (ii) transmits an application for insurance from an insured or potential insured to an insurer,
  - (iii) transmits a policy of insurance from an insurer to an insured,
  - (iv) negotiates or offers to negotiate insurance on behalf of an insurer, insured or potential insured or the continuance or renewal of insurance on behalf of an insurer or insured, or
  - (v) enrolls individuals in prescribed contracts of group insurance,
- but does not include an insurer;
- (cc) “insurance agent’s certificate of authority” includes a restricted insurance agent’s certificate of authority;
- (dd) “insurance council” means an insurance council referred to in section 484;
- (ee) “insurance money” includes all insurance money, benefits, surplus, profits, dividends, bonuses and annuities payable by an insurer under a contract of insurance;
- (ff) “insurer” means any person that undertakes or effects, or agrees or offers for valuable consideration to undertake or effect, a contract of insurance, including the underwriters or syndicates of underwriters operating on the plan known as Lloyd’s, but does not include a person who exchanges with other persons reciprocal contracts of indemnity or inter-insurance as part of a reciprocal insurance exchange;
- (gg) “licence” means a licence under this Act unless the provision in which the term is used specifies otherwise;
- (hh) “licensed provincial company” means a provincial company that holds a valid and subsisting licence or that holds an unexpired licence that has been suspended;
- (ii) “life company” means an insurer that is permitted to insure
- (i) only those risks falling within the class of life insurance, or

- (ii) only those risks falling within the class of life insurance and accident and sickness insurance or another class of insurance specified in the regulations under section 35(2);
- (jj) “market conduct activities” means activities that are carried out in the course of or for the purpose of the marketing, sale or distribution to the public of, or the performance of, any contract of insurance or service that an insurer offers to the public;
- (kk) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (ll) “motor vehicle liability policy” means a policy or part of a policy evidencing a contract insuring
  - (i) the owner or driver of an automobile, or
  - (ii) a person who is not the owner or driver of an automobile where the automobile is being used or operated by the person’s employee or agent or any other individual on the person’s behalf,
 against liability arising out of bodily injury to or the death of an individual or loss or damage to property caused by an automobile or the use or operation of an automobile;
- (mm) “mutual provincial company” means a provincial company that does not have common shares and that is formed for the purpose of issuing participating policies;
- (nn) “non-owner’s policy” means a motor vehicle liability policy insuring a person solely in respect of the use or operation by the person or on the person’s behalf of an automobile that the person does not own;
- (oo) “officer” means
  - (i) in relation to a body corporate, a chief executive officer, president, vice-president, secretary, controller, treasurer and any other individual designated as an officer of the body corporate by by-law or by resolution of the directors of the body corporate, and
  - (ii) in relation to any other entity, any individual designated as an officer of the entity by by-law, by resolution of the members of the entity or otherwise;

- (pp) “owner’s policy” means a motor vehicle liability policy insuring a person in respect of the ownership, use or operation of an automobile owned by the person and within the description or definition of automobile in the policy and, if the contract so provides, in respect of the use or operation of any other automobile;
- (qq) “participating policy” means a policy issued by an insurer that entitles its holder to participate in the profits of the insurer;
- (rr) “participating policyholder” means the holder of a participating policy;
- (ss) “person” means an individual, entity or personal representative;
- (tt) “personal representative” means an executor, administrator, guardian, committee, trustee, assignee, receiver or liquidator;
- (uu) “policy” means an instrument evidencing a contract of insurance;
- (vv) “premium” means the single or periodical payment to be made for insurance, and includes dues, assessments and other consideration;
- (ww) “premium note” means an instrument given as consideration for insurance by which the maker of the instrument undertakes to pay the sum or sums that may be legally demanded by the insurer, the aggregate of those sums not to exceed an amount specified in the instrument;
- (xx) “professional adviser” means
  - (i) an auditor,
  - (ii) an actuary,
  - (iii) a lawyer, accountant, appraiser, architect or engineer, or
  - (iv) any other person whose membership in a profession would tend to lend credibility to a statement made or opinion given by that person,

and includes an individual who is a member of or who works in a professional capacity for a partnership, body corporate or other association of persons that is a professional adviser;

- (yy) “property” that is the subject of a contract of insurance includes
- (i) profits, earnings and other pecuniary interests, and
  - (ii) expenditure for rents, interest, taxes and other expenses and charges and expenditures in respect of inability to occupy the insured premises, but only to the extent provided for in the contract;
- (zz) “property and casualty company” means an insurer that is not a life company;
- (aaa) “provincial company” means an insurer incorporated under this Act;
- (bbb) “provincial life company” means a provincial company that is a life company;
- (ccc) “provincial property and casualty company” means a provincial company that is a property and casualty company;
- (ddd) “proxy” means a completed and executed form of proxy by means of which a participating policyholder or shareholder appoints a proxyholder to attend and act on behalf of the participating policyholder or shareholder at a meeting of participating policyholders or shareholders;
- (eee) “proxyholder” means the person appointed by proxy to attend and act on behalf of a participating policyholder or shareholder at a meeting of participating policyholders or shareholders;
- (fff) “reciprocal insurance exchange” means a group of subscribers exchanging reciprocal contracts of indemnity or inter-insurance with each other through a principal attorney as defined in section 78(b);
- (ggg) “relative”, when used with respect to individuals, means related by blood, marriage or adoption;
- (hhh) “reporting issuer” means a reporting issuer within the meaning of that term in the *Securities Act*;
- (iii) “security” means
- (i) in relation to a body corporate, a share of any class of shares of the body corporate or a debt obligation of the body corporate, and includes a warrant of the body corporate, but does not include a deposit with

a deposit-taking institution or any instrument evidencing such a deposit, and

(ii) in relation to any other entity, any ownership interest in or debt obligation of the entity,

but does not include a policy;

- (jjj) “security interest” means an interest in or charge on property by way of mortgage, lien, pledge or otherwise taken by a creditor or guarantor to secure the payment or performance of an obligation;
- (kkk) “significant interest” has the meaning set out in section 8;
- (lll) “special broker” means a person who, for compensation, negotiates or offers to negotiate insurance, or the continuance or renewal of insurance, with unlicensed insurers in respect of any matter or thing in Alberta;
- (mmm) “special resolution” means a resolution passed by a majority of not less than  $\frac{2}{3}$  of the votes cast by the participating policyholders or shareholders who voted in respect of that resolution or signed by all the participating policyholders or shareholders entitled to vote on that resolution;
- (nnn) “subsidiary” has the meaning set out in section 9;
- (ooo) “subsisting” means, in respect of a licence or certificate of authority, that the licence or certificate has not expired and has not been cancelled;
- (ppp) “substantial investment” has the meaning set out in section 10;
- (qqq) “Superintendent” means the Superintendent of Insurance appointed under this Act;
- (rrr) “total assets” means total assets as defined in the regulations;
- (sss) “unincorporated body” means a trust, partnership, fund or other unincorporated association or organization;
- (ttt) “valid” means, in respect of a licence or certificate of authority, that the licence or certificate is not under suspension and has not been cancelled;
- (uuu) “voting share” means a share of any class of shares of a body corporate carrying voting rights under all



circumstances or by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled.

**Adjuster**

**2(1)** For the purposes of this Act, “adjuster” means a person who, for compensation,

- (a) directly or indirectly solicits the right to negotiate the settlement of a loss under a contract of insurance on behalf of an insured or insurer or a reciprocal insurance exchange, or
- (b) negotiates the settlement of a loss under a contract of insurance on behalf of an insured or insurer or a reciprocal insurance exchange.

**(2)** For the purposes of this Act, an adjuster does not include

- (a) a lawyer when practising law,
- (b) a trustee of property or an agent of an owner of or person having an insurable interest in property who negotiates a settlement of a loss under a contract of insurance in respect of the property,
- (c) an insurer, or
- (d) an employee of an insured who negotiates the settlement of a loss under a contract of insurance on behalf of the insured.

**Affiliate**

**3(1)** An entity is affiliated with another entity if one of them is controlled by the other or both of them are controlled by the same person.

**(2)** The affiliates of an entity are deemed to be affiliated with all other entities with which the entity is affiliated.

**Beneficial ownership**

**4(1)** A security or other interest is beneficially owned by a person when it is held

- (a) directly by that person, or
- (b) through a personal representative or other intermediary

for the use or benefit of that person otherwise than as a security interest.

(2) A person is deemed to own beneficially securities that are beneficially owned by an entity controlled by that person.

(3) If a person owns securities in a corporation that itself owns securities in a body corporate, in determining the person's beneficial ownership of securities in the body corporate for the purposes of subsection (2) no regard is to be taken of the securities of the body corporate that are owned by the corporation.

**Control**

**5(1)** A person controls a body corporate if the person holds or beneficially owns securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate.

(2) A person controls an unincorporated body if the person holds or beneficially owns more than 50% of the beneficial interest, however designated, into which the body is divided and the person is able to direct the affairs of the entity.

(3) Despite subsections (1) and (2), a person controls an entity if the person has, in relation to the entity, any direct or indirect influence that, if exercised, would result in control in fact of the entity.

(4) A holding body corporate is deemed to control any entity that is controlled or deemed to be controlled by a subsidiary of the holding body corporate.

(5) An entity that controls another entity is deemed to control any entity that is controlled or deemed to be controlled by the other entity.

**Holding body  
corporate**

**6** A body corporate is the holding body corporate of a body corporate that is its subsidiary.

**Ordinarily  
resident in  
Canada**

**7** An individual is ordinarily resident in Canada if the individual is

- (a) a Canadian citizen ordinarily resident in Canada,
- (b) a Canadian citizen who does not live in Canada but is a member of a prescribed class of individuals, or
- (c) a permanent resident within the meaning of the *Immigration Act* (Canada) and ordinarily resident in Canada, except a permanent resident who has been

ordinarily resident in Canada for more than one year after the time at which the individual first became eligible to apply for Canadian citizenship.

Significant  
interest

**8** A person has a significant interest in a class of shares of a body corporate where the aggregate of

- (a) any shares of that class beneficially owned by the person, and
- (b) any shares of that class beneficially owned by entities controlled by the person

exceeds 10% of all of the outstanding shares of that class of shares of the body corporate.

Subsidiary

**9** A body corporate is a subsidiary of another body corporate if

(a) it is controlled by

- (i) that other,
- (ii) that other and one or more bodies corporate each of which is controlled by that other, or
- (iii) 2 or more bodies corporate each of which is controlled by that other,

or

(b) it is a subsidiary of a body corporate that is that other's subsidiary.

Substantial  
investment

**10(1)** A person has a substantial investment in a body corporate when

- (a) the voting rights attached to the aggregate of any voting shares of the body corporate beneficially owned by the person exceed 10% of the voting rights attached to all of the outstanding voting shares of the body corporate, or
- (b) the aggregate of any shares of the body corporate beneficially owned by the person represents ownership of more than 25% of the shareholders' equity of the body corporate.

**(2)** A person has a substantial investment in an unincorporated body where the person beneficially owns more than 25% of all the

ownership interests, however designated, into which the body is divided.

**Incorporated**      **11(1)** When this Act or the regulations refer to a body corporate in relation to the jurisdiction in which it was incorporated or to the legislation under which it was incorporated, “incorporated” includes amalgamated and continued.

**(2)** This section does not apply to Divisions 1 and 2 of Part 2, Subpart 2.

**Contracts made in Alberta**      **12(1)** A contract of insurance is deemed to have been made in Alberta if

- (a)** it insures a person who is domiciled or resident in Alberta when the contract is made, or
- (b)** the subject-matter of the contract is property that is or will be located in Alberta.

**(2)** Subsection (1) does not apply to a contract of life insurance to which Part 5, Subpart 4 applies.

**(3)** This section has effect despite any agreement, condition or stipulation to the contrary.

### **Application**

**Mutual benefit societies**      **13(1)** In this section, “mutual benefit society” means a body corporate formed for the purpose of providing sick, disability or funeral benefits for its members.

**(2)** This Act does not apply to a mutual benefit society if,

- (a)** in the case of sick or disability benefits, the society provides benefits of \$12 or less per week, and
- (b)** in the case of funeral benefits, the society provides benefits of \$400 or less in respect of one funeral.

**Benefits provided under authority of federal Act**      **14** This Act does not apply to

- (a)** a body corporate that has, by or under the authority of an Act of the Parliament of Canada, created a fund for paying a gratuity on the event of death, sickness, infirmity, casualty, accident or disability or on any change of physical or mental condition, or

- (b) a body corporate that has, by or under the authority of an Act of the Parliament of Canada, an insurance and provident society or association or an insurance or guarantee fund in connection with the body corporate.

Associations  
that provide  
employee  
benefits

**15(1)** In this section, “association” means an entity that

- (a) is operated by an employer and the employer’s employees, or by 2 or more employers directly associated through corporate control and their employees, and
- (b) is formed for the purpose of providing medical care, sickness or accident benefits for some or all of the employees and the dependants of those employees of the employer or employers.

**(2)** This Act does not apply to an association if

- (a) membership in the association is restricted to bona fide employees or former employees of the employer or employers,
- (b) the right to receive medical care, sickness or accident benefits is dependent on the terms of the constitution and by-laws of the association, and
- (c) the association provides prescribed medical care, sickness or accident benefits.

**(3)** The Lieutenant Governor in Council may make regulations

- (a) prescribing medical care, sickness and accident benefits for the purposes of subsection (2)(c);
- (b) exempting from the application of this Act any entity or class of entity that is a non-profit organization, that has substantially the same purposes as an association and that provides the benefits referred to in subsection (2)(c);
- (c) respecting the terms and conditions that must be met to maintain an exemption under clause (b).

Regulations

**16** The Lieutenant Governor in Council may make regulations

- (a) defining base capital, electronic media and total assets for the purposes of this Act;
- (b) prescribing classes of individuals for the purposes of section 7;

- (c) establishing the classes and subclasses of insurance for the purposes of this Act.

## **PART 1**

### **LICENSING OF INSURERS AND RECIPROCAL INSURANCE EXCHANGES**

#### **SUBPART 1**

#### **LICENSING OF INSURERS**

##### **Insurer's Duty to be Licensed**

Undertaking  
insurance and  
carrying on  
business

**17(1)** An insurer undertaking a contract of insurance that is made in Alberta, whether the contract is original or renewed, except the renewal from time to time of life insurance policies, is, for the purposes of this Act, undertaking insurance in Alberta.

**(2)** An insurer is, for the purposes of this Act, carrying on business in Alberta if the insurer

- (a) undertakes or offers to undertake insurance in Alberta,
- (b) sets up or causes to be set up in Alberta any sign or inscription that contains the name of the insurer or that refers to insurance,
- (c) carries on market conduct activities in Alberta,
- (d) solicits or negotiates insurance in Alberta orally or in writing or by electronic media or any other medium of communication or by vending machines,
- (e) issues or delivers any policy of insurance or interim receipt in Alberta,
- (f) collects or receives or negotiates for or causes to be collected or received or negotiated for any premium for a contract of insurance in Alberta,
- (g) inspects any risk in Alberta,
- (h) adjusts any loss under a contract of insurance in Alberta,
- (i) prosecutes or maintains in Alberta any action or proceeding in respect of a contract of insurance, or
- (j) is listed in a telephone directory for any part of Alberta.

**(3)** Any body corporate or unincorporated body that receives in Alberta contributions from its members out of which any gratuities or benefits are paid directly or indirectly on the death of any of its members is, for the purposes of this Act, an insurer carrying on business in Alberta.

Requirement  
for licence

**18(1)** Except as provided for in this Act, no insurer may carry on business in Alberta unless the insurer holds a valid and subsisting licence.

**(2)** Except as provided for in this Act, no insurer may insure a risk in Alberta unless the insurer holds a valid and subsisting licence for a class of insurance that covers that risk.

**(3)** Except as provided for in this Act, no person may enter into or renew a contract of insurance to insure a risk in Alberta with an insurer unless

- (a) the insurer holds a valid and subsisting licence, and
- (b) the licence held by the insurer authorizes the insurer to undertake a class of insurance that covers the risk that is insured.

### **Licensing Requirements**

Types of  
insurers

**19(1)** Only the following insurers are eligible for a licence under this Part:

- (a) a provincial company;
  - (b) an extra-provincial company;
  - (c) a federally authorized company;
  - (d) an insurer made up of underwriters or syndicates of underwriters operating on the plan known as Lloyd's or any other plan approved by the Minister.
- (2)** Despite subsection (1), a fraternal society is eligible for a licence under this Part only if
- (a) the fraternal society is a federally authorized company, or
  - (b) the fraternal society is incorporated under the laws of a province other than Alberta and has been continuously licensed in Alberta as a fraternal society under this Act and the predecessor of this Act from December 31, 1995.

Application  
requirements

**20(1)** An application for a licence must

- (a) be filed with the Minister,
- (b) specify the classes of insurance that the applicant wishes to be authorized to undertake, and
- (c) contain the information, material and evidence required by the Minister.

**(2)** An application for a licence must be accompanied by

- (a) a plan for the conduct and development of the business of the company,
- (b) in the case of an applicant other than a provincial company, a certified copy of its instrument of incorporation and by-laws,
- (c) if the applicant is a federally authorized company, a certified copy of the order under the *Insurance Companies Act* (Canada) approving the company to carry on business or to insure risks in Canada,
- (d) if the applicant is an extra-provincial company, a certified copy of its authority to carry on business from the jurisdiction in which the company is incorporated and a certified copy of the latest audited financial statements of the company,
- (e) copies of all policy forms and forms of application for insurance proposed to be used by the applicant in Alberta,
- (f) the appointment of an individual as its attorney for service and the consent of the individual to act as the attorney for service, and
- (g) the address of its chief agency in Alberta.

**(3)** After filing an application for a licence, the applicant must provide to the Minister any additional information, material and evidence the Minister considers necessary.

**(4)** An application by a provincial company for its first licence after its incorporation under this Act must

- (a) set out the sums of money paid or to be paid by the company in connection with its incorporation and organization, and



- (b) contain evidence satisfactory to the Minister that the directors have performed their duties under section 309.

Names

**21(1)** No insurer may be licensed with a name that does not meet the requirements of section 211(1) and the regulations under section 212.

(2) Subject to this Act and the regulations, an insurer may be licensed with a name in an English form, a French form, an English form and a French form or a combined English and French form, and it may be legally designated in Alberta by any such name.

(3) Where an insurer has a name that contravenes subsection (1), the Minister may license the insurer if it undertakes either to change its name to a name that does not contravene subsection (1) or to carry on business in Alberta under a name that does not contravene subsection (1).

(4) Where, through inadvertence or otherwise, an insurer becomes licensed with a name that contravenes subsection (1), the Minister may order as a condition of being licensed that the insurer carry on business under a name specified in the order.

Extra-provincial Crown insurer

**22(1)** In this section, “extra-provincial Crown insurer” means an insurer that

- (a) is formed by or under the laws of another province,
- (b) has an exclusive right to perform an insurance activity in that province, and
- (c) is beneficially owned or controlled by Her Majesty in right of that province.

(2) No extra-provincial Crown insurer or affiliate of an extra-provincial Crown insurer may hold or be issued a licence under this Act.

First licence of provincial company

**23** Before issuing the first licence to a provincial company, the Minister must be satisfied that

- (a) the meeting of shareholders referred to in section 133 has been held,
- (b) the expenses of incorporation or organization that have been paid or are to be paid by the company are reasonable,

- (c) the management, directors or persons who hold a significant interest in any class of shares of the company are fit as to character, and
- (d) the management and directors have the competence and experience suitable for involvement in the operation of a financial institution.

**Ability to carry on class of insurance** **24** Before issuing the first licence to an insurer, the Minister must be satisfied that the insurer has the capacity and power to carry on the classes of insurance that it has specified in its application.

**Base capital** **25** Before issuing a licence to or renewing a licence of a provincial or extra-provincial company, the Minister must be satisfied that

- (a) the amount of the company's base capital is at least,
  - (i) for life companies, \$5 million or any greater amount specified by the regulations, and
  - (ii) for property and casualty companies, \$3 million or any greater amount specified by the regulations,
- and
- (b) the company's base capital is adequate, taking into account the nature of the business that it proposes to engage in, the expected volume of its business and any restrictions on its business.

**Compliance with market conduct laws** **26** The Minister may refuse to issue a licence to or renew a licence of an insurer if the Minister is satisfied that the insurer is not complying with the laws respecting market conduct activities of other jurisdictions in which it is licensed.

**Issuing licence** **27** An insurer who applies for a licence under this Subpart or to renew such a licence is entitled to the licence if the Minister is satisfied that

- (a) the requirements of this Act and the regulations relating to the licence have been met, and
- (b) the insurer is in compliance with this Act and the regulations.

Notice of licence	<p><b>28(1)</b> The Minister must publish a notice of the licence of an insurer in The Alberta Gazette.</p> <p><b>(2)</b> This section does not apply to a renewal of a licence.</p>
Expiry	<p><b>29</b> A licence expires on December 31 of the year in which it is issued or renewed.</p>
Renewal of licence	<p><b>30</b> An application for a renewal of a licence must</p> <ul style="list-style-type: none"> <li>(a) be filed with the Minister,</li> <li>(b) specify the classes of insurance that the applicant wishes to be authorized to undertake, and</li> <li>(c) contain the information, material and evidence required by the Minister.</li> </ul>
Duty on expiration of licence	<p><b>31(1)</b> An insurer must not allow its licence to expire unless</p> <ul style="list-style-type: none"> <li>(a) the insurer gives the Minister 30 days' notice of its intention not to renew its licence, and</li> <li>(b) the insurer provides the Minister with a statutory declaration stating that <ul style="list-style-type: none"> <li>(i) the insurer has no unpaid claims in respect of the insurer's contracts of insurance made in Alberta,</li> <li>(ii) all of the insurer's contracts of insurance made in Alberta are discharged or expired or have been transferred or assigned to another licensed insurer, and</li> <li>(iii) the insurer has no outstanding fees or taxes payable to the Government.</li> </ul> </li> </ul> <p><b>(2)</b> When an insurer does not renew its licence, the Minister must publish a notice in The Alberta Gazette stating that the licence of the insurer has expired and setting out any information about the insurer or its business in Alberta that the Minister considers appropriate.</p>

Terms and conditions

**32(1)** The Minister may, when issuing or renewing a licence, impose on the licence any terms or conditions that are consistent with this Act that the Minister considers appropriate.

**(2)** Before imposing terms or conditions under this section, the Minister must notify the insurer of the proposed terms or conditions and provide the insurer with an opportunity to make representations to the Minister.

Automobile insurance

**33** An insurer's licence to undertake automobile insurance in Alberta is subject to the following conditions:

- (a) in any action in Alberta against the licensed insurer or its insured arising out of an automobile accident in Alberta, the insurer must appear and must not set up any defence to a claim under a contract made outside Alberta, including any defence as to the limit or limits of liability and prescribed accident benefits under the contract, that could not be set up if the contract were evidenced by a motor vehicle liability policy issued in Alberta;
- (b) in any action in another province against the licensed insurer or its insured arising out of an automobile accident in that province, the insurer must appear and must not set up any defence to a claim under a contract evidenced by a motor vehicle liability policy issued in Alberta, including any defence as to the limit or limits of liability and prescribed accident benefits under the contract, that could not be set up
  - (i) if the contract were evidenced by a motor vehicle liability policy issued in the other province, or
  - (ii) under a scheme of no fault insurance that has been established by statute in the other province.

### **Classes of Insurance**

Classes of insurance

**34(1)** A licence issued by the Minister must set out the classes of insurance that the licensee is authorized to undertake.

**(2)** If a question arises as to the class of insurance into which any specific contract of insurance or form of policy falls, the Minister may determine the question and that determination is final for the purposes of this Act.

Restriction on  
classes of  
insurance

**35(1)** Subject to subsection (2), no licence may be issued that authorizes the licensee to undertake life insurance and any other class of insurance.

(2) A licence may be issued that authorizes the licensee to undertake life insurance and

- (a) accident and sickness insurance, or
- (b) any other prescribed class of insurance in the prescribed circumstances.

Prohibited  
activities

**36(1)** Except as permitted under this Act and the regulations, no licensed insurer may

- (a) carry on business as an information management corporation as defined in the regulations, except in relation to the main business of an insurer;
- (b) carry on business as a financial leasing corporation as defined in the regulations;
- (c) accept deposits;
- (d) carry on the business of offering services to the public as or accepting or executing the office of
  - (i) executor or administrator or trustee, or
  - (ii) guardian or trustee of a minor's estate or of the estate of a mentally incompetent person;
- (e) carry on any other activity that is prescribed for the purposes of this subsection.

(2) Nothing in this section prevents a subsidiary of a insurer from engaging in the activities described in subsection (1).

Scope of fire  
insurance  
licence

**37(1)** An insurer licensed to undertake fire insurance may, subject to its instrument of incorporation and any term or condition of its licence, insure or reinsure any property in which the insured has an insurable interest

- (a) against loss or damage by fire, lightning or explosion,
- (b) against loss or damage from falling aircraft, earthquake, windstorm, tornado, hail, sprinkler leakage, riot, malicious

damage, weather, water damage, smoke damage, civil commotion and impact by vehicles, and

(c) against any one or more perils falling within any other prescribed classes of insurance.

(2) An insurer licensed to undertake fire insurance may, under a contract falling within Part 5, Subpart 3, insure an automobile against loss or damage.

Life insurance **38** An insurer licensed to undertake life insurance may, unless the licence expressly provides otherwise, include disability insurance in any policy of life insurance in respect of the same life or lives insured by the policy.

### **Attorney for Service**

Attorney for service **39(1)** Every insurer licensed under this Subpart must have an attorney for service who meets the requirements of subsection (2).

(2) The attorney for service must be an individual who is resident in Alberta.

(3) Service of any document in a legal action, suit or proceeding on an insurer may be effected by

(a) delivering the document to its attorney according to the Minister's records,

(b) delivering the document to the address of its attorney according to the Minister's records, or

(c) sending the document by registered mail to that address.

(4) A document sent by registered mail to the attorney's address in accordance with subsection (3)(c) is deemed to be served 7 days from the date of mailing unless there are reasonable grounds for believing that the attorney did not receive the document at that time or at all.

(5) Every licensed insurer must ensure that its attorney's office is open during normal business hours.

Attorney's change of address **40** An attorney for service who changes addresses must, before the change occurs, notify the Minister of the date of the change and the new address.

Change in  
attorney

**41(1)** If the attorney for service of an insurer dies or resigns or if an insurer revokes the appointment of its attorney for service, the insurer must, as soon as is reasonably possible, provide the Minister with

- (a) the appointment of its new attorney for service, and
- (b) the consent of the individual to act as the attorney for service.

**(2)** An attorney for service of an insurer who intends to resign must

- (a) give not less than 60 days' notice to the insurer, and
- (b) send a copy of the notice to the Minister.

No attorney for  
service

**42** If an insurer does not have an attorney for service, service on the insurer may be effected by serving the Superintendent.

### **Reporting Requirements**

Annual  
financial  
statements

**43(1)** Every insurer licensed under this Act must within 180 days after the end of the insurer's financial year provide the Minister with a copy of the insurer's audited financial statements for the financial year.

**(2)** Every licensed provincial company that has a subsidiary must within 180 days after the end of the subsidiary's financial year provide the Minister with a copy of the subsidiary's audited financial statements for the financial year.

**(3)** The Minister may, by written notice, require the holding body corporate of a licensed provincial company to provide the Minister with the holding body corporate's annual audited financial statements and the annual audited financial statements in respect of any of the holding body corporate's subsidiaries.

**(4)** Every licensed insurer must provide, on written request without charge, one copy of the insurer's latest audited financial statements to a person who is resident in Alberta and who is a policyholder.

Annual return

**44(1)** Every licensed provincial company must file an annual return within the time period specified in subsection (2) that meets the requirements of subsections (3) and (4).

**(2)** The annual return must be filed

- (a) in the case of a provincial company that is limited by the Minister to the reinsurance of risks, within 105 days after the end of the financial year in respect of which the return is prepared, or
- (b) in the case of any other provincial company, within 60 days after the end of the financial year in respect of which the return is prepared.

**(3) The annual return must**

- (a) set out the provincial company's name and the address of its head office, the names and residential addresses of its directors, the names of its officers and auditor, the name and address of its attorney for service and, if the company's records are held outside Alberta under section 217(4), the address at which those records are located,
- (b) set out the assets, liabilities, receipts and expenditures of the company for the financial year and be audited in a manner that is satisfactory to the Minister,
- (c) set out particulars of the business done in Alberta during the financial year,
- (d) be accompanied by the actuary's valuation referred to in section 405,
- (e) set out any other information considered necessary by the Minister, and
- (f) be approved and signed by the president, vice-president or managing director or other director appointed for the purpose by the board of directors and by the secretary or manager of the company.

**(4) The assets of a provincial company must be valued in accordance with the method established by the regulations under section 432(f).**

**Change in  
officials**

**45** If the directors, officers or auditor of a provincial company change, or if the residential addresses of the directors change, the company must notify the Minister of the new names or addresses within 15 days of the change.

**Report on  
business  
particulars**

**46(1)** Every insurer, other than a provincial company, licensed under this Act for all or part of a year (the "reporting year") must submit to the Minister before the last day of February of the year following the reporting year a report that sets out the particulars of



the insurer's insurance business written in Alberta during the reporting year.

(2) Instead of submitting the report referred to in subsection (1) to the Minister, the Minister may allow an insurer to submit the report to an official of a government in Canada who has an information sharing agreement with the Minister.

Records of  
premium  
income and  
losses -  
automobile  
insurance

**47(1)** Every licensed insurer that carries on in Alberta the business of automobile insurance must prepare and file with the Minister, or with a statistical agency that the Minister may designate, a record of its automobile insurance premiums and of its loss and expense costs in Alberta, in a manner and according to a system of classification that the Minister approves.

(2) A statistical agency designated by the Minister must compile the data in the records filed under subsection (1) in a manner approved by the Minister and submit the compiled data to the Minister.

(3) The reasonable remuneration and expenses of the statistical agency designated by the Minister are payable by the insurers whose data is compiled and, if there is a dispute with respect to the amount payable, the Minister's decision is final.

(4) An amount determined by the Minister under subsection (3) is a debt owing to the statistical agency by the insurer specified by the Minister and may be recovered from the insurer by the agency in an action for debt.

Audit of  
records

**48(1)** If at any time it appears to the Minister that an insurer is not keeping records in a manner that shows correctly the experience of the insurer in Alberta as required by section 46 or 47, the Minister may hire an accountant

(a) to audit the books and records of the insurer, and

(b) to give instructions that will enable the officers of the insurer to comply with those sections.

(2) The reasonable remuneration and expenses of the accountant that are approved by the Minister for an audit of an insurer under subsection (1) must be paid by the insurer.

(3) If the amount approved under subsection (2) is not paid by the insurer, the Minister may pay the amount and then recover it from the insurer in an action for debt.

Other  
information -  
licensed  
insurers

**49** Every licensed insurer, other than a provincial company, must provide the Minister with a copy of

- (a) any change to its instrument of incorporation within 7 days of the change's being made, and
- (b) notice of its being subject to an arrangement in a jurisdiction in which it is licensed other than Alberta that is in the nature of a compliance undertaking, within 7 days of the arrangement's being made.

Additional  
information

**50** A licensed insurer must provide to the Minister, within the time specified by the Minister,

- (a) any information that is required by the Minister to enable the Minister to respond to inquiries on the company's market conduct activities;
- (b) information for prescribed analytical or policy-making purposes.

### **Suspension, Cancellation and Other Actions Affecting Insurers' Licences**

Federally  
authorized  
companies

**51(1)** In this section, "order" means an order under the *Insurance Companies Act* (Canada) that approves a federally authorized company to carry on business or to insure risks in Canada.

**(2)** If the order of a federally authorized company is rescinded, the licence of the company under this Act is automatically cancelled.

**(3)** The Minister must revive the licence of a federally authorized company that has been cancelled under this section if the company obtains a new order before the licence would have expired.

**(4)** If the authority to insure a class of risks is deleted from the order of a federally authorized company, that class of insurance is automatically deleted from the licence of the company under this Act.

**(5)** The Minister must restore the class of insurance to the licence of the federally authorized company referred to in subsection (4) if the class of insurance is restored to the company's order before the licence has expired.

Extra-  
provincial  
companies

**52(1)** If the licence of an extra-provincial company is cancelled or suspended with or without conditions under the laws of the jurisdiction under which the company is incorporated, the Minister must,

- (a) if the jurisdiction cancelled the licence, cancel the licence held by the company under this Act, or
- (b) if the jurisdiction suspended the licence, suspend the licence on the same conditions.

(2) If under the laws of the jurisdiction under which an extra-provincial company is incorporated terms, conditions or restrictions are imposed on its licence to carry on business in that jurisdiction, the licence held by the company under this Act is automatically subject to the same terms, conditions or restrictions unless the Minister provides otherwise under subsection (3).

(3) If the Minister suspends a licence under subsection (1) or if subsection (2) applies, the Minister may make any modifications to the terms, conditions or restrictions imposed under the laws of the other jurisdiction that the Minister considers necessary to take into account circumstances in Alberta.

(4) If under the laws of the jurisdiction under which an extra-provincial company is incorporated a class of insurance is deleted from its licence issued in that jurisdiction, the class of insurance is automatically deleted from the licence held by the company under this Act.

(5) The Minister may revive the licence of an extra-provincial company that has been cancelled under subsection (1), delete or vary terms or conditions imposed on the licence of an extra-provincial company under subsection (2) or (3) or restore to the licence of an extra-provincial company a class of insurance that is deleted under subsection (4) if the revival, deletion, variance or restoring occurs in the jurisdiction in which the extra-provincial company is incorporated.

Cancellation  
on request

**53(1)** The Minister may, on the request of a licensed insurer, cancel the insurer's licence.

(2) The Minister must not cancel the licence of an insurer under subsection (1) unless the Minister is satisfied that

- (a) the insurer has no unpaid claims in respect of the insurer's contracts of insurance made in Alberta,

- (b) all of the insurer's contracts of insurance made in Alberta are discharged or expired, or have been transferred or assigned to another licensed insurer, and
  - (c) the insurer has no outstanding fees or taxes payable to the Government.
- (3) The Minister must publish a notice of the cancellation of a licence under this section in The Alberta Gazette.

Sanctions  
affecting  
licences

**54(1) Where**

- (a) a licensed insurer or other person denies the Minister, the Superintendent or an examiner access to any information, records, documents or property that the Minister, Superintendent or examiner is authorized by this Act to have access to,
- (b) the holding body corporate of a licensed provincial company fails to forward to the Minister audited financial statements in accordance with a notice under section 43(3),
- (c) a licensed insurer or other person contravenes
  - (i) an order of the Minister,
  - (ii) a decision of a review board under section 806, or
  - (iii) an order of the Court under section 767 or 809,
- (d) a licensed insurer is convicted of an offence under section 531(8) or 657,
- (e) grounds exist for the possession and control of the assets of a provincial company by the Minister,
- (f) a provincial company is carrying on or soliciting business in any jurisdiction other than Alberta without first being authorized to do so under the laws of that jurisdiction,
- (g) a licensed insurer fails to comply with any term or condition to which its licence is subject,
- (h) a licensed insurer does not, for a period of 5 years or more, engage in the business of insurance, or
- (i) a licensed insurer fails to comply with the provisions of Part 4,

the Minister may cancel, suspend or refuse to renew the licence of the insurer, or may impose terms or conditions on its licence.

(2) Where the Minister proposes to act under subsection (1), the Minister must give notice of that intention to the licensed insurer.

(3) If in the Minister's opinion the public interest may be prejudiced or adversely affected by any delay in acting under subsection (1), the Minister may, without notice, cancel or suspend the licence of the insurer or impose terms or conditions on its licence.

(4) The Minister must forthwith give notice to the insurer of any action taken under subsection (3).

(5) An insurer who receives a notice under subsection (2) or (4) and who wishes to have a hearing before the Minister must serve a written request for the hearing on the Minister within 15 days of receipt of the notice.

(6) If an insurer requests a hearing in accordance with subsection (5) in respect of an action taken by the Minister under subsection (3), the Minister may, after giving the insurer an opportunity to be heard, confirm the action taken or modify or reverse the action taken.

(7) If an insurer requests a hearing in accordance with subsection (5) in respect of the Minister's proposed action under subsection (1), the Minister may, after giving the insurer an opportunity to be heard, take any of the proposed actions set out in the notice with or without modifications or decide not to take any of those actions.

(8) The Minister must publish in The Alberta Gazette notice of every cancellation or suspension of a licence under this section.

Non-payment  
of claims

**55(1)** The Minister must cancel the licence of an insurer if the Minister is satisfied that

- (a) a judgment arising out of a contract of insurance made in Alberta has been issued against the insurer, and
- (b) the judgment has become final in the regular course of law, is enforceable in Alberta and has remained unpaid for 30 or more days after becoming final.

(2) The Minister may revive a licence that has been cancelled under subsection (1) if the judgment against the insurer is paid within 6 months after the cancellation and the licence would not have expired.

Effect of  
cancellation or  
suspension

**56(1)** When an insurer's licence is cancelled under this Subpart, the insurer may carry on business in Alberta only to the extent that it is necessary for the winding-up of its business in Alberta.

**(2)** When an insurer's licence is suspended under this Subpart, the insurer may carry on business in Alberta only in accordance with the terms and conditions of the suspension.

**(3)** When a class of insurance has been deleted from an insurer's licence under this Subpart, the insurer must cease to undertake or to offer to undertake that class of insurance in Alberta.

Provisional  
liquidator

**57(1)** The Minister may appoint a provisional liquidator to be in charge of the affairs of a provincial company if

- (a) the company fails to renew its licence without complying with section 31,
- (b) the company's application to renew its licence is refused, or
- (c) the company's licence is cancelled in circumstances other than those set out in section 53.

**(2)** Until a permanent liquidator is appointed by the Court, the provisional liquidator has all of the powers of the insurer, and none of the officers or directors of the provincial company may enter into a contract or incur any liability on behalf of the company without the approval of the provisional liquidator.

**(3)** A provisional liquidator of a provincial company must apply to the Court under section 190 for an order winding up the company.

**(4)** Despite subsection (3), a provisional liquidator of a provincial company may, with the approval of the Court, sell the business of the company as a going concern.

Remuneration  
of provisional  
liquidator

**58(1)** The Minister is responsible for establishing the remuneration of a provisional liquidator.

**(2)** The remuneration of a provisional liquidator of a provincial company and the provisional liquidator's costs and expenses while acting as the provisional liquidator are payable by the company and are a first lien or charge on the assets of the company.

## **Municipal Licensing Fees**

Exemption  
from certain  
fees

**59** An insurer that holds a licence under this Act is exempt from the payment of any licence fee for the transaction of the business of insurance imposed by a municipality or Metis settlement.

## **Regulations**

Regulations

**60** The Lieutenant Governor in Council may make regulations

- (a) specifying an amount of base capital for life or property and casualty companies for the purposes of section 25(a);
- (b) respecting any matter that is to be prescribed under this Subpart.

## **SUBPART 2**

## **EXCEPTIONS**

### **Unsolicited Insurance**

Unsolicited  
insurance

**61(1)** Despite section 18, an insurer that is not licensed may undertake insurance in Alberta with an insured if

- (a) the insurance is effected without any solicitation whatsoever on the part of that insurer, and
- (b) the insured, not later than 30 days after signing the contract of insurance or receiving any policy, interim receipt or insuring document issued by or on behalf of the insurer, whichever occurs first,
  - (i) notifies the Superintendent in writing under oath of the terms of the insurance, the insurer with whom the insurance is placed and the amount of premium paid or payable or premium notes given or to be given in connection with the insurance, and
  - (ii) at the same time pays to the Provincial Treasurer a fee equal to 50% of the premium paid or payable or premium notes given or to be given in connection with the insurance.

**(2)** If the fee referred to in subsection (1)(b)(ii) is not paid within 30 days from the time it becomes payable, a sum equal to 50% of the fee remaining unpaid becomes a penalty that forms a part of the fee and is recoverable with the fee.

(3) Despite section 18, a person may enter into or renew a contract of insurance to insure a risk in Alberta with an unlicensed insurer if the requirements of subsection (1)(a) and (b) have been met.

(4) This section does not apply to a contract of insurance that may be evidenced by a motor vehicle liability policy.

### **Reinsurance**

Reinsurance

**62(1)** In this section, “Alberta contract” means a contract of insurance made in Alberta, but does not include a contract of reinsurance.

(2) Despite section 18, an insurer, other than a provincial company, that is not licensed may enter into a contract as the insurer that reinsures risks in respect of an Alberta contract if the insurance business in Alberta of the insurer is restricted to the reinsurance of risks.

(3) Despite section 18, a licensed insurer that is the insurer under an Alberta contract may, subject to the regulations, enter into a contract of reinsurance in respect of the Alberta contract with an insurer referred to in subsection (2).

### **Special Brokers**

Insurance  
through  
special broker

**63(1)** Despite section 18, an insurer that is not licensed may undertake insurance in Alberta with an insured if

- (a) the insurance cannot be obtained from licensed insurers,
- (b) the insurance is effected through a person who holds a valid and subsisting special broker’s licence for that class of insurance,
- (c) before the insurance is undertaken the special broker obtains from the proposed insured a signed and dated document
  - (i) describing the nature and amount of the insurance required, and
  - (ii) stating that the insurance cannot be obtained from licensed insurers and specifying the licensed insurers who refused the proposed insured’s application,

and



(d) before the insurance is undertaken the special broker discloses in writing to the proposed insured that the insurance will be placed with an unlicensed insurer.

(2) Despite section 18, a person may enter into or renew a contract of insurance to insure a risk in Alberta with an unlicensed insurer if the requirements of subsection (1)(a) to (d) have been met.

(3) This section does not apply to a contract of insurance that may be evidenced by a motor vehicle liability policy.

Certificate of  
authority

**64** No person may be issued a special broker's licence for a class of insurance or have a special broker's licence renewed for a class of insurance unless the person holds an insurance agent's certificate of authority, other than a restricted insurance agent's certificate of authority, for that class of insurance.

Financial  
guarantee

**65** No person may be issued a special broker's licence or have a special broker's licence renewed unless the person maintains a financial guarantee in a form satisfactory to the Minister in the prescribed amount.

Application for  
special  
broker's  
licence

**66(1)** An application for a special broker's licence or to renew a special broker's licence must

- (a) be filed with the Minister,
- (b) specify the classes of insurance in respect of which the applicant wishes to transact business,
- (c) contain the information, material and evidence required by the Minister, and
- (d) be accompanied by proof that the financial guarantee referred to in section 65 is being maintained.

(2) After filing an application, the applicant must provide to the Minister any additional information, material and evidence the Minister considers necessary.

Issuing  
certificates

**67** An applicant who applies for a special broker's licence or a renewal of a special broker's licence is entitled to the licence if the Minister is satisfied that the requirements of this Act and the regulations relating to the licence have been met.

Terms and conditions	<p><b>68(1)</b> The Minister may issue a special broker's licence subject to terms and conditions provided for in the regulations.</p> <p>(2) Every holder of a special broker's licence must comply with the terms and conditions to which the licence is subject.</p>
Expiration	<p><b>69</b> A special broker's licence expires on December 31 of the year in which it is issued or renewed.</p>
Status of certificate of authority	<p><b>70(1)</b> When a person's insurance agent's certificate of authority expires, the person's special broker's licence is automatically cancelled.</p> <p>(2) When a person's insurance agent's certificate of authority is suspended or cancelled, the person's special broker's licence is automatically suspended.</p> <p>(3) The Minister must reinstate a person's special broker's licence that has been suspended under subsection (1) or (2) for a class of insurance if</p> <ul style="list-style-type: none"> <li>(a) the person submits an application for reinstatement to the Minister,</li> <li>(b) before the special broker's licence would have expired, the certificate of authority is reinstated or the person is issued an insurance agent's certificate of authority for that class of insurance, and</li> <li>(c) the Minister is satisfied that the person is in compliance with the requirements of this Act and the regulations relating to special brokers.</li> </ul>
Reporting requirements	<p><b>71</b> A licensed special broker must within 10 days after the end of each month submit to the Minister a return containing the following information with respect to the insurance effected under section 63 by the broker during the month:</p> <ul style="list-style-type: none"> <li>(a) the names of the insured;</li> <li>(b) the nature of the insurance;</li> <li>(c) the names of the unlicensed insurers;</li> <li>(d) the amount of insurance placed with each unlicensed insurer and the rate and amount of premium paid to each unlicensed insurer.</li> </ul>

Payments in  
respect of  
premiums

**72(1)** In respect of all premiums on insurance effected by a licensed special broker, the special broker must pay to the Minister the taxes that would be payable if the premiums had been received by a licensed insurer, and the payment must accompany the monthly return provided for in section 71.

**(2)** If the amount referred to in subsection (1) is not paid within 30 days from the time it becomes payable, a sum equal to 50% of the amount remaining unpaid becomes a penalty that forms a part of the amount referred to in subsection (1) and is recoverable with the amount.

Records

**73** A special broker must keep a separate account of insurance effected by the special broker.

Financial  
guarantee not  
in force

**74(1)** If, during the term of a special broker's licence, the financial guarantee referred to in section 65 maintained in respect of that licence is no longer in force, the special broker must immediately notify the Minister, in writing, that the guarantee is not in force.

**(2)** If, during the term of a special broker's licence, the financial guarantee referred to in section 65 maintained in respect of the licence is no longer in force, the licence is automatically suspended unless, while the guarantee is in force, the special broker satisfies the Minister that the special broker has obtained a new guarantee that meets the requirements of section 65.

**(3)** The Minister must reinstate a special broker's licence that has been suspended under subsection (2) if

- (a)** the broker submits an application for reinstatement to the Minister,
- (b)** the broker satisfies the Minister that the broker has obtained a new financial guarantee that meets the requirements of section 65 before the licence would have expired, and
- (c)** the Minister is satisfied that the broker is in compliance with the requirements of this Act and the regulations relating to special brokers.

Using different  
names

**75** No person may advertise or carry on business as a special broker in a name other than the name set out in the person's special broker's licence.

Release of  
financial  
guarantee

**76** A special broker is entitled to a release or cancellation of the financial guarantee submitted by the special broker when the Minister is satisfied that all insurance effected under section 63 by the broker is no longer in force or has been reinsured.

### **Regulations**

Regulations

**77** The Lieutenant Governor in Council may make regulations

- (a) respecting the maximum proportion of risks that may be reinsured with unlicensed insurers for the purposes of section 62(3);
- (b) respecting the requirement, conditions, training and experience that must be met before a special broker's licence is issued or renewed;
- (c) respecting terms and conditions that may be imposed on a special broker's licence;
- (d) respecting any matter that is to be prescribed under this Subpart.

### **SUBPART 3**

#### **LICENSING OF RECIPROCAL INSURANCE EXCHANGES**

Definitions

**78** In this Subpart,

- (a) "approved securities" means
  - (i) in respect of a reciprocal insurance exchange that has its principal office in Alberta, investments that the exchange would be authorized to make if the exchange were a provincial company,
  - (ii) in respect of a reciprocal insurance exchange that has its principal office in a province other than Alberta, investments that the exchange is authorized to make under the laws of that province, and
  - (iii) in respect of a reciprocal insurance exchange that has its principal office outside of Canada, investments that the exchange is authorized to make under Part XIII of the *Insurance Companies Act* (Canada);

- (b) “principal attorney” means a person authorized by subscribers under a power of attorney to sign reciprocal contracts on their behalf and to act on the subscribers’ behalf in respect of any matter specified in the power of attorney relating to those contracts;
- (c) “principal office” means the main office of the principal attorney;
- (d) “reciprocal contract” means a reciprocal contract of indemnity or inter-insurance;
- (e) “subscribers” means persons exchanging reciprocal contracts with each other.

Licence  
required

**79(1)** No person may exchange a reciprocal contract unless

- (a) the exchange is made by the person’s principal attorney,
- (b) the exchange is part of a reciprocal insurance exchange that is licensed under this Subpart, and
- (c) the reciprocal contract falls within a class of insurance that the reciprocal insurance exchange is authorized to undertake.

**(2)** No person may act as principal attorney or on behalf of a principal attorney in the exchange of reciprocal contracts for persons who are resident in Alberta unless the exchange is part of a reciprocal insurance exchange that is licensed under this Subpart.

Exception

**80(1)** Despite section 79, a person may, with respect to property located in Alberta, exchange a reciprocal contract that is a contract of property insurance and that is part of an unlicensed reciprocal insurance exchange if

- (a) the exchange of the contracts is done for protection only and not for profit,
- (b) the contracts are effected outside of Alberta,
- (c) the exchange of contracts is effected without any solicitation by the unlicensed reciprocal insurance exchange, and
- (d) the person who owns the property, within 30 days after signing the contract,

- (i) notifies the Superintendent in writing under oath of the terms of the contract, the persons with whom the insurance is placed and the amount of premium paid or payable or premium notes given or to be given or mutual liability assumed in connection with the insurance, and
- (ii) at the same time pays to the Provincial Treasurer a fee equal to 50% of the premium paid or payable or premium notes given or to be given or mutual liability assumed in connection with the insurance.

(2) If the fee referred to in subsection (1)(d)(ii) is not paid within 30 days from the time when it becomes payable, a sum equal to 50% of the fee remaining unpaid becomes a penalty that forms a part of the fee and is recoverable with the fee.

**Classes of insurance**

**81** Subject to section 82, a reciprocal insurance exchange may be licensed to undertake any class of insurance that a provincial company may be licensed to undertake except for the following classes:

- (a) life insurance;
- (b) accident insurance;
- (c) sickness insurance;
- (d) guarantee insurance.

**Automobile insurance**

**82(1)** No reciprocal insurance exchange may be licensed to undertake the type of automobile insurance that is evidenced by a motor vehicle liability policy.

(2) The Minister may issue a licence to a reciprocal insurance exchange that authorizes the exchange to undertake automobile insurance, other than the type described in subsection (1), if the Minister is satisfied that

- (a) the exchange has signed reciprocal contracts or bona fide applications for such contracts for at least the prescribed number of automobiles, and
- (b) arrangements are in effect for the reinsurance of all liabilities in excess of the prescribed limits.

**Fire insurance** **83** The Minister must not issue a licence to a reciprocal insurance exchange that authorizes the exchange to undertake fire insurance unless the Minister is satisfied that the exchange has bona fide applications for reciprocal contracts for at least the prescribed number of separate fire insurance risks in Alberta or elsewhere and for at least the prescribed aggregate amount.

**Application for licence** **84(1)** Persons who wish to have a reciprocal insurance exchange licensed must submit the following to the Minister:

- (a) the name of the exchange;
- (b) the name and address of its principal attorney;
- (c) the classes of insurance that cover the reciprocal contracts to be exchanged;
- (d) a copy of the form of the contract, agreement or policy under or by which the reciprocal contracts are to be effected or exchanged;
- (e) a copy of the form of power of attorney under which the contracts are to be effected or exchanged;
- (f) the location of the office from which the contracts are to be issued;
- (g) if the exchange is required by section 94 to have an attorney for service, the appointment of an individual as its attorney for service and the consent of the individual to act as the attorney for service;
- (h) any other information required by the Minister.

**(2)** Persons who wish to have a reciprocal insurance exchange's licence renewed must submit the following to the Minister:

- (a) the name of the exchange;
- (b) the name of its principal attorney;
- (c) any other information required by the Minister.

**Name of exchange** **85** The Minister may refuse to issue a licence to a reciprocal insurance exchange if the name or designation under which contracts are issued is so similar to a name or designation of a licensed exchange or licensed insurer that confusion or deception is likely.

Issuing licence	<p><b>86</b> Applicants who apply for a licence for a reciprocal insurance exchange or to renew such a licence are entitled to the licence if the Minister is satisfied that</p> <ul style="list-style-type: none"> <li>(a) the requirements of this Act and the regulations relating to the licence have been met, and</li> <li>(b) in the case of an existing reciprocal insurance exchange, the exchange is in compliance with the requirements of this Act and the regulations.</li> </ul>
Notice of licence	<p><b>87(1)</b> The Minister must publish a notice of the licence of a reciprocal insurance exchange in The Alberta Gazette.</p> <p><b>(2)</b> This section does not apply to the renewal of a licence.</p>
Premium deposit	<p><b>88</b> Every reciprocal insurance exchange must require its subscribers to provide to its principal attorney, as a condition of membership in the exchange, a premium reasonably sufficient for the risk assumed by the exchange.</p>
Management of exchange	<p><b>89</b> The affairs of a reciprocal insurance exchange must be managed by an advisory board or committee of subscribers established in accordance with the power of attorney.</p>
Term of licence	<p><b>90</b> A licence issued under this Subpart expires on December 31 of the year in which it is issued or renewed.</p>
Annual return	<p><b>91(1)</b> Every licensed reciprocal insurance exchange must file an annual return for each calendar year within the time period specified in subsection (2) that meets the requirements of subsection (3).</p> <p><b>(2)</b> The annual return for a calendar year must be filed by the last day of the following February.</p> <p><b>(3)</b> The annual return must</p> <ul style="list-style-type: none"> <li>(a) set out the name of the reciprocal insurance exchange and the name and address of its principal attorney and of its attorney for service,</li> <li>(b) set out the financial information required by the Minister that is audited in a manner that is satisfactory to the Minister,</li> </ul>



(c) set out any other information considered necessary by the Minister, and

(d) be signed by the principal attorney and at least 2 members of the advisory board or committee of subscribers of the reciprocal insurance exchange.

(4) If, in the Minister's opinion, an annual return prepared by a reciprocal insurance exchange for another jurisdiction meets the requirements of subsection (3), the exchange may file that return to satisfy the requirements of subsection (1).

Signing  
contracts

**92** After a reciprocal insurance exchange is licensed under this Subpart, a principal attorney may sign a reciprocal contract on behalf of a subscriber if the attorney is authorized by a power of attorney from the subscriber.

Court action

**93** Despite any condition or stipulation in a power of attorney or in a reciprocal contract, any action or proceeding in respect of any such contract may be maintained in any court of competent jurisdiction in Alberta.

Attorney for  
service

**94(1)** Every reciprocal insurance exchange whose principal attorney is not located in Alberta must have an attorney for service who meets the requirements of subsection (2).

(2) The attorney for service must be an individual who is resident in Alberta.

(3) Service of any document in a legal action, suit or proceeding on a reciprocal insurance exchange may be effected by

(a) delivering the document to its attorney according to the Minister's records,

(b) delivering the document to the address, according to the Minister's records, of its attorney, or

(c) sending the document by registered mail to that address.

(4) A document sent by registered mail to the attorney's address in accordance with subsection (3)(c) is deemed to be served 7 days from the date of mailing unless there are reasonable grounds for believing that the attorney did not receive the document at that time or at all.

(5) Every reciprocal insurance exchange that is required to have an attorney for service must ensure that its attorney's office is open during normal business hours.

Attorney's  
change of  
address

**95** An attorney for service who changes addresses must, before the change occurs, notify the Minister of the date of the change and the new address.

Change in  
attorney for  
service

**96(1)** If the attorney for service of a reciprocal insurance exchange dies or resigns or if an exchange revokes the appointment of an attorney for service, the exchange must, as soon as is reasonably possible, provide the Minister with

- (a) the appointment of its new attorney for service, and
- (b) the consent of the individual to act as the attorney for service.

**(2)** An attorney for service of a reciprocal insurance exchange who intends to resign must

- (a) give not less than 60 days' notice to the exchange, and
- (b) send a copy of the notice to the Minister.

No attorney for  
service

**97** If a reciprocal insurance exchange that is required to have an attorney for service does not have an attorney for service, service on the exchange may be effected by serving the Superintendent.

Requirements  
for fire  
insurance

**98(1)** A reciprocal insurance exchange that is authorized to undertake fire insurance must ensure that no subscriber has assumed on any single fire insurance risk an amount greater than 10% of the net worth of the subscriber.

**(2)** The principal attorney of a reciprocal insurance exchange that is authorized to undertake fire insurance must file, when requested by the Minister, a statement under oath

- (a) showing the maximum amount of indemnity on any single fire insurance risk, and
- (b) stating that no subscriber has assumed on any single fire insurance risk an amount greater than 10% of the net worth of the subscriber.

Amount of  
reserve

**99** Every reciprocal insurance exchange must maintain with the principal attorney as a reserve fund a sum in cash or approved securities equal to an amount calculated in accordance with the following formula:

$$(50\% \text{ of } (A-B)) + (C-D)$$

where

A is the amount of premiums collected or credited to the accounts of subscribers on reciprocal contracts in force having one year or less to run;

B is the amount paid to licensed insurers to reinsure the reciprocal contracts referred to in A;

C is the amount of premiums collected or credited to the accounts of subscribers on reciprocal contracts in force that have more than one year to run less the amount of those premiums that is attributable to the expired portion of the contracts;

D is the amount paid to licensed insurers to reinsure the reciprocal contracts referred to in C less the amount that is attributable to the expired portion of the reinsurance contracts.

Guarantee  
fund

**100(1)** In addition to the reserve fund referred to in section 99, every reciprocal insurance exchange must maintain a guarantee fund in cash or approved securities in an amount calculated in accordance with the following formula:

$$(A - B) + C$$

where

A is all liabilities associated with the operation of the exchange, including liabilities under reciprocal contracts undertaken by the exchange;

B is any amount that is recoverable from licensed insurers that have reinsured the reciprocal contracts referred to in A;

C is an amount set out in the regulations.

**(2)** Cash or approved securities maintained in the reserve fund referred to in section 99 must not be included in the guarantee fund.

Deficiency	<p><b>101(1)</b> If a reciprocal insurance exchange does not have the minimum amount required under sections 99 and 100, the subscribers or the principal attorney of the exchange must make up the deficiency forthwith.</p> <p><b>(2)</b> If funds other than those that accrued from premiums of subscribers are supplied to make up a deficiency, the funds must, so long as a deficiency exists, be deposited and held for the benefit of subscribers under the terms and conditions specified by the Minister.</p>
Investments	<p><b>102(1)</b> Every reciprocal insurance exchange that has its principal office in a province other than Alberta must ensure that the funds of the exchange that are required by the laws of the province in which the principal office is located to be invested</p> <ul style="list-style-type: none"> <li>(a) are invested in approved securities, and</li> <li>(b) are within the limits for investments established by the laws of that province for reciprocal insurance exchanges.</li> </ul> <p><b>(2)</b> Every reciprocal insurance exchange that has its principal office outside Canada must ensure that the funds of the exchange that are required by Part XIII of the <i>Insurance Companies Act</i> (Canada) to be invested</p> <ul style="list-style-type: none"> <li>(a) are invested in approved securities, and</li> <li>(b) are within the limits for investments established by Part XIII of the <i>Insurance Companies Act</i> (Canada).</li> </ul>
Contracts	<p><b>103</b> No reciprocal insurance exchange may undertake any liability on a reciprocal contract or on any other contract of insurance except on behalf of a subscriber.</p>
Reinsurance	<p><b>104</b> No principal attorney or reciprocal insurance exchange may effect reinsurance of any risks undertaken by the exchange in any other reciprocal insurance exchange.</p>
Suspension or cancellation of licence	<p><b>105(1)</b> If a reciprocal insurance exchange or principal attorney fails or refuses to comply with or contravenes any provision of this Act or the regulations, the licence issued to the exchange may be suspended or cancelled by the Minister after notice and opportunity for a hearing before the Minister has been given to the exchange or its principal attorney.</p>

(2) A suspension or cancellation under subsection (1) does not affect the validity of any reciprocal contracts effected before the suspension or cancellation of the rights and obligations of subscribers under the contracts.

(3) The principal attorney must give the subscribers notice of the suspension or cancellation and the Minister must publish notice of the suspension or cancellation in The Alberta Gazette.

Regulations

**106** The Lieutenant Governor in Council may make regulations

- (a) respecting the number of automobiles and limits for the purposes of section 82(2);
- (b) prescribing the amount for "C" for the purposes of section 100;
- (c) respecting any matter that is to be prescribed under this Subpart.

**PART 2**

**PROVINCIAL COMPANIES**

**SUBPART 1**

**STATUS AND POWERS OF PROVINCIAL COMPANIES**

Capacity of  
provincial  
company

**107(1)** Subject to this Act, the regulations, its by-laws and any term or condition in its instrument of incorporation or licence, a provincial company

- (a) has the capacity and the rights, powers and privileges of an individual, and
  - (b) has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Alberta to the extent that the laws of that jurisdiction permit.
- (2) A provincial company must not
- (a) carry on business or exercise any right, power or privilege that it is prohibited from carrying on or exercising by this Act, the regulations, its by-laws or any term or condition in its instrument of incorporation or licence, or
  - (b) exercise any of its rights, powers and privileges in a manner that contravenes this Act or the regulations.

Constructive  
notice

**108** No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning a provincial company by reason only that the document has been filed with the Minister or is available for inspection at an office of the company.

Authority of  
directors,  
officers and  
agents

**109** A provincial company, a guarantor of an obligation of the company or a person claiming through the company must not assert against a person dealing with the company or dealing with any person who has acquired rights from the company

- (a) that the instrument of incorporation or by-laws have not been complied with,
- (b) that the persons named in the most recent notice of directors filed with the Minister under this Act are not the directors of the company,
- (c) that a person held out by the company as a director, an officer or an agent of the company
  - (i) has not been duly appointed, or
  - (ii) has no authority to exercise a power or perform a duty that the director, officer or agent might reasonably be expected to exercise or perform,

or

- (d) that a document issued by any director, officer or agent of the company with actual or usual authority to issue the document is not valid or not genuine,

unless the person has, or by virtue of the person's position with or relationship to the company ought to have, knowledge of those facts at the relevant time.

Main business

**110(1)** Subject to this Act and the regulations, a provincial company must not engage in or carry on any business other than

- (a) the business of insurance, or
- (b) the business of providing financial services.

**(2)** For the purposes of this Act, the business of insurance includes any activity that is reasonably ancillary to the business of insurance.

**(3)** For the purposes of this Act, the business of providing financial services includes in respect of a provincial company

- (a) acting as a receiver, liquidator or sequestrator,
  - (b) issuing payment, credit or charge cards and, in co-operation with others including other financial institutions, operating a payment, credit or charge card plan,
  - (c) providing real property brokerage services,
  - (d) holding and otherwise dealing with real property,
  - (e) providing information processing services that the company has developed for its own use and that are an integral part of the company's operations to entities in which the company has a substantial investment that do not provide information processing services to other entities,
  - (f) promoting merchandise and services to the holders of any payment, credit or charge card issued by the company,
  - (g) acting as a custodian of property,
  - (h) acting as a trustee for a trust in respect of a prescribed class of transaction,
  - (i) any of the activities referred to in section 111, and
  - (j) with the consent of the Minister, any other activity that is reasonably ancillary to the business of providing financial services.
- (4) Subject to subsection (5), a provincial company must not carry on an activity that requires registration under the *Securities Act*.
- (5) A provincial company may carry on an activity that is regulated under the *Securities Act* if the *Securities Act* allows the company to carry on the activity without being registered under that Act.

#### Networking

#### **111** A provincial company may

- (a) act as agent for any person in respect of the provision of any service that is provided by a financial institution or a body corporate in which the company is permitted to have a substantial investment,
- (b) enter into an arrangement with any person in respect of the provision of that service, or
- (c) refer any person to any such financial institution or body corporate.

Life insurance	<b>112</b> No provincial company may issue a contract of life insurance that does not appear to be self-supporting on reasonable assumptions as to interest, mortality and expenses.
Security interests	<p><b>113(1)</b> Subject to subsection (2), a provincial company must not create a security interest in any property of the company to secure an obligation of the company.</p> <p><b>(2)</b> This section does not apply to the creation of a security interest</p> <ul style="list-style-type: none"> <li>(a) in relation to the reinsurance by the provincial company of risks insured by another insurer,</li> <li>(b) on prescribed classes of personal property or prescribed classes of transactions, or</li> <li>(c) on property having an aggregate value that is less than the prescribed amount.</li> </ul>
Beneficial interests	<b>114</b> A provincial company must not acquire any beneficial interest in property, other than by way of realization, that is subject to a security interest.
Debt obligations	<p><b>115(1)</b> A provincial life company must not, and must not permit its prescribed subsidiaries to, enter into a debt obligation or issue any share, other than a common share, if as a result the aggregate of the total debt obligations of the company and the book value of its prescribed shares would exceed 20% of the total assets of the company.</p> <p><b>(2)</b> A provincial property and casualty company must not, and must not permit its prescribed subsidiaries to, enter into any debt obligation or issue any share, other than a common share, if as a result the aggregate of the total debt obligations of the company and the book value of its prescribed shares would exceed 2% of the total assets of the company.</p>
Guarantees	<p><b>116(1)</b> A provincial company must not guarantee on behalf of any person other than itself the payment or repayment of any sum of money unless</p> <ul style="list-style-type: none"> <li>(a) the sum of money is a fixed sum of money with or without interest on the fixed sum, and</li> <li>(b) the person on whose behalf the company has undertaken to guarantee the payment or repayment has an unqualified</li> </ul>



obligation to reimburse the company for the full amount of the payment or repayment to be guaranteed.

(2) Subsection (1) does not apply in respect of any indemnity referred to in section 365.

(3) Subsection (1)(a) does not apply to a provincial life company where the person on whose behalf the provincial life company has undertaken to guarantee a payment or repayment is a subsidiary of the company and is primarily engaged in insuring risks that fall within a class of insurance that the company is authorized to insure.

### **Segregated Funds**

Segregated  
funds  
restricted to  
life companies

**117** A provincial property and casualty company must not

- (a) issue policies, or
- (b) accept or retain on the direction of a policyholder or beneficiary policy dividends or bonuses or policy proceeds that are payable on the surrender or maturity of the policy or on the death of the person whose life is insured,

where the liabilities of the company in respect of the policies or the amounts accepted or retained vary in amount depending on the market value of a fund consisting of a specified group of assets.

Where  
segregated  
funds required

**118** A provincial life company that issues policies described in section 117 or accepts or retains amounts described in section 117 must, in respect of those policies or amounts,

- (a) maintain separate accounts, and
- (b) establish and maintain one or more funds consisting of assets that are segregated from the other assets of the company and that are specified as the assets on the market value of which the liabilities of the company in respect of those policies or amounts depend.

Creation and  
maintenance  
of segregated  
funds

**119(1)** A provincial life company may transfer an amount to a separate account referred to in section 118(a) for the purpose of maintaining or establishing a segregated fund under section 118.

(2) Subsection (1) is subject to the regulations and, in the case of a transfer from a participating account maintained pursuant to section 294, to the regulations under section 299.

- Transfers from segregated funds** **120** A provincial life company may, with the approval of the Minister, return the current value of an amount transferred pursuant to section 119 to the account from which the amount was transferred.
- Claims against segregated funds** **121** A claim against a segregated fund maintained pursuant to section 118 under a policy or for an amount in respect of which the fund is maintained has priority over any other claim against the assets of that fund.
- Restriction of claims** **122** The liability of a provincial life company under a policy or for an amount in respect of which a segregated fund is maintained pursuant to section 118
- (a) does not, except to the extent that the assets of the fund are insufficient to satisfy a claim for any minimum amount that the company agrees to pay under the policy or in respect of the amount, give rise to a claim against any assets of the company other than the assets of that fund,
- but
- (b) to the extent that the assets of the fund are insufficient to satisfy such a claim, gives rise to a claim against the assets of the company, other than the assets of that fund.

### **Regulations**

- Regulations** **123** The Lieutenant Governor in Council may make regulations
- (a) respecting the business that a provincial company may engage in or carry on;
  - (b) respecting the disclosure of
    - (i) the name of the principal for whom a provincial company is acting as agent pursuant to section 111, and
    - (ii) whether any commission is being earned by a provincial company when acting as agent pursuant to section 111;
  - (c) respecting the transfer of amounts in respect of a segregated fund for the purposes of section 119;
  - (d) respecting any matter that is to be prescribed under this Subpart.

## **SUBPART 2**

### **INCORPORATION, FUNDAMENTAL CHANGES AND DISSOLUTION OF PROVINCIAL COMPANIES**

Alberta  
insurers

**124(1)** No insurer may be incorporated, amalgamated or continued in Alberta unless it is incorporated, amalgamated or continued under this Act.

**(2)** No fraternal society may be incorporated, amalgamated or continued under the laws of Alberta.

#### **Division 1 Incorporation**

Application

**125(1)** One or more persons who wish to incorporate a provincial company must submit an application to the Minister that contains the following:

- (a) the information, material and evidence specified by the Minister;
- (b) a plan for the future conduct and development of the business of the company;
- (c) its proposed financial year;
- (d) the location of the head office of the company in Alberta;
- (e) the names of the first directors of the company.

**(2)** After filing an application for incorporation, the applicants must

- (a) provide to the Minister any additional information, material and evidence the Minister considers necessary, and
- (b) publish a notice of the application, containing any information that the Minister specifies, in The Alberta Gazette and in a newspaper having general circulation in the place where the head office of the provincial company is to be located.

**(3)** Any person who objects to the proposed incorporation of a provincial company may, within 30 days after the date of publication of the notice in The Alberta Gazette under subsection (2), submit an objection in writing to the Minister.

(4) On the receipt of an objection under subsection (3), the Minister may direct that a public hearing into the objection be held.

(5) The Minister may make rules governing the proceedings at public hearings held under subsection (4), and the *Regulations Act* does not apply to the rules.

(6) On the completion of the hearing, the Minister must ensure that a report of the hearing is made available to the public.

Factors to be considered

**126** Before recommending that a provincial company be incorporated, the Minister must take into account all matters that the Minister considers relevant to the application, including

- (a) the nature and sufficiency of the financial resources of the applicants as a source of continuing financial support for the company,
- (b) the soundness and feasibility of the plan for the future conduct and development of the business of the company,
- (c) the business record and experience of the applicants, and
- (d) whether the company will be operated by persons who are fit as to character or who have the competence and experience suitable for involvement in the operation of an insurer.

Incorporation

**127** The Lieutenant Governor in Council may, on the application of one or more persons and on the recommendation of the Minister, incorporate a provincial company by issuing a certificate of incorporation.

Contents of certificate of incorporation

**128(1)** The certificate of incorporation of a provincial company must set out the name of the company, its financial year and whether the company is a mutual provincial company.

(2) The Lieutenant Governor in Council may set out in the certificate of incorporation of a provincial company any term or condition not contrary to this Act that the Lieutenant Governor in Council considers advisable to deal with the particular circumstances of the company.

Notice of incorporation

**129** The Minister must publish a notice of the incorporation of a provincial company in *The Alberta Gazette*.

First directors      **130** The first directors of a provincial company are the directors named in the application for incorporation.

Effective date of incorporation      **131(1)** A provincial company comes into existence and is incorporated on the date set out in its certificate of incorporation.

(2) A certificate of incorporation is conclusive proof for the purposes of this Act and for all other purposes

(a) that the provisions of this Act in respect of incorporation and all requirements precedent and incidental to incorporation have been complied with, and

(b) that the provincial company has been incorporated under this Act on the date set out in the certificate of incorporation.

## **Division 2**

### **Organization and Commencement after Incorporation**

First directors' meeting      **132(1)** After a provincial company is incorporated, the directors of the company must hold a meeting.

(2) At that meeting the directors may, subject to this Subpart,

(a) make by-laws,

(b) adopt forms of share certificates and corporate records,

(c) authorize the issue of shares of the company,

(d) appoint officers,

(e) appoint an auditor to hold office until the first meeting of shareholders,

(f) make banking arrangements, and

(g) deal with any other matters necessary to organize the company.

(3) An incorporator or a director of the provincial company may call the meeting referred to in subsection (1) by giving not less than 5 days' notice to each director, stating the time and place of the meeting.

Calling  
shareholders'  
meeting

**133(1)** When the base capital of a provincial company reaches the amount required under section 25, the directors of the company must forthwith call a meeting of

- (a) the shareholders of the company, in the case of a company that is not a mutual provincial company, or
- (b) the incorporators of the company, in the case of a mutual provincial company.

**(2)** The shareholders or incorporators of a provincial company must, by resolution at the meeting called pursuant to subsection (1),

- (a) approve, amend or reject any by-law made by the directors of the company,
- (b) elect directors to hold office for a term expiring not later than the close of the first annual meeting of shareholders following the election or, in the case of a mutual provincial company, not later than the close of the first annual meeting of policyholders following the election, and
- (c) appoint an auditor to hold office until the close of the first annual meeting of shareholders or, in the case of a mutual provincial company, until the close of the first annual meeting of policyholders.

Term of first  
directors

**134** A director named in the application for incorporation of a provincial company holds office until the election of directors at the meeting of shareholders or incorporators referred to in section 133(1).

Carrying on of  
business

**135** Except as permitted in sections 136 and 137, a provincial company must not carry on any business until it is licensed under this Act.

Expenses  
charged to  
capital

**136** A provincial company must pay all incorporation and organization expenses from the capital of the company or interest on the capital and the company must not charge directly or indirectly its policyholders for those expenses.

No payments  
until licensed

**137** Until a provincial company is licensed under this Act, the company must not make any payment on account of incorporation or organization expenses except reasonable sums

- (a) for the payment of remuneration of not more than 2 officers,

- (b) for the payment of costs related to the issue of shares of the company, and
- (c) for the payment of clerical assistance, legal services, accounting services, office accommodation at one location, office expenses, advertising, stationery, postage and travel expenses.

**Deposits and investments**

**138** Until a provincial company is licensed under this Act, the company may

- (a) deposit its capital and interest on the capital only in a deposit-taking institution, and
- (b) invest its capital and interest on the capital only in securities issued or guaranteed by the Government of Canada or any province.

**Time limit to acquire licence**

**139** If a provincial company does not become licensed within one year after it comes into existence or within any further period that the Minister may on application allow,

- (a) its directors must forthwith take all reasonable steps to ensure that the company is dissolved under Division 11, and
- (b) the company must not carry on any business or activity except for the sole purpose of dissolving the company.

**Allowed disbursements**

**140(1)** If the directors of a provincial company are required under section 139 to take all reasonable steps to ensure that the company is dissolved, no part of the capital of the company or interest on the capital may be used for the payment of incorporation and organization expenses, other than remuneration and costs referred to in section 137, unless the payment has been approved by a special resolution.

(2) If the amount of a payment approved by a special resolution for the payment of any incorporation and organization expenses is considered insufficient by the directors or if no special resolution for the payment of such expenses is passed, the directors may apply to the Court to settle and determine the amounts to be paid out of the capital of the company and interest on the capital before distribution of the balance to the shareholders or, where there are no shareholders, to the incorporators.

(3) The directors must, at least 21 days prior to the date fixed for the hearing of the application referred to in subsection (2), send to

the shareholders or incorporators, as the case may be, a notice of the application, which notice must contain a statement of the amounts that are proposed to be settled and determined by the Court.

(4) In order that the amounts paid and payable under this section may be equitably borne by the shareholders or incorporators, as the case may be, the directors must, after the amounts of the payments have been approved by special resolution or settled and determined by the Court, fix the proportionate part of the amount of the payment chargeable to each shareholder or incorporator in the ratio of the amount paid in by each shareholder or incorporator to the aggregate of all the amounts paid in by all the shareholders or incorporators.

(5) After the amounts referred to in this section have been paid, the directors must pay to the shareholders or incorporators the respective balances of the money paid in by them together with any interest earned on that money, less the amount chargeable to each shareholder or incorporator under subsection (4).

### **Division 3**

#### **Continuance into Alberta**

Restriction on  
continuance

**141** Despite anything in this Division, no insurer formed outside of Canada may be continued as a provincial company under this Act.

Continuance  
from another  
jurisdiction

**142** A federally authorized company or an extra-provincial company may be continued as a provincial company if

- (a) the company submits an application to the Minister,
- (b) the continuance of the company is authorized under the Act under which the company is incorporated,
- (c) the applicant meets the requirements for incorporation under this Act,
- (d) the Minister has received evidence showing the proposed continuance has been approved in conformity with the laws of the jurisdiction in which the company was incorporated,
- (e) the Minister is satisfied that continuance as a provincial company will not adversely affect the policyholders, security holders or creditors of the company, and



- (f) the company intends to undertake the classes of insurance in Alberta that it was authorized to undertake in the jurisdiction in which it was incorporated.

Certificate of  
continuance

**143(1)** The Lieutenant Governor in Council may, on the recommendation of the Minister, issue a certificate of continuance continuing a federally authorized company or an extra-provincial company as a provincial company.

(2) The certificate of continuance must set out the name of the company, its financial year and whether the company is a mutual provincial company.

(3) The Lieutenant Governor in Council may set out in the certificate of continuance any term or condition that the Lieutenant Governor in Council considers advisable to deal with the particular circumstances of the company.

Effect of  
certificate of  
continuance

**144(1)** On the date set out in the certificate of continuance continuing a federally authorized company or an extra-provincial company as a provincial company,

- (a) the company becomes a provincial company as if it had been incorporated under Division 1, and
- (b) the certificate of continuance is the instrument of incorporation of the continued company.

(2) A certificate of continuance is conclusive proof for the purposes of this Act and for all other purposes

- (a) that the provisions of this Act in respect of continuance and all requirements precedent and incidental to continuance have been complied with, and
- (b) that the provincial company has been continued under this Act on the date set out in the certificate of continuance.

Notice of  
continuance

**145(1)** The Minister must publish a notice of the continuance of a federally authorized company or an extra-provincial company in The Alberta Gazette.

(2) When a federally authorized company or an extra-provincial company is continued as a provincial company, the Minister must forthwith send a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which the federally authorized company or extra-provincial company was authorized to apply to be continued under this Division.

Effects of  
continuance

**146** When a federally authorized company or an extra-provincial company (referred to as the “body corporate”) is continued as a provincial company under this Division,

- (a) the property of the body corporate continues to be the property of the provincial company,
- (b) the provincial company continues to be liable for the obligations of the body corporate,
- (c) an existing cause of action or claim by or against the body corporate or any liability of the body corporate to prosecution is unaffected,
- (d) a civil, criminal or administrative action or proceeding pending by or against the body corporate may continue to be prosecuted by or against the provincial company,
- (e) a conviction against or ruling, order or judgment in favour of or against the body corporate may be enforced by or against the provincial company,
- (f) a person who, on the day the body corporate becomes a provincial company, was the holder of a security issued by the body corporate is not deprived of any right or privilege available to the person at that time in respect of the security or relieved of any liability in respect of the security, but any such right or privilege may be exercised only in accordance with this Act, and
- (g) the by-laws of the body corporate, except those by-laws that are in conflict with this Act, continue as the by-laws of the provincial company.

#### **Division 4 Continuance Out of Alberta**

Continuance  
in another  
jurisdiction

**147(1)** Subject to section 148, a provincial company may, if

- (a) the proposed continuance is approved by a special resolution of the participating policyholders and shareholders, and
- (b) the Minister approves the proposed continuance on being satisfied that the continuance will not adversely affect the policyholders, security holders or creditors of the company,

apply to the appropriate official or public body of another jurisdiction requesting that the company be continued in that other

jurisdiction as if it had been incorporated under the laws of that other jurisdiction.

(2) The directors of the provincial company must submit the proposed continuance to a meeting of the participating policyholders and shareholders for approval.

(3) The directors must give notice of the meeting and particulars of the proposed continuance

(a) in accordance with section 270, and

(b) to the Minister at least 21 days before the meeting.

(4) The provincial company must advise the Minister if the special resolution approving the continuance is passed.

Requirements  
for other  
jurisdiction's  
law

**148** A provincial company may be continued as a body corporate under the laws of another jurisdiction only if those laws provide in effect that, if the company is continued,

(a) the property of the provincial company continues to be the property of the body corporate,

(b) the body corporate continues to be liable for the obligations of the provincial company,

(c) an existing cause of action, claim or liability to prosecution is unaffected by the continuance,

(d) a civil, criminal or administrative action or proceeding pending by or against the provincial company may continue to be prosecuted by or against the body corporate, and

(e) a conviction against or ruling, order or judgment in favour of or against the provincial company may be enforced by or against the body corporate.

Abandoning  
application

**149** The directors of a provincial company may, if authorized by the participating policyholders and shareholders at the time of approving a proposed continuance under this Division, abandon the application for continuance without further approval of the participating policyholders or shareholders.

Certificate of  
discontinuance

**150(1)** On receipt of notice satisfactory to the Minister that the provincial company has been continued under the laws of another jurisdiction, the Minister must file the notice and issue a certificate

of discontinuance, and the continued company is no longer a provincial company.

(2) The Minister must publish a notice of the certificate of discontinuance in The Alberta Gazette.

## **Division 5 Mutualization**

Conversion  
into mutual  
provincial  
company

**151(1)** On the application of a provincial company, the Minister may issue a certificate converting the provincial company into a mutual provincial company.

(2) The Minister must not issue the certificate unless the requirements of the regulations have been met.

Regulations

**152** The Lieutenant Governor in Council may make regulations respecting mutualization proposals and procedures and requirements that must be met before a provincial company may be converted into a mutual provincial company.

Payment

**153** Despite anything in this Act, a provincial company may, with the approval of the Minister, pay for shares purchased or otherwise acquired pursuant to a mutualization proposal by

(a) making a promissory note that is, or issuing debt securities that are, payable at a fixed or determinable future time not later than 10 years after the date of its making or their issue, or

(b) issuing shares that a mutual provincial company may issue.

## **Division 6 Demutualization**

Conversion  
into provincial  
company with  
common  
shares

**154(1)** On the application of a mutual provincial company, the Minister may issue a certificate converting the mutual provincial company into a provincial company with common shares.

(2) The Minister must not issue the certificate unless the requirements of the regulations have been met.

(3) On the day that the certificate becomes effective the policyholders of the company cease to have any rights with respect to the company as a mutual provincial company or any interest in the company as a mutual provincial company.

- Regulations      **155(1)** The Lieutenant Governor in Council may make regulations
- (a) respecting demutualization proposals and procedures and requirements that must be met before a mutual provincial company may be converted into a provincial company with common shares;
  - (b) governing the ownership of shares issued by a mutual provincial company that has been converted into a provincial company with common shares.
- (2) A regulation made under this section may provide that the Minister may, by order, on such terms and conditions as the Minister considers appropriate, exempt a provincial company from prescribed requirements of that regulation.
- (3) The Minister may, on such terms and conditions as the Minister considers appropriate, exempt a mutual provincial company from any requirement of this Act or the regulations if
- (a) the company is applying to convert the company into a company with common shares, and
  - (b) the Minister is of the opinion that the company is, or is about to be, in financial difficulty and that the exemption would help to facilitate an improvement in the financial condition of the company.

## Division 7

### Change of Name, Financial Year and Terms and Conditions

- Change of  
name and  
financial year      **156(1)** On the application of a provincial company authorized by special resolution, the Minister may issue a certificate
- (a) changing the name of the company, or
  - (b) changing the financial year of the company.
- (2) Before an application is made under subsection (1) to change the name of a provincial company, a notice of intention to make the application must be published by the applicant in The Alberta Gazette and in a newspaper in general circulation in the place where the head office of the company is located.

Changing  
terms and  
conditions

**157** On the application of a provincial company authorized by special resolution, the Lieutenant Governor in Council may issue a certificate adding, changing or removing any term or condition that is set out in the company's instrument of incorporation.

Proposal to  
amend

**158(1)** Subject to subsection (2), a director or a participating policyholder or shareholder of a provincial company may, in accordance with sections 274 and 275, make a proposal to make an application referred to in section 156 or 157.

(2) Notice of a meeting of participating policyholders or shareholders at which a proposal to amend the instrument of incorporation is to be considered must set out the proposal.

## **Division 8 Amalgamation**

Amalgamation

**159(1)** Two or more provincial companies may amalgamate under this Division to become one provincial company.

(2) One or more provincial companies may amalgamate under this Division with one or more extra-provincial or federally authorized companies that are licensed under this Act to become one provincial company.

(3) Despite anything in this Division, no insurer formed outside of Canada may be amalgamated under this Act.

Amalgamation  
agreement

**160(1)** The companies proposing to amalgamate must enter into an amalgamation agreement.

(2) An amalgamation agreement does not take effect until the Minister's approval under section 161 and the participating policyholders' and shareholders' approval under section 163 have been obtained.

Minister's  
approval

**161(1)** Before an amalgamation agreement is submitted for participating policyholders' and shareholders' approval under section 163, the agreement must be submitted to the Minister for approval, and any participating policyholders' or shareholders' approval under section 163 is invalid if it is obtained prior to the Minister's approval.

(2) An amalgamation agreement submitted to the Minister for approval must be accompanied by the report of an independent actuary on the agreement.

(3) The Minister must not approve the amalgamation agreement unless the Minister is satisfied that

- (a) the agreement meets the requirements of the regulations,
- (b) the laws of the jurisdiction in respect of each company that is proposing to amalgamate permit the proposed amalgamation, and the proposed amalgamation has obtained the approvals required under the laws of those jurisdictions, and
- (c) the requirements of the regulations for amalgamation have been met.

Regulations

**162** The Lieutenant Governor in Council may make regulations

- (a) respecting the requirements for amalgamation agreements;
- (b) respecting requirements that must be met before companies may be amalgamated under this Division.

Policyholder  
and  
shareholder  
approval

**163(1)** In this section, “company” means a company that is proposing to amalgamate under this Division.

(2) The directors of each company must submit an amalgamation agreement for approval to a meeting of the participating policyholders and shareholders of the company of which they are directors and, subject to subsection (4), to the holders of each class or series of shares.

(3) Each share of a company carries the right to vote in respect of an amalgamation whether or not it otherwise carries the right to vote.

(4) The holders of shares of a class or series of shares of a company are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the by-laws or instrument of incorporation of the company, would entitle those holders to vote separately as a class or series.

(5) Participating policyholders are entitled to vote separately from shareholders in respect of an amalgamation agreement.

(6) Subject to subsections (4) and (5), an amalgamation agreement is approved when the participating policyholders and shareholders of each company have approved the amalgamation by special resolution.

(7) An amalgamation agreement may provide that, at any time before the issue of a certificate of amalgamation, the agreement may be terminated by the directors of a company even though the agreement has been approved by the participating policyholders or shareholders of all or any of the companies that are proposing to amalgamate.

Joint  
application to  
Minister

**164(1)** Subject to subsection (2), unless an amalgamation agreement is terminated in accordance with section 163(7), companies that are proposing to amalgamate must, within 3 months after the Minister approves their amalgamation agreement, jointly apply to the Minister for a certificate of amalgamation continuing the companies as one provincial company.

(2) No application for the issue of a certificate of amalgamation may be made unless

- (a) notice of intention to make such an application has been published in The Alberta Gazette and in a newspaper in general circulation in the place where the head office of each applicant is located, and
- (b) the application is supported by satisfactory evidence that the applicants have complied with the requirements of this Division and the regulations relating to amalgamation.

Certificate of  
amalgamation

**165(1)** Where an application has been made to the Minister in accordance with section 164, the Lieutenant Governor in Council may issue a certificate of amalgamation continuing the applicants as one provincial company.

(2) Section 128 applies with such modifications as the circumstances require when a certificate of amalgamation is issued pursuant to this section.

(3) The Minister must publish notice of the issuance of the certificate of amalgamation in The Alberta Gazette.

Effect of  
certificate

**166(1)** On the date set out in the certificate of amalgamation issued under section 165,

- (a) the amalgamation of the applicants and their continuance as one provincial company are effective;
- (b) the property of each applicant is the property of the amalgamated company;



- (c) the amalgamated company is liable for the obligations of each applicant;
  - (d) any existing cause of action, claim or liability to prosecution is unaffected;
  - (e) any civil, criminal or administrative action or proceeding pending by or against an applicant may be prosecuted by or against the amalgamated company;
  - (f) any conviction against or ruling, order or judgment in favour of or against an applicant may be enforced by or against the amalgamated company;
  - (g) if any director or officer of an applicant continues as a director or officer of the amalgamated company, any disclosure of a material interest in any contract made to the applicant by that director or officer is deemed to be disclosure to the amalgamated company;
  - (h) the certificate of amalgamation is the instrument of incorporation of the amalgamated company.
- (2) Any deemed disclosure under subsection (1)(g) must be recorded in the minutes of the first meeting of the directors of the amalgamated company.

Transitional

**167(1)** Despite anything in this Act or the regulations, the Minister may grant to a company in respect of which a certificate of amalgamation has been issued under this Division permission

- (a) to engage in a business activity that a provincial company is not otherwise permitted by this Act to engage in and that one or more of the amalgamating companies was engaging in at the time the application for the certificate was made,
- (b) to continue to have issued and outstanding debt obligations the issue of which is not authorized by this Act if the debt obligations were outstanding at the time the application for the certificate was made,
- (c) to hold assets that a provincial company is not otherwise permitted by this Act to hold if the assets were held by one or more of the amalgamating companies at the time the application for the certificate was made,
- (d) to acquire and hold assets that a provincial company is not otherwise permitted by this Act to acquire or hold if one or more of the amalgamating companies was obliged, at the

time the application for the certificate was made, to acquire those assets, and

- (e) to maintain outside Canada any records or registers required by this Act to be maintained in Canada and maintain and process, outside Canada, information and data relating to the preparation and maintenance of such records or registers.

(2) The permission granted under subsection (1) must be expressed to be granted for a specific period not exceeding

- (a) with respect to any matter described in subsection (1)(a), 30 days after the date of issue of the certificate or, where the activity is conducted pursuant to an agreement existing on the date of issue of the certificate, the expiration of the agreement,
- (b) with respect to any matter described in subsection (1)(b), 10 years, and
- (c) with respect to any matter described in subsection (1)(c), (d) or (e), 2 years.

(3) Subject to subsection (4), the Minister may renew a permission granted under subsection (1) with respect to any matter described in subsection (1)(b), (c) or (d) for such further period or periods as the Minister considers necessary.

(4) The Minister must not grant to a provincial company any permission

- (a) with respect to matters described in subsection (1)(b) that purports to be effective more than 10 years after the amalgamation became effective unless the Minister is satisfied on the basis of evidence on oath provided by an officer of the company that the company will not be able at law at the end of the 10 years to redeem the outstanding debt obligations to which the permission relates, and
- (b) with respect to matters described in subsection (1)(c) and (d), that purports to be effective more than 10 years after the amalgamation became effective.

Notice to other  
jurisdiction

**168** When a federally authorized company or an extra-provincial company is amalgamated with a provincial company under this Division, the Minister must forthwith send a copy of the certificate of amalgamation to the appropriate official or public body in the jurisdiction in which the federally authorized company or

extra-provincial company was authorized to apply to be amalgamated under this Division.

### **Division 9**

#### **Provincial Company Amalgamating under the Laws of Another Jurisdiction**

**Amalgamation agreement**     **169(1)** A provincial company proposing to amalgamate with one or more companies under the laws of another jurisdiction must enter into an amalgamation agreement with the other companies.

**(2)** A provincial company must not proceed with an amalgamation referred to in subsection (1) unless the Minister approves the amalgamation agreement.

**Notice of intention**     **170(1)** Before an amalgamation agreement referred to in section 169 is made, a notice of intention to make the agreement must be published

(a) in The Alberta Gazette, and

(b) in a newspaper in general circulation in the place where the head office of the provincial company is located,

stating the date on or after which the application will be made to the Minister to approve the agreement, that date being at least 30 days after the date of publication of the notice.

**(2)** Where a provincial company publishes a notice referred to in subsection (1), the Minister may direct the company to provide its policyholders and shareholders with the information the Minister specifies.

**(3)** Where a provincial company publishes a notice referred to in subsection (1), the company must make the proposed agreement to which the notice relates available for inspection by the policyholders and shareholders of the company at the head office of the company for a period of at least 30 days after the publication of the notice and provide a copy of the agreement to any policyholder or shareholder who sends a request in writing to the head office of the company.

**(4)** Where the Minister is of the opinion that it is in the best interests of a group of policyholders affected by an agreement, the Minister may shorten the periods of 30 days referred to in subsections (1) and (3).

**(5)** The Minister may designate a professional adviser to evaluate the agreement and the provincial company that is proposing to enter

into the agreement must provide any assistance required by the professional adviser to enable the adviser to complete the evaluation.

(6) The remuneration and expenses of the professional adviser for carrying out the evaluation under subsection (5) are payable by the provincial company on being approved by the Minister.

Participating  
policyholder  
and  
shareholder  
approval

**171(1)** A provincial company proposing to make an amalgamation agreement referred to in section 169 must submit the proposed agreement for approval at a meeting of the participating policyholders and shareholders and, subject to subsection (3), to the holders of each class or series of shares.

(2) Each share of the provincial company carries the right to vote in respect of a proposed agreement whether or not the share otherwise carries the right to vote.

(3) The holders of shares of a class or series of shares of a provincial company are entitled to vote separately as a class or series in respect of a proposed agreement submitted under subsection (1) if the effect of the agreement on the shares of the class or series is different from the effect on the shares of another class or series.

(4) Participating policyholders are entitled to vote separately from shareholders in respect of an agreement.

(5) For the purpose of subsection (1), and subject to subsections (3) and (4), an agreement is approved when the participating policyholders and shareholders have approved the agreement by special resolution.

Abandoning  
voting  
agreement

**172** Where a special resolution approving an amalgamation agreement under section 171(5) so states, the directors of a provincial company may, subject to the rights of third parties, abandon the agreement without further approval of the participating policyholders and shareholders.

Application to  
Minister

**173(1)** Unless an amalgamation agreement is abandoned in accordance with section 172, a provincial company referred to in section 171(1) must, within 3 months after the agreement has been approved in accordance with section 171(5), apply to the Minister for approval of the agreement.

(2) An amalgamation agreement has no force or effect until it has been approved by the Minister.

Certificate of  
discontinuance

**174(1)** On receipt of a notice satisfactory to the Minister that a provincial company has been amalgamated under the laws of another jurisdiction, the Minister must file the notice and issue a certificate of discontinuance, and the amalgamated company is no longer a provincial company.

**(2)** The Minister must publish a notice of the certificate of discontinuance in The Alberta Gazette.

## **Division 10**

### **Transfer of Business and Fundamental Reinsurance**

Interpretation

**175(1)** In this Division, “Division 10 agreement” means an agreement in which an insurer

- (a) fundamentally reinsures any of its contracts of insurance,
- (b) fundamentally reinsures any of the contracts of insurance of any other insurer, or
- (c) sells all or substantially all of its assets.

**(2)** In this Division, a contract of insurance is fundamentally reinsured if

- (a) the insurer under the contract transfers or assigns all rights and obligations under the contract to another insurer, or
- (b) the contract is replaced by novation and the insurer under the replacement contract is different from the insurer under the original contract.

Notice of  
intention

**176(1)** Before a provincial company enters into a Division 10 agreement, the company must publish a notice of intention to enter into the agreement

- (a) in The Alberta Gazette, and
- (b) in a newspaper in general circulation in the place where the head office of the provincial company is located,

stating the date on or after which the application will be made to the Minister to approve the agreement, that date being at least 30 days after the date of publication of the notice.

**(2)** Where a provincial company publishes a notice referred to in subsection (1), the Minister may direct the company to provide its

policyholders and shareholders with the information the Minister specifies.

(3) Where a provincial company publishes a notice referred to in subsection (1), the company must make the proposed agreement to which the notice relates available for inspection by the policyholders and shareholders of the company at the head office of the company for a period of at least 30 days after the publication of the notice and provide a copy of the agreement to any policyholder or shareholder who sends a request in writing to the head office of the company.

(4) Where the Minister is of the opinion that it is in the best interests of a group of policyholders affected by an agreement, the Minister may shorten the periods of 30 days referred to in subsections (1) and (3).

(5) The Minister may designate a professional adviser to evaluate the agreement, and the provincial company that is proposing to enter into the agreement must provide any assistance required by the professional adviser to enable the adviser to complete the evaluation.

(6) The remuneration and expenses of the professional adviser for carrying out the evaluation under subsection (5) are payable by the provincial company on being approved by the Minister.

Participating  
policyholder  
and  
shareholder  
approval

**177(1)** A provincial company proposing to make a Division 10 agreement must submit the proposed agreement for approval at a meeting of the participating policyholders and shareholders and, subject to subsection (3), to the holders of each class or series of shares.

(2) Each share of the provincial company carries the right to vote in respect of a proposed agreement whether or not the share otherwise carries the right to vote.

(3) The holders of shares of a class or series of shares of a provincial company are entitled to vote separately as a class or series in respect of a proposed agreement submitted under subsection (1) if the effect of the agreement on the shares of the class or series is different from the effect on the shares of another class or series.

(4) Participating policyholders are entitled to vote separately from shareholders in respect of an agreement.

(5) For the purpose of subsection (1), and subject to subsections (3) and (4), an agreement is approved when the participating policyholders and shareholders have approved the agreement by special resolution.

Abandoning  
agreement

**178** Where a special resolution approving a Division 10 agreement under section 177(5) so states, the directors of a provincial company may, subject to the rights of third parties, abandon the agreement without further approval of the participating policyholders and shareholders.

Application to  
Minister

**179(1)** Unless a Division 10 agreement is abandoned in accordance with section 178, a provincial company referred to in section 177(1) must, within 3 months after the agreement has been approved in accordance with section 177(5), apply to the Minister for approval of the agreement.

**(2)** A Division 10 agreement in which a provincial company is a party has no force or effect until it has been approved by the Minister.

**(3)** The Minister must not approve a Division 10 agreement if the reinsuring or purchase or sale of assets would cause any provincial company that would be a party to the agreement to be in contravention of the capital adequacy or liquidity requirements of Subpart 10.

Federal and  
extra-  
provincial  
companies

**180(1)** A licensed federally authorized company or extra-provincial company that enters into a Division 10 agreement to fundamentally reinsure any of its contracts of insurance that are made in Alberta with another licensed federally authorized company or extra-provincial company must provide a copy of the agreement to the Minister.

**(2)** A Division 10 agreement referred to in subsection (1) does not affect contracts of insurance that are made in Alberta until the Division 10 agreement has been provided to the Minister.

**(3)** The Minister may require a licensed federal or extra-provincial company that is fundamentally reinsuring contracts of insurance made in Alberta to notify, in a form and manner satisfactory to the Minister, the policyholders under those contracts of the fundamental reinsurance.

## **Division 11 Dissolution and Revival**

Application

**181** This Division does not apply to a mutual provincial company.

Insolvent  
provincial  
companies

**182(1)** This Division does not apply to a provincial company that is insolvent within the meaning of that term in the *Winding-up and Restructuring Act* (Canada).

(2) Any proceedings taken under this Division to dissolve or to liquidate and dissolve a provincial company must be stayed if the company is at any time found to be insolvent within the meaning of that term in the *Winding-up and Restructuring Act* (Canada).

Returns to  
Minister

**183** A liquidator appointed under this Division to wind up the business of a provincial company must provide the Minister with the information relating to the business and affairs of the company in the form the Minister requires.

### Simple Dissolution

No property  
and no  
liabilities

**184(1)** A provincial company that has no property and no liabilities may, if authorized by a special resolution of the shareholders or, if there are no shareholders, by a resolution of all the directors, apply to the Minister for a certificate dissolving the company.

(2) The Minister may require a provincial company that has applied for a certificate of dissolution to publish a notice of the application in *The Alberta Gazette* that contains any information that the Minister specifies.

(3) Where the Minister has received an application under subsection (1) and is satisfied that all the circumstances so warrant, the Lieutenant Governor in Council may issue a certificate of dissolution that dissolves the provincial company.

(4) A provincial company is dissolved and ceases to exist on the date stated in the certificate of dissolution.

Property and  
liabilities

**185(1)** The voluntary liquidation and dissolution of a provincial company that has property or has property and liabilities

(a) may be proposed by its directors, or

(b) may be initiated in accordance with sections 274 and 275 by way of a proposal made by a shareholder who is entitled to vote at an annual meeting of shareholders.

(2) A notice of any meeting of shareholders at which the voluntary liquidation and dissolution of a provincial company is to be proposed must set out the terms of the proposal.



Application	<p><b>186</b> Where the voluntary liquidation and dissolution of a provincial company is proposed under section 185, the company may apply to the Minister for a certificate dissolving the company if authorized by a special resolution of the shareholders or, where the company has issued more than one class of shares, by special resolution of each class of shareholders whether or not those shareholders are otherwise entitled to vote.</p>
Approval of Minister required	<p><b>187(1)</b> No action directed toward the voluntary liquidation and dissolution of a provincial company under section 185 may be taken by a company until an application made by the company in accordance with section 186 has been approved by the Minister.</p> <p><b>(2)</b> The Minister may approve an application made pursuant to section 186 where the Minister is satisfied on the basis of the application that</p> <ul style="list-style-type: none"> <li>(a) the circumstances warrant the voluntary liquidation and dissolution of the provincial company, and</li> <li>(b) the company, in accordance with the provisions of Division 10, <ul style="list-style-type: none"> <li>(i) has transferred or will be transferring all or substantially all of its policies, or</li> <li>(ii) has reinsured or will be reinsuring itself against all or substantially all of the risks undertaken by it.</li> </ul> </li> </ul> <p><b>(3)</b> Where the Minister has approved an application under section 186 with respect to a provincial company, the company must not carry on business except to the extent necessary to complete its voluntary liquidation.</p> <p><b>(4)</b> Where the Minister has approved an application under section 186 with respect to a provincial company, the company must</p> <ul style="list-style-type: none"> <li>(a) cause notice of the approval to be sent to each known claimant against and creditor of the company, except policyholders,</li> <li>(b) publish notice of the approval in The Alberta Gazette and in a newspaper having general circulation in the place where the head office of the company is located and take reasonable steps to give notice of the approval of the application in each province in which the company transacted any business within the preceding 12 months,</li> </ul>

- (c) proceed to collect its property, dispose of property that is not to be distributed in kind to its shareholders, discharge or provide for all its obligations and do all other acts required to liquidate its business,
- (d) transfer its remaining policies, or reinsure itself against the remaining risks undertaken by it, and
- (e) after giving the notice required under clauses (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

Certificate of  
dissolution

**188(1)** Unless the Court has made an order in accordance with section 189, 190 or 191, the Lieutenant Governor in Council may, if satisfied that the provincial company has complied with section 187(4) and that all the circumstances so warrant, issue a certificate of dissolution that dissolves the company.

(2) A provincial company is dissolved and ceases to exist on the date stated in the certificate of dissolution.

### **Court Supervised Liquidation**

Court  
supervision -  
voluntary  
liquidation

**189(1)** The Minister or any interested person may, at any time during the voluntary liquidation of a provincial company, apply to the Court for an order directing that the company be wound up subject to the supervision of the Court in accordance with this section and sections 192 to 203, and on such application the Court may so order and make any further order it thinks fit.

(2) An application under subsection (1) to the Court for supervision of a voluntary liquidation must state the reasons, verified by an affidavit of the applicant, why the Court should supervise the liquidation.

(3) Where a person other than the Minister makes an application under subsection (1), the person must give the Minister notice of the application, and the Minister may appear and be heard in person or by counsel at the hearing of the application.

Court  
supervision -  
involuntary  
liquidation

**190(1)** The Minister or any interested person may, for the reasons referred to in subsection (2), apply to the Court for an order directing that a provincial company be wound up subject to the supervision of the Court in accordance with this section and sections 192 to 203.

(2) The Court may so order and make any further order it sees fit if the Court is satisfied that

- (a) the company has failed to exercise its corporate powers for any continuous period of 4 years,
- (b) the company has not commenced business or gone into actual operation within 4 years after it was incorporated,
- (c) the company has discontinued business for one year after it has undertaken insurance contracts within the meaning of this Act,
- (d) the company's licence has been suspended for one year or more,
- (e) the company has contravened this Act or the regulations and it is in the public interest that the company be wound up, or
- (f) other sufficient cause has been shown.

Application by  
provisional  
liquidator

**191(1)** A provisional liquidator of a provincial company appointed under section 57(1) must apply to the Court for an order directing that the provincial company be wound up subject to the supervision of the Court in accordance with this section and sections 192 to 203 and for an order appointing a permanent liquidator.

(2) The Court may so order and may make any further order it sees fit.

Effect of Court  
supervision

**192(1)** When the Court makes an order under section 189, 190 or 191, the liquidation of the provincial company is subject to the supervision of the Court.

(2) The supervision of the liquidation of a provincial company by the Court pursuant to an order made under section 189, 190 or 191 commences on the date the order is made.

Powers of  
Court

**193(1)** In connection with the liquidation and dissolution of a provincial company, the Court may, where it is satisfied that the company is able to pay or adequately provide for the discharge of all its obligations and to make satisfactory arrangements for the protection of its policyholders, make any order it thinks fit, including, without limiting the generality of the foregoing,

- (a) an order to liquidate;

- (b) an order appointing a liquidator, with or without security, fixing a liquidator's remuneration and replacing a liquidator;
- (c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;
- (d) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (e) an order determining the validity of any claims made against the company;
- (f) an order, at any stage of the proceedings, restraining the directors and officers of the company from
  - (i) exercising any of their powers, or
  - (ii) collecting or receiving any debt or other property of the company, and from paying out or transferring any property of the company,
 except as permitted by the Court;
- (g) an order determining and enforcing the duty or liability of any present or former director, officer, policyholder or shareholder
  - (i) to the company, or
  - (ii) for an obligation of the company;
- (h) an order approving the payment, satisfaction or compromise of claims against the company and the retention of assets for that purpose, and determining the adequacy of provisions for the payment, discharge or transfer of any obligation of the company, whether liquidated, unliquidated, future or contingent;
- (i) with the concurrence of the Minister, an order providing for the disposal or destruction of the documents, records or registers of the company;
- (j) on the application of a creditor, an inspector or the liquidator, an order giving directions on any matter arising in the liquidation;
- (k) after notice has been given to all interested parties, an order relieving the liquidator from any omission or default

on such terms as the Court thinks fit and confirming any act of the liquidator;

- (l) subject to sections 199, 200 and 202, an order approving any proposed, interim or final distribution to shareholders, if any, or incorporators, in money or in property;
  - (m) an order disposing of any property belonging to creditors, policyholders, shareholders and incorporators who cannot be found;
  - (n) on the application of any director, officer, policyholder, shareholder, incorporator or creditor or the liquidator,
    - (i) an order staying the liquidation proceedings on the terms and conditions the Court thinks fit,
    - (ii) an order continuing or discontinuing the liquidation proceedings, or
    - (iii) an order to the liquidator to restore to the company all of its remaining property;
  - (o) after the liquidator has rendered the liquidator's final account to the Court, an order directing the company to apply to the Minister for a certificate dissolving the company.
- (2) The Court may appoint any person as liquidator including a director, an officer or a shareholder of the provincial company being liquidated or of any other provincial company.

Cessation of  
business and  
powers

**194(1)** Where the Court makes an order for the liquidation of a provincial company,

- (a) the company continues in existence but must cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation;
  - (b) the powers of the directors and shareholders, if any, cease to be vested in the directors and shareholders and are vested in the liquidator, except as specifically authorized by the Court.
- (2) A liquidator may delegate any of the powers vested by subsection (1)(b) to the directors, officers or shareholders, if any.

Vacancy in  
liquidator's  
office

**195** Where an order for the liquidation of a provincial company has been made and the office of liquidator is or becomes vacant, the property of the company is under the control of the Court until the office of liquidator is filled.

Duties and  
powers of  
liquidator

**196(1)** A liquidator of a provincial company must

- (a) forthwith after being appointed give notice of the appointment to the Minister and to each claimant and creditor of the provincial company known to the liquidator,
- (b) forthwith after being appointed publish notice in The Alberta Gazette and once a week for two consecutive weeks in a newspaper in general circulation in the place where the head office of the provincial company is located, and take reasonable steps to give notice in each province where the company transacted business within the preceding 12 months, that
  - (i) any person indebted to the company is required to render an account and to pay any amount owing to the liquidator at the time and place specified in the notice,
  - (ii) any person possessing property of the company is required to deliver it to the liquidator at the time and place specified in the notice, and
  - (iii) any person having a claim against the company, whether liquidated, unliquidated, future or contingent, other than a policyholder having an unliquidated claim, is required to present written particulars of the claim to the liquidator not later than 60 days after the publication of the notice in The Alberta Gazette,
- (c) take the property of the provincial company into custody and control,
- (d) transfer the remaining policies of the provincial company, or reinsure the remaining risks undertaken by the company in accordance with Division 10,
- (e) open and maintain a trust account for the money of the provincial company received by the liquidator,
- (f) keep accounts of the money of the provincial company received and paid out by the liquidator,

- (g) maintain separate lists of each class of creditors, shareholders, policyholders and other persons having claims against the provincial company,
  - (h) if at any time the liquidator determines that the provincial company is unable to pay or adequately provide for the discharge of its obligations, apply to the Court for directions,
  - (i) deliver to the Court and to the Minister, at least once in every 12-month period after the liquidator's appointment or more often, as the Court requires, the annual return of the provincial company prepared in accordance with section 44 or prepared in a manner the liquidator thinks proper or as the Court requires, and
  - (j) after the final accounts are approved by the Court, distribute any remaining property of the provincial company among the shareholders, if any, or incorporators, according to their respective rights.
- (2) A liquidator may in respect of a liquidation of a provincial company
- (a) retain professional advisers,
  - (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name of and on behalf of the company,
  - (c) carry on the business of the company as required for an orderly liquidation,
  - (d) sell any property of the company by public auction or private sale,
  - (e) do all acts and execute documents in the name of and on behalf of the company,
  - (f) with the prior approval of the Court, borrow money on the security of the property of the company,
  - (g) settle or compromise any claims by or against the company, and
  - (h) do all other things necessary for the liquidation of the company and the distribution of its property.
- (3) A liquidator must not purchase, directly or indirectly, any part of the property of the provincial company without the prior approval of the Court.

Reliance on statements	<p><b>197</b> A liquidator is not liable if the liquidator relies in good faith on</p> <ul style="list-style-type: none"> <li>(a) financial statements of the provincial company represented to the liquidator by an officer of the company, or in a written report of the auditor of the company, as reflecting the financial condition of the company fairly, or</li> <li>(b) an opinion, a report or a statement of a professional adviser retained by the liquidator.</li> </ul>
Examination of others	<p><b>198(1)</b> Where a liquidator has reason to believe that any property of the provincial company is in the possession or under the control of a person or that a person has concealed, withheld or misappropriated any such property, the liquidator may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order to be examined.</p> <p><b>(2)</b> Where an examination conducted pursuant to subsection (1) discloses that a person has concealed, withheld or misappropriated any property of the provincial company, the Court may order that person to restore the property or pay compensation to the liquidator.</p>
Costs of liquidation	<p><b>199</b> A liquidator must pay the costs of liquidation out of the property of the provincial company and must pay or make adequate provision for all claims against the company.</p>
Final accounts	<p><b>200(1)</b> Within one year after the appointment of a liquidator and after paying or making adequate provision for all claims against the provincial company, the liquidator must apply to the Court</p> <ul style="list-style-type: none"> <li>(a) for approval of the final accounts of the liquidator and for an order permitting the distribution, in money or in kind, of the remaining property of the company to its shareholders, if any, or to the incorporators, according to their respective rights, or</li> <li>(b) for an extension of time.</li> </ul> <p><b>(2)</b> If a liquidator fails to make the application required by subsection (1), a shareholder of the provincial company or, if there are no shareholders of the company, an incorporator may apply to the Court for an order for the liquidator to show cause why a final accounting and distribution should not be made.</p> <p><b>(3)</b> A liquidator must give notice of the liquidator's intention to make an application under subsection (1) to the Minister, to each</p>



inspector and referee appointed under section 193, to each shareholder of the provincial company or, if there are no shareholders, to each incorporator and to any person who provided a financial guarantee for the liquidation.

(4) The liquidator must publish the notice required under subsection (3) in The Alberta Gazette and once a week for two consecutive weeks in one or more newspapers in general circulation in each province in which the provincial company has transacted business within the preceding 12 months or as otherwise directed by the Court.

Right to  
distribution of  
money

**201(1)** If in the course of the liquidation of a provincial company the shareholders resolve, or the liquidator proposes,

- (a) to exchange all or substantially all of the remaining property of the company for securities of another body corporate that are to be distributed to the shareholders or to the incorporators, or
- (b) to distribute all or part of the remaining property of the company to the shareholders or to the incorporators in kind,

a shareholder or incorporator may apply to the Court for an order requiring the distribution of the remaining property of the company to be in money.

(2) On an application under subsection (1), the Court may determine whether any shareholder or incorporator of the provincial company is opposed to the resolution or proposal and, if so, join that shareholder or incorporator as a party and may order

- (a) that all of the remaining property of the company is to be converted into and distributed in money, or
- (b) that the claim of any shareholder or incorporator applying under this section is to be satisfied by a distribution in money.

(3) Where an order is made by the Court under subsection (2)(b), the Court

- (a) must fix a fair value on the share of the property of the provincial company attributable to the shareholder or incorporator,
- (b) may in its discretion appoint one or more appraisers to assist the Court in fixing a fair value in accordance with clause (a),

- (c) must render a final order against the provincial company in favour of the shareholder or incorporator for the amount of the share of the property of the company attributable to the shareholder or incorporator, and
- (d) must fix the time within which the liquidator must pay the amount referred to in clause (c) to a shareholder or incorporator, which payment in the case of a shareholder may occur only after delivery of the shareholder's shares to the liquidator.

**Final order**      **202(1)** If the Court approves the final accounts rendered by a liquidator in respect of a provincial company, the Court must make an order

- (a) directing the custody or disposal of the documents, records and registers of the company, and
- (b) discharging the liquidator except in respect of the duty of a liquidator under subsection (2).

**(2)** The liquidator must forthwith send a certified copy of the order referred to in subsection (1) to the Minister.

**Certificate of dissolution**      **203(1)** After the Minister receives the order under section 202, the Lieutenant Governor in Council may issue a certificate of dissolution that dissolves the provincial company.

**(2)** A provincial company is dissolved and ceases to exist on the day stated in the certificate of dissolution.

### **General**

**Continuation of actions**      **204(1)** Despite the dissolution of a provincial company under this Division,

- (a) a civil, criminal or administrative action or proceeding commenced by or against the company before its dissolution may be continued as if the company had not been dissolved,
- (b) a civil, criminal or administrative action or proceeding may be brought against the company within two years after its dissolution as if the company had not been dissolved, and
- (c) any property that would have been available to satisfy any judgment or order if the company had not been dissolved remains available for that purpose.

(2) Service of a document on a provincial company after its dissolution may be effected by serving the document on a person shown as a director in the most recent notice of directors filed under this Act.

Limitations on liability

**205(1)** In this section, “shareholder” and “incorporator” include the heirs and personal representatives of a shareholder or incorporator.

(2) Despite the dissolution of a provincial company, a shareholder or incorporator to whom any of its property has been distributed is liable to any person claiming under section 204(1) to the extent of the amount received by that shareholder or incorporator on the distribution.

(3) An action to enforce liability under subsection (2) must not be commenced after two years from the date of the dissolution of the provincial company.

(4) The Court may order an action referred to in subsections (2) and (3) to be brought against the persons who were shareholders or incorporators as a class, subject to the conditions the Court thinks fit.

(5) If the plaintiff establishes a claim in an action under subsection (4), the Court may refer the proceedings to a referee or other officer of the Court, who may

- (a) add as a party to the proceedings each person found by the plaintiff to have been a shareholder or incorporator,
- (b) determine, subject to subsection (2), the amount that each person who was a shareholder or incorporator must contribute towards satisfaction of the plaintiff’s claim, and
- (c) direct payment of the amounts so determined.

Where creditor cannot be found

**206** If, on the dissolution of a provincial company under this Division, the liquidator is unable to locate a creditor, shareholder, incorporator or other claimant who is entitled to a distribution of property, the liquidator may apply to the Court for directions.

Custody of records after dissolution

**207** A person who has been granted custody of the documents, records and registers of a dissolved provincial company must keep them available for production for 6 years following the date of the dissolution of the company or until the expiration of a shorter period ordered by the Court under section 202.

## **Revival**

### **Revival**

**208(1)** Any interested person may apply to the Minister to revive, for a specified period, a dissolved provincial company, other than one dissolved pursuant to an order of the Court.

**(2)** On receipt of the application, the Minister may

(a) issue a certificate of revival that revives the provincial company for a specified period, subject to any terms or conditions that the Minister considers appropriate, or

(b) direct that an application be made to the Court under subsection (3).

**(3)** Any interested person may apply to the Court for an order to revive, for a specified period, a dissolved provincial company

(a) where the company was dissolved pursuant to an order of the Court, or

(b) where the Minister makes a direction under subsection (2)(b),

and the applicant must give notice of the application to the Minister.

**(4)** The Court may order that the provincial company be revived for a specified period and that the revival is subject to any terms or conditions that it considers appropriate.

**(5)** If an order is made under subsection (4), the applicant must forthwith send a certified copy of it to the Minister, and the Minister must issue a certificate of revival that revives the company for the period specified in the order and that sets out any terms or conditions specified in the order.

**(6)** On the application of an interested party, the Minister, in the case of a certificate of revival issued under subsection (2), or the Court, in the case of a certificate of revival issued under subsection (5), may extend the period of time for which a provincial company is revived, and the certificate of revival must be amended to show the extended period.

**(7)** A provincial company is revived on the date shown in the certificate of revival, and subject to any order under this section and to rights acquired by any person prior to the revival, the company is deemed to have continued in existence as if it had not been dissolved.

(8) A provincial company that is revived under this section is dissolved on the expiry of the period specified in its certificate of revival.

## **Division 12**

### **Dissolution and Revival of Mutual Provincial Companies**

Insolvent  
mutual  
provincial  
companies

**209(1)** This Division does not apply to a mutual provincial company that is insolvent within the meaning of that term in the *Winding-up and Restructuring Act* (Canada).

(2) Any proceedings taken under this Division to dissolve or to liquidate and dissolve a mutual provincial company must be stayed if the company is at any time found to be insolvent within the meaning of that term in the *Winding-up and Restructuring Act* (Canada).

Regulations

**210** The Lieutenant Governor in Council may make regulations respecting the winding-up and dissolution of mutual provincial companies and the revival of mutual provincial companies that have been dissolved under the regulations.

## **Division 13**

### **General**

Names

**211(1)** Subject to the regulations, no provincial company may have a name

(a) that is prohibited by the regulations or contains a word, expression or symbol that is prohibited by the regulations,

(b) that is identical to the name of

(i) a body corporate, whether in existence or not, incorporated under the laws of Alberta,

(ii) an extra-provincial body corporate registered in Alberta, or

(iii) a body corporate incorporated by or under an Act of the Parliament of Canada,

(c) that is similar to the name of

(i) a body corporate incorporated under the laws of Alberta,

(ii) an extra-provincial body corporate registered in Alberta, or

(iii) a body corporate incorporated by or under an Act of the Parliament of Canada,

if the use of that name is confusing or misleading, or

(d) that does not meet the prescribed requirements.

(2) Subject to this Act and the regulations, a provincial company may have a name in an English form, a French form, an English form and a French form or a combined English and French form, and it may be legally designated by any such name.

(3) Where, through inadvertence or otherwise, a provincial company obtains a name that does not comply with this section, the Minister may issue a certificate changing the name of the company.

(4) The Minister must publish a notice of a change of name made under subsection (3) in The Alberta Gazette.

Regulations	<p><b>212</b> The Lieutenant Governor in Council may make regulations for the purposes of sections 21 and 211</p> <p>(a) prohibiting names of insurers or any word, expression or symbol in the names of insurers;</p> <p>(b) respecting requirements for the names of insurers.</p>
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Use of "insurance" in names	<p><b>213</b> No entity incorporated or formed by or under an enactment, other than a provincial company, may use the words "insurance company" or "insurance corporation" or the French equivalents of those words in its name.</p>
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Rights preserved	<p><b>214</b> No amendment to the incorporating instrument or by-laws of a provincial company affects an existing cause of action or claim or liability to prosecution in favour of or against the company or its directors or officers, or any civil, criminal or administrative action or proceeding to which the company or any of its directors or officers is a party.</p>
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Effective date of certificates	<p><b>215</b> A certificate issued under this Subpart may be stated to be effective for as long as one year before the date on which the certificate is issued.</p>
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### SUBPART 3

#### HEAD OFFICE, RECORDS AND FINANCIAL STATEMENTS

Head office      **216(1)** Every provincial company must have a head office in Alberta.

(2) A provincial company that changes the address of its head office must, before the change occurs, notify the Minister in writing of the date of the change and of the new address.

Records      **217(1)** Subject to the regulations, every provincial company must keep a copy of the following records at its head office:

- (a) its instrument of incorporation and by-laws;
- (b) the particulars of any terms or conditions imposed on its licence;
- (c) the particulars of exceptions granted by the Minister that are applicable to the company;
- (d) the minutes of meetings and resolutions of participating policyholders or shareholders;
- (e) the name, address and date of appointment of the auditor;
- (f) the directors register
  - (i) containing the name and address and a statement of citizenship of all persons who are or have been directors, the date on which each became a director, the terms of the appointments and the dates on which they ceased to be directors, and distinguishing, in the case of a life company, between policyholders' directors and shareholders' directors,
  - (ii) containing a list of the bodies corporate of which each director is an officer or director and the firms of which each director is a member,
  - (iii) containing the names of the directors who are also officers or employees of the company or any of its affiliates and a list of the positions they occupy in the company or affiliates, and
  - (iv) the name of each committee on which each director serves;

- (g) a central securities register set up and maintained in accordance with section 46 of the *Business Corporations Act* as incorporated by section 230 of this Act;
  - (h) a copy of the current financial statements of the company and each of its subsidiaries;
  - (i) a copy of the investment committee procedures and policies;
  - (j) minutes of meetings and resolutions of the directors and any committee of the directors;
  - (k) adequate accounting records
    - (i) that will enable the Minister to determine the company's financial position and whether it is in compliance with this Act and the regulations,
    - (ii) that set out the company's investments,
    - (iii) with accounts, in the form and manner determined by the Minister, in respect of participating policies that are separate from accounts maintained in respect of other policies, and
    - (iv) that set out the amount owing to it by each customer of or claimant under a policy issued by it, and the nature of its liabilities to the customer or claimant.
- (2) Every provincial company must keep at its head office any information or data relating to the preparation and maintenance of the records referred to in subsection (1).
- (3) The Minister may make regulations respecting the manner in which the records referred to in subsection (1) are to be retained by a provincial company and the length of time those records are to be retained.
- (4) The Minister may, subject to such terms and conditions as the Minister considers appropriate, exempt a provincial company from keeping all or any of the records referred to in subsection (1) in Alberta.
- (5) A provincial company that is permitted to keep records at a place outside of Alberta under the authority of subsection (4) must pay the reasonable transportation and living expenses of any examiner authorized by the Minister to travel to that place to examine those records, and the costs may be recovered from the company by the Minister in an action for debt.



Access to  
records

**218(1)** Every provincial company must ensure that

- (a) its records referred to in section 217(1)(a) to (i) are accessible to participating policyholders, shareholders and creditors of the company and their agents during normal business hours, and
  - (b) the participating policyholders, shareholders and creditors and their agents may examine those records, free of charge, or have copies made of the records on payment of a reasonable fee.
- (2) Records of a provincial company referred to in section 217 must at all reasonable times be open to inspection by the directors and their agents.

Standards of  
financial  
reporting

**219(1)** Where a provincial company provides its or its subsidiaries' audited financial statements to the Minister, policyholders, shareholders or the public, the company must ensure that the statements are prepared in accordance with the following:

- (a) generally accepted accounting principles, including the accounting recommendations of the Canadian Institute of Chartered Accountants set out in the Handbook published by that Institute as amended from time to time;
  - (b) generally accepted auditing standards, including the auditing recommendations of the Canadian Institute of Chartered Accountants set out in the Handbook published by that Institute as amended from time to time;
  - (c) subject to subsection (2), generally accepted actuarial practices described in the Standards of Practice of the Canadian Institute of Actuaries, as amended from time to time;
  - (d) any modification of those principles, standards or practices established by the Minister or any additional requirements, principles, standards or practices established by the Minister.
- (2) Subsection (1)(c) does not apply to a provincial property and casualty company or its subsidiaries if the actuary of the provincial company is not a Fellow in good standing of the Canadian Institute of Actuaries but has been approved by the Minister under section 395(2)(b).

(3) The *Regulations Act* does not apply to the modifications or additional requirements, principles, standards or practices established under subsection (1)(d).

Approval of  
annual  
financial  
statements

**220(1)** No provincial company may publish, issue or circulate copies of its annual financial statement unless the statement is

- (a) approved by the directors of the company,
- (b) signed in accordance with subsections (2) and (3), and
- (c) accompanied by the report of its auditor.

(2) The approval of the directors must be evidenced by the signature of

- (a) the chief executive officer or, in the event of that officer's absence or inability to act, any other officer authorized by the directors to sign in place of the chief executive officer, and
- (b) one director if the signature required by clause (a) is that of a director, or 2 directors if the signature required by clause (a) is that of an officer who is not a director.

(3) One of the directors referred to in subsection (2)(b) must be a member of the company's audit committee.

Distribution of  
financial  
statements

**221** Every provincial company must send a copy of its annual audited financial statements to its participating policyholders and shareholders not later than 21 days before each annual meeting of participating policyholders and shareholders of the company.

List of  
shareholders

**222(1)** In this section, "basic list of shareholders" of a provincial company means a list of the names of, the number and type of shares owned by, and the address of, each shareholder and any known holder of an option or right to acquire shares of the company, as shown in the records of the company.

(2) Every shareholder, participating policyholder or creditor of a provincial company or their agents are entitled to a basic list of shareholders of the company.

(3) On the request of a person who is entitled to a basic list of shareholders, the provincial company must furnish a basic list of shareholders to that person within 10 days after the company receives a statutory declaration referred to in subsection (9) and payment of a reasonable fee.

(4) The basic list of shareholders must be made up to a date not more than 10 days before the date of receipt of the statutory declaration.

(5) A person requesting a basic list of shareholders from a provincial company may also request in the statutory declaration that the company provide a supplemental list of shareholders.

(6) On receiving a request for a supplemental list and payment of a reasonable fee, the provincial company must furnish a supplemental list setting out any changes from the basic list of shareholders for each business day from the date that the basic list is made up to, to the date that the supplemental list is made up to.

(7) If the statutory declaration requests that the supplemental list be made up to the date the basic list is provided, the supplemental list must be furnished within 10 days following the date that the basic list is provided.

(8) If the statutory declaration requests that the supplemental list be made up to a specified date after the basic list is provided, the supplemental list must be furnished within 10 days following the specified date.

(9) A statutory declaration must state

- (a) the name and address for service of the applicant,
- (b) whether a supplemental list is required and the date that the supplemental list is to be made up to, and
- (c) that the basic list of shareholders and any supplemental list obtained under this section will not be used except as permitted under section 223.

(10) If the applicant is an entity, the statutory declaration must be made by a director or officer of the entity or a person acting in a similar capacity.

Use of list

**223** A person who receives a basic list of shareholders or a supplemental list of shareholders under section 222 may use the list only in connection with

- (a) an effort to influence the voting of the shareholders of the provincial company,
- (b) an offer to acquire shares of the provincial company, or
- (c) any other matter relating to the affairs of the provincial company.

- Dealing in lists **224** No person may sell or purchase, offer for sale or purchase or otherwise traffic in
- (a) a basic list of shareholders or a supplemental list of shareholders referred to in section 222, or
  - (b) a list of holders of securities of a provincial company.
- Information to be given to Minister by provincial companies **225** Every provincial company must provide to the Minister
- (a) a copy of any application and supporting documents it makes to be licensed in a jurisdiction other than Alberta within 7 days of making the application and a copy of the approval or refusal of the application within 7 days of the receipt of the approval or refusal;
  - (b) a copy of an order or direction by a court or person in a jurisdiction other than Alberta in which the company is licensed that affects the status of the company in the jurisdiction or that requires the company to undergo special examinations or to do something or to refrain from doing something.
- Records as evidence **226** Every record that a provincial company is, by this Act, required to keep or maintain is, in any suit or proceeding against the provincial company or against a shareholder, prima facie proof of all facts purporting to be stated in the record.
- Certificate of company as evidence **227(1)** A certificate issued on behalf of a provincial company stating any fact that is set out in the by-laws, in the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a contract to which the company is a party, may be signed by a director, an officer or a transfer agent of the company.
- (2)** When introduced as evidence in any civil, criminal or administrative action or proceeding,
- (a) a fact stated in a certificate referred to in subsection (1),
  - (b) a certified extract from a securities register of a provincial company, or
  - (c) a certified copy of minutes or of an extract from minutes of a meeting of directors, a committee of directors or the shareholders of a provincial company,

is prima facie proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

(3) An entry in a securities register of, or a security certificate issued by, a provincial company is prima facie proof that the person in whose name the security is registered is the owner of the securities described in the register or in the certificate.

Notices to  
policyholders,  
shareholders,  
directors

**228(1)** A notice or document required by this Act, the regulations or the by-laws of a provincial company to be given or sent to a policyholder, shareholder or director of a provincial company may be delivered personally to the policyholder, shareholder or director or sent by mail addressed to

- (a) the policyholder at the policyholder's latest address as shown in the records of the company,
- (b) the shareholder at the shareholder's latest address as shown in the records of the company or its transfer agent, or
- (c) the director at the director's latest address as shown in the records of the company or of the Minister.

(2) A notice or document sent by mail in accordance with subsection (1) to a policyholder, shareholder or director is deemed to be received by the policyholder, shareholder or director at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the policyholder, shareholder or director did not receive the notice or document at that time or at all.

(3) If a provincial company sends a notice or document to a policyholder or shareholder in accordance with subsection (1) and the notice or document is returned on 3 consecutive occasions because the policyholder or shareholder cannot be found, the company is not required to send any further notices or documents to the policyholder or shareholder until the policyholder or shareholder informs the company in writing of the policyholder's or shareholder's new address.

(4) If there is a conflict between subsections (1) to (3) and a statutory condition contained in a policy, the statutory condition prevails.

## SUBPART 4

### CAPITAL STRUCTURE

**Definition** **229** In this Subpart, “security” means, subject to Part 6 of the *Business Corporations Act* as incorporated by section 230 of this Act, a share of any class or series of shares or a debt obligation of a body corporate, and includes a certificate evidencing such a share or debt obligation and includes a warrant.

**Application of Business Corporations Act** **230** Part 6 of the *Business Corporations Act* applies with respect to a provincial company as if the company were a corporation within the meaning of that Act, and a reference in that Part to a section of that Act, other than to a section in that Part, is deemed to be a reference to the corresponding section of this Act that deals with the same subject-matter.

### Requirements for Shares

**Non-par-value shares** **231** Shares of a provincial company must be in registered form and must be without nominal or par value.

**Classes of shares** **232(1)** A provincial company, other than a mutual provincial company, must have a class of shares designated as common shares.

**(2)** The rights of the holders of common shares are equal in all respects and include

- (a)** the right to vote at all meetings of shareholders except where only holders of a specified class of shares, or participating policyholders, are entitled to vote,
- (b)** the right to receive dividends of the provincial company if declared on those shares, and
- (c)** the right to receive the remaining property of the provincial company on dissolution.

**(3)** No provincial company may designate more than one class of its shares as common shares or confer all of the characteristics of a common share described in subsection (2) on more than one class of shares.

**(4)** A provincial company may have classes of shares in addition to common shares, and in that case the rights, privileges, restrictions and conditions attaching to the shares of each class must be set out in the by-laws.

(5) Subject to section 236, if a provincial company has more than one class of shares, the rights of the holders of the shares of a class are equal in all respects.

Mutual  
provincial  
companies -  
shares

**233(1)** A mutual provincial company must not issue any share that confers on the shareholder the right to vote at any meeting of the company.

(2) Subsection (1) does not apply in respect of any share that confers on the shareholder the right to vote by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled.

Issue of  
shares

**234(1)** Subject to this Act, the instrument of incorporation and the by-laws, shares of a provincial company may be issued at the times, to the persons and for the consideration determined by the directors.

(2) Shares issued by a provincial company are non-assessable and the shareholders are not liable to the company or to its creditors in respect of them.

(3) A provincial company must not issue a share until the consideration for the share is fully paid in money and received by the company.

(4) The requirement in subsection (3) that the consideration be money does not apply

(a) when a share is issued as part of an amalgamation, or

(b) when the Minister has given prior approval to the consideration's being other than money.

Capital  
account

**235(1)** A provincial company must maintain a separate capital account for each class and series of shares it issues.

(2) Unless the Minister approves otherwise, a provincial company must add to the appropriate capital account in respect of any shares it issues the full amount of the consideration it receives for the shares.

(3) On the issue of a share, a provincial company must not add to a capital account in respect of the share an amount greater than the amount referred to in subsection (2).

(4) If a provincial company proposes to add any amount to a capital account it maintains in respect of a class or series of shares and

- (a) the amount to be added was not received by the company as consideration for the issue of shares, and
- (b) the company has issued outstanding shares of more than one class or series,

the addition to the capital account must be approved by special resolution unless all the issued and outstanding shares are shares of not more than 2 classes of convertible shares referred to in section 250(5).

(5) Where, in the case of a proposed addition of an amount to a capital account in a situation where a special resolution is required under subsection (4), a class or series of shares of a provincial company would be affected differently from how any other class or series of shares of the company would be affected by such action, the holders of shares of the differently affected class or series are entitled to vote separately as a class or series, as the case may be, on the proposal to take the action, whether or not such shares otherwise carry the right to vote.

Shares in  
series

**236(1)** Subject to the instrument of incorporation and the by-laws, the directors of a provincial company may authorize the issue of any class of shares, other than common shares, in one or more series, and they may fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of, each series.

(2) If any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate ratably in respect of accumulated dividends and return of capital.

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorized under this section confer on shares of a series

- (a) greater voting rights than are attached to shares of any other series in the same class that are then outstanding, or
- (b) a priority in respect of dividends or return of capital over shares of any other series in the same class that are then outstanding.



(4) Subsection (3) does not apply to a right or privilege to exchange a share or shares for, or to convert a share or shares into, a share or shares of another class.

Shareholder's  
pre-emptive  
right

**237(1)** For the purposes of this section, a pre-emptive right is a right attached to a class of shares in which no shares of that class may be issued unless the shares to be issued have first been offered to each shareholder holding shares of that class

(a) in an amount that is in proportion to their holdings of the shares of that class, and

(b) at a price and on the same terms as those shares are to be offered to others.

(2) The shares of a provincial company do not have a pre-emptive right unless the instrument of incorporation or the by-laws provide for a pre-emptive right.

(3) A pre-emptive right does not apply in respect of shares to be issued

(a) for a consideration other than money,

(b) as a share dividend, or

(c) pursuant to the exercise of conversion privileges, options or rights previously granted by the provincial company.

### Changes to Shares

Changing  
shares

**238(1)** The directors of a provincial company may make, amend or repeal any by-laws

(a) to change the maximum number, if any, of shares of any class that the company is authorized to issue,

(b) to create new classes of shares,

(c) to change the designation of any or all of the company's shares and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of any or all of the company's shares, whether issued or unissued,

(d) to change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series,

- (e) to divide a class of shares, whether issued or unissued, into series and fix the maximum number of shares, if any, in each series and the rights, privileges, restrictions and conditions attached to the shares in each series,
- (f) to authorize the directors to divide any class of unissued shares into series and fix the maximum number of shares, if any, in each series and the rights, privileges, restrictions and conditions attached to the shares in each series,
- (g) to authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series, and
- (h) to revoke, diminish or enlarge any authority conferred under clause (f) or (g).

(2) The directors must submit a by-law, or an amendment to or a repeal of a by-law, that is made under subsection (1) to the participating policyholders and shareholders, and the policyholders and shareholders may, by special resolution, confirm, amend or reject the by-law, amendment or repeal.

(3) A by-law, or an amendment to or a repeal of a by-law, made under subsection (1) is not effective until it is

- (a) confirmed or confirmed as amended by the policyholders and shareholders under subsection (2), and
- (b) approved by the Minister.

(4) Where a special resolution referred to in subsection (2) so states, the directors may, before it is submitted to the Minister for approval and without further approval of the policyholders or shareholders, revoke the special resolution.

Class vote

**239(1)** The holders of shares of a class or, subject to subsection (2), of a series are, unless the by-laws otherwise provide in the case of an amendment to the by-laws referred to in clause (a), (b) or (e), entitled to vote separately as a class or series on a proposal to amend the by-laws

- (a) to increase or decrease any maximum number of authorized shares of that class, or increase any maximum number of authorized shares of a class having rights or privileges equal or superior to the shares of that class,
- (b) to effect an exchange, reclassification or cancellation of all or part of the shares of that class,

- (c) to add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, without limiting the generality of the foregoing,
  - (i) to remove or change prejudicially rights to accrued dividends or rights to cumulative dividends,
  - (ii) to add, remove or change prejudicially redemption rights,
  - (iii) to reduce or remove a dividend preference or a liquidation preference, or
  - (iv) to add, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights, rights to acquire securities of the provincial company or sinking fund provisions,
- (d) to increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of that class,
- (e) to create a new class of shares equal or superior to the shares of that class,
- (f) to make any class of shares having rights or privileges inferior to the shares of that class equal or superior to the shares of that class, or
- (g) to effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of that class.

(2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) if that series would be affected by an addition or amendment to the by-laws differently from how other shares of the same class would be affected.

(3) Subsections (1) and (2) apply whether or not the shares of a class otherwise carry the right to vote.

(4) A proposed addition or amendment to the by-laws referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately on the addition or amendment as a class or series and the participating policyholders have approved the addition or amendment by a special resolution.

Proposal to  
amend

**240(1)** Subject to subsection (2), a director or a participating policyholder or shareholder of a provincial company may, in accordance with sections 274 and 275, make a proposal to make, amend or repeal the by-laws of the company referred to in section 238(1).

(2) If a proposal is made to make, amend or repeal by-laws of a provincial company to effect any of the changes referred to in section 238(1), notice of the meeting of policyholders or shareholders at which the proposal is to be considered must set out the proposal.

Restriction on  
subordinated  
indebtedness

**241(1)** A provincial company must not issue subordinated indebtedness unless the subordinated indebtedness is fully paid for in money or, with the approval of the Minister, in property.

(2) A person must not in any prospectus, advertisement, correspondence or literature relating to any subordinated indebtedness issued or to be issued by a provincial company refer to the subordinated indebtedness otherwise than as subordinated indebtedness.

(3) When issuing subordinated indebtedness, a provincial company may provide that any aspect of the subordinated indebtedness relating to money or involving the payment of or the liability to pay money in relation to the subordinated indebtedness be in a currency other than that of Canada, including, without restricting the generality of the foregoing, the payment of any interest on the subordinated indebtedness.

### Other Matters

Conversion  
privileges,  
options and  
rights

**242(1)** A provincial company may issue certificates, warrants or other evidences of conversion privileges or options or rights to acquire securities of the company and must set out the conditions to which the conversion privileges, options or rights are subject

(a) in the certificates, warrants or other evidences, or

(b) in certificates evidencing the securities to which the conversion privileges, options or rights are attached.

(2) Conversion privileges and options or rights to purchase securities of a provincial company may be made transferable or non-transferable, and options and rights to purchase may be made separable or inseparable from any securities to which they are attached.

(3) If a provincial company has granted privileges to convert any securities issued by the company into shares, or into shares of another class or series, or has issued or granted options or rights to acquire shares, the company must reserve and continue to reserve sufficient authorized shares to meet the exercise of those conversion privileges, options and rights.

Prohibited  
shareholdings

**243(1)** A provincial company

- (a) must not hold shares in itself or in its holding body corporate, and
- (b) must not permit any of its subsidiaries to hold shares in the company or in the holding body corporate of the company

except in accordance with this section and sections 244 to 248 unless the Minister consents to the holding.

(2) A provincial company may in the capacity of personal representative hold shares in itself or in its holding body corporate so long as the company or the holding body corporate or a subsidiary of either of them does not have a beneficial interest in the shares.

(3) A provincial company may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of its business.

(4) A provincial company holding shares in itself or in its holding body corporate must not vote or permit those shares to be voted unless the company

- (a) holds the shares in the capacity of personal representative, and
- (b) has complied with section 307.

Restrictions on  
acquisition of  
shares

**244(1)** Subject to this section, sections 256 to 266 apply to a purchase, acquisition or redemption for cancellation of voting shares by a provincial company under section 245, 246 or 247 if the purchase, acquisition or redemption of the voting shares

- (a) would cause a person to have a significant interest in those voting shares or would increase the significant interest of a person in those voting shares, or
- (b) would cause the combined holdings of a person and a person related to that person to amount to a significant interest in those voting shares or would increase the

significant interest of a person and a related person in those voting shares.

(2) Despite subsection (1), in the case of a purchase, acquisition or redemption of shares referred to in subsection (1),

- (a) section 259 does not apply, and
- (b) the provincial company must make the application referred to in section 262(1).

Acquisition of  
own shares

**245(1)** Subject to subsection (2) and to its by-laws, the directors of a provincial company may authorize the company to purchase or otherwise acquire shares issued by it.

(2) The directors of a provincial company must not authorize the company to make any payment to purchase or otherwise acquire shares issued by it if there are reasonable grounds for believing that

- (a) the company is, or after the payment would be, unable to pay its liabilities as they become due, or
- (b) the realizable value of the company's assets after the payment would be less than the aggregate of its liabilities and the book value of all its shares.

(3) A provincial company that is not a reporting issuer must, within 30 days of the purchase of any of its issued shares, notify its shareholders

- (a) of the number of shares it has purchased,
- (b) of the names of the shareholders from whom it has purchased the shares,
- (c) of the price paid for the shares, and
- (d) of the balance, if any, remaining due to the shareholders from whom it has purchased the shares.

(4) A shareholder of a provincial company other than a reporting issuer is entitled on request and without charge to a copy of the agreement between the company and any of its other shareholders under which the company has agreed to purchase, or has purchased, any of its own shares.

Alternative  
acquisition of  
own shares

**246(1)** Subject to subsection (2) and to its by-laws, the directors of a provincial company may authorize the company to purchase or otherwise acquire shares issued by it

- (a) to settle or compromise a debt or claim asserted by or against the company,
- (b) to eliminate fractional shares, or
- (c) to fulfil the terms of a non-assignable agreement under which the company has an option or is obliged to purchase shares owned by a director, officer or employee of the company.

(2) Despite section 245(2), a provincial company may purchase or otherwise acquire shares issued by it to comply with an order under section 776.

(3) The directors of a provincial company must not authorize the company to make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that

- (a) the company is, or after the payment would be, unable to pay its liabilities as they become due,
- (b) the realizable value of the company's assets after the payment would be less than the aggregate of
  - (i) its liabilities, and
  - (ii) the amount that would be required to pay the holders of shares who have a right to be paid, on a redemption or in a liquidation, prior to the holders of the shares to be purchased or acquired,

or

- (c) the purchase or acquisition would cause the company to be in contravention of this Act or the regulations.

Redemption of  
shares

**247(1)** Subject to subsection (2) and to its by-laws, the directors of a provincial company may authorize the company to purchase or redeem any redeemable shares issued by it at prices not exceeding the redemption price calculated according to a formula stated in the by-laws.

(2) The directors of a provincial company must not authorize the company to make any payment to purchase or redeem any

redeemable shares issued by it if there are reasonable grounds for believing that

- (a) the company is, or after the payment would be, unable to pay its liabilities as they become due,
- (b) the realizable value of the company's assets after the payment would be less than the aggregate of
  - (i) its liabilities, and
  - (ii) the amount that would be required to pay the holders of shares who have a right to be paid, on a redemption or in a liquidation, ratably with or prior to the holders of the shares to be purchased or redeemed,

or

- (c) the redemption would cause the company to be in contravention of this Act or the regulations.

Donated and  
escrowed  
shares

**248** A provincial company may accept from any shareholder a share of the company

- (a) that is surrendered to it as a gift, or
- (b) that has been held in escrow pursuant to an escrow agreement required by the Executive Director under the *Securities Act* and that is surrendered pursuant to that agreement.

Reduction of  
share capital

**249(1)** Subject to subsection (3), its instrument of incorporation and its by-laws, a provincial company, by special resolution and with the approval of the Minister, may reduce its share capital for any purpose.

**(2)** Where a class or series of shares of a provincial company would be affected by a reduction of share capital under subsection (1) differently from how any other class or series of shares of the company would be affected by such action, the holders of shares of the differently affected class or series are entitled to vote separately as a class or series, as the case may be, on the proposal to take the action, whether or not the shares otherwise carry the right to vote.

**(3)** A provincial company must not reduce its share capital, other than for the purpose of declaring it to be reduced by an amount that is not represented by realizable assets, if there are reasonable grounds for believing that



- (a) the company is, or after the reduction would be, unable to pay its liabilities as they become due, or
  - (b) the reduction would cause the company to be in contravention of this Act or the regulations.
- (4) A special resolution under this section must specify the capital account or accounts from which the reduction of share capital effected by the special resolution will be made.
- (5) An application for the Minister's approval of a special resolution must contain statements showing
- (a) the number of the provincial company's shares issued and outstanding,
  - (b) the results of the voting by class of shares of the company,
  - (c) the company's assets and liabilities, and
  - (d) the reason why the company seeks the reduction of share capital.
- (6) A shareholder, creditor or participating policyholder of a provincial company may apply to the Court for an order compelling another shareholder or another recipient
- (a) to pay to the company an amount equal to any liability of that other shareholder that was extinguished or reduced in contravention of this section, or
  - (b) to pay or deliver to the company any money or property that was paid or distributed to that other shareholder or recipient as a consequence of a reduction of share capital made in contravention of this section.
- (7) A proceeding to enforce a liability imposed by this section must not be commenced after 2 years from the date of the action complained of.
- (8) This section does not affect any liability that arises under section 360.

Adjustment of  
capital  
account

**250(1)** On a purchase, redemption or other acquisition by a provincial company under section 245, 246, 247, 254 or 776(3)(e) of shares or fractions of shares issued by it, the company must deduct from the capital account maintained for the class or series of shares of which the shares purchased, redeemed or otherwise acquired form a part, an amount equal to the result obtained by multiplying the book value of the shares of that class or series by

the number of shares or fractions of shares of that class or series purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) A provincial company must deduct the amount of a payment made by the company to a shareholder under section 776 from the capital account maintained for the class or series of shares in respect of which the payment was made.

(3) A provincial company must adjust its capital account or accounts in accordance with any special resolution referred to in section 249(4).

(4) On a conversion or change of issued shares of a provincial company into shares of another class or series, the company must

- (a) deduct from the capital account maintained for the class or series of shares converted or changed an amount equal to the result obtained by multiplying the book value of the shares of that class or series by the number of shares of that class or series converted or changed, divided by the number of issued shares of that class or series immediately before the conversion or change, and
- (b) add the result obtained under clause (a) and any additional consideration received pursuant to the conversion or change to the capital account maintained or to be maintained for the class or series of shares into which the shares have been converted or changed.

(5) For the purposes of subsection (4), where a provincial company issues 2 classes or series of shares and there is attached to each class or series a right to convert a share of one class or series into a share of the other class or series, the amount to be attributed to a share in either class or series is the amount obtained when the sum of the book value of both classes or series of shares is divided by the number of issued shares of both classes or series of shares immediately before the conversion.

(6) Shares or fractions of shares issued by a provincial company and purchased, redeemed or otherwise acquired by it must be cancelled or restored to the status of authorized but unissued shares.

(7) For the purposes of this section, a provincial company holding shares in itself as permitted by section 243(2) or (3) is deemed not to have purchased, redeemed or otherwise acquired those shares.

(8) Where shares of a class or series are converted or changed into the same or another number of shares of another class or series,

those shares become the same in all respects as the shares of the class or series into which they are converted or changed.

Enforceability  
of contract to  
purchase  
shares

**251(1)** A contract with a provincial company providing for the purchase by it of its own shares is specifically enforceable against the company, except to the extent that it cannot perform the contract without contravening section 245 or 246.

(2) In any action brought on a contract referred to in subsection (1), the provincial company has the burden of proving that performance of the contract is prevented by section 245 or 246.

(3) Until the provincial company has fully performed a contract referred to in subsection (1), the other party to the contract retains the status of a claimant and is entitled

(a) to be paid as soon as the company is lawfully able to perform the contract, or

(b) in a liquidation, to be ranked subordinate to the rights of policyholders, creditors, holders of subordinated notes and any class of shareholders whose rights were in priority to the rights given to the class of shares that the other party contracted to sell to the company, but in priority to the rights of other shareholders.

Commission  
on sale of  
shares

**252** The directors of a provincial company may authorize the company to pay a reasonable commission to any person in consideration of the person's

(a) purchasing or agreeing to purchase shares of the company from it or from any other person, or

(b) procuring or agreeing to procure purchasers for any such shares.

Payment of  
dividend

**253(1)** The directors of a provincial company may declare, and a provincial company may pay, a dividend by issuing fully paid shares of the company and, subject to subsection (3), a provincial company may pay a dividend in money or property.

(2) If a provincial company issues shares of the company in payment of a dividend, it must add to the capital account for the shares of the class or series issued the declared amount of the dividend, stated as an amount of money.

(3) The directors must not declare and a provincial company must not pay a dividend if there are reasonable grounds for believing tha

- (a) the company is, or after the payment would be, unable to pay its liabilities as they become due, or
- (b) the payment would cause the company to be in contravention of this Act or the regulations.

**Lien on share**     **254(1)** The by-laws of a provincial company may provide that the company has a lien on a share registered in the name of a shareholder or the shareholder's personal representative for a debt of that shareholder to the company.

**(2)** A provincial company may enforce a lien referred to in subsection (1) in accordance with its by-laws.

**Restrictions on issue, transfer**     **255** A provincial company must not impose restrictions on the issue, transfer or ownership of shares of any class or series except to the extent that it is authorized to do so by its instrument of incorporation or this Act.

**Interpretation**     **256** For the purposes of this section, section 244 and sections 257 to 265, a person is deemed to be related to

- (a) every body corporate the person controls and every affiliate of such a body corporate,
- (b) every partner of the person,
- (c) every trust or estate in which the person has a substantial beneficial interest or in respect of which the person serves as trustee or in a similar capacity,
- (d) the spouse of the person,
- (e) every relative of the person, or of the person's spouse, who resides in the same home as the person, and
- (f) every other person the Minister considers is acting in concert with the person to acquire and control voting shares of a provincial company and that the Minister designates by order as a related person.

**Constraints on ownership**     **257(1)** No person may, without the approval of the Minister, purchase or otherwise acquire any share of a provincial company or purchase or otherwise acquire control of any entity that holds any share of a provincial company if

- (a) the acquisition would cause the person to have a significant interest in any class of shares of the company, or
  - (b) where the person has a significant interest in a class of shares of the company, the acquisition would increase the significant interest of the person in that class of shares.
- (2) No person and no person related to that person may, without the approval of the Minister, purchase or otherwise acquire any share of a provincial company or purchase or otherwise acquire control of any entity that holds any share of a provincial company if
  - (a) the acquisition would cause the combined holdings of the person and the related person to amount to a significant interest in any class of shares of the company, or
  - (b) where the combined holdings of the person and the related person amount to a significant interest in a class of shares of the company, the acquisition would increase the significant interest of the person and the related person in that class of shares.
- (3) Unless the acquisition of the share has been approved by the Minister, no provincial company may record in its securities register a transfer or issue of any share of the company to any person if
  - (a) the transfer or issue of the share would cause the person to have a significant interest in any class of shares of the company, or
  - (b) where the person has a significant interest in a class of shares of the company, the transfer or issue of the share would increase the significant interest of the person in that class of shares.
- (4) Unless the acquisition of the share has been approved by the Minister, no provincial company may record in its securities register a transfer or issue of any share of the company to any person or any person related to that person if
  - (a) the transfer or issue of the share would cause the combined holdings of the person and the related person to amount to a significant interest in any class of shares of the company, or
  - (b) where the combined holdings of the person and the related person amount to a significant interest in a class of shares of the company, the transfer or issue of the share would

increase the significant interest of the person and the related person in that class of shares.

(5) This section does not apply to any class of non-voting shares of a provincial company that do not amount to more than 10% of the equity of the company.

(6) If the Minister's approval is required under subsection (1), (2), (3) or (4) before a provincial company may record in its securities register a transfer or issue of a share of the company to a person, the person must not exercise any voting rights attached to those shares until the Minister's approval is obtained.

Previous  
approval  
obtained

**258(1)** Where the Minister's approval is given under section 257 with respect to a person or other persons related to that person, no approval under section 257 is required with respect to those persons in respect of a subsequent transfer or issue of voting shares unless, as a result of the transfer or issue, the shareholdings or beneficial ownership of those persons would undergo an increase of more than 5% from the shareholdings or beneficial ownership calculated immediately after the previous approval was given.

(2) The exception set out in subsection (1) does not apply

- (a) to a transfer or issue of shares that would result in a change of control of the provincial company, or
- (b) where, since the previous approval was given, the shareholdings or beneficial ownership of the person and other persons related to that person have decreased by more than 5% from the shareholdings or beneficial ownership calculated immediately after the previous approval was given.

Shares to  
underwriter

**259** The approval of the Minister under section 257 is not required in respect of a transfer or issue of shares to an underwriter, within the meaning of that term in the *Securities Act*, who receives them in that capacity.

Exception for  
small holdings

**260** Despite section 257(3) and (4), where, as a result of a transfer or issue of shares of a class of shares of a provincial company to a person, the total number of shares of that class registered in the securities register of the company in the name of the person

- (a) would not exceed 5000, and

- (b) would not exceed 0.1% of the outstanding shares of that class,

the company is entitled to act as though no person is acquiring or increasing a significant interest in that class of shares of the company as a result of that issue or transfer of shares unless it has actual knowledge that the person is acquiring or increasing a significant interest in that class of shares.

Increasing  
large holdings

**261** The approval of the Minister under section 257 is not required where a person who holds 95% or more of the total rights attached to all of the outstanding voting shares of a company purchases or otherwise acquires additional shares of the company.

Minister's  
approval

**262(1)** Where an approval is required under section 257,

- (a) the person to whom the shares are to be transferred or issued, or
- (b) where the person referred to in clause (a) will not be the beneficial owner of the shares, that person and the beneficial owner jointly,

must apply for the approval and must provide the Minister with any information the Minister requires in support of the application.

**(2)** On an application under subsection (1), the Minister must take into account all matters that the Minister considers relevant to the application, including

- (a) whether any of the holders or beneficial owners to whom the approval relates
  - (i) is or has been bankrupt,
  - (ii) has been convicted of a criminal offence, an offence under this Act or an offence under the *Securities Act* or comparable legislation of another jurisdiction in Canada,
  - (iii) is or has been subject to a cease trading order under the *Securities Act* or comparable legislation of another jurisdiction in Canada,
  - (iv) is the subject of a special examination under section 757,
  - (v) is, in the Minister's opinion, contravening any provision of this Act or the regulations or of any

comparable legislation of another jurisdiction or of any undertaking given to the Minister, or

- (vi) has failed to provide the information required under subsection (1);
  - (b) the nature and sufficiency of the financial resources of the holders or beneficial owners to whom the application for approval relates as a source of continuing financial support for the provincial company;
  - (c) where the transfer or issue would result in a change in control of the provincial company, the soundness and feasibility of plans of the holders or beneficial owners to whom application for the approval relates for the future conduct and development of the business of the company;
  - (d) the business record and experience of the holders or beneficial owners to whom the application for approval relates;
  - (e) whether the provincial company will be operated responsibly by persons who are fit as to character and are competent for that purpose;
  - (f) the best interests of the financial system in Alberta.
- (3) The approval of the Minister under this section takes effect on the date set out in the approval, and the effective date may be a date before the date the approval is given.

Minister's right  
to information

**263(1)** The Minister may in writing direct a provincial company to obtain from a person in whose name a share is registered in the securities register of the company or who is the beneficial owner of a share of the company a declaration containing any or all of the following information:

- (a) information concerning the ownership or beneficial ownership of the share;
- (b) information as to whether the share is held or beneficially owned by a person who is related to that person, and the name of the related person where applicable;
- (c) information as to the place in which the shareholder and any person for whose use or benefit the share is held are ordinarily resident;
- (d) information concerning the ownership or beneficial ownership of the shares of a holding body corporate;



(e) information concerning any other matters specified by the Minister.

(2) The directors of a provincial company that is the subject of a direction under subsection (1) must ensure that the company forthwith complies with the direction.

(3) A provincial company that is the subject of a direction under subsection (1) may request a person who has possession of or access to the information required to provide a declaration containing the information to the Minister, and that person must forthwith comply with the request.

Exemption

**264(1)** The Minister may by order exempt any provincial company or other person from the application of section 257 in whole or in part and on any terms and conditions set out in the order.

(2) The *Regulations Act* does not apply to an order under subsection (1).

By-laws re  
shareholder  
information

**265(1)** The directors of a provincial company may make by-laws

(a) requiring any person holding any voting share of the company to submit written declarations

(i) with respect to the ownership and beneficial ownership of a share of the company or of a holding body corporate,

(ii) with respect to the place in which the shareholder and any person for whose use or benefit the share is held are ordinarily resident,

(iii) as to whether the shareholder is related to other persons, and

(iv) with respect to any other matters the directors consider relevant for the purposes of sections 256 to 263,

(b) prescribing the times at which and the manner in which any declarations required under clause (a) are to be submitted, and

(c) requiring any person desiring to have a transfer of a share to the person recorded in the securities register of the company to submit a declaration referred to in clause (a) as if the person were a shareholder.

(2) Where under any by-law made under subsection (1) a declaration is required to be submitted by any shareholder or person in respect of the transfer of any share, the directors may refuse to allow the entry of the transfer of the share in the securities register of the provincial company until the required declaration has been submitted.

Reliance on  
information

**266** A director of a provincial company and any other person acting as proxy for a shareholder of the company may rely on a statement made in a declaration made pursuant to a by-law under section 265(1) and on their own knowledge of the circumstances for the purposes of determining

- (a) the residence of a person,
- (b) who controls a body corporate, or
- (c) any other circumstances relevant to the performance of their duties under sections 256 to 263,

and the director or other person is not liable in any action for anything done or omitted by the director or other person in good faith in reliance on that statement or that knowledge.

## **SUBPART 5**

### **PARTICIPATING POLICYHOLDERS AND SHAREHOLDERS**

#### **Division 1 Meetings and Voting**

Place of  
meetings

**267(1)** Meetings of participating policyholders or shareholders of a provincial company must be held at the place in Alberta provided for in the by-laws of the company or, in the absence of any such provision, at the place in Alberta that the directors determine.

(2) The Minister may, on application, exempt a provincial company from holding a meeting of participating policyholders or shareholders in Alberta.

Calling  
meetings

**268** The directors of a provincial company

- (a) must, after the meeting called pursuant to section 133, call the first annual meeting of participating policyholders and shareholders of the provincial company, which meeting must be held not later than 6 months after the end of the first financial year of the company,

- (b) must subsequently call annual meetings of participating policyholders and shareholders, to be held not later than 6 months after the end of each financial year, and
- (c) may at any time call a special meeting of participating policyholders or shareholders.

Record date

**269(1)** For the purpose of determining

- (a) shareholders entitled to receive payment of a dividend,
- (b) participating policyholders or shareholders entitled to participate in a liquidation distribution,
- (c) who is a shareholder for any other purpose except the right to receive notice of, or to vote at, a meeting, or
- (d) who is a policyholder for any other purpose except
  - (i) the right to receive notice of, or to vote at, a meeting,
  - (ii) the right to receive payment of a policy dividend or bonus, and
  - (iii) any purpose for which the determination of policyholders is governed by contract,

the directors may fix in advance a date as the record date for the determination of policyholders or shareholders, but the record date so fixed must not precede the particular action to be taken by more than 50 days.

(2) If no record date is fixed under subsection (1) for the determination of policyholders or shareholders for any purpose for which a record date could have been fixed under that subsection, the record date for the determination of policyholders or shareholders for that purpose is the date on which the directors pass the resolution relating to that purpose.

(3) For the purpose of determining participating policyholders entitled to receive notice of a meeting of participating policyholders, the directors may fix in advance a date as the record date for the determination of participating policyholders, but the record date so fixed must not precede the date on which the meeting is to be held by more than 90 days or less than 21 days.

(4) If no record date is fixed under subsection (3) for the determination of participating policyholders entitled to receive notice of a meeting, the record date for that purpose is

- (a) the day immediately before the day on which the notice is given, or
  - (b) if no notice is given, the day on which the meeting is held.
- (5) Before a meeting of participating policyholders, the directors may fix a date as the record date for the purpose of determining participating policyholders entitled to vote at the meeting, and that record date must not be more than 10 days before the date on which the meeting is to be held.
- (6) If no record date is fixed under subsection (5) for the determination of participating policyholders entitled to vote at a meeting, the record date for that purpose is the day on which the meeting is held.
- (7) For the purpose of determining shareholders entitled to receive notice of and to vote at a meeting of shareholders, the directors may fix in advance a date as the record date for the determination of shareholders, but the record date so fixed must not precede the date on which the meeting is to be held by more than 50 days or less than 21 days.
- (8) If no record date is fixed under subsection (7) for the determination of shareholders entitled to receive notice of and to vote at a meeting, the record date for the determination of shareholders entitled to receive notice of and to vote at the meeting is
  - (a) the day immediately before the day on which the notice is given, or
  - (b) if no notice is given, the day on which the meeting is held.
- (9) Subject to subsections (10) and (11), where a record date is fixed for a provincial company, notice of the record date must be given not less than 7 days before the record date
  - (a) by advertisement in a newspaper in general circulation in the place where the head office of the company is located and in each place in Canada where the company has a transfer agent or where a transfer of the company's shares may be recorded, and
  - (b) by written notice to each recognized stock exchange in Canada on which the shares of the company are listed for trading.
- (10) Notice of a record date fixed for a provincial company need not be given if

- (a) the company has no participating policyholders or notice of the record date is waived in writing by every participating policyholder who holds a policy at the close of business on the date the directors fix as the record date, and
- (b) notice of the record date is waived in writing by every holder of a share of the class or series affected whose name is set out in the central securities register at the close of business on the date the directors fix as the record date.

(11) Where the by-laws provide, a provincial company is not required to give notice by advertisement in a newspaper under subsection (9) of a record date for the determination of participating policyholders or shareholders entitled to receive notice of a meeting of participating policyholders or shareholders if the record date is included in the notice of the meeting.

**Notice of  
meeting**

**270(1)** A provincial company must send a notice of the time and place of a meeting of its participating policyholders or shareholders not less than 21 days nor more than 50 days before the meeting to

- (a) each shareholder entitled to receive notice of the meeting,
- (b) each participating policyholder who has within 3 years before the record date fixed or determined under section 269(3) or (4) completed and returned to the company the form referred to in section 292(1)(b) if no business referred to in clause (c) is to be dealt with at the meeting,
- (c) every participating policyholder determined under section 269(3) or (4) if any of the following business is to be dealt with at the meeting:
  - (i) authorizing the company to apply to the Minister for the approval of a mutualization proposal or of an amalgamation agreement,
  - (ii) confirming a by-law changing the rights of policyholders to vote at meetings of policyholders or shareholders,
  - (iii) approving an agreement setting out the terms and means of effecting
    - (A) the transfer of all or substantially all of the company's policies, or
    - (B) the reinsurance of all or substantially all of the company's policies,

or

- (iv) approving a proposal to convert the company from a mutual provincial company into a provincial company with common shares,

(d) each director,

(e) the auditor of the company, and

(f) the actuary of the company.

**(2)** The Minister, having regard to the size of a provincial company and of the companies or bodies corporate with which it proposes to amalgamate, may exempt the company from the application of subsection (1)(c) with respect to business consisting of the approval of an amalgamation agreement.

**(3)** In addition to the notice required under subsection (1),

(a) where any class of shares of a provincial company is publicly traded on a recognized stock exchange in Canada, notice of the time and place of the meeting of shareholders must be published once a week for at least 4 consecutive weeks before the date of the meeting in a newspaper in general circulation in the place where the head office of the company is located and in each place in Canada where the company has a transfer agent or where a transfer of the company's shares may be recorded, or

(b) where the company is a mutual provincial company, notice of the time and place of the meeting of participating policyholders of the company and the nature of the business in sufficient detail to permit a participating policyholder to form a reasoned judgment on the nature of the business, together with information on the means by which any policyholder can receive the notice referred to in subsection (1), must be

(i) published once a week for at least 4 consecutive weeks before the date of the meeting in a newspaper in general circulation in the place where the head office of the company is located and in each province in which more than 1% of the total number of participating policyholders reside, or

(ii) sent to every participating policyholder.

**(4)** A notice of the annual meeting of participating policyholders and shareholders must include a copy of the provincial company's annual financial statements for the preceding year unless the

participating policyholder or shareholder has advised the provincial company that the holder does not wish to receive the annual financial statements.

(5) Failure to receive a notice of a meeting of participating policyholders or shareholders does not deprive a participating policyholder or shareholder of the right to vote at the meeting.

Notice of  
adjourned  
meeting

**271(1)** If a meeting of participating policyholders or shareholders of a provincial company is adjourned for less than 30 days, it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the time of the adjournment.

(2) If a meeting of participating policyholders or shareholders of a provincial company is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting must be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than 90 days, section 304 does not apply.

Special  
business

**272(1)** All matters dealt with at an annual or special meeting of participating policyholders or shareholders are special business except the election of directors and consideration of

- (a) the financial statements,
- (b) the auditor's report,
- (c) the actuary's report,
- (d) the remuneration of directors and reappointment of the incumbent auditor, or
- (e) the description of the roles of the actuary and the auditor in the preparation and audit of the financial statements.

(2) Notice of a meeting of participating policyholders or shareholders of a provincial company at which special business is to be transacted must

- (a) state the nature of the special business in sufficient detail to permit a participating policyholder or shareholder to form a reasoned judgment on the nature of the special business,
- (b) contain the text of any special resolution to be submitted to the meeting, and

(c) state, where a management proxy circular is sent to shareholders concurrently with the notice, that a participating policyholder is entitled on request to receive a copy of the management proxy circular.

(3) The Minister may exempt a provincial company from the application of subsection (2)(b) in relation to participating policyholders on condition that, instead of sending the policyholders the text of a special resolution to be submitted to a meeting, the company send the policyholders a summary of the text.

(4) The text of a special resolution may be amended at a meeting of participating policyholders or shareholders if the amendments correct manifest errors or are not material.

Waiver of  
notice

**273(1)** A participating policyholder, a shareholder and any other person entitled to attend a meeting of participating policyholders or shareholders may in any manner waive notice of a meeting of participating policyholders or shareholders.

(2) Attendance at a meeting of participating policyholders or shareholders is a waiver of notice of the meeting, except when a person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Policyholder  
and  
shareholder  
proposals

**274(1)** A participating policyholder or shareholder of a provincial company may

- (a) submit to the company notice of a proposal of any matter that the participating policyholder or shareholder intends to raise at the meeting, and
- (b) discuss at the meeting any matter in respect of which the participating policyholder or shareholder would have been entitled to submit a proposal.

(2) A provincial company must attach to the notice of the meeting any notice of proposal of a participating policyholder or shareholder submitted for consideration at a meeting of policyholders and shareholders.

(3) If so requested by a participating policyholder or shareholder who submits a notice of proposal to a provincial company, the company must attach to the notice of the meeting a statement by the participating policyholder or shareholder of not more than 200 words in support of the proposal and the name and address of the participating policyholder or shareholder.



(4) A proposal may include nominations for the election of directors if the proposal is signed by

- (a) one or more holders of shares representing in the aggregate not less than 5% of the shares or 5% of the shares of a class of shares of the provincial company entitled to vote at the meeting at which the proposal is to be presented, in the case of nominations for the directors to be elected by shareholders, or
- (b) at least 100 participating policyholders or 10% of the total number of those policyholders, whichever is fewer, in the case of nominations for the directors to be elected by participating policyholders.

(5) A provincial company is not required to comply with subsections (2) and (3) if

- (a) the notice of the proposal is not submitted to the company at least 90 days before the anniversary date of the previous annual meeting of participating policyholders and shareholders,
- (b) it clearly appears that the proposal is submitted by the participating policyholder or shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or its directors, officers or security holders, or for a purpose that is not related in any significant way to the business or affairs of the company,
- (c) the company, at the participating policyholder's or shareholder's request, attached a notice of proposal to the notice of a meeting of participating policyholders or shareholders held within 2 years preceding the receipt of the request, and the participating policyholder or shareholder failed to present the proposal, in person or by proxy, at the meeting,
- (d) substantially the same proposal was submitted to participating policyholders or shareholders in a dissident's proxy circular relating to, or was attached to the notice of, a meeting of participating policyholders or shareholders held within 2 years preceding the receipt of the participating policyholder's or shareholder's request and the proposal was defeated,
- (e) in the case of a proposal submitted by a participating policyholder that relates to business that is referred to in section 270(1)(c), the notice of proposal is not signed by at

least 100 participating policyholders or 10% of the total number of those policyholders, whichever is fewer,

(f) in the case of any other proposal submitted by a participating policyholder, the notice of proposal is not signed by at least 100 participating policyholders, or

(g) in the case of a proposal submitted by a participating policyholder, the proposal

(i) relates to the management of the ordinary business and affairs of the company,

(ii) would, if implemented, result in a change in the character or direction of the company that would have a material adverse effect on the ability of the company to meet the reasonable expectations of the company's participating policyholders as to the net cost of their insurance, or

(iii) would result in the conversion of a mutual provincial company into a provincial company with common shares.

(6) No provincial company or person acting on behalf of a company incurs any liability by reason only of circulating a notice of proposal or statement in compliance with subsections (2) and (3).

**Refusal of  
proposal**

**275(1)** If a provincial company refuses to attach a proposal to the notice of the meeting, the company must, within 10 days after receiving the proposal, notify the participating policyholder or shareholder submitting the proposal of its intention not to attach the proposal to the notice of the meeting and send to the participating policyholder or shareholder a statement of the reasons for the refusal.

(2) On the application of a participating policyholder or shareholder claiming to be aggrieved by a provincial company's refusal under subsection (1), the Court may restrain the holding of the meeting at which the proposal is sought to be presented and make any further order it thinks fit.

(3) A provincial company or any person claiming to be aggrieved by a proposal may apply to the Court for an order permitting the company not to attach the notice of proposal to the notice of the meeting, and the Court, if it is satisfied that section 274(5) applies, may make any order it thinks fit.

(4) An applicant under subsection (2) or (3) must give the Minister written notice of the application, and the Minister may appear and be heard at the hearing of the application in person or by counsel.

Policyholder  
and  
shareholder  
lists

**276(1)** For each meeting of participating policyholders or shareholders of a provincial company, the company must prepare

- (a) a list of its participating policyholders entitled to vote at the meeting, and
- (b) a list of its shareholders entitled to vote at the meeting arranged in alphabetical order and showing the number of shares held by each shareholder.

(2) If a record date is fixed under section 269(5), the list of participating policyholders must be prepared not later than the day on which the meeting is held and, if no record date is fixed under section 269(5), the list must be prepared on the day on which the meeting is held.

(3) If a record date is fixed under section 269(7), the list of shareholders must be prepared not later than 10 days after that record date, and if no record date is fixed under section 269(7), the list must be prepared

- (a) at the close of business on the day immediately before the day on which the notice of the meeting is given, or
- (b) if no notice is given, on the day on which the meeting is held.

(4) A list of participating policyholders or shareholders may be in electronic form.

(5) Subject to this Act, a person named in a list of participating policyholders prepared under subsection (1) is entitled to vote at the meeting to which the list relates unless, after the record date fixed under section 269(5) or, if no record date is fixed under section 269(5), after the date on which the list was prepared,

- (a) the person has transferred the policy entitling the holder to vote, in which case the transferee is entitled to vote at the meeting, or
- (b) the policy entitling the person to vote is not in force.

(6) Subject to this Act, a person named in a list of shareholders prepared under subsection (1) is entitled to vote the shares shown opposite that person's name at the meeting to which the list relates unless

- (a) the person has transferred the ownership of any of those shares after the record date fixed under section 269(7), or if no record date is fixed under section 269(7), after the date on which the list was prepared, and
- (b) the transferee of those shares
  - (i) produces properly endorsed share certificates, or
  - (ii) otherwise establishes that the transferee owns the shares,

and demands, not later than 10 days before the meeting or such shorter period before the meeting as the by-laws of the company provide, that the transferee's name be included in the list before the meeting,

in which case the transferee may vote those transferred shares at the meeting.

(7) A participating policyholder or shareholder of a provincial company may examine the list of shareholders prepared under subsection (1)

- (a) during normal business hours at the company's head office or, if the company has been authorized to keep its central securities register at a place other than its head office, at that other place, and
- (b) at the meeting of shareholders for which the list was prepared.

(8) A participating policyholder or shareholder of a provincial company may, at the meeting of participating policyholders for which the list referred to in subsection (1) was prepared, require the company to verify from that list whether a person identified both by name and by some other distinguishing feature is entitled to vote at that meeting.

#### Quorum

**277(1)** Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders if the holders of a majority of the shares who are entitled to vote at the meeting are present in person or represented by proxyholders.

(2) A quorum of participating policyholders is present at a meeting of participating policyholders if at least 100 participating policyholders or 10% of the total number of those policyholders, whichever is fewer, are present in person or represented by proxyholders.

(3) A quorum of participating policyholders and shareholders is present at a meeting of participating policyholders and shareholders if

(a) unless the by-laws otherwise provide, the holders of a majority of the shares who are entitled to vote at the meeting, and

(b) at least 100 participating policyholders or 10% of the total number of those policyholders, whichever is fewer,

are present in person or represented by proxyholders.

(4) If a quorum is present at the opening of a meeting of participating policyholders or shareholders, the participating policyholders or shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting even though a quorum is not present throughout the meeting.

(5) If a quorum is not present at the opening of a meeting of participating policyholders or shareholders, or within such reasonable time after the opening of the meeting as the participating policyholders or shareholders present may determine, the participating policyholders or shareholders present may adjourn the meeting to a fixed time and place, but must not transact any other business.

One  
shareholder  
meeting

**278** If a provincial company has only one shareholder, or only one holder of any class or series of shares, the shareholder present in person or represented by a proxyholder constitutes a meeting of shareholders or a meeting of shareholders of that class or series.

Meeting by  
electronic  
means

**279** A participating policyholder, shareholder or other person entitled to attend a meeting of participating policyholders or shareholders may participate in the meeting by means of telephone or other communication devices that permit all persons participating in the meeting to hear each other, and a person participating in such a meeting by those means is, for the purposes of this Act, present at the meeting.

One share -  
one vote

**280** Unless the by-laws otherwise provide, each share of a provincial company that entitles the holder of the share to vote at a meeting of shareholders or participating policyholders and shareholders entitles the shareholder to one vote at the meeting.

One  
participating  
policyholder -  
one vote

**281** The holder of one or more participating policies issued by a provincial company is entitled to attend, and is also entitled to one vote at, a meeting of participating policyholders or participating policyholders and shareholders of the company.

Changing  
policyholders'  
right to vote

**282(1)** Subject to section 281, the directors of a provincial company may make, amend or repeal any by-law to change the rights of participating policyholders to vote at meetings of participating policyholders and shareholders.

(2) The directors must submit a by-law, or an amendment to or a repeal of a by-law, that is made under subsection (1) to the participating policyholders and shareholders, and the policyholders and shareholders may, by special resolution, confirm, amend or reject the by-law, amendment or repeal.

(3) A by-law, or an amendment to or a repeal of a by-law, made under subsection (1) is not effective until it is

(a) confirmed or confirmed as amended by the participating policyholders and shareholders under subsection (2), and

(b) approved by the Minister.

(4) Where a special resolution referred to in subsection (2) so states, the directors may, before it is submitted to the Minister for approval and without further approval of the participating policyholders or shareholders, revoke the special resolution.

Proposal to  
amend

**283(1)** Subject to subsection (2), a director or a participating policyholder or shareholder of a provincial company may, in accordance with sections 274 and 275, make a proposal to make, amend or repeal the by-laws of the company referred to in section 282.

(2) If a proposal is made to make, amend or repeal the by-laws of a provincial company to effect any of the changes referred to in section 282, notice of the meeting of participating policyholders and shareholders at which the proposal is to be considered must set out the proposal.

Represen-  
tative  
participating  
policyholder or  
shareholder

**284(1)** If an entity is a participating policyholder or shareholder of a provincial company, the company must recognize any individual authorized by a resolution of the directors or governing body or similar authority of the entity to represent it at meetings of participating policyholders or shareholders of the company.

(2) An individual authorized under subsection (1) to represent an entity may exercise on behalf of the entity all the powers the entity could exercise if the entity were an individual who was a participating policyholder or shareholder.

Joint voting  
policyholders  
or  
shareholders

**285** Unless the by-laws otherwise provide, if 2 or more persons hold policies or shares jointly, one of those holders present at a meeting of participating policyholders or shareholders may, in the absence of the others, vote the shares or policies, but if 2 or more of those persons who are present in person or represented by proxyholder vote, they must vote as one on the policies or shares jointly held by them.

Voting by  
hands or ballot

**286(1)** Unless the by-laws otherwise provide, voting at a meeting of participating policyholders or shareholders must take place by show of hands except when a ballot is demanded by a participating policyholder, shareholder or proxyholder entitled to vote at the meeting.

(2) A participating policyholder, shareholder or proxyholder may demand a ballot either before or on the declaration of the result of a vote by show of hands.

Resolution in  
lieu of meeting

**287(1)** Except where a written statement is submitted by a director under section 326 or by an auditor under section 379(1),

(a) a resolution in writing signed by all the participating policyholders and shareholders entitled to vote on that resolution at a meeting of participating policyholders or shareholders is as valid as if it had been passed at a meeting of the participating policyholders or shareholders, and

(b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of participating policyholders or shareholders, and signed by all the participating policyholders and shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of participating policyholders or shareholders.

(2) A copy of every resolution referred to in subsection (1) must be kept with the minutes of the meetings of participating policyholders or shareholders.

Requisitioned  
meetings

**288(1)** Shareholders who together hold not less than 5% of the issued and outstanding shares of a provincial company that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders or participating policyholders and shareholders for the purposes stated in the requisition.

(2) At least 100 participating policyholders or 10% of the total number of those policyholders, whichever is fewer, may requisition the directors to call a meeting of participating policyholders or participating policyholders and shareholders for the purposes stated in the requisition.

(3) A requisition referred to in subsection (1) or (2)

(a) must state the business to be transacted at the meeting and must be sent to each director and to the provincial company's head office, and

(b) may consist of several documents of similar form, each signed by one or more participating policyholders or shareholders.

(4) The requisitioner must give notice to the Minister of a requisition made under subsection (1) or (2).

(5) On receipt of a requisition referred to in subsection (1) or (2), the directors must call a meeting of participating policyholders or shareholders to transact the business stated in the requisition, unless

(a) a record date has been fixed under section 269(3) or (7) and notice of the record date has been given under section 269(9),

(b) the directors have called a meeting of participating policyholders or shareholders and have given notice of the meeting under section 270, or

(c) the business of the meeting as stated in the requisition includes matters described in section 274(5)(b) to (d) and (g).

(6) If the directors do not call a meeting within 21 days after receiving a requisition referred to in subsection (1) or (2), any participating policyholder or shareholder who signed the requisition may call the meeting.

(7) A meeting called under this section must be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws and this Act.



(8) Unless the participating policyholders or shareholders otherwise resolve at a meeting called under subsection (6), the provincial company must reimburse the participating policyholders or shareholders for any expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

Meeting called  
by Court

**289(1)** Where it is impracticable

- (a) to call a meeting of participating policyholders or shareholders of a provincial company in the manner in which meetings of those policyholders or shareholders are to be called, or
- (b) to conduct the meeting in the manner required by the by-laws and this Act,

or where the Court thinks fit to do so for any other reason, the Court, on the application of a director or a participating policyholder or shareholder, may order a meeting to be called, held and conducted in such manner as the Court directs.

(2) Without restricting the generality of subsection (1), the Court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting called, held and conducted pursuant to this section is for all purposes a meeting of participating policyholders or shareholders of the provincial company duly called, held and conducted.

Disputed  
elections and  
appointments

**290(1)** A provincial company or a participating policyholder, shareholder or director of a company may apply to the Court to resolve any dispute in respect of the election or appointment of a director or an auditor of the company.

(2) On an application under subsection (1), the Court may make any order it thinks fit, including, without limiting the generality of the foregoing,

- (a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute,
- (b) an order declaring the result of the disputed election or appointment,
- (c) an order requiring a new election or appointment, including directions for the management of the business and affairs

of the company until a new election is held or a new appointment is made, and

- (d) an order determining the voting rights of shareholders, persons claiming to own shares, participating policyholders and persons claiming to be participating policyholders.

Notice to  
Minister

**291(1)** A person who makes an application under section 289(1) or 290(1) must give notice of the application to the Minister before the hearing and must deliver a copy of the order of the Court, if any, to the Minister.

**(2)** The Minister may appear and be heard in person or by counsel at the hearing of an application referred to in subsection (1).

Triennial  
solicitation of  
policyholders

**292(1)** A provincial company must, at the time of the application for or issuance of a policy the holder of which is entitled to vote at meetings of the participating policyholders or participating policyholders and shareholders of the company and at least once every 3 years after the application,

- (a) advise the participating policyholder of the policyholder's right to attend and to vote in person or by proxy at those meetings,
- (b) provide the policyholder with a form for the policyholder to complete and return to the company if the policyholder wishes to receive notices of the meetings of the participating policyholders or participating policyholders and shareholders during the next 3 years, and
- (c) provide the participating policyholder with a form of proxy.

**(2)** Subsection (1) does not apply in respect of a provincial company that provides its participating policyholders with notices of all meetings of participating policyholders and shareholders.

### **Take-Over Bids – Compulsory Purchase**

Application of  
Business  
Corporations  
Act

**293** Part 16 of the *Business Corporations Act*, except section 188(3) of that Act, applies with respect to a provincial company as if the company were a corporation within the meaning of that Act, and a reference in that Part to a section in that Act, other than to a section in that Part, is deemed to be a reference to the corresponding section of this Act that deals with the same subject-matter.

## Participating Policies and Dividends

Participating  
account

**294(1)** A provincial company must maintain accounts in respect of participating policies, separate from those maintained in respect of other policies, in the form and manner determined by the Minister.

**(2)** The accounts maintained in respect of participating policies are referred to in this Subpart as participating accounts.

Allocation of  
income

**295** A provincial company must credit to, or debit from, a participating account that portion of the investment income or losses of the company for a financial year, including accrued capital gains or losses, whether or not realized, that is determined in accordance with a method that is

- (a) in the written opinion of the actuary of the company, fair and equitable to the participating policyholders,
- (b) approved by resolution of the directors, after consideration of the written opinion of the actuary of the company, and
- (c) not disallowed by the Minister, within 60 days after the Minister receives the resolution under section 297, on the ground that it is not fair and equitable to the participating policyholders.

Allocation of  
expenses

**296** A provincial company must debit from a participating account that portion of the expenses, including taxes, of the company for a financial year that is determined in accordance with a method that is

- (a) in the written opinion of the actuary of the company, fair and equitable to the participating policyholders,
- (b) approved by resolution of the directors, after consideration of the written opinion of the actuary of the company, and
- (c) not disallowed by the Minister, within 60 days after the Minister receives the resolution under section 297, on the ground that it is not fair and equitable to the participating policyholders.

Filing of  
allocation  
method

**297** The directors of a provincial company must file a copy of any resolution referred to in section 295(b) or 296(b) with the Minister, together with a copy of the written opinion of the actuary of the company and any other information that the Minister requests, within 30 days after making the resolution.

Review of allocation method	<b>298</b> The actuary of a provincial company must report annually in writing to the directors on the fairness and equitableness of the method used by the company for allocating its investment income and losses and expenses to a participating account.
Regulations	<p><b>299</b> The Lieutenant Governor in Council may make regulations</p> <ul style="list-style-type: none"> <li>(a) with respect to a provincial company that has share capital, establishing limits on the payment to shareholders of the company from a participating account or on the transfer of an amount from a participating account to an account from which payment may be made to shareholders of the company;</li> <li>(b) establishing limits on the transfer from a participating account to a segregated fund maintained pursuant to section 118.</li> </ul>
Declaration of policy dividend or bonus	<p><b>300(1)</b> Subject to this section, the directors of a provincial company that issues participating policies may declare, and the company may pay or otherwise satisfy, a dividend, bonus or other benefit on those policies in accordance with its dividend or bonus policy.</p> <p><b>(2)</b> The directors must, before declaring a dividend, bonus or other benefit on participating policies, consider a written report, which the actuary of the provincial company must make, on whether in the actuary's opinion the dividend, bonus or other benefit is in accordance with the dividend or bonus policy of the company.</p> <p><b>(3)</b> The directors of a provincial company must not declare a dividend, bonus or other benefit to participating policyholders if there are reasonable grounds for believing that the company is, or the payment or other satisfaction would cause the company to be, in contravention of the requirements of Subpart 10.</p>

## Division 2 Proxies and Proxy Solicitation

Definitions	<p><b>301</b> In this Division,</p> <ul style="list-style-type: none"> <li>(a) "registrant" means a securities broker or dealer required to be registered to trade or deal in securities under the laws of any jurisdiction;</li> <li>(b) "solicit" or "solicitation" includes</li> </ul>
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- (i) a request for a proxy, whether or not accompanied by or included in a form of proxy,
- (ii) a request to execute or not to execute a form of proxy or to revoke a proxy,
- (iii) the sending of a form of proxy or other communication to a participating policyholder or shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
- (iv) the sending of a form of proxy to a shareholder under section 304,

but does not include

- (v) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a participating policyholder or shareholder,
  - (vi) the performance of administrative acts or professional services on behalf of a person soliciting a proxy,
  - (vii) the sending by a registrant of the documents referred to in section 307, or
  - (viii) a solicitation by a person in respect of shares of which that person is the beneficial owner;
- (c) “solicitation by or on behalf of the management of a provincial company” means a solicitation by any person pursuant to a resolution or instructions of, or with the acquiescence of, the directors or a committee of the directors of the company.

Appointing  
proxyholder

**302(1)** A participating policyholder or shareholder may, by executing a form of proxy, appoint a proxyholder or one or more alternate proxyholders, who are not required to be policyholders or shareholders, to attend and act at the meeting of participating policyholders or shareholders in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

**(2)** A form of proxy must be executed by a participating policyholder or shareholder or by a participating policyholder’s or shareholder’s attorney authorized in writing to do so.

(3) No appointment of a proxyholder provides authority for the proxyholder to act in respect of the appointment of an auditor or the election of a director unless

(a) a nominee proposed in good faith for the appointment or election is named in the form of proxy, a management proxy circular, a dissident's proxy circular or a proposal under section 274(1), or

(b) the form of proxy was sent to a participating policyholder pursuant to section 292.

(4) No appointment of a proxyholder by execution of a form of proxy sent to a participating policyholder pursuant to section 292 provides authority for the proxyholder to act in respect of business referred to in section 270(1)(c).

(5) An appointment of a proxyholder by execution of a form of proxy sent to a participating policyholder pursuant to section 292 after a provincial company receives a dissident's proxy circular does not provide authority for the proxyholder to act at the meeting in respect of which the dissident's proxy circular is sent.

(6) A form of proxy must indicate, in boldface type, that the participating policyholder or shareholder by whom or on whose behalf it is executed may appoint a proxyholder, other than a person designated in the form of proxy, to attend and act on the policyholder's or shareholder's behalf at a meeting to which the proxy relates, and must contain instructions as to the manner in which the policyholder or shareholder may do so.

(7) Subject to subsections (4) and (5), a proxy given by a policyholder by executing a form of proxy sent to the participating policyholder pursuant to section 292 is valid for a period of 3 years after it is given or a lesser period specified in the proxy and at any adjournment of a meeting begun during that period, and any other proxy is valid only at the meeting in respect of which it is given or any adjournment of the meeting.

(8) A participating policyholder or shareholder may revoke a proxy

(a) by depositing a letter executed by the policyholder or shareholder or by the policyholder's or shareholder's attorney authorized in writing to do so

(i) at the provincial company's head office at any time up to and including the last business day preceding the day of a meeting, or an adjournment of the meeting, at which the proxy is to be used, or

(ii) with the chair of the meeting on the day of the meeting or an adjournment of the meeting, or

(b) in any other manner permitted by law.

**Deposit of  
proxies**

**303(1)** The directors may specify in a notice calling a meeting of participating policyholders or shareholders a time preceding the meeting or an adjournment of the meeting before which time executed forms of proxy to be used at the meeting must be deposited with the provincial company or its transfer agent.

**(2)** The time specified for the deposit of forms of proxy must not precede the meeting by more than

(a) 48 hours, excluding Saturdays and holidays, in the case of forms of proxy executed by shareholders, and

(b) 10 days, in the case of forms of proxy executed by participating policyholders.

**Mandatory  
solicitation**

**304(1)** Subject to section 271(2) and subsection (2), the management of a provincial company must, concurrently with giving notice of a meeting of shareholders, send a form of proxy to each shareholder entitled to receive notice of the meeting.

**(2)** Where a provincial company has fewer than 15 shareholders, 2 or more joint holders being counted as one shareholder, the management of the company is not required to send a form of proxy to the shareholders under subsection (1).

**Soliciting  
proxies**

**305(1)** A person must not solicit proxies unless

(a) in the case of solicitation by or on behalf of the management of a provincial company, a management proxy circular, either as an appendix to or as a separate document accompanying the notice of the meeting, or

(b) in the case of any other solicitation, a dissident's proxy circular stating the purposes of the solicitation

is sent to the auditor of the company, to each participating policyholder or shareholder whose proxy is solicited and, if clause (b) applies, to the company.

**(2)** A person who sends a management proxy circular or dissident's proxy circular must concurrently file with the Minister

- (a) in the case of a management proxy circular, a copy of the circular together with a copy of the notice of meeting, form of proxy and any other documents for use in connection with the meeting, and
  - (b) in the case of a dissident's proxy circular, a copy of the circular together with a copy of the form of proxy and any other documents to be used in connection with the meeting.
- (3) Subsection (1) does not apply in respect of the solicitation of proxies by the provision of a form of proxy pursuant to section 292.
- (4) On the application of an interested person, the Minister may, on the terms the Minister thinks fit, exempt the interested person from any of the requirements of subsection (1) and section 304, and the exemption may be given retroactive effect.
- (5) The Minister must set out in The Alberta Gazette the particulars of exemptions granted under subsection (4) together with the reasons for granting the exemptions.

Attendance at  
meeting

**306(1)** A person who solicits a proxy and is appointed proxyholder must attend in person or cause an alternate proxyholder to attend every meeting in respect of which the proxy is valid, and the proxyholder or alternate proxyholder must comply with the directions of the participating policyholder or shareholder who executed the form of proxy.

(2) A proxyholder or an alternate proxyholder has the same rights as the appointing participating policyholder or shareholder to speak at a meeting of policyholders or shareholders in respect of any matter, to vote by way of ballot at the meeting and, except where the proxyholder or alternate proxyholder has conflicting instructions from more than one policyholder or shareholder, to vote at such a meeting in respect of any matter by way of a show of hands.

Duty of  
registrant

**307(1)** Shares of a provincial company that are registered in the name of a registrant or registrant's nominee and that are not beneficially owned by the registrant must not be voted unless the registrant sends to the beneficial owner

- (a) forthwith after receiving them, a copy of the notice of the meeting, annual statement, management proxy circular, dissident's proxy circular and any other documents, other than the form of proxy, that were sent to shareholders by or on behalf of any person for use in connection with the meeting, and



- (b) a written request for voting instructions, except where the registrant has already received written voting instructions from the beneficial owner.
- (2) A registrant must not vote or appoint a proxyholder to vote shares of a provincial company registered in the registrant's name or in the name of the registrant's nominee that the registrant does not beneficially own unless the registrant receives voting instructions from the beneficial owner.
- (3) A person by or on behalf of whom a solicitation is made must, at the request of a registrant, forthwith provide the registrant, at that person's expense, with the necessary number of copies of the documents referred to in subsection (1)(a).
- (4) A registrant must vote or appoint a proxyholder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.
- (5) If requested by a beneficial owner, a registrant must appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.
- (6) The failure of a registrant to comply with any of subsections (1) to (5) does not render void any meeting of participating policyholders or shareholders or any action taken at the meeting.
- (7) Nothing in this Subpart gives a registrant the right to vote shares that the registrant is otherwise prohibited from voting.

Restraining  
order

**308(1)** If a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement of a material fact or omits to state a material fact required in the document or necessary to make a statement contained in the document not misleading in the light of the circumstances in which it was made, an interested person or the Minister may apply to the Court and the Court may make any order it thinks fit, including, without limiting the generality of the foregoing,

- (a) an order restraining the solicitation or the holding of the meeting, or restraining any person from implementing or acting on any resolution passed at the meeting, to which the form of proxy, management proxy circular or dissident's proxy circular relates,
- (b) an order requiring correction of any form of proxy or proxy circular and a further solicitation, and
- (c) an order adjourning the meeting.

(2) Where a person other than the Minister is an applicant under subsection (1), the applicant must give to the Minister notice of the application and the Minister is entitled to appear and to be heard in person or by counsel.

## **SUBPART 6**

### **DIRECTORS AND OFFICERS**

#### **Duties**

Duty to  
manage

**309(1)** Subject to this Act, the directors of a provincial company must manage or supervise the management of the business and affairs of the company.

(2) Without limiting the generality of subsection (1), the directors of a provincial company must

- (a) establish an audit committee and a conduct review committee;
- (b) establish procedures to resolve conflicts of interest, including techniques for the identification of potential conflict situations and for restricting the use of confidential information;
- (c) in the case of a company that issues participating policies, establish, before issuing any participating policies, a policy for determining the dividends and bonuses to be paid to the participating policyholders;
- (d) establish procedures to provide disclosure of information that this Act and the regulations require to be disclosed;
- (e) establish policies and procedures to ensure that the company applies prudent investment standards in accordance with section 417;
- (f) appoint the actuary of the company.

(3) Subsection (2)(a) does not apply to the directors of a provincial company where

- (a) all the voting shares of the company, other than directors' qualifying shares, if any, are beneficially owned by a financial institution incorporated by or under an Act of the Legislature,
- (b) there are no participating policyholders, and

- (c) the audit committee or the conduct review committee of the financial institution referred to in clause (a) performs for and on behalf of the company all the functions that would otherwise be required to be performed by the audit committee or conduct review committee of the company under this Act.

Duty of care

**310(1)** Every director and officer of a provincial company in exercising any of the powers of a director or an officer and discharging any of the duties of a director or an officer must

- (a) act honestly and in good faith with a view to the best interests of the company, and
- (b) exercise the care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances.

(2) Every director, officer and employee of a provincial company must comply with this Act, the regulations, the company's instrument of incorporation and the by-laws of the company.

(3) No provision in any contract, in any resolution or in the by-laws of a provincial company relieves any director, officer or employee of the company from the duty to act in accordance with this Act and the regulations or relieves a director, officer or employee from liability for a breach of that duty.

### **Qualifications and Number of Directors**

Minimum  
number of  
directors

**311(1)** A provincial company must have at least 5 directors.

(2) A majority of the directors must be ordinarily resident in Canada.

Disqualified  
persons

**312(1)** The following persons are disqualified from being directors of a provincial company:

- (a) a person who is less than 18 years of age;
- (b) a person who is of unsound mind and has been so found by a court in Canada or elsewhere;
- (c) a person who has the status of an undischarged bankrupt;
- (d) a person who is not an individual;

- (e) a person who holds shares of the company where, by section 257(6), the person is prohibited from exercising the voting rights attached to the shares;
  - (f) a person who is an officer, director or full-time employee of an entity that holds shares of the company where, by section 257(6), the entity is prohibited from exercising the voting rights attached to the shares;
  - (g) a person who is a dependent adult as defined by the *Dependent Adults Act* or is the subject of a certificate of incapacity under that Act;
  - (h) a person employed in the public service of Alberta or by a Provincial agency or Crown-controlled organization within the meaning of the *Financial Administration Act* and to which that Act applies, whether under a contract of service or a contract for services, whose substantive duties are directly concerned with the business or affairs of insurers, insurance agents or adjusters;
  - (i) a person who fails to meet any other qualification requirements of the by-laws;
  - (j) a person who, within the immediately preceding 5 years,
    - (i) has been convicted of an indictable offence that is of a kind that is related to the qualifications, functions or duties of a corporate director, or
    - (ii) has been convicted of an offence against this Act,
 if the time for making an appeal has expired without an appeal having been made or the appeal has been finally disposed of by the courts or abandoned.
- (2) A shareholder of a provincial company is disqualified from being a participating policyholders' director of the company.

No  
requirement to  
hold shares or  
policies

**313** A director of a provincial company is not required to hold shares of or a policy issued by the company.

Affiliated  
directors

**314(1)** In this section,

- (a) "not in good standing", in respect of a loan, means that, in respect of that loan,
  - (i) any payment of principal or interest is 90 days or more overdue,

- (ii) interest is not being accrued on the books of the lender because it is doubtful whether the principal or interest will be paid or recovered, or
- (iii) the rate of interest is reduced by the lender because the borrower is financially weak;

(b) “significant borrower” means

- (i) an entity that has outstanding indebtedness for money borrowed from the provincial company and from any affiliate of the company in an aggregate principal amount that exceeds 25% of the equity in the entity, or
- (ii) an individual who has outstanding indebtedness for money borrowed from the provincial company and any affiliate of the company, other than a loan secured by a mortgage on the principal residence of that individual, in an aggregate principal amount that exceeds 25% of the individual’s net worth.

(2) Not more than  $\frac{1}{3}$  of the directors of a provincial company may be individuals who are, or within the preceding 2 years have been, remunerated officers, employees, insurance agents, insurance brokers or adjusters of the company or any of its affiliates.

(3) No more than  $\frac{2}{3}$  of the directors may be affiliated directors.

(4) An individual is an affiliated director of a provincial company if the individual

- (a) is an officer or employee of the company or an affiliate of the company,
- (b) has a significant interest in a class of shares of the company,
- (c) has a substantial investment in an affiliate of the company,
- (d) is a significant borrower in respect of the company,
- (e) is a director, officer or employee of an entity that is a significant borrower in respect of the company,
- (f) controls one or more entities of which the total indebtedness to the company or to an affiliate of the company would cause those entities, if treated as a single entity, to be a significant borrower of the company,

- (g) provides goods or services to the company, or is a partner or an employee in a partnership that provides goods or services to the company or an officer or employee of, or a person who has a substantial investment in, a body corporate that provides goods or services to the company, if the total annual billings to the company in respect of the goods and services provided exceeds 10% of the total annual billings of the individual, partnership or body corporate, as the case may be,
  - (h) has a loan that is not in good standing from the company or from an affiliate of the company or is a director, an officer or an employee of, or an individual who controls, an entity that has a loan that is not in good standing from the company or from an affiliate of the company,
  - (i) is a professional adviser to the company,
  - (j) is an insurance agent, insurance broker or adjuster of the company,
  - (k) is the spouse of an individual described in any of clauses (a) to (j), or
  - (l) is a relative of an individual described in any of clauses (a) to (j) who resides in the same home as the individual.
- (5) Whether or not a person is affiliated with a provincial company is determined as of the day the notice of the annual meeting is sent to participating policyholders and shareholders and that determination becomes effective on the day of that meeting, and a person is deemed to continue to be affiliated or unaffiliated, as the case may be, until the next annual meeting of participating policyholders and shareholders.

### **Election and Tenure of Directors**

Number of  
directors

**315(1)** Subject to sections 311(1) and 320, the directors of a provincial company must, by by-law, determine the number of directors or the minimum and maximum number of directors, but no by-law that decreases the number of directors shortens the term of an incumbent director.

**(2)** Subject to sections 311(1) and 320, if a provincial company has common shares and participating policyholders, the directors of the company must by by-law determine the number of directors, or the minimum and maximum number of directors, who are to be elected by the shareholders and the number, or the minimum and maximum number, who are to be elected by the participating policyholders.

(3) A by-law made pursuant to subsection (1) or (2) that provides for a minimum and maximum number of directors may provide that the number of directors, shareholders' directors or participating policyholders' directors to be elected at any annual meeting of the participating policyholders and shareholders is to be the number fixed by the directors prior to the annual meeting.

(4) The number of shareholders' directors and the number of participating policyholders' directors, whether determined by by-law or fixed by the directors, must each be at least  $\frac{1}{3}$  of the total number of directors.

(5) If the shareholders of a mutual provincial company are entitled to elect one or more directors of the company, not more than  $\frac{1}{3}$  of the directors may be elected by the shareholders.

Changing  
number of  
directors

**316(1)** Subject to sections 311(1), 315(4) and 320, the directors of a provincial company may make, amend or repeal any by-law to increase or decrease the number of directors or the minimum or maximum number of directors, directors who are to be elected by the shareholders or directors who are to be elected by the participating policyholders.

(2) The directors must submit a by-law, or an amendment to or a repeal of a by-law, that is made under subsection (1) to the participating policyholders and shareholders, and the policyholders and shareholders may, by special resolution, confirm, amend or reject the by-law, amendment or repeal.

(3) A by-law, or an amendment to or a repeal of a by-law, made under subsection (1) is not effective until it is confirmed or confirmed as amended by the policyholders and shareholders under subsection (2).

(4) Where a special resolution referred to in subsection (2) so states, the directors may, without further approval of the policyholders or shareholders, revoke the special resolution.

Proposal to  
amend

**317(1)** Subject to subsection (2), a director or a policyholder or shareholder who is entitled to vote at an annual meeting of policyholders and shareholders of a provincial company may, in accordance with sections 274 and 275, make a proposal to make, amend or repeal the by-laws of the company referred to in section 316.

(2) If a proposal is made to make, amend or repeal the by-laws of a provincial company to effect any of the changes referred to in section 316, notice of the meeting of policyholders and shareholders at which the proposal is to be considered must set out the proposal.

Term of  
directors

**318(1)** The provincial company may, by by-law, provide that the directors be elected for a maximum of 3 years.

(2) The term of a director ends at the close of the annual meeting of participating policyholders and shareholders held in the year in which the director's term ends.

(3) A director who is not elected for an expressly stated term of office holds office for a one-year term.

Determining  
election of  
directors

**319(1)** Except where the by-laws of a provincial company provide for cumulative voting, the individuals who receive the greatest number of votes at an election of directors of a company, up to the number authorized to be elected, are the directors of the company.

(2) If a provincial company has common shares and participating policyholders, a shareholder of the company

(a) is not entitled to vote for the participating policyholders' directors if the shareholder is not a participating policyholder, and

(b) is not entitled to vote any shares for the policyholders' directors.

(3) If a provincial company has common shares and participating policyholders, a participating policyholder of the company

(a) is not entitled to vote for the shareholders' directors if the participating policyholder is not a shareholder, and

(b) is not entitled to vote as a participating policyholder for the shareholders' directors.

(4) If at any election of directors referred to in subsection (1) 2 or more persons receive an equal number of votes and there are not sufficient vacancies remaining to enable all the individuals receiving an equal number of votes to be elected, the directors who receive a greater number of votes, or the majority of those directors, must, in order to complete the full number of directors, determine which of the persons receiving an equal number of votes are to be elected.

Cumulative  
voting

**320(1)** Where the by-laws provide for cumulative voting,

(a) in the case of a provincial company that has no participating policyholders, there must be a stated number of directors determined by by-law, and not a minimum and maximum number;



- (b) in the case of a provincial company that has participating policyholders, there must be a stated number of shareholders' directors determined by by-law, and not a minimum and maximum number;
- (c) each shareholder entitled to vote at an election of directors to be elected by cumulative voting has the right to cast a number of votes equal to the number of votes attached to the shares held by the shareholder multiplied by the number of directors to be elected by cumulative voting, and the shareholder may cast all such votes in favour of one candidate or distribute them among the candidates in any manner;
- (d) a separate vote must be taken with respect to each candidate nominated for a position that is to be filled by cumulative voting, unless a resolution is passed unanimously permitting 2 or more persons to be elected by a single vote;
- (e) if a shareholder has voted for more than one candidate without specifying the distribution of the votes among the candidates, the shareholder is deemed to have distributed the votes equally among the candidates for whom the shareholder voted;
- (f) if the number of candidates nominated exceeds the number of positions to be filled, the candidates who receive the least number of votes must be eliminated until the number of candidates remaining equals the number of positions to be filled;
- (g) each director elected by cumulative voting ceases to hold office at the close of the next annual meeting of participating policyholders and shareholders following the director's election;
- (h) a director elected by cumulative voting must not be removed from office if the votes cast against the removal would be sufficient to elect the director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the same number of directors required by the by-laws to be elected by cumulative voting were then being elected;
- (i) the number of directors required by the by-laws to be elected by cumulative voting must not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the same number of directors

required by the by-laws to be elected by cumulative voting were then being elected.

**Class or series of shares**     **321** Nothing in this Act precludes the holders of any class or series of shares of a provincial company from having an exclusive right to elect one or more directors.

**Re-election of directors**     **322** A director who has completed a term of office is, if otherwise qualified, eligible for re-election.

### **Incomplete Elections and Director Vacancies**

**Void election or appointment**     **323(1)** If directors are not elected at a meeting of participating policyholders or shareholders, the incumbent directors continue in office until their successors are elected.

**(2)** If a meeting of participating policyholders or shareholders fails to elect the number of directors required by this Act or the by-laws by reason of disqualification or the incapacity or death of one or more candidates, the directors elected at that meeting, if they constitute a quorum, may exercise all the powers of the directors of the provincial company pending the holding of a meeting of participating policyholders or shareholders in accordance with subsection (3).

**(3)** If there is not a quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by this Act or the by-laws, the directors then in office must forthwith call a special meeting of participating policyholders or shareholders, as the case may be, to fill the vacancy or vacancies, and if they fail to call a meeting or if there are no directors then in office, any participating policyholder or shareholder may call the meeting.

**Ceasing to hold office**     **324(1)** A director ceases to hold office

- (a) when the director's term of office expires,
- (b) when the director dies or resigns,
- (c) when the director becomes disqualified under section 312 or ineligible to hold office pursuant to section 355(2), or
- (d) when the director is removed under section 325.

**(2)** The resignation of a director of a provincial company becomes effective at the time a written resignation is sent to the company by

the director or at the time specified in the resignation, whichever is later.

**Removal of  
director**

**325(1)** Subject to section 320(1)(h) and this section, the participating policyholders or shareholders of a provincial company may by resolution at a special meeting remove any director or all the directors from office.

(2) A shareholders' director may be removed only by a resolution of the shareholders at a meeting of shareholders or participating policyholders and shareholders.

(3) A participating policyholders' director may be removed only by a resolution of the participating policyholders at a meeting of participating policyholders or participating policyholders and shareholders.

(4) Where the holders of any class or series of shares of a provincial company have the exclusive right to elect one or more directors, a director so elected may be removed only by a resolution at a meeting of the shareholders of that class or series.

(5) A vacancy created by the removal of a director may be filled at the meeting of the participating policyholders or shareholders at which the director is removed or, if not so filled, may be filled under section 328.

**Statement of  
director**

**326(1)** A director who

- (a) resigns,
- (b) receives a notice or otherwise learns of a meeting of participating policyholders or shareholders called for the purpose of removing the director from office, or
- (c) receives a notice or otherwise learns of a meeting of directors or participating policyholders or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of the director's resignation or removal or because the director's term of office has expired or is about to expire,

is entitled to submit to the provincial company a written statement giving the reasons for the resignation or the reasons why the director opposes any proposed action or resolution.

(2) Where a director of a provincial company resigns as a result of a disagreement with the other directors or the officers of the

company, the director must submit to the company and the Minister a written statement setting out the nature of the disagreement.

Circulation of  
statement

**327(1)** A provincial company must forthwith on receipt of a director's statement referred to in section 326(1) relating to a matter referred to in section 326(1)(b) or (c), or a director's statement referred to in section 326(2), send a copy of the director's statement

(a) to all other directors, and

(b) unless the directors of the company consider on reasonable grounds that sending the statement would materially and adversely affect the financial viability of the company, to each participating policyholder and shareholder entitled to receive notice of meetings under section 270(1)(a) or (b) and to the Minister, unless the statement is attached to a notice of a meeting.

**(2)** Where the directors decide, under subsection (1)(b), not to send a copy of the statement to the participating policyholders and shareholders, they must forthwith notify the Minister in writing to that effect, and the Minister may, despite that decision, order the provincial company to send the statement to the participating policyholders and shareholders entitled to receive notice of meetings under section 270(1)(a) or (b).

**(3)** No provincial company or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (1).

Shareholders  
or  
policyholders  
filling vacancy

**328** The by-laws of a provincial company may provide that a vacancy among the directors is to be filled only by vote of

(a) the participating policyholders or shareholders,

(b) the shareholders, if the vacancy occurs among the shareholders' directors,

(c) the participating policyholders, if the vacancy occurs among the participating policyholders' directors, or

(d) the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by the holders of that class or series.

Directors filling  
vacancy

**329(1)** Despite section 335(4)(b) but subject to subsection (2) and sections 328, 330 and 331, a quorum of directors may fill a vacancy among the directors except a vacancy among the directors resulting from a change in the by-laws by which the number or minimum number of directors is increased or from a failure to elect the number or minimum number of directors required by the by-laws.

(2) Despite sections 324 and 335(4)(b), where by reason of a vacancy the number of directors or the composition of the board of directors fails to meet any of the requirements of sections 311, 314(2) and (3) and 315(4), the directors who, in the absence of any by-law, would be empowered to fill that vacancy must do so forthwith.

Vacancy  
among  
shareholders'  
or  
policyholders'  
directors

**330** Despite section 335(4)(b) but subject to sections 328 and 331, where a provincial company has shareholders' directors and participating policyholders' directors and a vacancy occurs among those directors,

- (a) the remaining shareholders' directors or participating policyholders' directors, as the case may be, may fill the vacancy except a vacancy resulting from an increase in, or a failure to elect, the number or minimum number of shareholders' directors or participating policyholders' directors,
- (b) if there are no such remaining directors and, by reason of the vacancy, the number of directors or the composition of the board of directors fails to meet any of the requirements of sections 311, 314(2) and (3) and 315(4), the other directors may fill that vacancy, and
- (c) if there are no such remaining directors and clause (b) does not apply, any participating policyholder or shareholder may call a meeting of participating policyholders or shareholders for the purpose of filling the vacancy.

Class vacancy

**331** Despite section 335(4)(b) but subject to section 328, where the holders of any class or series of shares of a provincial company have an exclusive right to elect one or more directors and a vacancy occurs among those directors,

- (a) the remaining directors elected by the holders of that class or series may fill the vacancy except a vacancy resulting from an increase in, or a failure to elect, the number or minimum number of directors for that class or series,

- (b) if there are no such remaining directors and, by reason of the vacancy, the number of directors or the composition of the board of directors fails to meet any of the requirements of sections 311, 314(2) and (3) and 315(4), the other directors may fill that vacancy, and
- (c) if there are no such remaining directors and clause (b) does not apply, any holder of shares of that class or series may call a meeting of the holders of those shares for the purpose of filling the vacancy.

Unexpired  
term

**332** Unless the by-laws otherwise provide, a director elected or appointed to fill a vacancy holds office for the unexpired term of the director's predecessor in office.

### Meetings of the Board

Meeting of  
directors

**333(1)** Unless the by-laws otherwise provide, the directors may meet at any place.

(2) Notice of meetings of the directors must be given in accordance with the by-laws.

Notice of  
meeting

**334(1)** A notice of a meeting of directors must specify each matter referred to in section 350(2) that is to be dealt with at the meeting but, unless the by-laws otherwise provide, need not otherwise specify the purpose of or the business to be transacted at the meeting.

(2) A director may in any manner waive notice of a meeting of directors and the attendance of a director at a meeting of directors is a waiver of notice of that meeting except where the director attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

(3) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting was announced at the original meeting.

Quorum

**335(1)** The number of directors referred to in subsection (2) constitutes a quorum at any meeting of directors or a committee of directors and, despite any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

(2) A quorum for a meeting of the directors is the greater of

(a) 3 directors, and

(b) a majority of the directors.

(3) A quorum for a meeting of a committee of the directors is a majority of the directors comprising the committee.

(4) Despite subsections (2) and (3), there is no quorum unless

(a) at least one of the directors present at the meeting is not an affiliated director as determined under section 314(4) and (5), and

(b) at least  $\frac{1}{2}$  of the directors present at the meeting are ordinarily resident in Canada.

(5) Any director present at a meeting of directors who is not present at any particular time during the meeting for the purposes of section 355(1) is considered as being present for the purposes of this section.

Resident  
Canadian  
majority

**336** Despite section 335, the directors of a provincial company may transact business at a meeting of directors or of a committee of directors without the required proportion of directors who are ordinarily resident in Canada if

(a) a director who is ordinarily resident in Canada and is unable to be present approves, in writing or by telephone or by any other means, the business transacted at the meeting, and

(b) there would have been present the required proportion of directors who are ordinarily resident in Canada had that director been present at the meeting.

Electronic  
meeting

**337(1)** Subject to the by-laws of a provincial company, a meeting of directors or of a committee of directors may be held by means of telephonic, electronic or other communications facilities that permit all persons participating in the meeting to communicate with each other during the meeting.

(2) A director participating in a meeting by any means referred to in subsection (1) is, for the purposes of this Act, present at that meeting.

Resolution  
instead of  
meeting

**338(1)** A resolution in writing signed by all the directors of a provincial company entitled to vote on that resolution at a meeting of directors or a committee of directors is as valid as if it had been passed at a meeting of directors or a committee of directors.

**(2)** A resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of directors or a committee of directors of a provincial company and signed by all the directors entitled to vote at that meeting satisfies all the requirements of this Act relating to meetings of directors or committees of directors.

Dissent of  
director

**339(1)** A director of a provincial company who is present at a meeting of directors or a committee of directors is deemed to have consented to any resolution passed or action taken at that meeting unless

- (a) the director requests that the director's dissent be entered or the director's dissent is entered in the minutes of the meeting,
- (b) the director sends a written dissent to the secretary of the meeting before the meeting is adjourned, or
- (c) the director sends the director's dissent by registered mail or delivers it to the head office of the company immediately after the meeting is adjourned.

**(2)** A director of a provincial company who votes for or consents to a resolution is not entitled to dissent under subsection (1).

**(3)** A director of a provincial company who is not present at a meeting at which a resolution is passed or action taken is deemed to have consented to the resolution or action taken unless, within 7 days after the director becomes aware of the resolution or action taken, the director

- (a) causes the director's dissent to be placed with the minutes of the meeting, or
- (b) sends the director's dissent by registered mail or delivers it to the head office of the company.

Meeting  
required by  
Minister

**340(1)** The Minister may, by notice in writing, require a provincial company to hold a meeting of directors of the company to consider the matters set out in the notice.

**(2)** The Minister may attend and be heard at a meeting referred to in subsection (1).



## By-laws

By-laws

**341(1)** Unless this Act otherwise provides, the directors of a provincial company may by resolution make, amend or repeal any of the company's by-laws.

**(2)** The directors must submit a by-law, or an amendment to or a repeal of a by-law, that is made under subsection (1) to the participating policyholders and shareholders at the next meeting of participating policyholders and shareholders, and the participating policyholders and shareholders may, by resolution, confirm, amend or reject it.

**(3)** Unless this Act or the instrument of incorporation otherwise provides, a by-law, or an amendment to or a repeal of a by-law, is effective from the date of the resolution of the directors under subsection (1) until it is confirmed, confirmed as amended or rejected by the participating policyholders and shareholders under subsection (2) or until it ceases to be effective under subsection (4) and, where the by-law is confirmed, or confirmed as amended, it continues in effect in the form in which it was so confirmed.

**(4)** If a by-law, or an amendment to or a repeal of a by-law, is rejected by the participating policyholders and shareholders, or is not submitted to the participating policyholders and shareholders by the directors as required under subsection (2), the by-law, amendment or repeal ceases to be effective from the date of its rejection or the date of the next meeting of participating policyholders and shareholders, as the case may be, and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until it is confirmed, or confirmed as amended, by the participating policyholders and shareholders.

Policyholder or shareholder proposal of by-law

**342** A participating policyholder or shareholder may, in accordance with sections 274 and 275, make a proposal to make, amend or repeal a by-law.

Minister to receive by-laws

**343** A provincial company must provide the Minister with a copy of all by-laws of the provincial company, including amendments, within 30 days after they come into force.

Entitlement to copies of by-laws

**344** Every participating policyholder and shareholder of a provincial company is entitled, on request made not more frequently than once in each calendar year, to receive, free of charge, one copy of the by-laws of the company.

### **Committees of the Board**

- Committees**      **345** The directors of a provincial company may appoint from their number, in addition to the committees referred to in section 309(2), such other committees as they deem necessary and, subject to section 350, delegate to those committees such powers of the directors, and assign to those committees such duties, as the directors consider appropriate.
- Audit committee**      **346(1)** The audit committee of a provincial company must consist of at least 3 directors.
- (2) Two-thirds of the members of the audit committee of a provincial company must be directors who are not affiliated directors of the company as determined under section 314(4) and (5), and none of the members of the audit committee may be officers, employees, insurance agents, adjusters or brokers of the company or of a subsidiary of the company.
- (3) The audit committee of a provincial company must
- (a) review the annual financial statements of the company before the annual financial statements are approved by the directors,
  - (b) review the annual return of the company before the annual return is approved by the directors,
  - (c) ensure that appropriate internal control procedures are in place,
  - (d) review the investments and transactions that could adversely affect the well-being of the company that the auditor or any officer of the company brings to the attention of the committee,
  - (e) meet with the auditor to discuss the annual financial statements and the annual return and transactions referred to in this subsection,
  - (f) meet with the actuary of the company to discuss the parts of the annual financial statements and the annual return prepared by the actuary, and
  - (g) meet with the chief internal auditor of the company, or the officer or employee of the company acting in a similar capacity, and with management of the company, to discuss the effectiveness of the internal control procedures established for the company.

(4) The audit committee of a provincial company must report on the annual financial statements and annual return to the directors before the directors approve the statements and return.

(5) The audit committee of a provincial company may call a meeting of the directors of the company to consider any matter of concern to the committee.

Conduct  
review  
committee

**347(1)** The conduct review committee of a provincial company must consist of at least 3 directors.

(2) Two-thirds of the members of the conduct review committee of a provincial company must be directors who are not affiliated directors of the company as determined under section 314(4) and (5), and none of the members of the conduct review committee may be officers, employees, insurance agents, adjusters or brokers of the company or of a subsidiary of the company.

(3) The conduct review committee of a provincial company must

(a) establish procedures for the review of transactions with related parties of the provincial company to which Subpart 12 applies,

(b) review all proposed transactions with related parties of the company in accordance with Subpart 12, and

(c) review the practices of the company to ensure that any transactions with related parties of the company that may have a material effect on the stability or solvency of the company are identified.

(4) After each meeting of the conduct review committee of a provincial company, the committee must report to the directors of the company on all transactions and other matters reviewed by the committee.

### Authority of Directors and Officers

Chief  
executive  
officer

**348** The directors of a provincial company must appoint from their number a chief executive officer who must be ordinarily resident in Canada and, subject to section 350, may delegate to that officer any of the powers of the directors.

Appointment  
of officers

**349(1)** The directors of a provincial company may, subject to the by-laws, designate the offices of the company, appoint officers to those offices, specify the duties of those officers and, subject to

section 350, delegate to them powers to manage the business and affairs of the company.

(2) A director of a provincial company may be appointed to any office of the company.

(3) Two or more offices of a provincial company may be held by the same person.

Delegation

**350(1)** The directors of a provincial company may delegate any of their powers, except for the powers specified in subsection (2).

(2) The directors of a provincial company must not delegate the power

- (a) to submit to the participating policyholders or shareholders a question or matter requiring the approval of the participating policyholders or shareholders,
- (b) to fill a vacancy among the directors or a committee of directors or in the office of auditor or actuary of the company,
- (c) to issue or cause to be issued securities, except in the manner and on terms authorized by the directors,
- (d) to declare a dividend on shares or a policy dividend, bonus or other benefit payable to participating policyholders, other than a dividend on a group policy that is a participating policy,
- (e) to authorize the redemption or acquisition of shares issued by the company pursuant to section 245, 246 or 247,
- (f) to authorize the payment of a commission on a securities issue,
- (g) to approve a management proxy circular,
- (h) to approve the annual financial statements of the company and any other financial statements issued by the company,
- (i) to approve the annual return of the company, or
- (j) to adopt, amend or repeal by-laws.

- Remuneration**     **351(1)** A provincial company must make by-laws respecting the remuneration of directors.
- (2)** Subject to the by-laws, the directors of a provincial company may fix the remuneration of the officers and employees of the company.
- Validity of acts**     **352(1)** An act of a director or an officer of a provincial company is valid despite a defect in the director's qualification or an irregularity in the director's election or in the appointment of the director or officer.
- (2)** An act of the board of directors of a provincial company is valid despite a defect in the composition of the board or an irregularity in the election of the board or in the appointment of a member of the board.
- Right to attend meetings**     **353** A director of a provincial company is entitled to attend and to be heard at every meeting of participating policyholders or shareholders.

### **Conflicts of Interest**

- Disclosure of interest**     **354(1)** A director or an officer of a provincial company who
- (a) is a party to a material contract or proposed material contract with the company,
  - (b) is a director or an officer of any entity that is a party to a material contract or proposed material contract with the company, or
  - (c) has a material interest in any person who is a party to a material contract or proposed material contract with the company
- must disclose in writing to the company or request to have entered in the minutes of the meetings of directors the nature and extent of that interest.
- (2)** The disclosure required by subsection (1) must be made, in the case of a director,
- (a) at the meeting of directors at which a proposed contract is first considered,

- (b) if the director was not then interested in the proposed contract, at the first meeting after the director becomes so interested,
  - (c) if the director becomes interested after a contract is made, at the first meeting after the director becomes so interested, or
  - (d) if a person who is interested in a contract later becomes a director, at the first meeting after that person becomes a director.
- (3) The disclosure required by subsection (1) must be made, in the case of an officer who is not a director,
- (a) forthwith after the officer becomes aware that a proposed contract is to be considered or a contract has been considered at a meeting of directors,
  - (b) if the officer becomes interested after a contract is made, forthwith after the officer becomes so interested, or
  - (c) if a person who is interested in a contract later becomes an officer, forthwith after the person becomes an officer.
- (4) If a material contract or proposed material contract is one that, in the ordinary course of business of the provincial company, would not require approval by the directors or the participating policyholders and shareholders, a director or an officer referred to in subsection (1) must disclose in writing to the company or request to have entered in the minutes of meetings of directors the nature and extent of the director's or officer's interest forthwith after the director or officer becomes aware of the contract or proposed contract.

Voting

**355(1)** A director referred to in section 354(1) must not be present or vote on any resolution to approve the contract unless the contract is

- (a) an arrangement by way of security for money lent to or obligations undertaken by the director for the benefit of the provincial company or a subsidiary of the company,
- (b) a contract relating primarily to the director's remuneration as a director or an officer, employee or agent of the provincial company, a subsidiary of the company, an entity controlled by the company or an entity in which the company has a substantial investment,

- (c) a contract for indemnity under section 365 or for insurance under section 366, or
- (d) a contract with an affiliate of the provincial company.

(2) Any director who knowingly contravenes subsection (1) ceases to hold office as director and is not eligible, for a period of 5 years after the date on which the contravention occurred, for election or appointment as a director of any financial institution that is incorporated by or under an Act of the Legislature.

Continuing disclosure

**356** For the purposes of section 354(1), a general notice to the directors by a director or an officer declaring that the director or officer is a director or officer of an entity or has a material interest in a person and is to be regarded as interested in any contract made with that entity or person is a sufficient declaration of interest in relation to any contract so made.

Avoidance standards

**357** A material contract between a provincial company and one or more of its directors or officers, or between a provincial company and another entity of which a director or an officer of the company is a director or an officer, or between a provincial company and a person in which the director or officer has a material interest, is neither void nor voidable

- (a) by reason only of that relationship, or
- (b) by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at the meeting of directors or the committee of directors that authorized the contract,

if the director or officer disclosed the interest in accordance with section 354(2), (3) or (4) or section 356 and the contract was approved by the directors or the participating policyholders and shareholders and the contract was reasonable and fair to the company at the time it was approved.

Application to Court

**358** Where a director or an officer of a provincial company fails to disclose an interest in a material contract in accordance with sections 354 and 356, the Court may, on the application of the company, a shareholder of the company or a participating policyholder, set aside the contract on such terms as the Court thinks fit.

## Liability and Indemnification

Liability for  
incorporation  
expenses

**359(1)** The directors of a provincial company who pay incorporation or organization expenses from the capital of the company or from interest on the capital without complying with section 140 are jointly and severally liable to the shareholders or incorporators of the company for the amount of those expenses.

(2) A director of a provincial company who has satisfied a claim under this section is entitled to a contribution from the other directors of the company who are liable for the claim.

Liability for  
other matters

**360(1)** The directors of a provincial company who vote for or consent to a resolution of the directors authorizing the issue of a share in contravention of section 234(3) or the issue of subordinated indebtedness in contravention of section 241 for a consideration other than money are jointly and severally liable to the company to make good any amount by which the consideration received is less than the fair equivalent of the money that the company would have received if the share or subordinated indebtedness had been issued for money on the date of the resolution.

(2) The directors of a provincial company who vote for or consent to a resolution of the directors authorizing

- (a) a purchase, redemption or acquisition of shares in contravention of section 245, 246 or 247,
- (b) a reduction of share capital in contravention of section 249,
- (c) a payment of a dividend in contravention of section 253,
- (d) a payment of an indemnity in contravention of section 365,  
or
- (e) any transaction in contravention of Subpart 12,

are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company and any amounts in relation to any loss suffered by the company.

Contribution

**361(1)** A director who has satisfied a judgment in relation to the director's liability under section 360 is entitled to contribution from the other directors who voted for or consented to the unlawful act on which the judgment was founded.



(2) A director who is liable under section 360 is entitled to apply to the Court for an order compelling a shareholder or other person to pay or deliver to the director

- (a) any money or property that was paid or distributed to the shareholder or other person in contravention of section 245, 246, 247, 249, 253 or 365, or
- (b) an amount equal to the value of the loss suffered by the provincial company as a result of any transaction that contravenes Subpart 12.

(3) Where an application is made to the Court under subsection (2), the Court may, where it is satisfied that it is equitable to do so,

- (a) order a shareholder or other person to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other person in contravention of section 245, 246, 247, 249, 253 or 365 or any amount referred to in subsection (2)(b),
- (b) order a provincial company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares, or
- (c) make any further order it thinks fit.

Limitation

**362** An action to enforce a liability imposed by section 360 must not be commenced after 2 years from the date of the resolution authorizing the action complained of.

Liability for wages

**363(1)** Subject to subsections (2) and (3), the directors of a provincial company are jointly and severally liable to each employee of the company for all debts not exceeding 6 months' wages payable to the employee for services performed for the company while they are directors.

(2) A director is not liable under subsection (1) unless

- (a) the provincial company has been sued for the debt within 6 months after it has become due and execution has been returned unsatisfied in whole or in part,
- (b) the company has commenced liquidation and dissolution proceedings or has been dissolved and a claim for the debt has been proven within 6 months after the earlier of the date of commencement of the liquidation and dissolution proceedings and the date of dissolution, or

(c) a winding-up order has been issued in respect of the company under the *Winding-up and Restructuring Act* (Canada) and a claim for the debt has been allowed or proven within 6 months after the issue of the winding-up order.

(3) A director is not liable under subsection (1) unless the director is sued for a debt referred to in that subsection while a director or within two years after the person has ceased to be a director.

(4) Where execution referred to in subsection (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(5) Where a director of a provincial company pays a debt referred to in subsection (1) that is proven in liquidation and dissolution or winding-up proceedings, the director is entitled to any preference that the employee would have been entitled to and, where a judgment has been obtained, the director is entitled to an assignment of the judgment.

(6) A director of a provincial company who has satisfied a claim under this section is entitled to a contribution from the other directors of the company who are liable for the claim.

Reliance on  
statement

**364** A director, an officer or an employee of a provincial company is not liable under section 310(1) or (3), 360 or 363 if the director, officer or employee relies in good faith on

(a) financial statements of the company represented to the director, officer or employee by an officer of the company or in a written report of the auditor of the company to reflect fairly the financial condition of the company, or

(b) a report of a professional adviser.

Indemnifica-  
tion of  
directors and  
officers

**365(1)** Except in respect of an action by or on behalf of the provincial company to procure a judgment in its favour, a provincial company may indemnify

(a) a director or an officer of the company,

(b) a former director or officer of the company, or

(c) any person who acts or acted at the company's request as a director or an officer of an entity of which the company is or was a shareholder or creditor

against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred by the person in respect of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a person referred to in any of clauses (a) to (c), if

- (d) the director, officer or person acted honestly and in good faith with a view to the best interests of the company, and
- (e) in the case of a criminal or administrative action or proceeding enforced by a monetary penalty, the director, officer or person had reasonable grounds for believing that the impugned conduct was lawful.

(2) A provincial company may, with the approval of the Court, indemnify a person referred to in subsection (1) in respect of an action by or on behalf of the company or entity to procure a judgment in its favour to which the person is made a party by reason of being or having been a director or an officer of the company or entity against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in connection with that action if the person fulfils the conditions set out in subsection (1)(d) and (e).

(3) Despite anything in this section, a person referred to in subsection (1) is entitled to indemnity from the provincial company in respect of all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in connection with the defence of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or an officer of the company or an entity if the person seeking indemnity

- (a) was substantially successful on the merits in the defence of the action or proceedings, and
- (b) fulfils the conditions set out in subsection (1)(d) and (e).

(4) A provincial company may, to the extent referred to in subsections (1) to (3) in respect of the person, indemnify the heirs or personal representatives of any person the company may indemnify pursuant to subsections (1) to (3).

Directors' and  
officers'  
insurance

**366** A provincial company may purchase and maintain insurance for the benefit of any person referred to in section 365 against any liability incurred by the person

- (a) in the capacity of a director or an officer of the company, except where the liability relates to a failure to act honestly

and in good faith with a view to the best interests of the company, or

- (b) in the capacity of a director or an officer of another entity where the person acts or acted in that capacity at the company's request, except where the liability relates to a failure to act honestly and in good faith with a view to the best interests of the entity.

Application to  
Court for  
indemnification

**367(1)** A provincial company or a person referred to in section 365 may apply to the Court for an order approving an indemnity under section 365(2) and the Court may so order and make any further order it thinks fit.

**(2)** An applicant under subsection (1) must give the Minister written notice of the application and the Minister is entitled to appear and to be heard at the hearing of the application in person or by counsel.

**(3)** On an application under subsection (1), the Court may order notice to be given to any interested person and that person is entitled to appear and to be heard at the hearing of the application in person or by counsel.

## SUBPART 7

### INSIDER TRADING

Interpretation

**368(1)** In this Subpart,

- (a) "business combination" means an acquisition of all or substantially all the assets of one body corporate by another body corporate or an amalgamation of 2 or more bodies corporate;
- (b) "insider" means, with respect to a provincial company,
  - (i) the company,
  - (ii) an affiliate of the company,
  - (iii) a director or an officer of the company,
  - (iv) a person who has a substantial investment in the company,
  - (v) a person employed or hired by the company, and

- (vi) a person who receives specific confidential information from a person referred to in this clause, including a person referred to in this subclause, and who has knowledge that the person giving the information is a person described in this clause;

(c) “officer”, in relation to a provincial company, means

- (i) a chief executive officer, president, vice-president, secretary, controller, treasurer and any other individual designated as an officer of the company by by-law or by resolution of the directors of the company, and
- (ii) any individual who performs functions for the company similar to those performed by an individual referred to in subclause (i).

(2) For the purposes of this Subpart,

- (a) if a body corporate becomes an insider of a provincial company or enters into a business combination with a provincial company, or
- (b) if a provincial company becomes an insider of a body corporate, or enters into a business combination with a body corporate,

every director or officer of the body corporate is deemed to have been an insider of the company for the previous six months or for such shorter period as the director or officer was a director or officer of the body corporate.

**Application**

**369** This Subpart applies to a transaction in a security of a provincial company or any of its affiliates only if the provincial company is not a reporting issuer.

**Civil liability**

**370(1)** An insider who, in connection with a transaction in a security of the provincial company or any of its affiliates, makes use of any specific confidential information for the insider’s own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the security is

- (a) liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known to that person at the time of the transaction, and

(b) accountable to the company for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

(2) An action to enforce a right created by subsection (1) must not be commenced after 2 years from discovery of the facts that gave rise to the cause of action.

## **SUBPART 8**

### **AUDITORS**

Definition	<b>371</b> In this Subpart, “designated individual” means the individual that is required to be designated by an auditor under section 373.
Appointment of auditor	<p><b>372(1)</b> The shareholders and participating policyholders of a provincial company must, by ordinary resolution at each annual meeting of participating policyholders and shareholders, appoint a person as auditor to hold office until the close of the next annual meeting.</p> <p>(2) The remuneration of an auditor may be fixed by ordinary resolution of the participating policyholders and shareholders but, if not so fixed, must be fixed by the directors.</p>
Designated individual	<b>373</b> If the auditor of a provincial company is not an individual, the auditor must designate an individual who is responsible for acting on behalf of the auditor.
Qualifications of auditor	<p><b>374(1)</b> The designated individual or individual who is the auditor of a provincial company must</p> <ul style="list-style-type: none"><li>(a) be a member in good standing of an institute or association of accountants incorporated by or under an Act,</li><li>(b) have at least 5 years’ experience in performing audits of a financial institution, and</li><li>(c) be ordinarily resident in Canada.</li></ul> <p>(2) The auditor of a provincial company, every partner in a firm that is the auditor of a provincial company and the designated individual of an auditor must be independent of the company.</p> <p>(3) For the purposes of subsection (2),</p> <ul style="list-style-type: none"><li>(a) independence is a question of fact, and</li></ul>

(b) a person is deemed not to be independent of a provincial company if that person

- (i) is a director or an officer or employee of the company or of any affiliate of the company or is a business partner of any director, officer or employee of the company or of any affiliate of the company,
- (ii) beneficially owns or controls, directly or indirectly, a material interest in the shares of the company or of any affiliate of the company, or
- (iii) has been a liquidator, trustee in bankruptcy, receiver or receiver and manager of any affiliate of the company within the 2 years immediately preceding the person's or person's firm's proposed appointment as auditor of the company or the individual's proposed designation by the auditor, other than an affiliate that is a subsidiary of the company acquired pursuant to a loan workout or through a realization of security pursuant to section 421(2).

(4) No person is disqualified from acting as the auditor of a provincial company or from being a designated individual solely on the grounds that the person or, if the person is a firm, a partner of the firm is a policyholder in the company.

**Revocation of  
auditor's  
appointment**

**375(1)** The directors of a provincial company must revoke the appointment of its auditor if

- (a) the auditor no longer meets the requirements of section 374 and the auditor does not resign, or
- (b) the auditor's designated individual no longer meets the requirements of section 374 and the auditor does not replace its designated individual with an individual who meets the requirements of section 374.

(2) The Minister may revoke the appointment of an auditor of a provincial company if the Minister is satisfied that the auditor or the auditor's designated individual no longer meets the requirements of section 374.

(3) The participating policyholders and shareholders of a provincial company may, by ordinary resolution at a special meeting, revoke the appointment of an auditor.

(4) Nothing in this section permits the revocation of the appointment of an auditor if the auditor was appointed by the Court, unless the Court provides otherwise.

Declaration of  
vacancy by  
Court

**376** Any interested person may apply to the Court for an order declaring that an auditor or its designated individual no longer meets the requirements of section 374 and declaring the office of auditor to be vacant.

Ceasing to  
hold office

**377(1)** The office of auditor of a provincial company becomes vacant when

- (a) the auditor resigns,
- (b) if the auditor is an individual, the individual dies,
- (c) if the auditor is not an individual, the auditor is dissolved,
- (d) the appointment of the auditor is revoked, or
- (e) the office of auditor is declared to be vacant under section 376.

(2) The resignation of an auditor becomes effective at the time a written resignation is sent to the provincial company or at the time specified in the resignation, whichever is later.

Filling vacancy

**378(1)** If the office of auditor of a provincial company becomes vacant, the participating policyholders and shareholders or, if the by-laws permit, the directors must forthwith fill the vacancy.

(2) An auditor appointed under subsection (1) holds office for the unexpired term of office of the predecessor auditor.

(3) If a replacement auditor is not appointed in accordance with subsection (1), the Court may appoint an auditor to hold office for the unexpired term of the predecessor auditor and fix the remuneration of the auditor on the application of

- (a) a participating policyholder or shareholder of the provincial company, or
- (b) in addition to the persons referred to in clause (a), the Executive Director under the *Securities Act* if the provincial company is a reporting issuer.



Statement of  
auditor

**379(1)** An auditor of a provincial company who

- (a) resigns,
- (b) receives a notice or otherwise learns of a meeting of directors or participating policyholders and shareholders called for the purpose of revoking the appointment of the auditor, or
- (c) receives a notice or otherwise learns of a meeting of directors or participating policyholders and shareholders at which another person is to be appointed in the auditor's place, whether because of the auditor's resignation or revocation of appointment or because the auditor's term of office has expired or is about to expire,

must submit to the company and the Minister a written statement giving the reasons for the resignation or the reasons why, in the auditor's opinion, the auditor's appointment is to be revoked or not renewed.

(2) If the reasons in the auditor's statement are based on a disagreement between the auditor and the directors or officers, the provincial company must forthwith send a copy of the statement to each participating policyholder and each voting shareholder.

Duty of  
replacement  
auditor

**380(1)** Where an auditor of a provincial company has resigned or the appointment of an auditor has been revoked, or where the auditor's term of office has expired or is about to expire and the auditor is not to be reappointed, no person may accept an appointment or consent to be appointed as auditor of the company until

- (a) the person has requested and received from the predecessor auditor the written statement under section 379(1), or
- (b) the person has requested from the predecessor auditor the written statement under section 379(1) and the person has not received the statement within 15 days after making the request.

(2) If the predecessor auditor's statement is not received by the person who will be the replacement auditor within 15 days after the request is made, the person must promptly notify the Minister and, if the Minister has received the written statement, the Minister must provide it to the person.

**Right to attend  
meetings**

**381(1)** The auditor of a provincial company is entitled to receive reasonable notice of every meeting of participating policyholders or shareholders, directors, audit committee and conduct review committee of the company and, at the expense of the company, to attend and be heard at those meetings on matters relating to the duties of the auditor.

(2) If a director, participating policyholder or shareholder of a provincial company, whether or not the shareholder is entitled to vote at the meeting, gives written notice not less than 10 days before a meeting of participating policyholders or shareholders to an auditor or former auditor of the provincial company that the director, policyholder or shareholder wishes the auditor to attend at the meeting, the auditor or former auditor must attend the meeting at the expense of the company and answer questions relating to the auditor's or former auditor's duties as auditor.

(3) An auditor is not required to comply with subsection (2) where the audit committee is satisfied that the request under subsection (2) is made primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the provincial company or any of its directors, officers or security holders, or for a purpose that is not related in any significant way to the duties of the auditor.

(4) A director, participating policyholder or shareholder who gives notice under subsection (2) must send concurrently a copy of the notice to the provincial company, and the company must forthwith send a copy of the notice to the Minister regardless of any decision of the audit committee under subsection (3).

(5) The Minister may attend and be heard at any meeting referred to in subsection (2).

**Right to  
information**

**382(1)** On the request of the auditor of a provincial company, the present or former directors, officers, employees or representatives of the company and any former auditors of the company must, to the extent that they are reasonably able to do so,

- (a) obtain or permit access to such records, assets and security held by the company or any entity in which the company has a substantial investment, and
- (b) provide such information and explanations

as are, in the opinion of the auditor, necessary to enable the auditor to perform the duties of auditor of the company.

(2) A person who in good faith makes an oral or written communication under subsection (1) is not liable in any civil action arising from the communication's having been made.

Auditor's  
report

**383(1)** The auditor of a provincial company must make a report in writing on the annual financial statement of the company at the annual meeting of the participating policyholders and shareholders of the company.

**(2)** In each report referred to in subsection (1), the auditor must include such remarks as the auditor considers necessary when

- (a) the auditor's examination conducted to report on the annual financial statement has not been made in accordance with the auditing standards referred to in section 219,
- (b) the annual statement has not been prepared on a basis consistent with that of the preceding financial year, or
- (c) the annual statement does not present fairly, in accordance with the accounting principles referred to in section 219, the financial position of the provincial company as at the end of the financial year to which it relates or the results of the operations or changes in the financial position of the company for that financial year.

Requiring new  
financial  
statements

**384** If the Minister is satisfied that the financial statements and reports of a provincial company that have been sent to the Minister, policyholders, shareholders or the public were not prepared in accordance with the standards set out in section 219, the Minister may require the company

- (a) to prepare new financial statements or reports that are prepared in accordance with the standards set out in section 219, and
- (b) to send the new financial statements or reports to the persons specified by the Minister.

Report on  
director's  
statement

**385(1)** The auditor of a provincial company must, if required by the participating policyholders and shareholders, audit and report to them on any financial statement submitted to them by the directors, and the report must state whether, in the auditor's opinion, the financial statement presents fairly the information required by the participating policyholders and shareholders.

**(2)** A report of the auditor made under subsection (1) must be attached to the financial statement to which it relates and a copy of the statement and report must be sent by the directors to every participating policyholder, to every shareholder and to the Minister.

**Report to  
officers**

**386(1)** The auditor of a provincial company must report in writing to the audit committee of the company

- (a) any material transactions or conditions affecting the well-being of the company that have come to the auditor's attention and that in the auditor's opinion are not satisfactory and require rectification, or
- (b) any material transaction that, in the auditor's opinion, was not within the powers of the company when the transaction occurred.

**(2)** An auditor is not required to make a report under subsection (1) unless the auditor becomes aware of the transactions or conditions in the ordinary course of the auditor's duties.

**(3)** If the auditor of a provincial company makes a report under subsection (1), the auditor must also transmit the report, in writing, to the chief executive officer and the actuary of the company and to the Minister.

**Auditor of  
subsidiaries**

**387** A provincial company must take all necessary steps to ensure that its auditor or, with the permission of the Minister, another auditor selected by the company, is duly appointed as the auditor of each of its subsidiaries unless

- (a) in the case of a subsidiary that carries on its operations in a country other than Canada, the laws of that country do not permit the appointment of the auditor of the provincial company as the auditor of that subsidiary, or
- (b) the provincial company's auditor is of the opinion that the total assets of the subsidiary are not a material part of the total assets of the company.

**Calling  
meeting**

**388(1)** The auditor of a provincial company or a member of the audit committee may call a meeting of the audit committee.

**(2)** The chief internal auditor of a provincial company or any officer or employee of the company acting in a similar capacity must, at the request of the auditor of the company and on reasonable notice, meet with the auditor.

**Notice of  
errors**

**389(1)** A director or an officer of a provincial company must forthwith notify the audit committee, the auditor and, if applicable, a former auditor of the company of any error or misstatement of which the director or officer becomes aware in an annual financial

statement or other statement on which the auditor or former auditor has reported.

(2) If the auditor or a former auditor of a provincial company is notified or becomes aware of an error or misstatement in an annual financial statement or other statement on which the auditor or former auditor reported,

- (a) the auditor must, if in the auditor's opinion the error or misstatement is material, inform each director of the company, the actuary, the former auditor, if applicable, and the Minister, or
- (b) the former auditor must, if in the former auditor's opinion the error or misstatement is material, inform each director of the company, the current auditor and the Minister.

(3) Where under subsection (2) the auditor or a former auditor of a provincial company informs the directors of an error or misstatement in an annual financial statement or other statement, the directors must

- (a) prepare and issue a revised annual financial statement or other statement, or
- (b) inform the Minister and the participating policyholders and shareholders of the company of the impact of the error or misstatement.

Auditor's  
report and  
extended  
examination

**390(1)** The Minister may, in writing, require that the auditor of a provincial company report to the Minister on the extent of the auditor's procedures in the examination of the annual return and may, in writing, require that the auditor enlarge or extend the scope of that examination or direct that any other particular procedure be performed in any particular case, and the auditor must comply with the requirement of the Minister and report to the Minister.

(2) The Minister may, in writing, require that the auditor of a provincial company make a particular examination relating to the adequacy of the procedures adopted by the company for the safety of its creditors, policyholders and shareholders, or any other examination that, in the Minister's opinion, the public interest may require, and the auditor must comply with the requirement and report to the Minister.

(3) The expenses incurred as a result of the auditor's performing duties under subsections (1) and (2) are payable by the provincial company on being approved by the Minister.

Protection  
from liability

**391** An oral or written statement or report made under this Act by the auditor or a former auditor of a provincial company has qualified privilege.

## SUBPART 9

### ACTUARIES

Definition

**392** In this Subpart, “designated individual” means the individual that is required to be designated by an actuary under section 394.

Notice of  
appointment

**393** A provincial company must, forthwith after the directors appoint a person to be the actuary of the company in accordance with section 309(2)(f), notify the Minister in writing of the appointment.

Designated  
individual

**394** If the actuary of a provincial company is not an individual, the actuary must designate an individual who is responsible for acting on behalf of the actuary.

Qualifications  
of actuary

**395(1)** A designated individual or an individual who is the actuary of a provincial life company must

(a) be ordinarily resident in Canada, and

(b) be a Fellow in good standing of the Canadian Institute of Actuaries.

**(2)** A designated individual or an individual who is the actuary of a provincial property and casualty company must

(a) be ordinarily resident in Canada, and

(b) be a Fellow in good standing of the Canadian Institute of Actuaries or be approved by the Minister as having the training and experience that are relevant to the duties of an actuary of a provincial company.

Certain  
officers  
precluded

**396(1)** The chief executive officer or chief operating officer or a person performing similar functions must not be appointed as or hold the position of actuary of a provincial company unless authorized in writing by the Minister.

**(2)** An authorization under subsection (1) ceases to be in effect on the day specified in the authorization but not later than the day that is 6 months after it is issued, and a person appointed or holding the

position of actuary pursuant to the authorization must not hold that position after that day.

Chief financial officer

**397(1)** The chief financial officer or a person performing similar functions must not be appointed as or hold the position of actuary of a provincial company unless

- (a) the audit committee of the company has provided the Minister with a written statement indicating that it is satisfied that the duties of both positions in the company will be adequately performed and that the actuarial duties will be performed in an independent manner, and
- (b) the appointment or holding of the position is authorized by the Minister.

(2) An authorization under subsection (1)(b) may contain limitations and conditions, including a limitation on the time during which the person referred to in the authorization may hold the position of actuary of the provincial company.

(3) A person holding the position of actuary pursuant to an authorization under subsection (1)(b) must not hold that position after the time limit referred to in subsection (2).

Revocation of actuary's appointment

**398(1)** The directors of a provincial company may revoke the appointment of the actuary of the company.

(2) The directors of a provincial company must revoke the appointment of its actuary if

- (a) the actuary no longer meets the requirements of section 395 and does not resign, or
- (b) the actuary's designated individual no longer meets the requirements of section 395 and the actuary does not replace its designated individual with an individual who meets the requirements of section 395.

(3) The Minister may revoke the appointment of an actuary of a provincial company if the Minister is satisfied that the actuary or the actuary's designated individual no longer meets the requirements of section 395.

(4) Nothing in this section permits the revocation of the appointment of an actuary if the actuary was appointed by the Court unless the Court provides otherwise.

Declaration of vacancy by Court	<p><b>399</b> Any interested person may apply to the Court for an order declaring that an actuary or its designated individual no longer meets the requirements of section 395 and declaring the office of actuary to be vacant.</p>
Ceasing to hold office	<p><b>400(1)</b> The office of actuary of a provincial company becomes vacant when</p> <ul style="list-style-type: none"> <li>(a) the actuary resigns,</li> <li>(b) if the actuary is an individual, the individual dies,</li> <li>(c) if the actuary is not an individual, the actuary is dissolved,</li> <li>(d) the appointment of the actuary is revoked, or</li> <li>(e) the office of actuary is declared to be vacant under section 399.</li> </ul> <p><b>(2)</b> The resignation of an actuary becomes effective at the time a written resignation is sent to the provincial company or at the time specified in the resignation, whichever is later.</p>
Filling vacancy	<p><b>401</b> When a vacancy occurs in the office of actuary of a provincial company, the directors must forthwith</p> <ul style="list-style-type: none"> <li>(a) submit a written statement to the Minister of the circumstances and reasons why, in the directors' opinion, the office of actuary became vacant, and</li> <li>(b) fill the vacancy.</li> </ul>
Statement of actuary	<p><b>402</b> An actuary of a provincial company who resigns or whose appointment is revoked must submit a written statement of the circumstances and reasons why the actuary resigned or why, in the actuary's opinion, the actuary's appointment was revoked to</p> <ul style="list-style-type: none"> <li>(a) the directors of the company,</li> <li>(b) the Minister, and</li> <li>(c) the replacement actuary of the company when a request for the statement is made by the replacement actuary.</li> </ul>



**Duty of  
replacement  
actuary**

**403(1)** If an actuary of a provincial company has resigned or the appointment of an actuary has been revoked, the replacement actuary must promptly after being appointed request the previous actuary to provide the replacement actuary with a copy of the statement referred to in section 402.

(2) If the replacement actuary does not receive the statement within 15 days after making the request, the replacement actuary must promptly notify the Minister that the statement has not been received and, if the Minister has received the statement, the Minister must provide it to the actuary.

**Right to  
information**

**404(1)** On the request of the actuary of a provincial company, the present or former directors, officers, employees or representatives of the company, any former actuary of the company and of any of the company's subsidiaries and holding bodies corporate must, to the extent that they are reasonably able to do so,

(a) obtain or permit access to such records held by the company or any of its subsidiaries or holding bodies corporate, and

(b) provide such information and explanations

as are, in the opinion of the actuary, necessary to enable the actuary to perform the duties of actuary of the company.

(2) A person who in good faith makes an oral or written communication under subsection (1) is not liable in any civil action arising from having made the communication.

**Actuary's  
valuation**

**405(1)** The actuary of a provincial company must value

(a) the actuarial and other policy liabilities of the company as at the end of a financial year, and

(b) any other matter specified in any direction made by the Minister.

(2) An actuary who is a Fellow of the Canadian Institute of Actuaries must ensure that the valuation is in accordance with generally accepted actuarial practices with any modification established by the Minister under section 219.

**Special  
valuation**

**406(1)** The Minister may appoint an individual as an actuary to value the matters referred to in section 405(1)(a) or (b) in relation to a provincial company if the Minister is of the opinion that the appointment is necessary.

(2) The remuneration and expenses incurred in carrying out a valuation under subsection (1) are payable by the provincial company on being approved by the Minister.

Actuary's  
report

**407(1)** The actuary of a provincial company must, not less than 21 days before the date of the annual meeting of the participating policyholders and shareholders of the company, make a report to them on the valuation made under section 405 and on any other matter that is prescribed.

(2) In each report required under subsection (1), the actuary must state whether, in the actuary's opinion, the annual statement presents fairly the results of the valuation made under section 405.

Report to  
directors

**408(1)** The directors of the company or, where the directors so choose, the audit committee of the company must meet with the actuary of a provincial company at least once during each financial year.

(2) The actuary must report at the meeting

(a) on the financial position of the provincial company, and

(b) if directed to do so by the Minister, the expected future financial condition of the company.

Report on  
matters  
requiring  
rectification

**409** The actuary of a provincial company must report in writing to the directors, chief executive officer and chief financial officer of the company and to the Minister any matters that have come to the actuary's attention in the course of carrying out the actuary's duties and that in the actuary's opinion have material adverse effects on the financial condition of the company and require rectification.

Actuary's  
procedures

**410(1)** The Minister may, in writing, require that the actuary of a provincial company report to the Minister on the extent of the actuary's procedures used in valuing the actuarially based liability figures contained in the annual return and may, in writing, require that the actuary enlarge or extend the scope of that valuation or direct that any other particular procedure be performed in any particular case, and the actuary must comply with the requirement of the Minister and report to the Minister.

(2) The expenses incurred as a result of the actuary's performing duties under subsection (1) are payable by the provincial company on being approved by the Minister.

Protection  
from liability

**411(1)** An oral or written statement or report made under this Act by the actuary or former actuary of a provincial company has qualified privilege.

**(2)** The actuary or former actuary of a company who in good faith makes an oral or written statement or report under section 402 or 409 is not liable in any civil action for damages attributable to the actuary's or former actuary's having made the statement or report.

Regulations

**412** The Lieutenant Governor in Council may make regulations providing for matters to be included in an actuary's report under section 407.

## **SUBPART 10**

### **ADEQUACY OF ASSETS, CAPITAL AND LIQUIDITY**

Assets

**413(1)** In this section,

- (a) "claims ratio" means, with respect to any particular period for policies issued by a provincial company with respect to a particular class of insurance, the ratio of the claims incurred during that period under those policies, including applicable adjustment expenses, to the premiums earned during that period in respect of those policies;
- (b) "expected claims ratio" means the claims ratio that the person signing the statement filed under subsection (8) expects the company to experience under policies issued by it with respect to a particular class of insurance during the unexpired terms of the policies;
- (c) "reinsurer" means an insurer that, at the request of another insurer, reinsures a risk or part of it that is insured by that other insurer.

**(2)** For the purposes of the definition "claims ratio" in subsection (1), the Minister may issue directions determining the applicable adjustment expenses for claims incurred.

**(3)** Subject to this section, every provincial company transacting the business of insurance, other than the business of life insurance, must maintain assets having a total value that is at least equal to the aggregate of the following:

- (a) an amount equal to the reserve for
  - (i) non-cancellable accident and sickness policies, and

- (ii) claims under accident and sickness policies payable in instalments;
  - (b) an amount equal to 1.15 times the amount of the unearned premiums in respect of the policies other than the policies referred to in clause (a);
  - (c) an amount equal to 1.15 times the amount of the provisions for claims incurred but unpaid, other than claims referred to in clause (a);
  - (d) an amount equal to the total of the other liabilities of the company.
- (4) For the purpose of determining the total value of assets under subsection (3) of a provincial company,
- (a) the value of the assets must be determined
    - (i) in accordance with the method established by the regulations under section 432(f), or
    - (ii) on the basis of the market value of the assets,

whichever produces the greater value, and
  - (b) the assets included in the determination must not include those investments of the company that are not authorized by this Act, unless they were authorized by law at the time of their acquisition.
- (5) For the purposes of subsection (3)(b),
- (a) when a provincial company has issued policies on the premium note system, unearned assessments levied in respect of all outstanding premium notes held by the company are considered to be unearned premiums, and
  - (b) unearned premiums must be calculated pro rata as of the date of the provincial company's annual return except that, when the risk insured and the amount of insurance are not substantially uniform over the term of the policy, the unearned premium must be calculated in the manner determined by the Minister.
- (6) Subject to subsection (8), if under the policies issued by a provincial company with respect to a particular class of insurance the expected claims ratio is less than 0.95, the company may, by written notice filed with the Minister, select a claims ratio not less than the expected claims ratio.

(7) When a claims ratio is selected under subsection (6) in respect of the policies referred to in that subsection, there must be substituted for the figure 1.15 referred to in subsection (3)(b) the figure determined by adding .20 to the selected claims ratio.

(8) If a provincial company selects a claims ratio under subsection (6),

- (a) the figure substituted for the figure referred to in subsection (3)(b) must not be less than 1.00 nor more than 1.15,
- (b) except with the approval of the Minister, the claims ratio selected must not be less than the claims ratio experienced under the policies with respect to the most recent calendar year, and
- (c) at the time of filing with the Minister the written notice under subsection (6), the company must file a statement signed by its actuary stating that, in the actuary's opinion, the claims ratio selected in accordance with subsection (6) is not less than the expected claims ratio.

(9) Subject to subsections (10) to (12), the aggregate of the amounts referred to in subsection (3) may be reduced in respect of a policy or group of policies issued or a claim payable by the provincial company when the risk or part of it is reinsured in whole or in part with a reinsurer.

(10) The amount by which the aggregate of the amounts referred to in subsection (3) may be reduced in respect of a policy, group of policies or claim must not exceed the portion of the amount included in the aggregate for that policy, group of policies or claim as may reasonably be considered to apply to the portion of the risk undertaken by the reinsurer.

(11) If the reinsurer is not licensed under this Act and is an extra-provincial company or a federally authorized company, the reduction authorized under this section must not be made unless, in the Minister's opinion,

- (a) the financial condition of the reinsurer is satisfactory, and
- (b) the operations of the reinsurer are conducted in accordance with sound business and financial practices.

(12) If the reinsurer is incorporated outside of Canada and is not a federally authorized company, the aggregate amount referred to in subsection (3) may be reduced

- (a) in respect of a policy, group of policies or a claim in Canada reinsured with that reinsurer, only to the extent that security is maintained in Canada, and
- (b) in respect of any other policy, group of policies or a claim reinsured with that reinsurer, only to the extent that security is maintained,

in respect of the potential obligations of the reinsurer in an amount, of a nature and under arrangements satisfactory to the Minister.

(13) If the assets of a provincial company include shares of a corporation transacting the business of insurance, other than the business of life insurance, the shares must not be taken into account for the purposes of subsection (3) at a value that exceeds a proportion of the excess of the value of the assets of the corporation, as that value would be determined for the purposes of subsection (3), over the minimum value of assets that would be required to be maintained by the corporation were it subject to subsection (3), the proportion being equal to the ratio that the portion of the capital of the company represented by the shares bears to the total capital of the company.

Capital and  
liquidity

**414(1)** This section comes into force when section 413 is repealed.

(2) A provincial company must, in relation to its operations,

- (a) maintain adequate capital and adequate and appropriate forms of liquidity, and
- (b) comply with any regulations in relation to capital and liquidity.

(3) The Lieutenant Governor in Council may make regulations respecting the maintenance by provincial companies of

- (a) adequate capital, and
- (b) adequate and appropriate forms of liquidity.

(4) The regulations may specify different requirements for different classes of provincial companies.

(5) Even though a provincial company is complying with regulations made under subsection (3), the Minister may, by order, direct the company

- (a) to increase its capital, or

(b) to provide additional liquidity in the forms and amounts that the Minister requires.

(6) A provincial company must comply with an order made under subsection (5) within the time the Minister specifies in the order.

## **SUBPART 11**

### **INVESTMENTS**

Definitions **415** In this Subpart,

(a) “commercial loan” means

(i) any loan other than

(A) loans to an individual in an aggregate prescribed amount or less,

(B) a loan to the government of Canada or a province, a municipality or any of their agencies, or to the government of a foreign country or any of its agencies, or to a prescribed international agency,

(C) a loan that is guaranteed by, or fully secured by securities issued by, a government, a municipality or an agency referred to in paragraph (B),

(D) a loan that is secured by a mortgage on real property

(I) where the mortgage is on residential property and the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, does not exceed 75% of the value of the property at the time the loan is made, or

(II) where the mortgage is on real property other than residential property and the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, does not exceed 75% of the value of the property at the time the loan is made and the property provides an annual income sufficient to pay all annual expenses related

to the property, including the payments owing under the mortgage and the mortgages having an equal or prior claim against the property,

(E) a loan that is secured by a mortgage on real property where the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, exceeds 75% of the value of the property at the time the loan is made if repayment of the amount of the loan that exceeds 75% of the value of the property is guaranteed or insured by an insurer approved by the Minister or a government agency, or

(F) a loan that

(I) is fully secured by a deposit with any deposit-taking institution,

(II) is fully secured by debt obligations guaranteed by any financial institution other than the provincial company or an affiliate of the company, or

(III) is fully secured by a guarantee of a financial institution other than the provincial company or an affiliate of the company,

or

(G) an advance on the security of or against the cash surrender value of a policy,

(ii) an investment in debt obligations, other than

(A) debt obligations that are

(I) guaranteed by any financial institution other than the provincial company or an affiliate of the company,

(II) fully secured by deposits with any deposit-taking institution, or

(III) fully secured by debt obligations that are guaranteed by any financial institution other than the provincial company or an affiliate of the company,



- (B) debt obligations issued by the government of Canada or a province, a municipality or any of their agencies, or by the government of a foreign country or any of its agencies, or by a prescribed international agency,
- (C) debt obligations that are guaranteed by, or fully secured by securities issued by, a government, a municipality or an agency referred to in paragraph (B), or
- (D) debt obligations that are widely distributed,
- (iii) an investment in shares of a body corporate or ownership interests in an unincorporated body, other than
  - (A) shares or ownership interests that are widely distributed, or
  - (B) participating shares,
- (iv) a deposit with any deposit-taking institution, and
- (v) any other prescribed form of financing;
- (b) “connected” means connected as defined in the regulations;
- (c) “debt obligation” means a bond, debenture, note or other evidence of indebtedness, whether secured or unsecured;
- (d) “investment” includes a loan to a person;
- (e) “loan” includes an acceptance, an advance on the security of or against the cash surrender value of a policy, endorsement, letter of credit or other guarantee, a financial lease, a conditional sales contract, a repurchase agreement and any other similar arrangement for obtaining funds or credit but does not include investments in securities;
- (f) “participating share” means a share of a body corporate that carries the right to participate in the earnings of the body corporate to an unlimited degree and to participate in a distribution of the remaining property of the body corporate on dissolution;
- (g) “widely distributed” with respect to securities of a body corporate means
  - (i) securities issued by way of a prospectus and traded on a recognized stock exchange, or

- (ii) securities issued to more than 25 investors within a 6-month period, no one of which holds more than 10% of the total amount of the securities issued and of which, on an ongoing basis, the body corporate does not own more than 10% of the securities outstanding.

**Prudent  
investment  
standards**

**416(1)** A provincial company must adhere to prudent investment standards in making investment decisions and in managing its total investments.

(2) For the purposes of this Act, prudent investment standards are those which, in the overall context of an investment portfolio, a reasonable and prudent person would apply to investments made on behalf of another person with whom there exists a fiduciary relationship to make such investments without undue risk of loss or impairment and with a reasonable expectation of fair return or appreciation.

(3) The fact that a provincial company is in compliance with the other provisions of this Act relating to investments does not of itself mean that the company is in compliance with subsection (1).

**Policies and  
procedures**

**417(1)** The directors of a provincial company must establish policies and procedures to ensure that the company applies prudent investment standards in making investment decisions and in managing its total investments.

(2) The directors must review the procedures established under subsection (1) at least once each year.

**Prohibited  
investments**

**418(1)** No provincial company may directly or indirectly make loans to or other investments in

(a) any person, or

(b) any 2 or more persons that to the knowledge of the company are connected,

if the outstanding balance of principal and interest of loans for the person or the connected persons, together with the book value of investments in the person or connected persons, would exceed \$500 000 or the prescribed percentage of the company's assets, whichever is greater.

(2) This section does not apply so as to restrict a provincial company from acquiring or making investments in

- (a) a security issued or guaranteed by the government of Canada or any province,
- (b) a mortgage that is
  - (i) insured under the *National Housing Act* (Canada) or through an agency of the government of Canada or a province, or
  - (ii) insured by an insurer approved by the Minister,
- (c) an unincorporated body referred to in section 420(2),
- (d) a body corporate referred to in section 421(3), or
- (e) other prescribed investments.

Restriction on  
residential  
mortgages

**419(1)** No provincial company may make a loan in Canada on the security of residential property in Canada for the purpose of purchasing, renovating or improving that property, or refinance such a loan, if the amount of the loan, together with the amount then outstanding of mortgages having an equal or prior claim against the property, would exceed 75% of the value of the property at the time of the loan.

**(2)** Subsection (1) does not apply in respect of

- (a) a loan if repayment of the amount of the loan that exceeds the maximum set out in subsection (1) is guaranteed or insured by the Government of Alberta, the Government of Canada, the government of another province, an agency of any of those governments or an insurance policy issued by a licensed insurer;
- (b) the acquisition by the company from an entity of securities issued or guaranteed by the entity that are secured on any residential property, whether in favour of a trustee or otherwise, or the making of a loan by the company to the entity against the issue of such securities, or
- (c) a loan secured by a mortgage where
  - (i) the mortgage is taken back by the company on a property disposed of by the company, including where the disposition is by way of a realization of a security interest, and
  - (ii) the mortgage secures payment of an amount payable to the company for the property.

Limitation on  
ownership of  
unincorporated  
body

**420(1)** Subject to subsections (2) and (4), no provincial company may beneficially own more than a 10% interest in an unincorporated body.

(2) Subsection (1) does not apply where the unincorporated body is carrying on a business that may be carried on by a body corporate referred to in section 421(3) and is carrying on that business in the same way as if it were such a body corporate.

(3) For the purposes of subsection (1), an interest beneficially owned by a subsidiary of a provincial company is deemed to be beneficially owned by the company.

(4) Despite subsection (1), a provincial company may, through realization of a security interest held by the company or, subject to the approval of the Minister, by means of a loan workout procedure, beneficially own more than a 10% interest in an unincorporated body, but the company must dispose of the excess interest within

(a) 2 years after acquiring the excess interest, or

(b) any longer period the Minister allows.

Limitation on  
shareholding

**421(1)** Subject to this section and except as otherwise prescribed, no provincial company may have a substantial investment in a body corporate.

(2) Despite subsection (1), a provincial company may, through realization of a security interest held by the company or, subject to the approval of the Minister, by means of a loan workout procedure, have a substantial investment in a body corporate, but the company must dispose of the excess shares that give the company a substantial investment within

(a) 2 years after acquiring the excess shares, or

(b) any longer period the Minister allows.

(3) Despite subsections (1) and (2) and except as otherwise prescribed, a provincial company may have a substantial investment in any of the following bodies corporate:

(a) a bank;

(b) a loan corporation or trust corporation incorporated by or under an Act of Canada or a province;

- (c) with the approval of the Minister, an extra-provincial company or an insurer formed by or under an Act of Canada;
- (d) with the approval of the Minister, a foreign financial institution;
- (e) a prescribed body corporate.

(4) A provincial company must not have a substantial investment in a body corporate referred to in subsection (3) if that body corporate has a substantial investment in another body corporate that is not a body corporate referred to in subsection (3).

Duty to  
provide  
information

**422** If a provincial company acquires control of an unincorporated body referred to in section 420(2), or of a body corporate referred to in section 421(3), the provincial company must provide the Minister with any information respecting the unincorporated body or body corporate that the Minister requires.

Divestment  
order

**423(1)** If a provincial company beneficially owns an interest in an unincorporated body referred to in section 420(2) and

- (a) the unincorporated body is carrying on business in an unsound manner that may imperil the company's investment if continued, or
- (b) in the case of an unincorporated body that is controlled by the company, the company fails to provide information to the Minister under section 422,

the Minister may, by order, direct the company to divest itself of all or part of its beneficial ownership within the time specified in the order.

(2) If a provincial company beneficially owns shares in a body corporate referred to in section 421(3) and

- (a) the body corporate is carrying on business in an unsound manner that may imperil the company's investment if continued, or
- (b) in the case of a body corporate that is a subsidiary, the company fails to provide information to the Minister under section 422,

the Minister may, by order, direct the company to divest itself of all or part of its beneficial ownership within the time specified in the order.

## Portfolio Limits

Exclusion from  
portfolio limits

**424(1)** Subject to subsection (3), the value of all investments acquired by a provincial company and any of its subsidiaries as a result of a realization of a security interest must not be included in calculating the value of the investments of the company and its subsidiaries under sections 425 to 430

- (a) for a period of 7 years following the day on which the interest was acquired, in the case of an interest in real property, and
- (b) for a period of 2 years following the day on which the investment was acquired, in the case of an investment other than an interest in real property.

**(2)** The Minister may, in the case of any particular provincial company, extend any period referred to in subsection (1) for such further period or periods, and on such terms and conditions, as the Minister considers necessary.

**(3)** Subsection (1) does not apply to interests in real property that are prescribed for the purposes of this subsection.

Lending limit -  
life companies

**425(1)** Subject to subsection (2), a provincial life company must not, and must not permit its subsidiaries to,

- (a) make or acquire a commercial loan, or
- (b) acquire control of a body corporate referred to in section 421(3) that holds commercial loans,

if the aggregate value of all commercial loans held by the company and its subsidiaries exceeds, or if the making or acquisition of the commercial loan or acquisition of control of the body corporate would cause the aggregate value of all commercial loans held by the company and its subsidiaries to exceed, 5% of the total assets of the company.

**(2)** A provincial life company that has more than \$15 000 000 of base capital may, with the prior approval of the Minister,

- (a) make or acquire commercial loans, or
- (b) acquire control of a body corporate referred to in section 421(3) that holds commercial loans.

Lending limit -  
property and  
casualty  
companies

**426** A provincial property and casualty company must not, and must not permit its prescribed subsidiaries to,

- (a) make or acquire a commercial loan or a loan to an individual, or
- (b) acquire control of a body corporate referred to in section 421(3) that holds commercial loans or loans to individuals

if the aggregate value of all such loans held by the company and its prescribed subsidiaries exceeds, or if the making or acquisition of the loan or the acquisition of control of the body corporate would cause the aggregate value of all such loans held by the company and its prescribed subsidiaries to exceed, 5% of the total assets of the company.

Limit on real  
property  
interest

**427** A provincial company must not, and must not permit its prescribed subsidiaries to,

- (a) purchase or otherwise acquire an interest in real property, or
- (b) make an improvement to any real property in which the company or any of its prescribed subsidiaries has an interest,

if the aggregate value of all of the company's interests in real property exceeds, or if the acquisition of the interest or the making of the improvement would cause that aggregate value to exceed, 10% of the total assets of the company and its prescribed subsidiaries.

Limits on  
equity  
acquisitions

**428** A provincial company must not, and must not permit its prescribed subsidiaries to,

- (a) purchase or otherwise acquire any participating shares of any body corporate or any ownership interests in any unincorporated body, other than those in which the company has, or by virtue of the acquisition would have, a substantial investment, or
- (b) acquire control of a body corporate that holds shares or ownership interests referred to in clause (a),

if the aggregate value of

- (c) all participating shares, excluding participating shares of bodies corporate referred to in section 421(3) in which the company has a substantial investment, and

(d) all ownership interests in unincorporated bodies

beneficially owned by the company and its prescribed subsidiaries exceeds, or if the purchase or acquisition would cause that aggregate value to exceed, the prescribed percentage of the total assets of the company and its prescribed subsidiaries.

Aggregate  
limit

**429** A provincial company must not, and must not permit its prescribed subsidiaries to,

(a) purchase or otherwise acquire

(i) participating shares of a body corporate, other than those of a body corporate referred to in section 421(3) in which the company has, or by virtue of the acquisition would have, a substantial investment,

(ii) ownership interests in an unincorporated body, or

(iii) interests in real property,

or

(b) make an improvement to real property in which the company or any of its prescribed subsidiaries has an interest

if the aggregate value of

(c) all participating shares and ownership interests referred to in clause (a)(i) and (ii) that are beneficially owned by the company and its prescribed subsidiaries, and

(d) all of the company's interests in real property referred to in clause (a)(iii)

exceeds, or if the acquisition of the shares or interests or the making of the improvement would cause that aggregate value to exceed, 30% of the total assets of the company and its prescribed subsidiaries.

Assets  
transactions

**430** A provincial company must not, without the approval of the Minister, in any transaction or series of transactions with the same party during a period of 12 months, acquire or dispose of assets, directly or indirectly, other than assets that are debt obligations referred to in section 415(a)(ii)(A) to (D), having a value in excess of 10% of the total assets of the company as at the beginning of the 12-month period.



Retaining  
investments

**431(1)** If a provincial company has acquired on or before December 31, 1996 an investment that was allowed under the *Insurance Act* in force at the time of acquisition, but that is not permitted under this Act and the regulations, the company may retain the investment.

**(2)** A provincial company that has an investment referred to in subsection (1) must not increase the amount of or renew or extend the investment without the prior consent of the Minister.

Regulations

**432** The Lieutenant Governor in Council may make regulations

- (a) defining terms that are specified in section 415 as being defined in the regulations;
- (b) defining interests in real property for the purposes of one or more provisions of this Subpart and determining the method of valuating those interests;
- (c) prescribing quantitative limits on investments that may be made by a provincial company or its subsidiary, including quantitative limits on investments referred to in section 421(3) and, where a limit has been imposed by this Act, prescribing limits that are more restrictive;
- (d) imposing terms and conditions subject to which a provincial company or its subsidiary may make investments or enter into other transactions, and imposing restrictions on the manner in which investments and other transactions may be made, given or entered into;
- (e) prescribing investments and other transactions that a provincial company or its subsidiary must not make, give or enter into;
- (f) respecting the method to be used to value the assets of a provincial company for the purposes of this Act;
- (g) respecting any matter that is to be prescribed under this Subpart.

## **SUBPART 12**

### **TRANSACTIONS WITH RELATED PARTIES**

Interpretation **433(1)** In this Subpart,

- (a) “fundamentally reinsure” with respect to a contract of insurance means
  - (i) that the insurer under the contract transfers or assigns all rights and obligations under the contract to another insurer, or
  - (ii) that the contract is replaced by novation and the insurer under the replacement contract is different from the insurer under the original contract;
- (b) “loan” includes a deposit, a financial lease, a conditional sales contract, a repurchase agreement and any other similar arrangement for obtaining funds or credit, but does not include investments in securities or the making of an acceptance, endorsement or other guarantee;
- (c) “senior official” of a body corporate means an individual who
  - (i) is a director and a full-time employee of the body corporate,
  - (ii) is an officer or the chief operating officer, chief financial officer, chief accountant, chief auditor or chief actuary of the body corporate,
  - (iii) performs functions for the body corporate similar to those performed by an official referred to in subclause (ii),
  - (iv) is the head of the strategic planning unit of the body corporate,
  - (v) is the head of the unit of the body corporate that provides legal services or human resources services to the body corporate,
  - (vi) is an official who reports directly to the body corporate’s board of directors, chief executive officer or chief operating officer, or
  - (vii) is prescribed.

(2) A transaction, guarantee or investment is made or entered into if an existing transaction, guarantee or investment, including one made or entered into before the coming into force of this section, is modified, added to, extended or renewed.

(3) Where a transaction is required by or under this Subpart to be at fair market rate, that requirement is satisfied, subject to subsection (4), if the transaction is not at fair market rate but is at a rate and terms that are more financially advantageous to the provincial company or subsidiary than actual fair market rate.

(4) Subsection (3) does not apply where the transaction is between

- (a) a provincial company and its affiliate, or
- (b) a subsidiary of a provincial company and an affiliate of the provincial company.

Meaning of  
related party

**434(1)** For the purposes of this Subpart, a person is a related party of a provincial company if the person

- (a) has a significant interest in a class of shares of the company,
- (b) is a director or senior official of the company or of a body corporate that controls the company or is acting in a similar capacity in respect of an unincorporated body that controls the company,
- (c) is the spouse, or a child who is less than 18 years of age, of a person described in clause (a) or (b),
- (d) is an entity that is controlled by a person referred to in any of clauses (a) to (c),
- (e) is an unincorporated body in which the company beneficially owns more than a 10% interest,
- (f) is a body corporate in which the company has a substantial investment,
- (g) is an entity in which a person who controls the company has a substantial investment,
- (h) is an entity in which the spouse, or a child who is less than 18 years of age, of a person who controls the company has a substantial investment, or
- (i) is designated under section 435 as a related party.

(2) Unless the regulations provide otherwise, the following are not a related party of a provincial company:

- (a) a financial institution that wholly owns the company;
- (b) a wholly owned subsidiary of the company.

(3) Where the Minister is satisfied that a subsidiary of a provincial company that is not a wholly owned subsidiary of the company functions primarily for the purpose of providing a service, other than a financial service, to the company or the company's subsidiaries, the Minister may, on application, exempt the subsidiary from the status of related party of the company, subject to any terms and conditions the Minister considers appropriate.

Designated  
related party

**435** For the purposes of this Subpart, the Minister may designate any person as a related party of a provincial company if the Minister is of the opinion that

- (a) the person is acting or has acted jointly or in concert with a related party of the company with respect to entering into a transaction that would be prohibited or restricted under this Subpart if entered into by or with respect to that related party,
- (b) there exists or has existed between the person and the company an interest or relationship that might reasonably be expected to affect or that has affected the exercise by the company of its best judgment with respect to a transaction, or
- (c) the person is acting in concert with one or more other persons to own or control, directly or indirectly, 10% or more of any class of voting shares of the company.

Transactions  
contemplating  
related party  
status

**436** If a person who, but for this section, is not a related party enters into a transaction with a provincial company or its subsidiary knowing that the person is going to become a related party of the company, the person is a related party of the company with respect to that transaction.

Prohibited  
transactions,  
guarantees  
and  
investments

**437** Except as provided in this Subpart,

- (a) no provincial company or subsidiary of a provincial company may, directly or indirectly, enter into any transaction with a related party of the company,

- (b) no related party of a provincial company may, directly or indirectly, enter into any transaction with the company or its subsidiary,
- (c) no provincial company or subsidiary of a provincial company may, directly or indirectly, enter into any guarantee on behalf of a related party of the company, and
- (d) no provincial company or subsidiary of a provincial company may, directly or indirectly, make an investment in or take a security interest in any securities of a related party of the company.

Exceptions to  
the prohibition

**438** This Subpart does not apply in respect of

- (a) the granting of indemnification in accordance with section 365,
- (b) the issue by the provincial company of shares of any class when fully paid for in money or when issued
  - (i) in accordance with any provisions for the conversion of other issued and outstanding securities of the company into shares of that class,
  - (ii) as a share dividend,
  - (iii) in exchange for shares of a body corporate that has been continued as a provincial company under Subpart 2,
  - (iv) in accordance with terms of an amalgamation under Subpart 2,
  - (v) by way of consideration in accordance with the terms of an agreement referred to in Subpart 2, Division 10 in which the provincial company agrees to sell all or substantially all of its assets, or
  - (vi) with the approval of the Minister, in exchange for shares of another body corporate,
- (c) the payment of dividends or policy dividends or bonuses, or
- (d) transactions that consist of the payment or provision by a provincial company of salaries, fees, stock options, policy premiums, pension benefits, incentive benefits or other benefits or remuneration to persons who are related parties

of the company in their capacity as directors, officers or employees of the company.

Permitted  
transactions

**439(1)** A provincial company or a subsidiary of a provincial company may

- (a) enter into a transaction with a related party that involves minor or general expenditures by the company or the subsidiary,
- (b) enter into a transaction with a related party for
  - (i) the sale of goods, or
  - (ii) the provision of financial services

that are normally sold or provided to the public by the company or the subsidiary in the ordinary course of business, so long as the prices and rates charged by the company or subsidiary are at fair market rate,

- (c) enter into a transaction with a related party that is a financial institution if
  - (i) the transaction consists of a deposit made at fair market rate and for a prescribed purpose, or
  - (ii) the transaction consists of the acquisition at fair market rate of prescribed securities from a securities dealer who is not an underwriter, within the meaning of that term in the *Securities Act*, in the distribution of those securities and is not selling them as their principal,

and

- (d) make a loan or give a guarantee on behalf of a senior official of the company or subsidiary if the aggregate of the outstanding principal and interest owing on all such loans and the contracted amount of all outstanding guarantees to or on behalf of that senior official does not exceed the lesser of
  - (i) \$100 000, and
  - (ii) twice the annual salary of that senior official.

**(2)** The conduct review committee of a provincial company must, subject to any prescribed limits, develop criteria as to what

constitutes minor or general expenditures for the purposes of subsection (1)(a).

(3) A provincial company may, subject to Subpart 2, fundamentally reinsure its contracts of insurance with a related party of the company.

(4) A related party of a provincial company may, subject to Subpart 2, fundamentally reinsure its contracts of insurance with the company.

(5) A provincial company may reinsure a contract of insurance in the ordinary course of its business with a related party of the company in accordance with section 62.

(6) A provincial company may accept or retain on the direction of a policyholder or beneficiary who is a related party amounts that are payable as

(a) policy dividends or bonuses, or

(b) policy proceeds on the surrender or maturity of the policy or on the death of the person whose life is insured

where the liabilities of the company in respect of the amount vary in amount depending on the market value of a specified group of assets.

Transactions  
requiring  
directors'  
approval

**440** A provincial company or its subsidiary may with the prior approval of the directors of the company

(a) enter into a written contract with a related party for the provision of management services to or by the company or subsidiary if it is reasonable that the company or subsidiary obtain or supply the services and so long as the consideration is reasonable for the services provided and is at fair market rate,

(b) enter into a written lease of real estate or personal property with a related party so long as

(i) the rent is at fair market rate,

(ii) the term of the lease and all renewals does not exceed

(A) 5 years in the case of a lease of personal property, or

(B) 20 years in the case of a lease of real estate,

and

- (iii) the terms of the lease are otherwise competitive and reasonable,
- (c) enter into a written contract with a related party at fair market rate for pension and benefit plans, stock options, incentive benefits and other reasonable commitments incidental to employment,
- (d) enter into a written contract with a related party respecting the provision of goods or services, or providing for a networking arrangement for the provision of goods and services, other than management services, so long as the price paid for those goods or services is at fair market rate and the term of the contract and all renewals does not exceed 5 years in total,
- (e) acquire from or sell to a related party prescribed securities, other than securities issued by the related party, so long as the transaction is at fair market rate,
- (f) acquire beneficial ownership of shares of a body corporate as permitted by section 421(3),
- (g) make a loan to or guarantee the obligations of an entity, other than a financial institution, in which the company beneficially owns shares as permitted by section 421(3) if the loan or guarantee is at fair market rate and meets prescribed conditions,
- (h) make a loan to
  - (i) a director or senior official of the company,
  - (ii) an employee of a prescribed class of the company, or
  - (iii) the spouse of a director or senior official of the company or of an employee referred to in subclause (ii)

on the security of the residence of the person to whom the loan is made, and the loan must be at fair market rate except in the case of a loan to an employee of the prescribed class, to a senior official or to a director who is a senior official or who is an employee of the prescribed class,

- (i) make a personal loan to



- (i) a senior official of the company,
- (ii) an employee of a prescribed class of the company, or
- (iii) the spouse of a senior official of the company or of an employee referred to in subclause (ii)

that is fully secured other than by promissory note, and the loan must be at fair market rate except in the case of a loan to a senior official or to an employee of the prescribed class,

- (j) make a loan to a related party that is a financial institution in which the company beneficially owns shares as permitted under section 421(3), if the loan is at fair market rate, is fully secured by securities that meet prescribed qualifications and is for prescribed purposes,
- (k) enter into a transaction with a related party that is a financial institution if the transaction consists of a disposition by the company or subsidiary of assets for which the consideration is fully paid in money and is at fair market rate,
- (l) guarantee the obligations of a related party that is a financial institution, and
- (m) enter into any other transaction with a related party that the regulations permit it to enter into with the prior approval of the directors of the company.

Procedures for approvals by directors

**441(1)** Where this Subpart requires that a transaction have the prior approval of the directors of a provincial company, the approval must be given in writing and in accordance with procedures established under section 445, and the approval may be given with respect to a specific transaction or with respect to a class of transactions.

(2) Where this Subpart requires that a transaction have prior approval of the directors of a provincial company and the transaction will be reviewed by the directors of a subsidiary of the company and the subsidiary is a financial institution, the directors of the company are not required to review the transaction.

Disclosure

**442(1)** A person who knows or has reason to believe that the person is a related party of a provincial company and who proposes to enter into a transaction or guarantee with the company or its subsidiary for which the approval of the directors of the company

is required must disclose in writing to the company the nature of the person's interest in the proposed transaction or guarantee forthwith after becoming aware of the facts that make the person a related party of the company.

(2) Where the related party is a director or senior official of a provincial company, disclosure must be made in accordance with section 354.

(3) Where, with respect to a proposed transaction or guarantee referred to in subsection (1), a provincial company knows or has reason to believe that a party is a related party of the company, the company must take all reasonable steps to obtain from that other party full disclosure in writing of any interest or relationship, direct or indirect, that would make that other party a related party of the company.

(4) The directors of the provincial company must ensure that a disclosure under subsection (1) or (3) is entered in the minutes of the first directors' meeting held after the making of the disclosure.

(5) A related party must not

- (a) vote or attempt in any way to influence the voting on any resolution to approve the transaction or guarantee, or
- (b) be present while the subject-matter of the transaction or guarantee is being discussed or the vote is being conducted.

(6) Where a provincial company does not receive full disclosure as required by this section in respect of a proposed transaction or guarantee, the company or its subsidiary, as the case may be, must not enter into the transaction or guarantee.

Transactions  
requiring  
Ministerial  
approval

**443** A provincial company or its subsidiary may with the prior approval of the Minister enter into a transaction, guarantee or investment or a class of transaction, guarantee or investment with a related party of the company that would otherwise be prohibited or restricted by this Act or the regulations if the Minister is satisfied that the transaction, guarantee or investment is in the best interests of the company and is not prejudicial to the interests of the shareholders and policyholders.

Limits on  
permitted  
transactions

**444** No provincial company or subsidiary of a provincial company may enter into a transaction with a related party of the company that is permitted under this Subpart if the transaction exceeds the prescribed limits.

**Review and  
approval  
procedures**

**445(1)** The conduct review committee of a provincial company must establish written review and approval procedures to be followed by the company to ensure compliance with this Subpart.

(2) The procedures referred to in subsection (1) must be reviewed at least once each year by the conduct review committee.

(3) The conduct review committee must report on its review under subsection (1) and must give its recommendations, if any, with respect to the procedures to the board of directors.

(4) The procedures referred to in subsection (1) must deal with at least the following matters:

- (a) the formalities governing transactions, guarantees and investments in respect of a related party;
- (b) the obligations of the provincial company, its subsidiaries and the related party to disclose information;
- (c) the protection of confidential information held by the provincial company or its subsidiaries relating to its business associates, and the conduct of the company or subsidiary in cases where the interests of the company or subsidiary or of a person affiliated with either of them may be in conflict with the interests of its business associates.

(5) The procedures referred to in subsection (1) are subject to the approval of the directors and the directors, on receipt of any recommendation from the conduct review committee, must review the procedures and make any changes they consider necessary.

**Duty to report  
contraventions**

**446(1)** The auditor of a provincial company must promptly report to the directors and the Minister any breach of this Subpart of which the auditor is aware or is made aware under subsection (2).

(2) Any person undertaking professional services for a provincial company who, in providing the professional services, becomes aware of a breach of this Subpart must promptly report the breach to the directors and the auditor of the company, unless the breach has already been reported under subsection (1).

(3) Nothing in this section abrogates any privilege that may exist between a solicitor and a client.

(4) A person who in good faith makes a report under subsection (1) or (2) is not liable in any civil action arising from it.

(5) Where a provincial company or its subsidiary has entered into a transaction

- (a) that is prohibited under this Subpart, or
- (b) without the approvals required under this Subpart,

the company must, on becoming aware of that fact, forthwith notify the auditor and the Minister of that fact.

Reliance on  
information

**447** A provincial company and any person who is a director, officer, employee or agent of the company may rely on any information received under section 442 regarding disclosure or any information otherwise acquired in respect of any matter that might be the subject of such a disclosure, and the company and person are not liable in any civil action for anything done or omitted to be done in good faith in reliance on any such information.

Onus of proof

**448** For the purposes of this Subpart, the onus is on the related party and the provincial company or its subsidiary to establish that a transaction, guarantee or investment between the company or subsidiary and the related party is permitted under this Subpart.

Applications to  
Court

**449(1)** Where a transaction, guarantee or investment that is prohibited under this Subpart takes place, any interested person, including the Minister, may apply to the Court for an order

- (a) setting aside the transaction, guarantee or investment and directing that the related party account to the provincial company for any profit or gain realized, and
- (b) that each person who participated in or facilitated the transaction, guarantee or investment pay to the company on a joint and several basis
  - (i) the damages suffered,
  - (ii) the face value of the transaction, guarantee or investment, or
  - (iii) the amount expended by the company in the transaction, guarantee or investment,

and on the application the Court may so order or make any other order it thinks fit, including an order for compensation for the loss or damage suffered by the company and punitive or exemplary damages from the related party.

**(2)** A person who is not a director is not liable under subsection (1)(b) unless the person knew or ought reasonably to have known

that the transaction, guarantee or investment contravened this Subpart,

(3) An application under subsection (1) in respect of a transaction, guarantee or investment, may only be made within 3 months of the transaction, guarantee or investments having been entered into.

- Regulations      **450** The Lieutenant Governor in Council may make regulations
- (a) respecting exceptions to section 434(2);
  - (b) specifying transactions for the purposes of section 440(m) that may be entered into with a related party with the prior approval of the directors of the provincial company;
  - (c) respecting any matter that is to be prescribed under this Subpart.

### **PART 3**

#### **INSURANCE AGENTS AND ADJUSTERS**

- Definitions      **451** In this Part,
- (a) “business” means a body corporate, partnership or sole proprietorship, but does not include an insurer;
  - (b) “designated representative” means a designated representative referred to in section 456 or 463;
  - (c) “general insurance” means any class of property and casualty insurance other than accident and sickness insurance;
  - (d) “group insurance” means insurance in which the lives, well-being or employment of individuals who enroll in the insurance is insured severally under a single contract between an insurer and an employer, creditor or other person;
  - (e) “independent contractor” means an individual who enters into a contract in the individual’s own name to provide services as an independent contractor;
  - (f) “individual” does not include an individual who is the sole proprietor of a sole proprietorship;
  - (g) “property and casualty insurance” means any class of insurance other than life insurance;

- (h) "sole proprietorship" includes an independent contractor who has entered into a contract with an insurer, but does not include an independent contractor who has entered into a contract with a business.

### **Insurance Agents**

Insurance  
agent's  
certificate

**452(1)** No business may act or offer to act as an insurance agent in respect of a class of insurance unless the business holds a valid and subsisting insurance agent's certificate of authority for that class of insurance.

**(2)** No individual may act or offer to act as an insurance agent in respect of a class of insurance unless the individual

- (a) is an employee or independent contractor of a business that holds a valid and subsisting insurance agent's certificate of authority for that class of insurance and the employee or independent contractor holds a valid and subsisting insurance agent's certificate of authority for that class of insurance,
- (b) is an employee of a business that holds a valid and subsisting restricted insurance agent's certificate of authority for that class of insurance, or
- (c) is an employee of an insurer that issues insurance of that class and the employee holds a valid and subsisting insurance agent's certificate of authority for that class of insurance.

**(3)** No business that holds an insurance agent's certificate of authority, other than a restricted insurance agent's certificate of authority, may employ an individual or enter into a contract with an individual as an independent contractor to act as an insurance agent unless the individual holds a valid and subsisting insurance agent's certificate of authority.

**(4)** No insurer may employ an individual to act as an insurance agent unless the individual holds a valid and subsisting insurance agent's certificate of authority.

**(5)** No insurer may allow a business to act as an insurance agent on its behalf unless the business holds a valid and subsisting insurance agent's certificate of authority.

Exception

**453** Despite section 452, a member of a licensed fraternal society, other than a member who receives a salary or commission for the purpose of acting as an insurance agent, who acts or offers to act as an insurance agent only with respect to insurance issued by the society for its members is not required to obtain an insurance agent's certificate of authority.

Restricted  
insurance  
agent's  
certificate

**454(1)** The Minister may issue a restricted insurance agent's certificate of authority to a business

- (a) that is a deposit-taking institution, or
- (b) that operates
  - (i) a transportation company,
  - (ii) a travel agency,
  - (iii) an automobile dealership, or
  - (iv) another prescribed enterprise.

(2) A restricted insurance agent's certificate of authority authorizes the holder and the holder's employees to act or offer to act, subject to prescribed conditions and restrictions, as an insurance agent in respect of classes or types of insurance specified by the Minister.

Representa-  
tion

**455(1)** No business that acts as an insurance agent may indicate in any manner that it represents another business that acts as an insurance agent.

(2) No individual may act as an insurance agent for a business unless the individual holds a valid and subsisting insurance agent's certificate of authority specifying that the individual is authorized to represent that business.

(3) An individual who is an employee or independent contractor of a business may act as an insurance agent for more than one business, but an individual must obtain a separate insurance agent's certificate of authority for each business that the individual represents.

(4) An individual who is an employee of an insurer and who holds a valid and subsisting insurance agent's certificate of authority may act as an insurance agent only for

- (a) that insurer,
- (b) an insurer that is an affiliate of that insurer, and

(c) in the case of automobile insurance, an insurer that is the service carrier for the Government approved industry plan under section 650.

(5) An individual who is an employee of an insurer and who holds an insurance agent's certificate of authority specifying that the individual is authorized to represent that insurer must not, while that certificate of authority is subsisting, be issued another insurance agent's certificate of authority to represent a different insurer or business.

Designated  
representative  
for businesses

**456(1)** Every business that holds an insurance agent's certificate of authority

(a) for life insurance must have a designated representative for life insurance who meets the prescribed requirements and is recommended by the licensed life company that recommended the business be issued an insurance agent's certificate of authority for life insurance;

(b) for general insurance must have a designated representative for general insurance who meets the prescribed requirements and is recommended by the licensed insurer that recommended the business be issued an insurance agent's certificate of authority for general insurance;

(c) for accident and sickness insurance must have a designated representative for accident and sickness insurance who meets the prescribed requirements and is recommended by the licensed insurer that recommended the business be issued an insurance agent's certificate of authority for accident and sickness insurance.

(2) The designated representative of a sole proprietorship is its sole proprietor, unless the proprietor designates someone else to be the designated representative.

(3) This section does not apply to a business that holds a restricted insurance agent's certificate of authority.

Restricted  
certificate  
holders -  
designated  
individual

**457** Every business that holds a restricted insurance agent's certificate of authority must designate an individual to be responsible for receiving notices and other documents under this Act.



Recommendations - life insurance

**458(1)** Every business that holds an insurance agent's certificate of authority for life insurance must be recommended by a licensed life company that has entered into an agency contract with the business.

(2) Every individual that holds an insurance agent's certificate of authority for life insurance must

(a) be an employee or an independent contractor of a business that holds an insurance agent's certificate of authority for life insurance and be recommended by the licensed life company that recommended the business receive its certificate of authority, or

(b) be an employee of a licensed life company and be recommended by the company.

(3) Subject to subsection (4), a holder of an insurance agent's certificate of authority for life insurance may act as an insurance agent only for the licensed life company that recommended that the holder be issued an insurance agent's certificate of authority.

(4) A holder of an insurance agent's certificate of authority for life insurance may act as an insurance agent for a licensed life company that did not recommend the holder be issued an insurance agent's certificate of authority if

(a) the holder is unable to negotiate life insurance on behalf of an applicant with the licensed life company that recommended the holder and the prescribed requirements for obtaining life insurance from another insurer have been met, or

(b) the holder has held an insurance agent's certificate for life insurance for the prescribed period and has met the prescribed requirements.

(5) A holder of an insurance agent's certificate of authority for life insurance that has been issued on the recommendation of a licensed life company must not, while that certificate of authority is subsisting, be issued another insurance agent's certificate of authority for life insurance to represent a different licensed life company.

Recommendations - property and casualty insurance

**459(1)** Every business that holds an insurance agent's certificate of authority for general insurance must be recommended by an insurer that is licensed to undertake a class of general insurance and that has entered into an agency contract with the business.

(2) Every business that holds an insurance agent's certificate of authority for accident and sickness insurance must be recommended by an insurer that is licensed to undertake that class of insurance and that has entered into an agency contract with the business.

(3) Every individual that holds an insurance agent's certificate of authority for general insurance must

(a) be an employee or independent contractor of a business that holds an insurance agent's certificate of authority for general insurance and be recommended by the designated representative of the business for general insurance, or

(b) be an employee of an insurer that is licensed to undertake a class of general insurance and be recommended by the insurer.

(4) Every individual that holds an insurance agent's certificate of authority for accident and sickness insurance must

(a) be an employee or independent contractor of a business that holds an insurance agent's certificate of authority for accident and sickness insurance and be recommended by the licensed insurer that recommended the business receive its certificate of authority for accident and sickness insurance, or

(b) be an employee of an insurer that is licensed to undertake accident and sickness insurance and be recommended by the insurer.

(5) Subsections (3)(a) and (4)(a) do not apply to the designated representative of a business.

(6) A business, or employee or independent contractor of a business, that holds an insurance agent's certificate of authority for a class of property and casualty insurance may, unless the certificate is made subject to prescribed conditions that provide otherwise, act as an insurance agent for any insurer that is licensed to undertake that class of property and casualty insurance.

### **Adjusters**

Adjuster's  
certificate

**460(1)** No business may act or offer to act as an adjuster in respect of a contract of insurance unless

(a) the business holds a valid and subsisting adjuster's certificate of authority, or

- (b) the business holds a valid and subsisting insurance agent's certificate of authority for the class of insurance under which the contract of insurance falls, the certificate is not a restricted insurance agent's certificate of authority, the amount of the loss under the contract is less than the prescribed amount and the business is the business that sold the contract of insurance.

(2) No individual may act or offer to act as an adjuster in respect of a contract of insurance unless

- (a) the individual is an employee or independent contractor of a business that holds a valid and subsisting adjuster's certificate of authority and the employee or independent contractor holds a valid and subsisting adjuster's certificate of authority,
- (b) the individual is an employee or independent contractor of a business that holds a valid and subsisting insurance agent's certificate of authority and the individual holds a valid and subsisting insurance agent's certificate of authority for the class of insurance under which the contract of insurance falls, the amount of the loss under the contract is less than the prescribed amount and the business is the business that sold the contract of insurance,
- (c) the individual is an employee of the insurer that issued the contract or an insurer that is an affiliate of the insurer that issued the contract and the individual holds a valid and subsisting adjuster's certificate of authority, or
- (d) the contract is a reciprocal contract of indemnity or inter-insurance of a licensed reciprocal insurance exchange and the individual is the principal attorney of the exchange.

(3) No business that holds an adjuster's certificate of authority may employ an individual or enter into a contract with an individual as an independent contractor to act as an adjuster unless the individual holds a valid and subsisting adjuster's certificate of authority.

(4) No insurer may employ an individual or enter into a contract with a business to act as an adjuster unless the individual or business

- (a) holds a valid and subsisting adjuster's certificate of authority, or
- (b) meets the requirements of subsection (1)(b) or (2)(b).

Exception	<b>461</b> Despite section 460, an employee of a licensed insurer who acts or offers to act as an adjuster only with respect to prescribed types of claims is not required to obtain an adjuster's certificate of authority.
Representation	<p><b>462(1)</b> No business that acts as an adjuster may indicate in any manner that it represents another business that acts as an adjuster.</p> <p>(2) No individual may act as an adjuster for a business unless the individual holds a valid and subsisting adjuster's certificate of authority specifying that the individual is authorized to represent that business.</p> <p>(3) An individual who is an employee or independent contractor of a business may act as an adjuster for more than one business, but an individual must obtain a separate adjuster's certificate of authority for each business that the individual represents.</p> <p>(4) An individual who is an employee of an insurer and holds an adjuster's certificate of authority specifying that the individual is authorized to represent that insurer must not, while that certificate of authority is subsisting, be issued another adjuster's certificate of authority to represent a different insurer or a business.</p>
Designated representative for businesses	<p><b>463(1)</b> Every business that holds an adjuster's certificate of authority must have a designated representative who meets the prescribed requirements.</p> <p>(2) The designated representative of a sole proprietorship is its sole proprietor, unless the proprietor designates someone else to be the designated representative.</p>
Recommendation	<p><b>464(1)</b> Every individual that holds an adjuster's certificate of authority must</p> <p>(a) be an employee or independent contractor of a business that holds an adjuster's certificate of authority and be recommended by the designated representative of the business, or</p> <p>(b) be an employee of an insurer and be recommended by the insurer.</p> <p>(2) Subsection (1)(a) does not apply to the designated representative of a business.</p>

### **Certificates of Authority**

**Financial  
guarantee**

**465(1)** Every business and individual that holds a certificate of authority must meet the requirements respecting financial guarantees set out in the regulations.

**(2)** This section does not apply in respect of

- (a) a certificate of authority issued to an employee of a licensed insurer, or
- (b) a certificate of authority for a prescribed class or type of insurance or for a prescribed class or type of certificate holder.

**Names**

**466(1)** No business may be issued a new certificate of authority or have a certificate of authority renewed or reinstated if the name of the business

- (a) includes the words “insurance company” or “insurance corporation” or the French equivalent of those words, or
- (b) is identical or similar to the name of an insurer formed under the laws of Canada or of a province.

**(2)** The Minister may refuse to issue a new certificate of authority or to renew or reinstate a certificate of authority to a business if the Minister is satisfied that the name of the business is confusing or misleading.

**Application for  
certificate**

**467(1)** An application for a certificate of authority must

- (a) be filed with the Minister,
- (b) in the case of an insurance agent’s certificate of authority, specify the classes of insurance in respect of which the applicant wishes to transact,
- (c) contain the information, material and evidence required by the Minister, and
- (d) be accompanied by proof that the requirements respecting financial guarantees referred to in section 465(1) have been met.

**(2)** An application for an applicant’s new or reinstated certificate of authority must be accompanied by

- (a) a written recommendation of an insurer or designated representative as required by section 458, 459 or 464, as the case may be, and
  - (b) in the case of an application by a business for an insurance agent's or adjuster's certificate of authority, the written designation of an individual to be the business's designated representative.
- (3) The requirement to submit a designation under subsection (2)(b) applies to a sole proprietorship only if the sole proprietor designates someone other than the proprietor to be the designated representative.
- (4) After filing an application, the applicant must provide the Minister with any additional information, material and evidence that the Minister considers necessary.

**Refusing  
certificates -  
general  
grounds**

**468(1)** The Minister may refuse to issue an applicant's new certificate of authority if the requirements of this Act and the regulations relating to the certificate have not been met.

(2) The Minister may refuse to renew or reinstate an applicant's certificate of authority

- (a) on the grounds set out in section 480(1) in accordance with that section, and
- (b) if any of the requirements of this Act and the regulations, other than those referred to in section 480(1), relating to the certificate have not been met.

**Issuing  
certificates**

**469(1)** A business that is entitled to receive an insurance agent's certificate of authority for life insurance and one or more classes of property and casualty insurance must be issued

- (a) an insurance agent's certificate of authority for life insurance, and
- (b) one or more insurance agent's certificates of authority for the property and casualty insurance.

(2) If a certificate of authority is issued or renewed in respect of an individual who is an employee or independent contractor of a business, the certificate must state the name of the business that the individual is authorized to represent.

(3) If a certificate of authority is issued or renewed in respect of an individual who is an employee of an insurer, the certificate must

state the name of the insurer that the individual is authorized to represent.

(4) If an insurance agent's certificate of authority is to be issued to a sole proprietorship that has or intends to have one or more individuals working as insurance agents or if an adjuster's certificate of authority is to be issued to a sole proprietorship that has or intends to have one or more individuals working as adjusters, a certificate of authority must be issued in the name of the sole proprietorship and a certificate of authority must be issued in the name of the sole proprietor.

**Terms and conditions**

**470(1)** The Minister may issue a certificate of authority subject to terms and conditions provided for in the regulations.

(2) Every business and individual who holds a certificate of authority must comply with the terms and conditions to which the certificate is subject.

**Expiration**

**471** A certificate of authority expires in accordance with the regulations.

**Reinstating certificates**

**472** If a certificate of authority is suspended by or under this Act for an unspecified period of time, the certificate may be reinstated only if the holder submits an application for reinstatement to the Minister.

**Ceasing to be worker**

**473(1)** The certificate of authority of an individual who is an employee or independent contractor of a business or an employee of an insurer is automatically suspended when the individual ceases to be an employee or independent contractor of the business or an employee of the insurer.

(2) If an employee or independent contractor of a business or an employee of an insurer who acts as an insurance agent or adjuster ceases to be an employee or independent contractor of the business or insurer, the business or insurer, as the case may be, must, within 14 days from the date that the individual ceased to be an employee or independent contractor, notify the Minister in writing of this fact.

**Changes in designated representative**

**474(1)** A designated representative who resigns must

- (a) give a notice of resignation to the business that the designated representative represents, and
- (b) send a copy of the notice to the Minister.

(2) If a business that a designated representative represents revokes the designation or if the designated representative of a business dies, the business must immediately notify the Minister and, in the case of a revocation, provide the reasons for the revocation.

(3) If an insurer who has recommended that a designated representative be issued an insurance agent's certificate of authority cancels the recommendation, the insurer must immediately notify in writing the business and the Minister of the cancellation of the recommendation and the reasons for the cancellation.

(4) If a designated representative of a business resigns or dies, the business must, within 14 days from the resignation or death, submit to the Minister a written designation of an individual who meets the requirements of this Act and the regulations to be the new designated representative and, if the business does not comply with this requirement, the certificate of authority of the business is automatically suspended.

(5) When

- (a) a business revokes the designation of its designated representative,
- (b) an insurer cancels its recommendation of a designated representative, or
- (c) a designated representative no longer meets the prescribed requirements for being a designated representative,

the certificate of authority of the business represented by the designated representative is automatically suspended unless, before the events referred to in clauses (a) to (c) occur, the business submits to the Minister a written designation of an individual who meets the requirements of this Act and the regulations to be the new designated representative.

(6) If a business's certificate of authority is suspended under subsection (4) or (5), the certificates of authority of the business's employees and independent contractors are automatically suspended.

(7) When a designated representative of a business has died, a reference in this section to suspending the business's certificate of authority or to suspending the certificates of authority of the employees or independent contractors of the business refers to every class of certificate of authority that was held by the designated representative.

(8) When



(a) a business's designated representative resigns as a designated representative in respect of a class of certificate of authority,

(b) a business revokes the designation of a designated representative in respect of a class of certificate of authority,

(c) an insurer cancels a recommendation of a designated representative of a business, or

(d) a business's designated representative no longer meets the prescribed requirements for being a designated representative in respect of a class of certificate of authority,

a reference in this section to suspending the business's certificate of authority or to suspending the certificates of authority of the employees or independent contractors of the business refers to those certificates of authority that are of the same class as the class of certificate of authority in respect of which the designated representative resigned, was revoked or was no longer meeting the prescribed requirements for or in respect of which the recommendation was cancelled.

(9) This section does not apply in respect of a sole proprietorship whose designated representative is its sole proprietor.

Cancellation of  
recommendation  
by insurer  
- businesses

**475(1)** If an insurer who has recommended that a business be issued an insurance agent's certificate of authority cancels the recommendation or if the agency contract between that insurer and business is no longer in force, the insurer must immediately notify the Minister in writing

(a) of the cancellation of the recommendation and the reasons for the cancellation, or

(b) that the agency contract is no longer in force and the reasons why the agency contract is no longer in force.

(2) When an insurer who has recommended that a business be issued an insurance agent's certificate of authority cancels the recommendation or when the agency contract between that insurer and business is no longer in force, the business's insurance agent's certificate of authority is automatically suspended unless, before the cancellation of the recommendation or the termination or expiration of the agency contract, the business submits to the Minister a new insurer's written recommendation referred to in section 458(1) or 459(1) or (2), as the case may be.

(3) If a business's insurance agent's certificate of authority is suspended under subsection (2), the insurance agent's certificates

of authority for the business's employees and independent contractors are automatically suspended.

(4) If an insurer who has recommended that an employee or independent contractor of a business be issued an insurance agent's certificate of authority cancels the recommendation, the insurer must immediately notify the Minister in writing of the cancellation and the reasons for the cancellation.

(5) When an insurer who has recommended that an employee or independent contractor of a business be issued an insurance agent's certificate of authority cancels the recommendation, the employee's or independent contractor's certificate of authority is automatically suspended unless, before the cancellation of the recommendation, the employee or independent contractor submits to the Minister a new insurer's written recommendation referred to in section 458(2) or 459(4).

(6) When a business is required to replace the recommendation of an insurer, a reference in this section to suspending the business's certificate of authority or to suspending the certificates of authority of the employees or independent contractors of the business refers to

- (a) certificates of authority for life insurance if the insurer referred to in subsection (2) was the insurer that recommended the business receive an insurance agent's certificate of authority for life insurance,
- (b) certificates of authority for general insurance if the insurer referred to in subsection (2) was the insurer that recommended the business receive an insurance agent's certificate for general insurance, and
- (c) certificates of authority for accident and sickness insurance if the insurer referred to in subsection (2) was the insurer that recommended the business receive an insurance agent's certificate of authority for accident and sickness insurance.

Cancellation of  
recommendation by  
designated  
representative

**476** If a designated representative who recommended that an individual be issued a certificate of authority cancels the recommendation, the certificate of authority is automatically suspended, and the designated representative must immediately notify the Minister in writing of the cancellation and the reasons for the cancellation.

Cancellation of  
recommendation by insurer  
- employees

**477** If an insurer who recommended that one of its employees be issued a certificate of authority cancels the recommendation, the certificate of authority is automatically suspended, and the insurer must immediately notify the Minister in writing of the cancellation and the reasons for the cancellation.

Financial  
guarantee not  
in force

**478(1)** If, during the term of a certificate of authority, the financial guarantee referred to in section 465 maintained in respect of that certificate is no longer in force, the grantor of the financial guarantee must notify the Minister of this fact in accordance with the terms of the guarantee.

(2) If, during the term of the certificate of authority, the financial guarantee referred to in section 465 maintained in respect of the certificate is no longer in force, the certificate of authority is automatically suspended unless, while the guarantee is in force, the holder of the certificate satisfies the Minister that the holder is covered by a new financial guarantee that meets the requirements of section 465.

(3) If a business's certificate of authority is suspended under subsection (2), the certificates of authority for the business's employees and independent contractors are automatically suspended.

Notice of  
automatic  
suspension

**479** When the certificate of authority of an employee or independent contractor of a business is automatically suspended under the provision of this Part, the business must immediately notify the employee or independent contractor of the suspension.

Sanctions  
affecting  
certificates

**480(1)** If the Minister is satisfied that the holder or a former holder of a certificate of authority

- (a) has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty,
- (b) has contravened any provision of this Act or the regulations or similar legislation in another jurisdiction or legislation that is a predecessor of this Act or the regulations,
- (c) has unreasonably failed to pay any premium collected by the holder within the time period stipulated in the holder's agency contract to an insurer or an insurance agent who is entitled to the premium,
- (d) has placed insurance with an insurer not licensed in Alberta under this Act without complying with the provisions of this Act relating to unlicensed insurers, or

- (e) has demonstrated incompetence to act as an insurance agent in the case of an insurance agent's certificate of authority or to act as an adjuster in the case of an adjuster's certificate of authority,

the Minister may revoke, suspend or refuse to renew or reinstate one or more of the certificates of authority held by the holder, impose terms and conditions provided for in the regulations on one or more of the certificates of authority held by the holder and impose a penalty on the holder or former holder.

(2) The amount of a penalty imposed under subsection (1) is governed by the regulations.

(3) The Minister must notify the holder or former holder of a certificate of any decision of the Minister under subsection (1).

(4) If a penalty levied against a certificate holder under subsection (1) is not paid within 30 days of the serving of the written notice of the penalty and the decision of the Minister is not appealed, the certificate of authority is automatically suspended immediately following the last date for paying the penalty or appealing the decision, whichever is later, and remains suspended until the penalty is paid or cancelled or the certificate expires.

(5) If a certificate expires while it is suspended under subsection (1) or (4), the former holder of the certificate must not be issued a certificate of authority until any penalty that is imposed under this section is paid or the penalty is cancelled.

(6) A penalty need not be paid while the decision imposing it is under appeal.

(7) If any amount of the penalty is due and is not paid, that amount bears interest at the prescribed rate from the last date for paying it.

(8) If a business's certificate of authority is revoked or suspended by the Minister under subsection (1) or by the operation of subsection (4), the certificates of authority held by employees or independent contractors of the business are automatically suspended if they are of the same class as the business's certificate that is revoked or suspended, and the Minister must notify the employees and independent contractors of the suspension.

(9) The Minister must not impose a penalty under this section in respect of an act or omission more than 3 years after

- (a) the act or omission occurred, or

- (b) if the act or omission is of a continuing nature, the termination of the act or omission.

**Demand for  
information**

**481(1)** The Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified in the direction any information specified by the Minister relating to the matters in section 480(1).

(2) A person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.

(3) Where a person served with a direction under this section does not provide the information in accordance with the direction, the Minister may on 2 days' written notice to that person, without affecting any sanction that the person may be subject to under this Act, apply to the Court for an order under subsection (4).

(4) The Court may order the person to provide the information subject to any conditions the Court considers appropriate if the Court is satisfied that the information is in the possession or under the control of the person and is relevant to the matters in section 480(1).

(5) The Minister may copy or otherwise record any information provided under this section and must, within a reasonable time, return the originals of any documents that have been provided under this section to the person who provided them.

**Appeal**

**482** A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

**Consequence  
of revocation**

**483(1)** No business or individual whose insurance agent's certificate of authority has been revoked may be issued a new insurance agent's certificate of authority for one year after the revocation.

(2) Despite subsection (1), a business or individual whose insurance agent's certificate of authority has been revoked because of incompetence in respect of a class of insurance may be issued an insurance agent's certificate of authority in respect of a different class of insurance.

(3) No business or individual whose adjuster's certificate of authority has been revoked may be issued a new adjuster's certificate of authority for one year after the revocation.

Exemption  
from municipal  
licence fee

**484** The holder of a certificate of authority is exempt from payment of any licence fee imposed by a municipality or Metis settlement for the transaction of the business of insurance.

### **Duties and Prohibitions**

Screening  
procedures

**485(1)** Every insurer that recommends an individual or sole proprietor to be issued an insurance agent's certificate of authority must

- (a) establish reasonable screening procedures to determine whether the individual is suitable to act as an insurance agent, and
- (b) use those procedures to screen an individual or sole proprietor before making a recommendation.

(2) Every insurer that recommends an individual be issued an adjuster's certificate of authority must

- (a) establish reasonable screening procedures to determine whether the individual is suitable to act as an adjuster, and
- (b) use those procedures to screen an individual before making a recommendation.

(3) Every business that acts as an adjuster that designates an individual to be its designated representative must

- (a) establish reasonable screening procedures to determine whether the individual is suitable to act as an adjuster, and
- (b) use those procedures to screen an individual before making a designation.

(4) Every designated representative who recommends that an individual be issued an insurance agent's certificate of authority must

- (a) establish reasonable screening procedures to determine whether the individual is suitable to act as an insurance agent, and
- (b) use those procedures to screen an individual before making a recommendation.

**(5)** Every designated representative who recommends that an individual be issued an adjuster's certificate of authority must

- (a) establish reasonable screening procedures to determine whether the individual is suitable to act as an adjuster, and
- (b) use those procedures to screen an individual before making a recommendation.

Knowledgable  
personnel

**486** Every holder of a restricted insurance agent's certificate of authority and every insurer on behalf of which the holder is marketing insurance must

- (a) establish reasonable procedures to ensure that personnel marketing insurance for the holder are knowledgable about the insurance being marketed, and
- (b) use those procedures.

Information

**487** Every holder of a certificate of authority must, on the request of the Minister, provide the Minister with information and copies of any document in its possession relating to its insurance activities.

Insurance  
broker

**488** No insurance agent may purport to be an insurance broker unless

- (a) the insurance agent is a party to 2 or more subsisting agency contracts with different insurers, and
- (b) none of the agency contracts requires the insurance agent to deal only with insurance offered by one insurer.

Advertising

**489** No business or individual who is required to hold an insurance agent's or adjuster's certificate of authority before acting as an insurance agent or adjuster may indicate in an advertisement that the business or individual is an insurance agent or adjuster or offer in an advertisement to provide the services of an insurance agent or adjuster unless the business or individual, as the case may be, holds the appropriate valid and subsisting certificate of authority.

Disclosure of  
business  
name

**490(1)** No business that holds an insurance agent's certificate of authority and no employee or independent contractor of a business that holds an insurance agent's certificate of authority may indicate in any advertisement or document or in any other manner that the business's insurance agent activities are carried out under a

business name that is different from the name set out in the certificate of authority.

(2) No business that holds an adjuster's certificate of authority and no employee or independent contractor of a business that holds an adjuster's certificate of authority may indicate in any advertisement or document or in any other manner that the business's adjuster activities are carried out under a business name that is different from the name set out in the certificate of authority.

(3) Every business that holds a certificate of authority must ensure that its name as set out in the certificate of authority is shown in a conspicuous manner in all of its advertising, correspondence and contracts relating to the activities authorized by the certificate of authority.

Representa-  
tive's duty of  
disclosure

**491** An individual who acts as an insurance agent for 2 or more businesses must, before a potential client purchases insurance from the individual, disclose in writing to the client

(a) the name of the business the individual is representing, and

(b) that the disclosure under clause (a) is made for the purposes of complying with this section.

### Notices

Notices

**492(1)** Subject to subsection (2), any notice or document that is required under this Act or the regulations to be given to or served on a business that is required to hold a certificate of authority may be given to or served on the business's designated representative.

(2) Any notice or document that is required under this Act or the regulations to be given to or served on a business that holds a restricted insurance agent's certificate of authority may be given to or served on the individual designated by the business under section 457.

### Insurance Councils

Insurance  
councils

**493(1)** The following are continued as insurance councils:

(a) the Alberta Insurance Council;

(b) the General Insurance Council;

(c) the Life Insurance Council;



(d) the Insurance Adjusters' Council.

(2) The insurance councils referred to in subsection (1) are bodies corporate and consist of members determined in accordance with the regulations.

Delegated  
powers

**494** An insurance council may exercise any of the Minister's powers, duties or functions delegated to it by or under the regulations.

By-laws of  
insurance  
councils

**495(1)** Every insurance council must make by-laws governing

- (a) the notice required for and the holding and conduct of its meetings,
- (b) the quorum for its meetings,
- (c) the remuneration and expenses of its members,
- (d) the establishment and functions of any committees of the council, and
- (e) the indemnification of members of the council for matters in respect of which a provincial company may indemnify its directors pursuant to section 365,

and may make by-laws respecting other aspects of its internal proceedings.

(2) An insurance council that has made a by-law or an amendment to a by-law must file a copy of the by-law or amendment with the Minister within 30 days after making it, and the by-law or amendment has no effect unless it is approved by the Minister.

(3) The Minister must, within 60 days after receiving a copy of a by-law or an amendment from the insurance council that made the by-law or amendment, give written notice to the insurance council that the Minister approves or does not approve the by-law or amendment.

(4) The only grounds on which the Minister may refuse to approve a by-law or amendment are that the Minister considers the by-law or amendment

- (a) to be unjust or prejudicial to the public interest, or
- (b) to go beyond the council's powers to make by-laws.

(5) A by-law or amendment, if approved, comes into force on the date of the approval or the date, if any, specified for commencement in the by-law or amendment, whichever date is later.

Winding-up of  
insurance  
councils

**496** If an insurance council is wound up, the assets of the insurance council must, after the payment of the costs of the winding-up and any liabilities of the council, be transferred to the Crown in right of Alberta.

### **Regulations for Compensation Plan and Other Matters**

Compensation  
plan

**497(1)** The Lieutenant Governor in Council may make regulations establishing a plan for the purposes of compensating persons who have suffered loss as a result of the fraudulent activities of insurance agents and adjusters.

**(2)** Without limiting subsection (1), the regulations may provide for the following matters:

- (a) the designation or establishment of an entity to operate the plan and the powers, duties and functions of the entity and, if the entity is established by the regulations, whether the entity is a body corporate;
- (b) the insurance agents and adjusters who are members of the plan;
- (c) the meaning of fraudulent activities for the purposes of the plan;
- (d) who is eligible to receive payments from the plan, the grounds upon which payments may be made, the application process for payments and the amount of payments that may be made from the plan;
- (e) determining the amount of assessments that members of the plan are required to pay to the plan, when the assessments have to be paid, the liability of members or past members for unpaid assessments and the means of collecting unpaid assessments;
- (f) providing that an insurance agent's or adjuster's certificate of authority may be suspended or cancelled or not renewed for non-payment of assessments;
- (g) the subrogation of rights to the operator of the plan when a payment is made from the plan.

**498** The Lieutenant Governor in Council may make regulations

- (a) establishing classes or levels of certificates of authority and setting out the limitations and restrictions attached to each class or level of certificate;
- (b) respecting the requirements, conditions, training and experience for the issuance of new certificates of authority and the renewal and reinstatement of certificates of authority;
- (c) respecting the requirements for designated representatives;
- (d) respecting financial guarantees for the purposes of section 465, including establishing insurance as a type of financial guarantee;
- (e) respecting the classes or types of insurance or holders of certificates of authority for the purposes of section 465(2)(b);
- (f) respecting terms and conditions that may be imposed on a certificate of authority;
- (g) respecting the expiration of certificates of authority;
- (h) respecting the training and conduct of the employees of the holders of restricted insurance agent's certificates of authority who market insurance;
- (i) respecting the penalties that may be imposed under section 480(1);
- (j) respecting the appeal of a decision of the Minister referred to in section 482 including providing for
  - (i) the formation of an appeal body and the manner of appointment of members,
  - (ii) appeals to the courts,
  - (iii) whether a decision that is being appealed remains in force during an appeal,
  - (iv) matters relating to fees for making an appeal, and
  - (v) the powers, duties and functions of an appeal body;
- (k) respecting the replacement of an existing life insurance contract by another contract of life insurance and the duties

of insurers and insurance agents relating to the replacement;

- (l) respecting the composition, and the term and manner of determining members, of each insurance council;
- (m) authorizing the Minister to delegate any of the Minister's powers, duties or functions under this Part or the regulations under this Part and sections 794 and 795 to any of the insurance councils, establishing the restrictions on and limitations of any such delegation and otherwise respecting any such delegated powers, duties and functions;
- (n) respecting the fees, levies, penalties and other charges that are to be paid to insurance councils by insurers, insurance agents or adjusters for any thing an insurance council does under the authority of this Act, respecting the means of enforcing payment of the fees, levies, penalties or other charges and specifying that all, some or none of the fees, levies, penalties or other charges are to be remitted to the Provincial Treasurer;
- (o) respecting the winding-up and dissolution of an insurance council;
- (p) respecting any matter that is to be prescribed under this Part.

## **PART 4**

### **MARKET CONDUCT**

Dealing with  
unauthorized  
insurance  
agents

**499(1)** No insurer, no officer, employee or agent of an insurer and no insurance agent may, directly or indirectly, pay or allow, or offer or agree to pay or allow, any commission or other compensation or anything of value to any person acting or offering to act as an insurance agent in Alberta, unless that person is authorized to act as an insurance agent under this Act.

**(2)** Subsection (1) does not apply to the payment

- (a) by an insurance agent of part of the agent's commission to insurance agents outside Alberta, or
- (b) of renewal commissions under the terms of an agency contract.

Amount of  
premium

**500** No insurer, no officer, employee or agent of an insurer and no insurance agent may indicate that the premium to be paid for a policy is an amount that is different than the amount of the premium set out in the policy.

Premium  
refunds

**501(1)** This section does not apply to automobile insurance.

(2) If an insurer terminates a contract of insurance, the insurer must pay to the insured a refund of premiums in an amount calculated using the pro rata method.

(3) If an insured terminates a contract of insurance, the insurer must pay to the insured a refund of premiums in an amount calculated under the pro rata method unless the contract sets out a formula for a different method of calculating the amount of the refund and, if the different method involves a short rate premium, a table showing the short rate premiums.

(4) This section operates despite any statutory condition contained in a policy.

Payments to  
agent

**502(1)** A payment to an agent of an insurer or to an insurance agent who represents an insurer, whether in cash or by negotiable instrument and whether in whole or in part, of the amount of a premium

(a) due in respect of a contract issued by the insurer, or

(b) that will become due in respect of a contract not yet issued by the insurer,

is deemed a payment to the insurer, despite any condition or stipulation to the contrary.

(2) No agent of an insurer or insurance agent may receive or accept payment of a premium for a life insurance policy if the form of payment is a negotiable instrument payable to the agent.

Agent  
receiving  
premiums

**503** An insurance agent is, for the purpose of receiving any premium for a contract of insurance, the agent of the insurer under the contract, despite any conditions or stipulations to the contrary.

Agent trustee  
of premiums

**504(1)** An insurance agent who acts in negotiating, renewing or continuing a contract of insurance with an insurer and who receives a payment from the insured for a premium for the contract is deemed to hold the premium in trust for the insurer.

(2) If the insurance agent fails to pay the premium, less the agent's commission and any deductions to which, by the written consent of the insurer, the agent is entitled, over to the insurer within 30 days after the agent receives a written demand for payment of the premium, the agent's failure is prima facie proof that the agent has used or applied the premium for a purpose other than paying it over to the insurer.

**Additional fees**     **505(1)** In this section, "fee" does not include the premium payable under a contract of insurance.

(2) No insurance agent may charge or collect a fee for providing a service to a person who is or is in the process of acquiring insurance through the agent unless the person has agreed in writing before the service is provided to pay the fee.

**Providing copies of policies**     **506** Every insurer must, upon the request of the Minister, provide the Minister with a copy of any policy that evidences a contract of insurance that is made in Alberta.

**Prohibiting use of certain forms**     **507** Where, in the opinion of the Minister, a form of policy or contract of insurance or a form of application, endorsement, information folder or advertisement relating to insurance is unfair, misleading or deceptive, the Minister may by order prohibit an insurer or insurance agent or both from using that form, and the person who is subject to the order must comply with the order.

**Disclosure of name**     **508** Every licensed insurer must ensure that its name as set out in its licence is shown in a conspicuous manner in all of its advertising, correspondence, contracts of insurance and policies.

**Unfair practices**     **509(1)** No insurer, insurance agent or adjuster may

- (a) make a false or misleading statement, representation or advertisement,
- (b) engage in a tied selling practice prohibited by the regulations,
- (c) commit any unfair, coercive or deceptive practice, or
- (d) make any statement or representation or commit any practice or act that is prohibited by the regulations.

(2) No person may, by means of misleading or false statements, procure or induce or attempt to procure or induce any person to forfeit, surrender or allow the lapse of any policy of insurance.

Dealing with  
unauthorized  
insurers

**510(1)** In this section, “unauthorized insurer” in respect of a contract of insurance means an insurer that is not permitted by this Act to enter into the contract as the insurer.

(2) An insurance agent is personally liable to the insured under a contract of insurance made in Alberta by or through the agent directly or indirectly with an unauthorized insurer in the same manner as if the agent were a licensed insurer.

Regulations

**511(1)** The Lieutenant Governor in Council may make regulations

- (a) respecting the underwriting of risks by insurers, including the criteria to be used to determine if a risk is to be insured;
- (b) respecting the claims settlement practices of insurers;
- (c) respecting the confidentiality of information obtained by insurers, insurance agents or adjusters;
- (d) respecting insurance marketed through electronic media, including
  - (i) regulating and prohibiting specified activities involved in marketing insurance through electronic media,
  - (ii) disclosure requirements in respect of insurance marketed through electronic media, and
  - (iii) setting out the rights and remedies of insured who enter into contracts of insurance wholly or partly through electronic media;
- (e) respecting an insured’s right to rescind a contract of life insurance and an insurer’s obligation to refund premiums if the contract is rescinded;
- (f) respecting the disclosure by insurance agents to insured or potential insured of the fact that insurance agents are receiving compensation, inducements or benefits from insurers for contracts of insurance sold by the insurance agents;

- (g) respecting the disclosure by insurers, insurance agents and adjusters to insured or potential insured of information, other than the information referred to in clause (f), including
    - (i) the disclosure to the insured of amounts paid under contracts of insurance to third parties, and
    - (ii) the disclosure of the insured's right under an insurance policy to repairs and replacement of property that has been lost or damaged;
  - (h) describing the types of tied selling practices that are prohibited for the purposes of section 509(1)(b);
  - (i) respecting any matter that is to be prescribed under this Part.
- (2) The Minister may make regulations respecting ethical, operational and trade practices for insurers, insurance agents or adjusters, and the regulations may adopt, with or without modification, industry codes of conduct or guidelines relating to those matters.

## PART 5

### INSURANCE CONTRACTS

#### SUBPART 1

#### INSURANCE CONTRACTS IN ALBERTA

- |                           |   |
|---------------------------|---|
| Application               | <b>512</b> Except where otherwise provided and where not inconsistent with any other provision of this Act, the provisions of this Subpart apply to every contract of insurance other than a contract of life insurance to which Subpart 4 applies.   |
| Terms, etc., of contracts | <p><b>513(1)</b> All the terms and conditions of a contract of insurance must be set out in full in the policy or by writing securely attached to it when issued, and unless so set out no term of the contract or condition, stipulation, warranty or proviso modifying or impairing its effect is valid or admissible in evidence to the prejudice of the insured or any beneficiary.</p> <p><b>(2)</b> Subsection (1) does not apply to an alteration or modification of the contract agreed on in writing by the insurer and the insured after the issue of the policy.</p> <p><b>(3)</b> Every policy must contain</p> |



- (a) the name of the insurer;
  - (b) the name of the insured;
  - (c) the name of the person or persons to whom the insurance money is payable;
  - (d) the amount or the method of determining the amount of the premium for the insurance;
  - (e) the subject-matter of the insurance;
  - (f) the indemnity for which the insurer may become liable;
  - (g) the event on the happening of which the liability is to accrue;
  - (h) the date on which the insurance takes effect;
  - (i) the date it terminates or the method by which that date is fixed or is to be fixed.
- (4) Subsection (3) does not apply to contracts of accident and sickness insurance, guarantee insurance or hail insurance.
- (5) When a contract, whether it does or does not provide for its renewal, is renewed by a renewal receipt, it is a sufficient compliance with subsection (1) if the terms and conditions of the contract were set out as provided by that subsection and the renewal receipt refers to the contract by its number or date.
- (6) The proposal or application of the insured must not, as against the insured, be deemed to be a part of or be considered with the contract of insurance except in so far as the Court determines that it contains a material misrepresentation by which the insurer was induced to enter into the contract.
- (7) No contract of insurance may contain or have endorsed on it, or be made subject to, any term, condition, stipulation, warranty or proviso providing that the contract is avoided by reason of any statement in the application for the contract or inducing the insurer to enter into the contract, unless the term, condition, stipulation, warranty or proviso is limited to cases in which the statement is material to the contract, and no contract may be avoided by reason of the inaccuracy of any such statement unless it is material to the contract.
- (8) The question of materiality in any contract of insurance is a question of fact for the jury, or for the Court if there is no jury, and no admission, term, condition, stipulation, warranty or proviso to the contrary contained in the application or proposal for insurance

or in the instrument of contract or in any agreement or document relating to the contract of insurance has any force or validity.

(9) Nothing in this section impairs the effect of any statutory condition required by this Act to be inserted in any contract of insurance, or of any express provision of this Act.

(10) This section does not apply to contracts of automobile insurance.

**Appraisals**

**514(1)** This section applies to a contract, other than a contract of hail insurance, containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.

(2) The insured and the insurer must each appoint an appraiser, and the 2 appraisers so appointed must appoint an umpire.

(3) The appraisers must determine the matters in disagreement and, if they fail to agree, they must submit their differences to the umpire, and the finding in writing of any 2 determines the matters.

(4) Each party to the appraisal must pay the appraiser that the party appointed, and each party must bear equally the expense of the appraisal and the umpire.

(5) If

(a) a party fails to appoint an appraiser within 7 clear days after being served with written notice to do so,

(b) the appraisers fail to agree on an umpire within 15 days after their appointment, or

(c) an appraiser or umpire refuses to act or is incapable of acting or dies,

the Court may appoint an appraiser or umpire, as the case may be, on the application of the insured or of the insurer.

**Relief against  
forfeiture**

**515** When there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or another matter or thing required to be done or omitted to be done by the insured with respect to the loss and the consequent forfeiture or avoidance of the insurance in whole or in part and the Court considers it inequitable that the insurance should be forfeited or avoided on that ground, the Court may relieve against the forfeiture or avoidance on any terms it considers just.

Payment of insurance money	<b>516</b> Insurance money is payable in Alberta in lawful money of Canada.
Waivers	<p><b>517(1)</b> No term or condition of a contract is deemed to be waived by the insurer in whole or in part unless the waiver is stated in writing and signed by a person authorized for that purpose by the insurer.</p> <p>(2) Neither the insurer nor the insured is deemed to have waived any term or condition of a contract by any act relating to the appraisal of the amount of loss or to the delivery and completion of proofs or to the investigation or adjustment of any claim under the contract.</p>
Effect of delivery of policy	<p><b>518(1)</b> When the policy has been delivered the contract is as binding on the insurer as if the premium had been paid, although it has not in fact been paid and although delivered by an officer or agent of the insurer who had no authority to deliver it.</p> <p>(2) The insurer may sue for the unpaid premium and may deduct the amount of the unpaid premium from the amount for which the insurer is liable under the contract of insurance.</p> <p>(3) When a cheque, bill of exchange or promissory note is given, whether originally or by way of renewal, for the whole or part of any premium and the cheque, bill of exchange or promissory note is not honoured according to its tenor, the insurer may terminate the contract forthwith by giving written notice by registered mail.</p> <p>(4) In making the deduction mentioned in subsection (2), the insurer must allow to the insured the same discount on any unpaid premium as the insured would be entitled to if the unpaid premium were paid in cash at the date of the loss.</p>
Insurer to furnish forms	<p><b>519(1)</b> Every insurer, immediately on receipt of a request, and in any event not later than 60 days after receipt of notice of loss, must furnish to the insured or person to whom the insurance money is payable forms on which to make the proof of loss required under the contract.</p> <p>(2) An insurer who neglects or refuses to comply with subsection (1) is guilty of an offence, and, in addition, the provisions of section 520 are not available to the insurer as a defence to an action brought, after the neglect or refusal, for the recovery of money payable under the contract of insurance.</p> <p>(3) If the insurer has, within 30 days after notification of loss, adjusted the claim acceptably to the claimant and the adjustment</p>

has been signed by the claimant or the claimant's agent, or if the amount of loss has been determined by arbitration or appraisal as provided for in this Act, the insurer is deemed to have complied with this section.

(4) An insurer by furnishing forms to make proof of loss is not to be taken to have admitted that a valid contract is in force or that the loss in question falls within the insurance provided by the contract.

When action  
may be  
brought

**520** No action lies for the recovery of money payable under a contract of insurance until the expiration of 60 days after proof, in accordance with the provisions of the contract,

(a) of the loss, or

(b) of the happening of the event on which the insurance money is to become payable,

or of any shorter period fixed by the contract of insurance.

Relief from  
forfeiture

**521** When there has been imperfect compliance with a condition or term of the contract as to proof of loss to be given by the claimant and a consequent forfeiture or avoidance of the insurance, in whole or in part, and the Court considers it inequitable that the insurance be forfeited or avoided on that ground, the Court may relieve against the forfeiture or avoidance on any terms it considers just.

Consolidation  
of actions

**522(1)** When several actions are brought for the recovery of money payable under a contract or contracts of insurance, the Court may consolidate or otherwise deal with them so that there is only one action for and in respect of all the claims made in the actions.

(2) When an action is brought to recover the share of one or more minors, all the other minors entitled, or the trustees, executors or guardians entitled to receive payment of the shares of the other minors, must be made parties to the action, and the rights of all the minors must be determined in one action.

(3) In all actions where several persons are interested in the insurance money, the Court may apportion among the persons entitled any sum directed to be paid, and may give all necessary directions and relief.

Payment to  
payee  
domiciled or  
resident  
abroad

**523** When the person entitled to receive money due and payable under a contract of insurance, except insurance of the person, is domiciled or resides in a foreign jurisdiction and payment valid

according to the law of the foreign jurisdiction is made to the person, the payment is valid and effectual for all purposes.

Notice	<p><b>524(1)</b> Subject to any statutory condition and subsection (2), any notice given by an insurer for any of the purposes of this Act, when the mode of giving notice is not otherwise expressly provided for, may, in the case of a member or person insured, be given by mailing it to the post office address given in the member's or person's original application for insurance or otherwise notified in writing to the insurer.</p> <p>(2) Notices given by provincial companies to policyholders are governed by section 228.</p> <p>(3) Subject to any statutory condition, delivery of any written notice to an insurer for any of the purposes of this Act, when the mode of delivering the notice is not otherwise expressly provided for, may be delivered by letter to the chief agency of the insurer in Alberta or sent by registered mail addressed to the insurer, its manager or agent at that chief agency, or sent in any other manner to an authorized agent of the insurer.</p>
Furnishing of copy to insured	<p><b>525(1)</b> An insurer must on request furnish to the insured a true copy of</p> <p>(a) the insured's application or proposal for insurance, and</p> <p>(b) the insured's policy of insurance.</p> <p>(2) The insurer may charge a reasonable fee to cover its expenses in issuing any additional copies of the policy other than the first copy.</p>
Inconsistencies	<p><b>526</b> No insurer may make a contract of insurance inconsistent with this Act.</p>
Imperfect compliance	<p><b>527</b> Any act or omission of the insurer resulting in imperfect compliance with any of the provisions of this Act does not render a contract invalid as against the insured.</p>
Insurance against loss through negligence	<p><b>528</b> It is lawful for an insurer to contract to indemnify an insured against financial loss occasioned by reason of liability to a third person, whether or not the loss is caused by the insured through negligence or while contravening any municipal or Metis settlement by-law or any Act of the Legislature.</p>

Claim for  
indemnity

**529(1)** In this section, “contract of insurance” includes disability insurance undertaken as a part of a contract of life insurance.

(2) Unless a contract of insurance provides otherwise, a contravention of any criminal or other law in force in Alberta or elsewhere does not render unenforceable a claim for indemnity under a contract of insurance except when the contravention is committed by the insured, or by another person with the consent of the insured, with intent to bring about loss or damage.

Execution  
against  
insured  
unsatisfied

**530** In any case in which a person insured against liability for injury or damage to persons or property of others has failed to satisfy a judgment obtained by a claimant for the injury or damage and a writ of enforcement against the insured in respect of the judgment is returned unsatisfied, the enforcement creditor has a right of action against the insurer to recover an amount, not exceeding the face amount of the policy or the amount of the judgment, in the same manner and subject to the same equities as the insured would have if the judgment had been satisfied.

### **Insurance as Collateral Security**

Insurance as  
collateral  
security

**531(1)** A mortgagee must not accept and is not entitled to receive either directly or through the mortgagee’s agent or employee, and no officer or employee of a mortgagee may accept or receive, any commission or other remuneration or benefit in consideration of effecting a contract of insurance or renewal of a contract of insurance under which contract loss, if any, is payable to the mortgagee as such.

(2) No insurer or insurance agent may pay, allow or give any commission or other remuneration or benefit to a mortgagee or to any person in the employ of or on behalf of the mortgagee in consideration of effecting a contract of insurance or renewal of a contract of insurance, under which contract loss, if any, is payable to the mortgagee as such.

(3) Subsection (2) does not apply to an insurer that pays, allows or gives any commission or other remuneration or benefit to a mortgagee or to any person in the employ of or on behalf of a mortgagee in respect of a contract of insurance if the mortgagee is a deposit-taking institution that holds a restricted insurance agent’s certificate of authority and the contract of insurance falls within one or more of the classes of insurance specified by the Minister under section 454(2).

(4) A contract of title insurance must be in writing, and in addition to the other requirements established by this Act must expressly limit the liability of the insurer to a sum stated in the contract.

(5) An insurer or other person who contravenes this section is guilty of an offence.

(6) No person who engages in the business of lending money and who has an insurance agency or any interest in or connection with an insurance agency may require as a condition of the making of any loan that the borrower must

(a) cancel any subsisting policy of insurance issued by an insurer licensed to issue such a policy under this Act, and

(b) take out other insurance through the lender or through any agency with which the lender has any such interest or connection.

(7) No trust corporation may cancel any subsisting policy of insurance that is issued by an insurer licensed to issue such a policy under this Act that is issued in respect of any property for which the trust corporation is a trustee, unless the necessity for the continuation of the insurance does not exist and no other insurance of a similar description is taken out in respect of the property during the original term of the first-mentioned insurance.

(8) A money-lender who contravenes subsection (6), every trust corporation that contravenes subsection (7), an insurance agent who knowingly accepts any proposal for any insurance taken out in contravention of subsection (6) or (7) and an insurer who issues any contract of insurance with actual or constructive notice that it has been negotiated in contravention of subsection (6) or (7) is guilty of an offence.

Assignment of  
premium  
refund

**532(1)** If an insured assigns the right to refund of premium that may accrue by reason of the cancellation or termination of a contract of insurance under the terms of the contract of insurance and notice of the assignment is given by the assignee to the insurer, the insurer must pay any refund to the assignee despite any provision in this Act or condition in the contract, whether established under this Act or not, requiring the refund to be paid to the insured or to accompany any notice of cancellation or termination to the insured.

(2) If the condition in the contract dealing with cancellation or termination by the insurer provides that the refund must accompany the notice of cancellation or termination, the insurer must include in the notice a statement that, in lieu of payment of the refund in accordance with the condition, the refund is being paid to the assignee under this section.

Payment into  
Court by  
insurer

**533(1)** If an insurer cannot obtain sufficient discharge for insurance money for which it admits liability, the insurer may apply to the Court ex parte for an order for the payment of the insurance money into Court, and the Court may order the payment into Court to be made on any terms as to costs and otherwise that the Court directs, and may provide to what fund or name the amount is to be credited.

**(2)** The receipt of the clerk or other proper officer of the Court is sufficient discharge to the insurer for the insurance money paid into Court, and the insurance money must be dealt with according to the orders of the Court.

Filing of copy  
of policy, etc.,  
with Super-  
intendent

**534(1)** The Superintendent may require an insurer to file with the Superintendent a copy of any form of policy or of the form of application for any policy or of any endorsement or rider or advertising material issued or used by the insurer.

**(2)** This section applies to contracts of life insurance.

Variable life  
insurance  
policies

**535(1)** In this section and section 536, “variable life insurance policy” means a life insurance policy for which all or part of the insurer’s liability under the policy, and the reserves for the liabilities to be included in the insurer’s annual return pursuant to section 44, vary in amount depending on the market value of a specific group of assets.

**(2)** An insurer must not issue a variable life insurance policy unless

(a) the insurer files with the Superintendent, not less than 30 days before offering to undertake any insurance of that kind, the form of the policy, the form of the application for the policy, the form of all endorsements and riders to be used in connection with the policy, all advertising material to be issued or used by the insurer in connection with the insurance, an information folder pertaining to the insurance and any other material that may be required by the Superintendent, and

(b) the Superintendent has issued to the insurer a receipt for the items filed.

**(3)** The information folder must provide brief and plain disclosure of all material facts relating to the contract evidenced by the variable life insurance policy and must contain a certificate to that effect signed by the chief executive officer and the chief financial officer of the insurer or any other person that the Superintendent may require.



(4) An application for a contract evidenced by a variable life insurance policy must not be accepted by an insurer until the insurer has delivered to the applicant for the policy a copy of the latest information folder relating to the policy that is on file with the Superintendent.

(5) So long as an insurer continues to issue variable life insurance policies in respect of which it has filed an information folder, the insurer must,

- (a) forthwith after the occurrence of any material change in the contract or in any other facts set out in the latest information folder so filed, and
- (b) within 13 months after the date of filing of the latest information folder so filed, or some other period of time that may be ordered by the Minister,

file with the Superintendent a new information folder in respect of the policies.

Regulations

**536** The Lieutenant Governor in Council may make regulations providing for the form and content or either of a life insurance policy, of a variable life insurance policy, of an application for a life insurance policy or a variable life insurance policy, of an endorsement or rider to a policy, of any advertising material or of an information folder issued or used by an insurer.

## SUBPART 2

### FRATERNAL SOCIETIES

Definition

**537** In this Subpart, “member” means a member of a fraternal society who is resident in Alberta.

Policy

**538(1)** When a person becomes a member of a fraternal society, the society must provide the member with a policy that contains or that has attached to it all the terms and conditions of the contract of insurance.

(2) If the terms and conditions of the contract of insurance between a fraternal society and its members are changed, deleted or added to, the society must as soon as practicable provide its members with a notice that contains the change, deletion or addition.

**(3)** A fraternal society must not enforce a term or condition of a contract of insurance to the prejudice of a member or a beneficiary unless

(a) a copy of the term or condition has been provided to the member, or

(b) the society has made reasonable attempts to provide a copy of the term or condition to the member.

**(4)** This section does not apply to a fraternal society that issues a group insurance policy to a person representing the members of the society.

Group  
insurance  
policy

**539(1)** When a person becomes a member of a fraternal society that issues a group insurance policy to a person representing the members of the society, the society must provide the member covered under the group insurance policy with a summary of the insurance benefits provided by the policy.

**(2)** If the benefits under a group insurance policy referred to in subsection (1) are changed, deleted or added to, the society must as soon as practicable provide its members with a notice of the change, deletion or addition.

Rules  
deliverable on  
demand

**540(1)** In this section, “insurance fund”, in respect of a fraternal society, includes all money, securities for money and assets appropriated by the rules of the society to the payment of insurance liabilities or appropriated to the management of the insurance branch or department or division of the society, or otherwise legally available for insurance liabilities, but does not include funds of a trade union under the *Labour Relations Code* or under the *Public Service Employee Relations Act* appropriated to or applicable for the voluntary assistance of wage-earners unemployed or on strike.

**(2)** On payment of a reasonable fee, a fraternal society must deliver a copy of all rules of the society relating to its insurance contracts and to the management and application of its insurance fund to any person requiring it.

**(3)** An officer or agent of a fraternal society must not, with intent to mislead or defraud, give to any person a copy of rules that are not in force on the pretence that they are the rules then in force.

Member's  
liability

**541(1)** The liabilities of a member under the member's contract are at any date limited to the assessments, fees and dues that became payable while the person was a member of the society and

of which notice has been given in accordance with the constitution and rules of the society.

(2) A member may at any time withdraw from the society by delivering or sending by registered mail to the society notice in writing of the person's intention to withdraw and by paying or tendering the assessments, fees and dues referred to in subsection (1).

(3) This section is subject to any rules to the contrary approved by the Superintendent.

Notice to  
members

**542(1)** Subject to subsection (2), any notice required to be given to a member for any purpose of this Act or of the rules of the fraternal society may be given by written or printed notice delivered or sent to the member by registered mail or left at the member's last known place of residence or business or published in the official paper of the society.

(2) A notice of the reduction of any benefit payable under a contract of insurance or of the increase of the premium payable under the contract must be sent by registered mail to the member at the member's last known place of residence or of business.

### **SUBPART 3**

#### **FIRE INSURANCE**

##### **General Provisions**

Application of  
Subpart

**543(1)** This Subpart applies to insurance against loss of or damage to property arising from the peril of fire in any contract made in Alberta, except

- (a) insurance falling within the classes of aircraft, automobile, boiler and machinery, inland transportation, marine, plate glass, sprinkler leakage and theft insurance,
- (b) when the subject-matter of the insurance is rents, charges or loss of profits,
- (c) when the peril of fire is an incidental peril to the coverage provided, or
- (d) when the subject-matter of the insurance is property that is insured by an insurer or group of insurers primarily as a nuclear risk under a policy covering against loss of or damage to the property resulting from nuclear reaction or nuclear radiation and from other perils.

(2) Despite subsection (1), this Subpart applies to insurance of an automobile as provided in section 37(2).

Extent of  
coverage

**544(1)** Subject to subsection (4) and to section 552(1)(a), in any contract to which this Subpart applies the contract is deemed to cover the insured property

- (a) against fire, whether resulting from explosion or otherwise, not occasioned by or happening through
  - (i) in the case of goods, their undergoing any process involving the application of heat, or
  - (ii) riot, civil commotion, war, invasion, act of foreign enemy, hostilities, whether war is declared or not, civil war, rebellion, revolution, insurrection or military power;
- (b) against lightning, but excluding destruction or loss to electrical devices or appliances caused by lightning or other electrical currents, unless fire originates outside the article itself and only for the destruction or damage that occurs from that fire;
- (c) against explosion not occasioned by or happening through any of the perils specified in clause (a)(ii) of natural, coal or manufactured gas in a building not forming part of a gas works, whether fire ensues from the explosion or not.

(2) Unless a contract to which this Subpart applies otherwise specifically provides, it does not cover the insured property against loss or damage caused by contamination by radioactive material directly or indirectly resulting from fire, lightning or explosion within the meaning of subsection (1).

(3) If property insured under a contract covering at a specified location is necessarily removed to prevent loss or damage or further loss or damage to the property, that part of the insurance under the contract that exceeds the amount of the insurer's liability for any loss incurred must, for 7 days only or for the unexpired term of the contract if less than 7 days, cover the property removed and any property remaining in the original location in the proportions that the value of the property in each of the respective locations bears to the value of the property in them all.

(4) Nothing in subsection (1) precludes an insurer's giving more extended insurance against the perils mentioned in subsection (1), but in that case this Subpart does not apply to the extended insurance.

(5) An insurer licensed to undertake fire insurance may include in its insurance contracts a clause or endorsement providing that, in the case of livestock insured against death or injury caused by fire or lightning, the word "lightning" is deemed to include other electrical currents.

Over-  
insurance

**545(1)** No insurance agent may knowingly issue any contract for fire insurance on property situated in Alberta for an amount that with any existing contracts exceeds the fair value of the property or of the interest of the insured in the property.

(2) Any insurer or insurance agent who knowingly effects, and any insured person who knowingly procures, insurance on any building or property, or interest in any building or property, against loss or damage by fire in excess of its insurable value is guilty of an offence.

(3) Every adjuster who holds an adjuster's certificate of authority and who adjusts any loss by fire to property situated in Alberta must

- (a) ascertain whether there is any over-insurance on the property,
- (b) ascertain the facts and circumstances, so far as practicable, pertaining to the origin and the cause of the fire, and
- (c) report the adjuster's findings in writing, together with any circumstances that, in the adjuster's belief, indicate any offence against the law of Alberta or Canada, to the Fire Commissioner of the Department of Labour, Government of Alberta and to the Superintendent.

(4) In the event of the total destruction of any insured property with respect to which the total amount of insurance money payable is less than the total amount of insurance on the insured property, the insurer or insurers must return to the insured person the total amount of insurance premium paid for the excess of the insurance over the appraised value of the property at the time of the loss, and the amount must be paid to the insured at the same time and in the same manner as the loss is paid.

(5) Subsection (4) does not apply

- (a) when an insured person has knowingly placed insurance in excess of the insurable value of any building or property or interest in any building or property, or
- (b) to insurance on stocks or merchandise.

(6) No prosecution may be instituted under subsection (2) without the consent of the Minister of Justice and Attorney General.

Application for  
fire insurance

**546(1)** No insurer may make a contract covering property situated outside the limits of a city, town or village for a term exceeding 12 months without a written application for the contract signed by the applicant or, in case of the absence or inability of the applicant to make the application, by the applicant's agent or by a person having an insurable interest in the property.

(2) A written application required under subsection (1) must set out the name, address and occupation of the applicant, the description, location and occupancy of the property to be insured, its value, particulars of any mortgage, lien or other encumbrance on the property, the purpose for which and the location in which any movable property is deposited or used, particulars of all previous fire claims made by the applicant together with the name of the company or companies against whom the claims were made, whether any insurer has cancelled any fire policy or refused fire insurance to the applicant and any other information the insurer requires.

Form of  
contract

**547** After an application for insurance is made, if it is in writing, any policy sent to the insured is deemed to be intended to be in accordance with the terms of the application unless the insurer points out in writing the differences from the application, in which case the insured may, within 2 weeks after the receipt of the notification, reject the policy.

Mortgagees  
and other  
payees

**548(1)** When the loss, if any, under a contract has, with the consent of the insurer, been made payable to a person other than the insured, the insurer must not cancel or alter the policy to the prejudice of that person without notice to that person.

(2) The length of and manner of giving the notice under subsection (1) must be the same as notice of cancellation to the insured under the statutory conditions in the contract.

Statutory  
conditions

**549(1)** The conditions set out in this section are deemed to be part of every contract in force in Alberta and must be printed on every policy with the heading "Statutory Conditions", and no variation or omission of or addition to any statutory condition is binding on the insured.

(2) In this section, "policy" does not include an interim receipt or binder.

## **Statutory Conditions**

**MISREPRESENTATION** 1 If any person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance which is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract shall be void as to any property in relation to which the misrepresentation or omission is material.

**PROPERTY OF OTHERS** 2 Unless otherwise specifically stated in the contract, the insurer is not liable for loss or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the contract.

**CHANGE OF INTEREST** 3 The insurer shall be liable for loss or damage occurring after an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada) or change of title by succession, by operation of law, or by death.

**MATERIAL CHANGE** 4 Any change material to the risk and within the control and knowledge of the insured shall avoid the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent; and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if he desires the contract to continue in force, he must, within 15 days of the receipt of the notice, pay to the insurer an additional premium; and in default of such payment the contract shall no longer be in force and the insurer shall return the unearned portion, if any, of the premium paid.

**TERMINATION OF INSURANCE** 5(1) This contract may be terminated

(a) by the insurer giving to the insured 15 days' notice of termination by registered mail or 5 days' written notice of termination personally delivered;

(b) by the insured at any time on request.

(2) Where this contract is terminated by the insurer

(a) the insurer shall refund the excess of premium actually paid by the insured over the pro rata premium for the expired time, but, in no event shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and

- (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.
- (3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but, in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (4) The refund may be made by money, postal or express company money order, or by cheque payable at par.
- (5) The 15 days mentioned in clause (a) of subcondition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

**REQUIREMENTS AFTER LOSS** 6(1) On the occurrence of any loss of or damage to the insured property, the insured shall, if such loss or damage is covered by the contract, in addition to observing the requirements of Conditions 9, 10 and 11,

- (a) forthwith give notice thereof in writing to the insurer;
- (b) deliver as soon as practicable to the insurer a proof of loss verified by statutory declaration
  - (i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed;
  - (ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes;
  - (iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured;
  - (iv) showing the amount of other insurances and the names of other insurers;
  - (v) showing the interest of the insured and of all others in the property with particulars of all liens, encumbrances and other charges on the property;



- (vi) showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract;
  - (vii) showing the place where the property insured was at the time of loss;
  - (c) if required, give a complete inventory of undamaged property and showing in detail quantities, cost, actual cash value;
  - (d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any other contract.
- (2) The evidence furnished under clauses (c) and (d) of subparagraph (1) of this condition shall not be considered proofs of loss within the meaning of Conditions 12 and 13.

**FRAUD** 7 Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, shall vitiate the claim of the person making the declaration.

**WHO MAY GIVE NOTICE AND PROOF** 8 Notice of loss may be given, and proof of loss may be made, by the agent of the insured named in the contract in case of absence or inability of the insured to give the notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

**SALVAGE** 9(1) The insured, in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to any such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereto.

(2) The insurer shall contribute pro rata towards any reasonable and proper expenses in connection with steps taken by the insured and required under subparagraph (1) of this condition according to the respective interests of the parties.

**ENTRY, CONTROL, ABANDONMENT** 10 After any loss or damage to insured property, the insurer shall have an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make appraisalment or particular estimate of the loss or

damage, but the insurer shall not be entitled to control or possession of the insured property, and without the consent of the insurer there can be no abandonment to it of insured property.

**APPRAISAL** 11 In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be any recovery under this contract whether the right to recovery on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

**WHEN LOSS PAYABLE** 12 The loss shall be payable within 60 days after completion of the proof of loss, unless the contract provides for a shorter period.

**REPLACEMENT** 13(1) The insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention so to do within 30 days after receipt of the proofs of loss.

(2) In that event the insurer shall commence to so repair, rebuild, or replace the property within 45 days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.

**ACTION** 14 Every action or proceeding against the insurer for the recovery of any claim under or by virtue of this contract shall be absolutely barred unless commenced within one year next after the loss or damage occurs.

**NOTICE** 15 Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.

Limitation of  
liability clause

**550** A contract containing

- (a) a deductible clause,
- (b) a co-insurance, average or similar clause, or
- (c) a clause limiting recovery by the insured to a specified percentage of the value of any property insured at the time of loss, whether or not that clause is conditional or unconditional,

must have printed or stamped on the face of the policy in red ink or bold type the words:

This policy contains a clause which may limit the amount payable.

and, unless these words are so printed or stamped, the clause is not binding on the insured.

Rateable  
contributions

**551(1)** When, on the happening of any loss or damage to insured property, there is in force more than one contract covering the same interest, the insurers under the respective contracts are each liable to the insured for its rateable proportion of the loss unless it is otherwise expressly agreed in writing between the insurers.

(2) For the purpose of subsection (1), a contract is deemed to be in force despite any term of the contract that the policy does not cover, come into force, attach or become insurance with respect to the property until after full or partial payment of any loss under any other policy.

(3) Nothing in subsection (1) affects the validity of any division of the sum insured into separate items, any limits of insurance on specified property, any clause referred to in section 550 or any contract condition limiting or prohibiting the having or placing of other insurance.

(4) Nothing in subsection (1) affects the operation of any deductible clause, and

(a) if one contract contains a deductible, the pro rata proportion of the insurer under that contract must be first ascertained without regard to the clause and then the clause must be applied only to affect the amount of recovery under that contract, and

(b) if more than one contract contains a deductible, the pro rata proportion of the insurers under those contracts must be first ascertained without regard to the deductible clauses and then the highest deductible must be pro rated among the insurers with deductibles, and those pro rated amounts affect the amount of recovery under those contracts.

(5) Nothing in subsection (4) may be construed to have the effect of increasing the pro rata contributions of an insurer under a contract that is not subject to a deductible clause.

(6) Despite subsection (1), insurance on identified articles are a first loss insurance as against all other insurance.

Special  
stipulations

**552(1)** When a contract

- (a) excludes any loss that would otherwise fall within the coverage described in section 544, or
- (b) contains any stipulation, condition or warranty that is or may be material to the risk including, but not restricted to, a provision in respect to the use, condition, location or maintenance of the insured property,

the exclusion, stipulation, condition or warranty is not binding on the insured if it is held to be unjust or unreasonable by the court before which a question relating to it is tried.

(2) The insurer and the insured, instead of proceeding under Statutory Condition 11, may at any time after the loss or damage make a joint survey, examination, estimate or appraisal of the loss or damage, in which case the insurer is deemed to have waived all right to make a separate survey, examination, estimate or appraisal of the loss or damage.

Subrogation

**553(1)** The insurer, on making any payment or assuming liability for making any payment under a contract of fire insurance, is subrogated to all rights of recovery of the insured against any person, and may bring action in the name of the insured to enforce those rights.

(2) If the net amount recovered after deducting the costs of recovery is not sufficient to provide a complete indemnity for the loss or damage suffered, that amount must be divided between the insurer and the insured in the proportions in which the loss or damage has been borne by them.

## SUBPART 4

### LIFE INSURANCE

Definitions

**554** In this Subpart,

- (a) “application” means an application for insurance or for the reinstatement of insurance;
- (b) “beneficiary” means a person, other than the insured or the insured’s personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration;
- (c) “contract” means a contract of insurance;

- (d) “creditor’s group insurance” means insurance effected by a creditor in respect of the lives of the creditor’s debtors by which the lives of those debtors are insured severally under a single contract;
- (e) “declaration” means an instrument signed by the insured
  - (i) with respect to which an endorsement is made on the policy,
  - (ii) that identifies the contract, or
  - (iii) that describes the insurance or insurance fund or a part of the insurance or insurance fund,
 in which the insured designates or alters or revokes the designation of the insured’s personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable;
- (f) “family insurance” means insurance in which the lives of the insured and one or more persons related to the insured by blood, marriage or adoption are insured under a single contract between an insurer and the insured;
- (g) “group insurance” means insurance, other than creditor’s group insurance and family insurance, in which the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person;
- (h) “group life insured” means a person (the “primary person”) whose life is insured by a contract of group insurance but does not include a person whose life is insured under the contract as a person dependent on or related to the primary person;
- (i) “instrument” includes a will;
- (j) “insurance” means life insurance;
- (k) “insured”
  - (i) in the case of group insurance means, in the provisions of this Subpart relating to the designation of beneficiaries and the rights and status of beneficiaries, the group life insured, and
  - (ii) in all other cases means the person who makes a contract with an insurer.

### Application of Subpart

Annuity  
deemed life  
insurance

**555** For the purposes of this Subpart, an undertaking entered into by an insurer to provide an annuity, or what would be an annuity except that the periodic payments may be unequal in amount, is deemed to be and always to have been life insurance whether the annuity is for

- (a) a term certain,
- (b) a term dependent either solely or partly on a human life, or
- (c) a term dependent solely or partly on the happening of an event not related to a human life.

Application of  
Subpart

**556(1)** Despite any agreement, condition or stipulation to the contrary, this Subpart applies to a contract made in Alberta on or after July 1, 1962 and, subject to subsections (2) and (3), applies to a contract made in Alberta before that date.

(2) The rights and interests of a beneficiary for value under a contract that was in force immediately before July 1, 1962 are those provided in Part 6 of the Act then in force.

(3) If the person who would have been entitled to the payment of insurance money if the money had become payable immediately before July 1, 1962 was a preferred beneficiary within the meaning of Part 6 of the Act then in force, the insured must not, except in accordance with that Part,

- (a) alter or revoke the designation of a beneficiary, or
- (b) assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract,

but this subsection does not apply after a time at which the insurance money, if it were then payable, would be payable wholly to a person other than a preferred beneficiary within the meaning of that Part.

Application of  
Subpart

**557** In the case of a contract of group insurance made with an insurer authorized to transact insurance in Alberta at the time the contract was made, this Subpart applies in determining

- (a) the rights and status of beneficiaries if the group life insured was resident in Alberta at the time the group life insured became insured, and

- (b) the rights and obligations of the group life insured if the group life insured was resident in Alberta at the time the group life insured became insured.

### **Issuance of Policy and Contents**

Issuance of  
policy

**558(1)** An insurer entering into a contract must issue a policy.

(2) Subject to subsection (3), the provisions in

- (a) the application,
- (b) the policy,
- (c) any document attached to the policy when issued, and
- (d) any amendment to the contract agreed on in writing after the policy is issued,

constitute the entire contract.

(3) In the case of a contract made by a fraternal society, the policy, the Act or instrument of incorporation of the society, its constitution, by-laws and rules and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant constitute the entire contract.

(4) An insurer must, on request, furnish to the insured or to a claimant under the contract a copy of the application.

Particulars in  
policy

**559(1)** This section does not apply to a contract

- (a) of group insurance,
- (b) of creditor's group insurance, or
- (c) made by a fraternal society.

(2) An insurer must set out the following particulars in the policy:

- (a) the name or a sufficient description of the insured and of the person whose life is insured;
- (b) the amount or the method of determining the amount of the insurance money payable, and the conditions under which it becomes payable;
- (c) the amount, or the method of determining the amount, of the premium and the period of grace, if any, within which it may be paid;

- (d) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer;
- (e) the conditions on which the contract may be reinstated if it lapses;
- (f) the options, if any,
  - (i) of surrendering the contract for cash,
  - (ii) of obtaining a loan or an advance payment of the insurance money, and
  - (iii) of obtaining paid-up or extended insurance.

Particulars in  
policy

**560** In the case of a contract of group insurance or of creditor's group insurance, an insurer must set out the following particulars in the policy:

- (a) the name or a sufficient description of the insured;
- (b) the method of determining the persons whose lives are insured;
- (c) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;
- (d) the period of grace, if any, within which the premium may be paid;
- (e) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer.

Particulars in  
certificate

**561** In the case of a contract of group insurance, an insurer must issue, for delivery by the insured to each group life insured, a certificate or other document in which are set out the following particulars:

- (a) the name of the insurer and an identification of the contract;
- (b) the amount or the method of determining the amount of insurance on the group life insured and on any person whose life is insured under the contract as a person dependent on or related to the group life insured;



- (c) the circumstances in which the insurance terminates and the rights, if any, on termination of the group life insured or of any person whose life is insured under the contract as a person dependent on or related to the group life insured.

### **Formation of Contract**

**Insurable interest**

**562(1)** Subject to subsection (2), if at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

**(2)** A contract is not void for lack of insurable interest

- (a) if it is a contract of group insurance, or
- (b) if the person whose life is insured has consented in writing to the insurance being placed on the person's life.

**(3)** If the person whose life is insured is under the age of 16 years consents to insurance being placed on the person's life may be given by one of the person's parents or by someone standing in loco parentis to the person.

**Persons insurable**

**563** Without restricting the meaning of the expression "insurable interest", a person (the "primary person") has an insurable interest in the primary person's own life and in the life of

- (a) the primary person's child or grandchild,
- (b) the primary person's spouse,
- (c) any person on whom the primary person is wholly or in part dependent for or from whom the primary person is receiving support or education,
- (d) the primary person's employee, and
- (e) any person in the duration of whose life the primary person has a pecuniary interest.

**When contract takes effect**

**564(1)** Subject to any provision to the contrary in the application or the policy, a contract does not take effect unless

- (a) the policy is delivered to an insured, the insured's assign or agent or a beneficiary,
- (b) payment of the first premium is made to the insurer or its authorized agent, and

(c) no change has taken place in the insurability of the life to be insured between the time the application was completed and the time the policy was delivered.

(2) When a policy is issued on the terms applied for and is delivered to an agent of the insurer for unconditional delivery to a person referred to in subsection (1)(a), it is deemed to have been delivered to the insured, but not to the prejudice of the insured.

Cheque for  
premium not  
honoured

**565(1)** When a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the whole or part of a premium and payment is not made according to its tenor, the premium or the part of the premium is deemed not to have been paid.

(2) When a remittance for or on account of a premium is sent in a registered letter to an insurer and is received by it, the remittance is deemed to have been received at the time of the registration of the letter.

Payment of  
premium by  
beneficiary

**566(1)** In this section, “industrial contract” means a contract of life insurance for an amount not exceeding \$2000, exclusive of any benefit, surplus, profit, dividend or bonus also payable under the contract, that provides for payment of premiums at fortnightly or shorter intervals or, if the premiums are usually collected at the home of the insured, at monthly intervals.

(2) Except in the case of group insurance, an assignee of a contract, a beneficiary or a person acting on behalf of one of them or of the insured may pay any premium that the insured is entitled to pay.

(3) If a premium, other than the initial premium, is not paid at the time it is due, the premium may be paid within a period of grace of

(a) 30 days, or in the case of an industrial contract 28 days, from and excluding the day on which the premium is due, or

(b) the number of days, if any, specified in the contract for payment of an overdue premium,

whichever is the longer period.

(4) When the happening of the event on which the insurance money becomes payable occurs during the period of grace and before the overdue premium is paid, the contract is deemed to be in effect as if the premium had been paid at the time it was due, but the amount of the premium, together with interest at the rate

specified in the contract, but not exceeding 6% per year, and the balance, if any, of the current year's premium may be deducted from the insurance money.

Disclosure of  
material facts

**567(1)** An applicant for insurance and a person whose life is to be insured must each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within the applicant's or person's knowledge that is material to the insurance and is not so disclosed by the other.

(2) Subject to section 568, a failure to disclose, or a misrepresentation of, such a fact renders the contract voidable by the insurer.

Disclosure and  
misrepresentation by  
insured

**568(1)** This section does not apply to a misstatement of age or to disability insurance.

(2) Subject to subsection (3), when a contract has been in effect for 2 years during the lifetime of the person whose life is insured, a failure to disclose, or a misrepresentation of, a fact required by section 567 to be disclosed does not, in the absence of fraud, render the contract voidable.

(3) In the case of a contract of group insurance a failure to disclose, or a misrepresentation of, a fact required by section 567 to be disclosed in respect of a person whose life is insured under the contract does not render the contract voidable, but if evidence of insurability is specifically requested by the insurer, the insurance in respect of that person is voidable by the insurer unless it has been in effect for 2 years during the lifetime of that person, in which event it is not, in the absence of fraud, voidable.

Non-disclosure  
and misrepresentation by  
insurer

**569** If an insurer fails to disclose or misrepresents a fact material to the insurance, the contract is voidable by the insured, but in the absence of fraud the contract is not by reason of the failure or misrepresentation voidable after the contract has been in effect for 2 years.

Misstatement  
of age

**570(1)** This section does not apply to a contract of group insurance or of creditor's group insurance.

(2) Subject to subsection (3), if the age of a person whose life is insured is misstated to the insurer, the insurance money provided by the contract must be increased or decreased to the amount that would have been provided for the same premium at the correct age.

(3) If a contract limits the insurable age and the correct age of the person whose life is insured at the date of the application exceeds the age so limited, the contract is, during the lifetime of that person but not later than 5 years from the date the contract takes effect, voidable by the insurer within 60 days after it discovers the error.

Misstatement  
of age

**571** In the case of a contract of group insurance or of creditor's group insurance, a misstatement to the insurer of the age of a person whose life is insured does not of itself render the contract voidable and the provisions, if any, of the contract with respect to age or misstatement of age apply.

Suicide clause

**572(1)** When a contract contains an undertaking, express or implied, that insurance money will be paid if a person whose life is insured commits suicide, the undertaking is lawful and enforceable.

(2) When a contract provides that if a person whose life is insured commits suicide within a certain period of time the contract is void or the amount payable under it is reduced, if the contract lapses and is subsequently reinstated on one or more occasions, the period of time commences to run from the date of the latest reinstatement.

Reinstatement  
of contract

**573(1)** This section does not apply to a contract of group insurance or to a contract made by a fraternal society.

(2) If a contract lapses and the insured applies within 2 years for reinstatement of the contract, if within that time the insured

(a) pays the overdue premiums and other indebtedness under the contract to the insurer, together with interest at the rate specified in the contract but not exceeding 6% per year compounded annually, and

(b) produces

(i) evidence satisfactory to the insurer of the good health, and

(ii) other evidence satisfactory to the insurer of the insurability,

of the person whose life was insured,

the insurer must reinstate the contract.

(3) Subsection (2) does not apply when the cash surrender value has been paid or an option of taking paid-up or extended insurance has been exercised.

(4) Sections 567 and 568 apply, with all necessary modifications, to the reinstatement of a contract.

### Designation of Beneficiaries

Designation of  
beneficiary

**574(1)** An insured may in a contract or by a declaration designate the insured's personal representative or a beneficiary to receive insurance money.

(2) Subject to section 575, the insured may alter or revoke the designation by a declaration.

(3) A designation in favour of the "heirs", "next of kin" or "estate" of the insured, or the use of words of similar meaning in a designation, are deemed to be a designation of the personal representative of the insured.

Irrevocable  
designation

**575(1)** An insured may in a contract or by a declaration, other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life is insured designate a beneficiary irrevocably, and in that event the insured, while the beneficiary is living, must not alter or revoke the designation without the consent of the beneficiary and the insurance money is not subject to the control of the insured or of the insured's creditors and does not form part of the insured's estate.

(2) When the insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed as provided in subsection (1), the designation has the same effect as if the insured had not purported to make it irrevocable.

Designation in  
will

**576(1)** A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will, or that the designation is invalid as a bequest under the will.

(2) Despite the *Wills Act*, a designation in a will is of no effect against a designation made later than the making of the will.

(3) When a designation is contained in a will, if subsequently the will is revoked by operation of law or otherwise, the designation is revoked.

(4) When a designation is contained in an instrument that purports to be a will, if subsequently the instrument is valid as a will would be revoked by operation of law or otherwise, the designation is revoked.

Trustee for  
beneficiary

**577(1)** An insured may in a contract or by a declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by a declaration.

(2) A payment made by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the payment.

Beneficiary  
predeceasing  
life insured

**578(1)** If a beneficiary predeceases the person whose life is insured and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by a declaration, the share is payable

(a) to the surviving beneficiary,

(b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares, or

(c) if there is no surviving beneficiary, to the insured or the insured's personal representative.

(2) When 2 or more beneficiaries are designated otherwise than alternatively but no division of the insurance money is made, the insurance money is payable to them in equal shares.

Enforcement  
of payment by  
beneficiary

**579** A beneficiary may enforce for the beneficiary's own benefit, and a trustee appointed pursuant to section 577 may enforce as trustee, the payment of insurance money made payable to the beneficiary or trustee in the contract or by a declaration in accordance with the provisions of the contract or declaration, but the insurer may set up any defence that it could have set up against the insured or the insured's personal representative.

Insurance  
money not  
part of estate

**580(1)** When a beneficiary is designated, the insurance money, from the time of the happening of the event on which the insurance money becomes payable, is not part of the estate of the insured and is not subject to the claims of the creditors of the insured.

(2) While a designation in favour of a spouse, child, grandchild or parent, or any of them, of a person whose life is insured is in effect, the insurance money and the rights and interests of the insured in the insurance money and in the contract are exempt from writ proceedings.

## Dealings with Contract

Assignment of  
insurance

### **581** If a beneficiary

- (a) is not designated irrevocably, or
- (b) is designated irrevocably but has attained the age of 18 years and consents,

the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided in the contract or in this Subpart or as may be agreed on with the insurer.

Entitlement to  
dividends

**582(1)** Despite the irrevocable designation of a beneficiary, the insured is entitled while living to the dividends or bonuses declared on a contract unless the contract provides otherwise.

(2) Unless the insured directs otherwise, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force.

Third party  
policies

**583(1)** Despite the *Wills Act*, if in a contract or in an agreement in writing between an insurer and an insured it is provided that a person named in the contract or in the agreement has, on the death of the insured, the rights and interests of the insured in the contract,

- (a) the rights and interests of the insured in the contract do not, on the death of the insured, form part of the insured's estate, and
- (b) on the death of the insured, the person named in the contract or in the agreement has the rights and interests given to the insured by the contract and by this Subpart and is deemed to be the insured.

(2) If the contract or agreement provides that, on the death of the insured, 2 or more persons named in the contract or in the agreement have successively on the death of each of them, the rights and interests of the insured in the contract, this section applies successively, with all necessary modifications, to each of those persons and to each of those persons' rights and interests in the contract.

(3) Despite any nomination made pursuant to this section, the insured may, prior to the insured's death, assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract as if the nomination had not been made, and may alter or revoke the nomination by agreement in writing with the insurer.

Priority of  
interest

**584(1)** When an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, the assignee has priority of interest as against

- (a) any assignee other than one who gave notice earlier in a similar manner, and
- (b) a beneficiary other than one designated irrevocably as provided in section 575 before the time the assignee gave notice to the insurer of the assignment in the manner provided for in this subsection.

(2) When a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.

(3) When a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this Subpart and is deemed to be the insured.

(4) A provision in a contract to the effect that the rights or interests of the insured, or in the case of group insurance the group life insured, are not assignable is valid.

Enforcement  
of right

**585** A group life insured may in the group life insured's own name enforce a right given to the group life insured under a contract, subject to any defence available to the insurer against the group life insured or against the insured.

### Minors

Minors

**586** Except in respect of a minor's rights as beneficiary, a minor who has attained the age of 16 years has the capacity of an adult

- (a) to make an enforceable contract, and
- (b) in respect of a contract.

### Proceedings under Contract

Proof of claim

**587** When an insurer receives sufficient evidence of

- (a) the happening of the event on which insurance money becomes payable,
- (b) the age of the person whose life is insured,



- (c) the right of the claimant to receive payment, and
- (d) the name and age of the beneficiary, if there is a beneficiary,

it must, within 30 days after receiving the evidence, pay the insurance money to the person entitled to it.

Payment of  
insurance  
money

**588(1)** Subject to subsection (4), insurance money is payable in Alberta.

(2) Unless a contract provides otherwise, a reference in the contract to dollars means Canadian dollars.

(3) If a person entitled to receive insurance money is not domiciled in Alberta, the insurer may pay the insurance money to that person or to any other person who is entitled to receive it on the person's behalf by the law of the domicile of the payee.

(4) In the case of a contract of group insurance, insurance money is payable in the province in which the group life insured was resident at the time the group life insured became insured.

Action on  
contract made  
elsewhere

**589** Despite where a contract was made, an action on it may be brought in a court by a person who is resident in Alberta if the insurer was authorized to transact insurance in Alberta at the time the contract was made or at the time the action is brought.

Limitation of  
actions

**590(1)** Subject to subsection (2), an action or proceeding against an insurer for the recovery of insurance money must not be commenced after one year from the furnishing of the evidence required by section 587, or after 6 years from the happening of the event on which the insurance money becomes payable, whichever period first expires.

(2) If a declaration has been made under section 593, an action or proceeding referred to in subsection (1) must not be commenced after one year from the date of the declaration.

Persons to  
whom  
insurance  
money  
payable

**591(1)** Until an insurer receives at its head or principal office in Canada an instrument or an order of a court affecting the right to receive insurance money, or a notarial copy, or a copy verified by statutory declaration, of any such instrument or order, it may make payment of the insurance money and is as fully discharged to the extent of the amount paid as if there were no such instrument or order.

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer.

Declaration by  
Court as to  
sufficiency of  
proof

**592** When an insurer admits the validity of the insurance but does not admit the sufficiency of the evidence required by section 587 and there is no other question in issue except a question under section 593, the insurer or the claimant may, before or after action is brought and on at least 30 days' notice, apply to the Surrogate Court in accordance with the *Surrogate Rules* (AR 130/95) for a declaration as to the sufficiency of the evidence furnished, and the Court may make the declaration or may direct what further evidence is to be furnished and on the furnishing of the evidence may make the declaration or, in special circumstances, may dispense with further evidence.

Declaration of  
presumption of  
death

**593** When a claimant alleges that the person whose life is insured should be presumed to be dead by reason of the person not having been heard of for 7 years, and there is no other question in issue except a question under section 592, the insurer or the claimant may, before or after action is brought and on at least 30 days' notice, apply to the Surrogate Court in accordance with the *Surrogate Rules* (AR 130/95) for a declaration as to presumption of the death, and the Court may make the declaration.

Court order re  
payment of  
insurance  
money

**594(1)** On making a declaration under section 592 or 593, the Surrogate Court may make any order respecting the payment of the insurance money and respecting costs that it considers just and, subject to section 596, a declaration or direction or order made under this subsection is binding on the applicant and on all persons to whom notice of the application has been given.

(2) A payment made under an order made under subsection (1) discharges the insurer to the extent of the amount paid.

Order stays  
pending action

**595** Unless the Surrogate Court otherwise orders, an application made under section 592 or 593 operates as a stay of any pending action with respect to the insurance money.

Right of  
appeal

**596** An appeal lies to the Court of Appeal from any declaration, direction or order made under section 592, 593 or 594(1).

Order re  
furnishing of  
further  
evidence

**597** If the Surrogate Court finds that the evidence furnished under section 587 is not sufficient or that a presumption of death is not established, it may order that the matters in issue be decided in an action brought or to be brought, or may make any other order it

considers just respecting further evidence to be furnished by the claimant, publication of advertisements, further inquiry or any other matter or respecting costs.

Order for  
payment into  
Court

**598** When an insurer admits liability for insurance money and it appears to the insurer that

- (a) there are adverse claimants,
- (b) the whereabouts of a entitled person is unknown, or
- (c) there is no person capable of giving and authorized to give a valid discharge for the insurance money who is willing to do so,

the insurer may, at any time after 30 days from the date of the happening of the event on which the insurance money becomes payable, apply to the Surrogate Court ex parte in accordance with the *Surrogate Rules* (AR 130/95) for an order for payment of the money into court, and the Court may on such notice, if any, as it thinks necessary make an order accordingly.

Simultaneous  
deaths

**599** Unless a contract or a declaration provides otherwise, if the person whose life is insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with section 578(1) as if the beneficiary had predeceased the person whose life is insured.

Commutation  
of instalments  
of insurance  
money

**600(1)** Subject to subsections (2) and (3), when insurance money is payable in instalments and a contract, or an instrument signed by the insured and delivered to the insurer, provides that a beneficiary does not have the right to commute the instalments or to alienate or assign the beneficiary's interest in the instalments, the insurer must not, unless the insured subsequently directs otherwise in writing, commute the instalments or pay them to any person other than the beneficiary, and the instalments are not, in the hands of the insurer, subject to any legal process except an action to recover the value of necessities supplied to the beneficiary or the beneficiary's minor children.

**(2)** The Surrogate Court may, on the application of a beneficiary and on at least 10 days' notice, declare that in view of special circumstances

- (a) the insurer may, with the consent of the beneficiary, commute instalments of insurance money, or

(b) the beneficiary may alienate or assign the beneficiary's interest in the insurance money.

(3) After the death of the beneficiary, the beneficiary's personal representative may, with the consent of the insurer, commute any instalments of insurance money payable to the beneficiary.

(4) In this section, "instalments" includes insurance money held by the insurer under section 601.

Insurer holding  
insurance  
money

**601(1)** An insurer may hold insurance money

(a) subject to the order of an insured or beneficiary, or

(b) on trusts or other agreements for the benefit of the insured or the beneficiary,

as provided in the contract, by an agreement in writing to which it is a party or by a declaration, with interest at a rate agreed on in the contract, agreement or declaration or, when no rate is agreed on, at the rate declared from time to time by the insurer in respect of insurance money so held by it.

(2) The insurer is not bound to hold insurance money as provided in subsection (1) under the terms of a declaration to which it has not agreed in writing.

Order for  
payment into  
Court

**602** If an insurer does not pay the insurance money to some person competent to receive it or into Court within 30 days after receipt of the evidence required by section 587, the Surrogate Court may, in accordance with the *Surrogate Rules* (AR 130/95), on application of any person, order that the insurance money or any part of the insurance money be paid into Court, or may make any other order as to the distribution of the money that it considers just, and payment made in accordance with the order discharges the insurer to the extent of the amount paid.

Fixing of costs

**603** The Surrogate Court may fix, without taxation, the costs incurred in connection with an application or order made under section 598 or 602, and may order them to be paid out of the insurance money or by the insurer or the applicant or otherwise as it considers just.

Insurance  
money  
payable to  
minor

**604(1)** When an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a discharge for the insurance money who is willing to do so, the insurer may at any time after 30 days from the date of the happening of the event on which the insurance money

becomes payable pay the money, less the applicable costs referred to in subsection (2), into Court to the credit of the minor.

(2) The insurer may retain out of the insurance money for costs incurred on payment into Court under subsection (1) the sum of \$10 when the amount does not exceed \$1000, and the sum of \$15 in other cases, and payment of the remainder of the money into Court discharges the insurer.

(3) No order is necessary for payment into Court under subsection (1), but the clerk of the Surrogate Court or other proper officer must receive the money on the insurer filing an affidavit showing the amount payable and the name, date of birth and residence of the minor, and on the payment's being made the insurer must forthwith notify the Public Trustee and deliver to the Public Trustee a copy of the affidavit.

Payment to  
representative

**605** When it appears that a representative of a beneficiary who is under disability may under the law of the domicile of the beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representative and the payment discharges the insurer to the extent of the amount paid.

### Miscellaneous Provisions

Agent of  
insurer

**606** No officer, agent or employee of an insurer and no person soliciting insurance, whether or not the person is an agent of the insurer, may, to the prejudice of the insured, be deemed to be the agent of the insured in respect of any question arising out of a contract.

Information as  
to notices

**607** An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money.

## SUBPART 5

### AUTOMOBILE INSURANCE

Definitions

**608** In this Subpart,

- (a) "contract" means a contract of automobile insurance;
- (b) "insured" means a person insured by a contract whether named or not and includes any person who is stated in a contract to be entitled to benefits payable under the

insurance mentioned in section 629 whether described in the contract as an insured person or not.

Application of  
Subpart

**609(1)** This Subpart applies to contracts providing automobile insurance made or renewed in Alberta on or after January 1, 1969.

**(2)** This Subpart does not apply to contracts insuring only against

- (a) loss of or damage to an automobile while in or on described premises,
- (b) loss of or damage to property carried in or on an automobile, or
- (c) liability for loss of or damage to property carried in or on an automobile.

**(3)** This Subpart does not apply to a contract providing insurance in respect of an automobile not required to be registered under the *Motor Vehicle Administration Act* unless it is insured under a contract evidenced by a form of policy approved under this Subpart.

**(4)** This Subpart does not apply to a contract insuring solely the interest of a person who has a lien on, or has as security legal title to, an automobile and who does not have possession of the automobile.

### Approval of Forms

Approval of  
forms

**610(1)** No insurer may use a form of application, policy, endorsement or renewal or continuation certificate in respect of automobile insurance other than a form approved by the Superintendent.

**(2)** An insurer may require additional information in an approved application form, but that additional information does not constitute part of the application for the purposes of section 613.

**(3)** When, in the opinion of the Superintendent, any provision of this Subpart, including any statutory condition, is wholly or partly inappropriate to the requirements of a contract or is inapplicable by reason of the requirements of any Act, the Superintendent may approve a form of policy, or part of a form of policy, or endorsement evidencing a contract sufficient or appropriate to insure the risks required or proposed to be insured, and the contract evidenced by the policy or endorsement in the form so approved is effective and binding according to its terms even though those terms are inconsistent with, vary, omit or add to any provision or condition of this Subpart.

(4) Except as to matters mentioned in section 623, the Superintendent may, if the Superintendent considers it to be in the public interest, approve a form of motor vehicle liability policy or endorsement to a motor vehicle liability policy that extends the insurance beyond that required by this Subpart.

(5) The Superintendent, in granting an approval under subsection (4), may require the insurer to charge an additional premium for the extension and to state that fact in the policy or in any endorsement.

(6) The Superintendent may approve a form of owner's policy containing insuring agreements and provisions in conformity with this Subpart for use by insurers in general, which, for the purposes of section 612, is the standard owner's policy.

(7) When the Superintendent approves the form referred to in subsection (6), the Superintendent must cause a copy of the form to be published in The Alberta Gazette but it is not necessary for the Superintendent to publish endorsement forms approved for use with the standard owner's policy.

(8) The Superintendent may revoke an approval given under this section, and on notification of the revocation in writing, no insurer may, after receiving the notification, use or deliver a form that contravenes the notification.

(9) The Superintendent must, on request of any interested insurer, specify in writing the Superintendent's reasons for granting, refusing or revoking an approval of a form.

(10) The Superintendent may at any time approve an amendment to the form of anything that was previously approved by the Superintendent under this section, and where the Superintendent does so, the Superintendent must have a copy of the amendment published in The Alberta Gazette, but it is not necessary for the Superintendent to publish an amendment to endorsement forms approved for use with the standard owner's policy.

(11) Ninety days after the publication of the amendment in The Alberta Gazette or at such later date as is specified in the Gazette notice and despite anything in this Act and any contract that is then in force,

(a) the amendment is deemed to be incorporated into the previously approved form and into any such contract that incorporated that form, and

(b) the amendment otherwise becomes effective.

(12) Despite subsection (11), the amendment also applies to contracts entered into or renewed after the date referred to in that subsection.

### **Application and Policy**

#### **Agents**

**611** No person carrying on the business of financing the sale or purchase of automobiles and no automobile dealer or insurance agent and no officer or employee of such a person, dealer or insurance agent may act as the agent of an applicant for the purpose of signing an application for automobile insurance.

#### **Application for insurance**

**612(1)** A copy of the written application, signed by the insured or the insured's agent, or, if no signed application is made, a copy of the purported application, or a copy of the part of the application or purported application that is material to the contract, must be embodied in, endorsed on or attached to the policy when issued by the insurer.

(2) If no signed written application is received by the insurer prior to the issue of the policy, the insurer must deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, a form of application to be completed and signed by the insured and returned to the insurer.

(3) Subject to subsection (5), the insurer must deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, the policy or a true copy of the policy and every endorsement or other amendment to the contract.

(4) When a written application signed by the insured or the insured's agent is made for a contract, the policy evidencing the contract is deemed to be in accordance with the application unless the insurer points out in writing to the insured named in the policy in what respect the policy differs from the application, and in that event, the insured is deemed to have accepted the policy unless, within one week from the receipt of the notification, the insured informs the insurer in writing that the insured rejects the policy.

(5) When an insurer uses the standard owner's policy, it may, instead of issuing the policy, issue a certificate in a form approved by the Superintendent which, when issued, is of the same force and effect as if it were the standard owner's policy, subject to the limits and coverages shown on the certificate by the insurer and any endorsements issued concurrently with the certificate or subsequent to the certificate, but at the request of an insured at any time, the insurer must issue the policy and a copy of the written application or purported application as required by subsection (1).



(6) When a certificate is issued pursuant to subsection (5), subsection (8) and section 638(3) apply with all necessary modifications.

(7) When an insurer issues a certificate pursuant to subsection (5), proof of the contents may be given by production of a copy of The Alberta Gazette containing the form of standard owner's policy approved by the Superintendent.

(8) Every application form and policy must have printed or stamped in conspicuous type a copy of section 613(1).

Misrepresentation, fraud or violation of condition

**613(1)** If

- (a) an applicant for a contract
  - (i) gives false particulars of the described automobile to be insured to the prejudice of the insurer, or
  - (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated in the application,
- (b) the insured contravenes a term of the contract or commits a fraud, or
- (c) the insured wilfully makes a false statement in respect of a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

(2) No statement of the applicant may be used in defence of a claim under the contract unless it is contained in the signed written application for the contract or, when no signed written application is made, in the purported application, or part of the application, that is embodied in, endorsed on or attached to the policy.

(3) No statement contained in a purported copy of the application, or part of the application, other than a statement describing the risk and the extent of the insurance, may be used in defence of a claim under the contract unless the insurer proves that the applicant made the statement attributed to the applicant in the purported application, or part of the application.

Statutory conditions

**614(1)** Subject to sections 610(3), 615 and 638(2),

- (a) the conditions set out in this section are statutory conditions and are deemed to be part of every contract and

must be printed in every policy with the heading "Statutory Conditions", and

- (b) no variation or omission of or addition to a statutory condition is binding on the insured.

(2) In this section, "policy" does not include an interim receipt or binder.

### **Statutory Conditions**

In these statutory conditions, unless the context otherwise requires, the word "insured" means a person insured by this contract whether named or not.

**MATERIAL CHANGE IN RISK** 1(1) The insured named in this contract shall promptly notify the insurer or its local agent in writing of any change in the risk material to the contract and within his knowledge.

(2) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include:

- (a) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy and Insolvency Act* (Canada);

and in respect of insurance against loss of or damage to the automobile,

- (b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;
- (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

**PROHIBITED USE BY INSURED** 2(1) The insured shall not drive or operate the automobile,

- (a) unless he is for the time being either authorized by law or qualified to drive or operate the automobile; or
- (b) while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or

- (c) while he is under the age of 16 years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or
- (d) for any illicit or prohibited trade or transportation; or
- (e) in any race or speed test.

**PROHIBITED USE BY OTHERS** (2) The insured shall not permit, suffer, allow or connive at the use of the automobile,

- (a) by any person,
  - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile; or
  - (ii) while that person is under the age of 16 years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him;

or

- (b) by any person who is a member of the household of the insured while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
- (c) for any illicit or prohibited trade or transportation; or
- (d) in any race or speed test.

**REQUIREMENTS WHERE LOSS OR DAMAGE TO PERSONS OR PROPERTY** 3(1) The insured shall,

- (a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident;
- (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and

- (c) forward immediately to the insurer every letter, document, advice or writ received by him from or on behalf of the claimant.
- (2) The insured shall not,
  - (a) voluntarily assume any liability or settle any claim except at his own cost; or
  - (b) interfere in any negotiations for settlement or in any legal proceeding.
- (3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

**REQUIREMENTS WHERE LOSS OR DAMAGE TO AUTOMOBILE**

4(1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,

- (a) promptly give notice thereof in writing to the insurer with the fullest information obtainable at the time;
  - (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
  - (c) deliver to the insurer within 90 days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.
- (2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition (1) of this condition is not recoverable under this contract.
- (3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed,
  - (a) without the written consent of the insurer; or

- (b) until the insurer has had a reasonable time to make the examination for which provision is made in Statutory Condition 5.

**EXAMINATION OF INSURED** (4) The insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the insurer or its representative all documents in his possession or control that relate to the matters in question, and he shall permit extracts and copies thereof to be made.

**INSURER LIABLE FOR CASH VALUE OF AUTOMOBILE** (5) The insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deductions for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

**REPAIR OR REPLACEMENT** (6) Except where an appraisal has been made, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality if, within 7 days after the receipt of the proof of loss, it gives written notice of its intention to do so.

**NO ABANDONMENT; SALVAGE** (7) There shall be no abandonment of the automobile to the insurer without the insurer's consent. If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall vest in the insurer.

**IN CASE OF DISAGREEMENT** (8) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

**INSPECTION OF AUTOMOBILE** 5 The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.

**TIME AND MANNER OF PAYMENT OF INSURANCE MONEY** 6(1) The insurer shall pay the insurance money for which it is liable under this contract within 60 days after the proof of loss has been received by it or, where an appraisal is made under subcondition (8) of Statutory Condition 4, within 15 days after the award is rendered by the appraisers.

**WHEN ACTION MAY BE BROUGHT** (2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of Statutory Conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as therein provided or by a judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the insurer.

**LIMITATION OF ACTIONS** (3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or property shall be commenced within one year next after the cause of action arose and not afterwards.

**WHO MAY GIVE NOTICE AND PROOFS OF CLAIM** 7 Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

**TERMINATION** 8(1) This contract may be terminated,

- (a) by the insurer giving to the insured 15 days' notice of termination by registered mail or 5 days' written notice of termination personally delivered;
- (b) by the insured at any time on request.

(2) Where this contract is terminated by the insurer,

- (a) the insurer shall refund the excess of premium actually paid by the insured over the pro rata premium for the expired time, but in no event shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and
- (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.

(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired term be deemed to be less than any minimum retained premium specified.

(4) The refund may be made by money, postal or express company money order or cheque payable at par.

(5) The 15 days mentioned in clause (a) of subcondition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

**NOTICE** 9 Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.

Conditions not  
part of policy

**615(1)** Except as otherwise provided in the contract, the statutory conditions set out in section 614 do not apply to insurance coming within section 640, 641 or 642.

(2) When a contract does not insure against liability for loss or damage to persons and property, Statutory Condition 3 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

(3) When a contract does not insure against loss of or damage to the automobile, Statutory Condition 4 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

### **Motor Vehicle Liability Policies**

Coverage of  
owner's policy

**616(1)** Every contract evidenced by an owner's policy insures the insured named in the contract (the "named insured") and every other person who with the named insured's consent drives an automobile owned by the named insured and that falls within the description or definition of automobile in the contract against liability imposed by law on the named insured or that other person for loss or damage

(a) arising from the ownership, use or operation of any such automobile, and

(b) resulting from bodily injury to or the death of any person and damage to property.

(2) When the contract evidenced by an owner's policy also provides insurance against liability in respect of an automobile not owned by the named insured, an insurer may stipulate in the contract that the insurance is restricted to those persons who are specified in the contract.

(3) If the named insured in an owner's policy dies, the following persons are deemed to be the insured under the policy:

(a) the spouse of the deceased insured if residing in the same dwelling place at the time of the deceased insured's death;

(b) in respect of the described automobile, a newly-acquired automobile that was acquired by the deceased insured prior to the deceased insured's death and a temporary substitute automobile, all as defined by the policy,

(i) any person having proper temporary custody of the automobile until grant of probate or administration to the personal representative of the deceased insured, and

(ii) the personal representative of the deceased insured.

Coverage of  
non-owner's  
policy

**617** Every contract evidenced by a non-owner's policy insures the person named in the contract and any other person who is specified in the policy against liability imposed by law on the insured named in the contract or that other person for loss or damage

(a) arising from the use or operation of an automobile within the definition of automobile in the policy, other than an automobile owned by or registered in the name of the insured named in the contract or that other person, and

(b) resulting from bodily injury to or the death of any person, and damage to property.

Effect of lien  
on automobile

**618** For the purposes of this Subpart, a person is not deemed to be the owner of an automobile by reason only that the person has a lien on the automobile or has legal title to the automobile as security.

Territorial  
limits

**619** Insurance under section 616 or 617 applies to the ownership, use or operation of the insured automobile within Canada and the United States of America and on a vessel plying between ports of those countries.



Rights of  
unnamed  
insured

**620** Any person insured by but not named in a contract to which section 616 or 617 applies may recover indemnity in the same manner and to the same extent as if named in the contract as the insured, and for that purpose is deemed to be a party to the contract and to have given consideration for the contract.

Liability of  
insurer

**621** Every contract evidenced by a motor vehicle liability policy must provide that, when a person insured by the contract is involved in an accident resulting from the ownership, use or operation of an automobile in respect of which insurance is provided under the contract and resulting in loss or damage to persons or property, the insurer must

- (a) on receipt of notice of loss or damage caused to persons or property, make such investigations, conduct such negotiations with the claimant and effect such settlement of any resulting claims as are considered expedient by the insurer,
- (b) defend in the name and on behalf of the insured and at the cost of the insurer any civil action that is brought against the insured at any time on account of loss or damage to persons or property,
- (c) pay all costs taxed against the insured in any civil action defended by the insurer and any interest accruing after entry of judgment on that part of the judgment that is within the limits of the insurer's liability, and
- (d) if the injury is to a person, reimburse the insured for outlay for any medical aid that is immediately necessary at the time.

Liability arising  
from  
contamination

**622** Liability arising from contamination of property carried in an automobile is deemed not to be liability arising from the ownership, use or operation of that automobile.

Exceptions to  
liability of  
insurer

**623** The insurer is not liable under a contract evidenced by a motor vehicle liability policy for any liability

- (a) imposed by any workers' compensation law on any person insured by the contract, or
- (b) resulting from bodily injury to or the death of any employee of any person insured by the contract while engaged in the operation or repair of the automobile.

Exceptions to  
liability of  
insurer

**624** The insurer may provide under a contract evidenced by a motor vehicle liability policy that it is not liable for one or both of the following:

- (a) to indemnify any person engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles for any loss or damage sustained while engaged in the use or operation of or while working on the automobile in the course of that business unless the person is the owner of the automobile or is the person's employee;
- (b) for loss of or damage to property carried in or on the automobile or to any property owned or rented by or in the care, custody or control of the insured.

Exceptions to  
liability of  
insurer

**625** Subject to the limitations and exclusions of the endorsement, the insurer may provide by endorsement to a contract evidenced by a motor vehicle liability policy that it is not liable for loss or damage resulting from the ownership, use or operation of any machinery or apparatus, including its equipment, mounted on or attached to the automobile while that automobile is at the site of the use or operation of that machinery or apparatus.

Exceptions to  
liability of  
insurer

**626(1)** The insurer may provide under a contract evidenced by a motor vehicle liability policy that it is not liable in one or more of the following cases:

- (a) while the automobile is rented or leased to another person;
  - (b) while the automobile is used to carry explosives or to carry radioactive material for research, education, development or industrial purposes or for purposes incidental to those purposes;
  - (c) while the automobile is used as a taxi-cab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire.
- (2) Subsection (1)(a) does not include the use by an employee of the employee's automobile in the business of the employee's employer for which the employee is paid.
- (3) In subsection (1)(b), "radioactive material" means
- (a) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor,
  - (b) radioactive waste material,

- (c) unused enriched nuclear fuel rods, or
- (d) any other radioactive material of such quantity and quality as to be harmful to persons or property if its container were destroyed or damaged.

**(4)** Subsection (1)(c) does not include

- (a) the use by an insured of the automobile for the carriage of another person in return for the insured's carriage in the automobile of the other person,
- (b) the occasional and infrequent use by an insured of the automobile for the carriage of another person who shares the cost of the trip,
- (c) the use by an insured of the automobile for the carriage of a temporary or permanent domestic servant of the insured or the insured's spouse,
- (d) the occasional and infrequent use by an insured of the automobile for the transportation of children to or from activities conducted as part of an educational program, or
- (e) the use by an insured of the automobile for the carriage of a client or customer or a prospective client or customer.

Limits of motor  
vehicle liability  
policy

**627(1)** Every contract evidenced by a motor vehicle liability policy insures, in respect of any one accident, to the limit of not less than \$200 000 exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and loss of or damage to property.

**(2)** A contract must be interpreted to mean that when, by reason of any one accident, liability results from bodily injury or death and from loss of or damage to property,

- (a) claims against the insured arising out of bodily injury or death have priority to the extent of \$190 000 over claims arising out of loss of or damage to property, and
- (b) claims against the insured arising out of loss of or damage to property have priority to the extent of \$10 000 over claims arising out of bodily injury or death.

**(3)** The insurer may, instead of specifying a limit in the policy for an inclusive amount, specify a limit of liability of at least \$200 000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and a limit of

liability of at least \$200 000, exclusive of interest and costs, against liability for loss of or damage to property.

(4) Nothing in this Subpart precludes an insurer, with respect to a limit or limits in excess of those specified in subsection (1) or (3), from increasing or reducing the limit or limits specified in the contract with respect to the use or operation of the automobile by a named person, but no reduction is effective for a limit less than that required under subsection (1) or (3).

(5) The premium for the insurance required under this section must be shown separately on the motor vehicle liability policy from the premium for any additional or other benefits under the policy.

Hospitals Act

**628** No amount that is required to be paid to the Crown under Part 5, Division 2 of the *Hospitals Act* may be shown as a separate amount on

- (a) an application for automobile insurance,
- (b) a motor vehicle liability policy, or
- (c) a certificate referred to in section 612(5).

Accident  
insurance  
benefits

**629(1)** In this section,

- (a) “benefits” means accident insurance benefits provided for in this section or in regulations made under subsection (9)(c);
- (b) “prescribed” means provided for by regulations made under this section.

(2) A contract evidenced by a motor vehicle liability policy insures in respect of an accident involving an automobile, for accident insurance benefits payable to the prescribed person, in or to at least the prescribed amounts and in accordance with or subject to this section and the prescribed terms, conditions, restrictions and exclusions.

(3) The insurer, on the death of an insured person, must pay

- (a) death benefits, and
- (b) actual funeral costs up to the prescribed maximum amount.

(4) If an insured person is totally disabled, the insurer must pay a weekly disability benefit.

- (5) The insurer must pay the prescribed medical payments.
- (6) Section 642 applies to the benefits.
- (7) Subject to section 656, the rates to be prescribed for the benefits must be the same within each class of automobile insured by an insurer in Alberta.
- (8) The rates for the benefits must be shown on the motor vehicle liability policy separately from the rates for any additional or other coverages under the policy.
- (9) The Lieutenant Governor in Council may make regulations
  - (a) respecting any matter or thing that may or is to be prescribed for the purposes of this section;
  - (b) defining for the purposes of this section any expression used in it;
  - (c) increasing the amount of any of the benefits.

Stipulation in  
motor vehicle  
liability policy

**630(1)** Every motor vehicle liability policy issued in Alberta must provide that, in the case of liability arising out of the ownership, use or operation of the automobile in any province,

- (a) the insurer is liable up to the minimum limits established for that province if those limits are higher than the limits established in the policy,
- (b) the insurer must not set up any defence to a claim that might not be set up if the policy were a motor vehicle liability policy issued in that province, and
- (c) the insured, by acceptance of the policy, constitutes and appoints the insurer as the insured's irrevocable attorney to appear and defend in any province in which an action is brought against the insured arising out of the ownership, use or operation of the automobile.

(2) A provision in a motor vehicle liability policy in accordance with subsection (1)(c) is binding on the insured.

Excess  
insurance

**631(1)** Nothing in this Subpart precludes an insurer from providing insurance under a contract evidenced by a motor vehicle liability policy restricted to a limit in excess of that provided by another designated contract evidenced by a motor vehicle liability policy, whether the designated contract is a first loss insurance or an excess insurance.

(2) When the contract designated in the excess contract terminates or is terminated, the excess contract is also automatically terminated.

Agreements re  
deductible  
amounts

**632** Nothing in this Subpart precludes an insurer from entering into an agreement with its insured under a contract evidenced by a motor vehicle liability policy providing that the insured will reimburse the insurer in an agreed amount in respect of any claim by or judgment in favour of a third party against the insured, and the agreement may be enforced against the insured according to its tenor.

Coverage  
under motor  
vehicle liability  
and nuclear  
energy hazard  
liability policies

**633(1)** In this section, “nuclear energy hazard” means the radioactive, toxic, explosive or other hazardous properties of prescribed substances under the *Atomic Energy Control Act* (Canada).

(2) When an insured, whether named in the contract or not, is covered under a contract evidenced by a motor vehicle liability policy for loss or damage resulting from bodily injury to or the death of any person or damage to property arising directly or indirectly out of a nuclear energy hazard and is, whether named in the contract or not, also covered against that loss or damage under a contract evidenced by a policy of nuclear energy hazard liability insurance issued by a group of insurers and in force at the time of the event giving rise to the loss or damage,

(a) the motor vehicle liability insurance is excess to the nuclear energy hazard liability insurance, and the insurer under the contract of motor vehicle liability insurance is not liable to pay beyond the minimum limits established by section 627, and

(b) the unnamed insured under the contract of nuclear energy liability hazard insurance may, in respect of the loss or damage, recover indemnity under that contract in the same manner and to the same extent as if named in the contract as the insured, and for that purpose the unnamed insured is deemed to be a party to the contract and to have given consideration for the contract.

(3) For the purpose of this section, a contract of nuclear energy hazard liability insurance is deemed to be in force at the time of the event giving rise to the loss or damage, even though the limits of liability under the contract have been exhausted.

Determining  
which insurer  
to be liable

**634(1)** When a person is insured under more than one contract evidenced by a motor vehicle liability policy, whether the insurance is first loss insurance or excess, and a question arises under section

621(b) between an insurer and the insured or between the insurers as to which insurer must undertake the obligation to defend in the name and on behalf of the insured, whether or not any insurer denies liability under its contract, the insured or any insurer may apply to the Court, and the Court may give any directions that appear proper with respect to the performance of the obligation.

(2) On an application under subsection (1), the only parties entitled to notice of the application and to be heard are the insured and the insured's insurers, and no material or evidence used or taken on the application is admissible on the trial of an action brought against the insured for loss or damage to persons or property arising out of the use or operation of the automobile in respect of which the insurance is provided.

(3) An order under subsection (1) does not affect the rights and obligations of the insurers in respect of payment of any indemnity under their respective policies.

(4) When indemnity is provided to the insured under 2 or more contracts and one or more of them are excess insurance, the insurers must, as between themselves, contribute to the payment of expenses, costs and reimbursement for which provision is made in section 621 in accordance with their respective liabilities for damages awarded against the insured.

Rights of  
creditors

**635(1)** Any person who has a claim against an insured for which indemnity is provided by a contract evidenced by a motor vehicle liability policy, even though that person is not a party to the contract, may, on recovering a judgment in respect of the claim in any province against the insured, have the insurance money payable under the contract applied in or towards satisfaction of the judgment and of any other judgments or claims against the insured covered by the contract and may, on the person's own behalf and on behalf of all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

(2) No action may be brought against an insurer under subsection (1) after the expiration of one year from the final determination of the action against the insured, including appeals, if any.

(3) A creditor of the insured is not entitled to share in the insurance money payable under any contract unless the creditor's claim is one for which indemnity is provided for by that contract.

(4) The right of a person who is entitled under subsection (1) to have insurance money applied on the person's judgment or claim is not prejudiced by

- (a) an assignment, waiver, surrender, cancellation or discharge of the contract, or of any interest in or of the proceeds of the contract, made by the insured after the happening of the event giving rise to a claim under the contract,
- (b) any act or default of the insured before or after that event in contravention of this Subpart or of the terms of the contract, or
- (c) any contravention of the *Criminal Code* (Canada) or a statute of any province or of any state or the District of Columbia of the United States of America by the owner or driver of the automobile,

and nothing mentioned in clause (a), (b) or (c) is available to the insurer as a defence in an action brought under subsection (1).

(5) It is not a defence to an action under this section that an instrument issued as a motor vehicle liability policy by a person engaged in the business of an insurer and alleged by a party to the action to be such a policy is not a motor vehicle liability policy, and this section applies, with all necessary modifications, to the instrument.

(6) The insurer may require any other insurers liable to indemnify the insured in whole or in part in respect of judgments or claims to which reference is made in subsection (1) to be made parties to the action and contribute according to their respective liabilities, whether the contribution is rateable or by way of first loss or excess insurance, as the case may be, and the insured must on demand furnish the insurer with particulars of all other insurance covering the subject-matter of the contract.

(7) When a person has recovered a judgment against the insured and is entitled to bring action under subsection (1) and the insurer admits liability to pay the insurance money under the contract, and the insurer considers that

- (a) there are or may be other claimants, or
- (b) there is no person capable of giving and authorized to give a valid discharge for payment who is willing to do so,

the insurer may apply to the Court ex parte for an order for payment of the money into Court, and the Court may, on the notice, if any, it thinks necessary, make an order accordingly.

(8) The receipt of the proper officer of the Court is a sufficient discharge to the insurer for the insurance money paid into Court under subsection (7), and the insurance money must be dealt with as the Court may order on application of any interested person.



(9) Despite anything contained in a contract evidenced by a motor vehicle liability policy to the contrary, every contract evidenced by a motor vehicle liability policy is deemed, for the purposes of this section, to provide all the types of coverage mentioned in section 626, but the insurer is not liable to a claimant with respect to the coverage in excess of the limits mentioned in section 627.

(10) When one or more contracts provide for coverage of a type mentioned in section 624 or 625, except as provided in subsection (12), the insurer may,

- (a) with respect to that type of coverage, and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, despite subsection (4).

(11) When one or more contracts provide for coverage in excess of the limits mentioned in section 627, except as provided in subsection (12), the insurer may, despite subsection (4),

- (a) with respect to the coverage in excess of those limits, and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured other than a defence arising out of a breach of Statutory Condition 2 set out in section 614.

(12) When a contract provides coverage for loss or damage resulting from bodily injury to or the death of any person being carried in or on or entering or getting on to or alighting from an automobile that is operated in the business of carrying passengers for compensation or hire and insured for that purpose, the insurer may, despite subsection (4),

- (a) with respect to that type of coverage in excess of the limits mentioned in section 627 or the minimum limits required for that type of coverage under any other Act, whichever is the greater amount, and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured other than a defence arising out of a breach of Statutory Condition 2 set out in section 614.

(13) The insured must reimburse the insurer on demand in the amount that the insurer has paid by reason of this section and that it would not otherwise be liable to pay.

(14) When an insurer denies liability under a contract evidenced by a motor vehicle liability policy, it must, on application to the Court, be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action in which it is or might be asserted that indemnity is provided by the contract, whether or not the insured enters an appearance or defence in the action.

(15) On being made a third party, the insurer may

- (a) contest the liability of the insured to any party claiming against the insured,
- (b) contest the amount of any claim made against the insured,
- (c) deliver any pleadings in respect of the claim of any party claiming against the insured,
- (d) have production and discovery from any party adverse in interest, and
- (e) examine and cross-examine witnesses at the trial,

to the same extent as if it were a defendant in the action.

(16) An insurer may avail itself of subsection (15) even though another insurer is defending in the name and on behalf of the insured an action to which its insured is a party.

Payment as  
release of  
claim

**636(1)** When an insurer makes a payment on behalf of an insured under a contract evidenced by a motor vehicle liability policy to a person who is or alleges to be entitled to recover from the insured covered by the policy, the payment constitutes, to the extent of the payment, a release by the person or the person's personal representative of any claim that the person or the person's personal representative or any person claiming through or under the person or by virtue of the *Fatal Accidents Act* may have against the insured and the insurer.

(2) Nothing in this section precludes the insurer making the payment from demanding, as a condition precedent to the payment, release from the person or the person's personal representative or any other person to the extent of the payment.

(3) If the person commences an action, the Court must adjudicate on the matter first without reference to the payment, but in giving judgment the Court must take the payment into account and the person is entitled to judgment only for the net amount, if any.

(4) The intention of this section is to permit payments to a claimant without prejudice to the defendant or the defendant's insurer, either as an admission of liability or otherwise, and the fact of any payment must not be disclosed to the judge or jury until after judgment but before formal entry of the judgment.

Notice of  
action against  
insured to  
insurer

**637(1)** Every insured against whom an action is commenced for damages occasioned by an automobile must give notice of every notice or process in the action in writing to the insurer within 5 days after service of every notice or process.

(2) An insured against whom an action is commenced for damages occasioned by an automobile must, on recovery of a judgment against the insured, disclose to a judgment creditor entitled to the benefit of any motor vehicle liability policy particulars of the contract within 10 days after written demand for the particulars.

Physical  
damage cover

**638(1)** Subject to section 610(1), the insurer may provide in a contract any exclusions and limitations in respect of loss of or damage to or the loss of use of the automobile that it considers necessary.

(2) A contract or part of a contract providing insurance against loss of or damage to an automobile and the loss of use of an automobile may contain a clause to the effect that, in the event of loss, the insurer is required to pay only

(a) an agreed portion of any loss that may be sustained, or

(b) the amount of the loss after deduction of a sum specified in the policy,

in either case not exceeding the amount of the insurance.

(3) When a clause is inserted in accordance with subsection (2), there must be printed or stamped on the face of the policy in conspicuous type the words: "This policy contains a partial payment of loss clause".

Adjustment of  
claim with  
insured

**639(1)** When a claim is made under any contract other than a contract evidenced by a motor vehicle liability policy, the insurer must, despite any agreement, adjust the amount of the claim with the insured named in the contract as well as with any person having an interest indicated in the contract.

(2) When notice is given or proof of loss is made by a person other than the insured because the insured cannot be located or neglects or refuses or is unable to give notice and make claim under Statutory Conditions 4 and 7 set out in section 614, the

insurer may, despite subsection (1) but in any event not earlier than 60 days from delivery of the proof required under Statutory Condition 4(1)(c), adjust and pay the claim to the other person having an interest indicated in the contract.

### Limited Accident Insurances

Uninsured  
motorist

**640(1)** If an insurer provides in a contract insurance against loss resulting from bodily injury to or the death of a person insured arising out of an accident involving an automobile when

- (a) there is legal liability of another person for the injury or death, and
- (b) the other person has no insurance against the liability for the injury or death or cannot be identified,

that insurance applies only in respect of

- (c) a person who sustains bodily injury or death while driving, being carried in or on or entering or getting on to or alighting from the described automobile in respect of which insurance against liability arising out of bodily injury to or the death of a person caused by an automobile or the use or operation of an automobile is provided under the contract, and
- (d) the insured named in the contract and the spouse of the insured named in the contract and any dependent relative residing in the same dwelling place as the insured named in the contract who sustains bodily injury or death while driving, being carried in or on or entering or getting on to or alighting from or as a result of being struck by any other automobile that is defined in the contract for the purposes of that insurance.

**(2)** The insurance mentioned in subsection (1) does not apply in respect of a person specified in the contract who has a right of recovery under the *Motor Vehicle Accident Claims Act* or similar legislation of any other province or of any state or the District of Columbia of the United States of America.

Medical  
expenses, etc.

**641(1)** When in a contract an insurer provides insurance against expenses for medical, surgical, dental, ambulance, hospital, professional nursing or funeral services, the insurance applies only in respect of reasonable expenses

- (a) of or incurred for any person who sustains bodily injury or death while driving or being carried in or on or entering or

getting on to or alighting from or, if not the occupant of another automobile, as a result of being struck by an automobile owned by the insured named in the contract in respect of which insurance against liability arising out of bodily injury to or the death of a person caused by an automobile or the use or operation of an automobile is provided under the contract, and

- (b) of the insured named in the contract and the spouse of the insured named in the contract and any dependent relative residing in the same dwelling place as the insured named in the contract who sustains bodily injury or death while driving or being carried in or on or entering or getting on to or alighting from or as a result of being struck by any other automobile that is defined in the contract for the purposes of that insurance.

(2) When an insurer makes a payment under a contract of insurance referred to in subsection (1), the payment constitutes, to the extent of the payment, a release by an insured or the insured's personal representatives of any claim that

- (a) the insured or the insured's personal representatives, or
- (b) any person claiming through or under the insured or by virtue of the *Fatal Accidents Act*

may have against

- (c) the insurer, and
- (d) any other person who may be liable to the insured or the insured's personal representatives if that other person is insured under a contract of the same type specified in subsection (1).

(3) Nothing in subsection (2) precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the insured or the insured's personal representatives or any other person.

(4) The insurance referred to in subsection (1)(a) is a first loss insurance, and any other automobile insurance of the same type available to the injured person or in respect of a deceased person is excess insurance only.

(5) The insurance referred to in subsection (1)(a) is excess insurance to any other insurance that is not automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses.

Accident  
insurance  
benefits

(6) The insurance referred to in subsection (1)(b) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses.

**642(1)** When in a contract an insurer provides accident insurance benefits in respect of the death of or injury to an insured arising out of an accident involving an automobile, the insurance applies only in respect of

- (a) any person who sustains bodily injury or death while driving or being carried in or on or entering or getting on to or alighting from or, if not the occupant of another automobile, as a result of being struck by an automobile owned by the insured named in the contract in respect of which insurance against liability arising out of bodily injury to or the death of a person caused by an automobile or the use or operation of an automobile is provided under the contract, and
- (b) the insured named in the contract and the spouse of the insured named in the contract and any dependent relative residing in the same dwelling place as the insured named in the contract who sustains bodily injury or death while driving or being carried in or on or entering or getting on to or alighting from or as a result of being struck by any other automobile that is defined in the policy for the purposes of the insurance.

(2) When an insurer makes a payment under a contract of insurance referred to in subsection (1), the payment constitutes, to the extent of the payment, a release by the insured or the insured's personal representatives of any claim that

- (a) the insured or the insured's personal representatives, or
- (b) any person claiming through or under the insured or by virtue of the *Fatal Accidents Act*

may have against

- (c) the insurer, and
- (d) any other person who may be liable to the insured or the insured's personal representatives if that other person is insured under a contract of the same type specified in subsection (1).

(3) Nothing in subsection (2) precludes an insurer from demanding, as a condition precedent to payment, a release to the

extent of the payment from the insured or the insured's personal representatives or any other person.

(4) Subject to subsection (6), the insurance referred to in subsection (1)(a) is a first loss insurance, and any other automobile insurance of the same type available to the injured person or in respect of a deceased person is excess insurance only.

(5) Subject to subsection (6), the insurance referred to in subsection (1)(b) is excess insurance over any other automobile insurance of the same type available to the injured person or in respect of a deceased person.

(6) When a person is entitled to benefits under more than one contract providing insurance of the type referred to in this section, the personal representative of the person entitled to benefits or any person claiming through or under the person entitled to benefits or by virtue of the *Fatal Accidents Act* may recover only an amount equal to

- (a) one benefit, if the benefits under the contracts are of the same limit, or
- (b) the highest benefit, if the benefits under the contracts are not of the same limit.

Demand for  
particulars of  
insurance

**643(1)** When a person is injured or killed in an accident in Alberta involving an automobile, that person or the person's personal representative may serve

- (a) a demand by registered mail on the owner of the automobile, or
- (b) a demand by registered mail on the insurer of the owner of the automobile,

requiring the owner or insurer, as the case may be, to state in writing to the person making the demand whether or not that owner has insurance of the type referred to in section 641 or 642 and, when the demand is made under clause (a), requiring the owner, if the owner has that insurance, to state the name of the insurer.

(2) An owner or insurer who does not comply with a demand made under subsection (1) within 10 days after receiving the demand is guilty of an offence.

Recovery by  
unnamed  
insured

**644** Any person insured by but not named in a contract to which section 640, 641 or 642 applies may recover under the contract in the same manner and to the same extent as if named in the contract

as the insured, and for that purpose is deemed to be a party to the contract and to have given consideration for the contract.

**Priority of  
payments**

**645(1)** When a person entitled to benefits provided by insurance under section 641 or 642

- (a) is an occupant of an automobile involved in an accident, the insurer is, in the first instance, liable for payment of the benefits provided by the insurance, or
- (b) is a pedestrian and is involved in an automobile accident, the insurer of the owner of that automobile is, in the first instance, liable for payment of the benefits provided by the insurance.

**(2)** Nothing in this section affects the operation of sections 641(2) to (6) and 642.

**Payment of  
insurance  
money into  
Court**

**646(1)** Where an insurer admits liability for insurance money payable under section 640, 641 or 642 and it appears that

- (a) there are adverse claimants,
- (b) the whereabouts of an insured entitled to the insurance money is unknown, or
- (c) there is no person capable of giving and authorized to give a valid discharge for the insurance money who is willing to do so,

the insurer may, at any time after 30 days after the date on which the insurance money becomes payable, apply to the Court ex parte for an order for payment of the money into Court, and the Court may make an order accordingly on any notice it thinks necessary.

**(2)** The receipt of the proper officer of the Court is sufficient discharge to the insurer for the insurance money paid into Court, and the insurance money must be dealt with as the Court orders.

**Limitation re  
commence-  
ment of action**

**647** An action or proceeding against an insurer under a contract in respect of insurance provided under section 640, 641 or 642 must be commenced within the limitation period specified in the contract, but in no event may the limitation period be less than one year after the happening of the accident.

**Demand on  
claimant for  
particulars**

**648** When a person makes a claim for damages in respect of bodily injury or death sustained by the person or any other person while driving or being carried in or on or entering or getting on to



or alighting from or as a result of being struck by an automobile, the claimant must, if required by the person against whom the claim is made or by someone acting on the person's behalf, furnish to or for that person full particulars of all insurance available to the claimant under contracts falling within the scope of section 641 or 642, and of any payments of insurance money made or to be made under those contracts.

Variations in  
policy

**649** Subject to section 610(1), an insurer may in a policy

- (a) provide insurance that is less extensive in scope than the insurance referred to in section 640, 641 or 642, and
- (b) provide the terms of the contract that relate to the insurance referred to in section 640, 641 or 642.

### Other Insurance

Proportioning  
liability of  
insurer

**650(1)** Subject to section 633, insurance under a contract evidenced by a valid owner's policy is, in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the insured named in the contract and within the description or definition of an automobile in the policy, a first loss insurance, and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.

(2) Subject to subsection (1) and to sections 633, 641 and 642, if the insured named in a contract has or places any other valid insurance, whether against liability for the ownership, use or operation of or against loss of or damage to an automobile or otherwise, of the named insured's interest in the subject-matter of the contract or any part of the contract, the insurer is liable only for its rateable proportion of any liability, expense, loss or damage.

(3) In subsection (2), "rateable proportion" means,

- (a) if there are 2 insurers liable and each has the same policy limits, that each of the insurers is liable to share equally in any liability, expense, loss or damage, or
- (b) if there are 2 insurers liable with different policy limits, that the insurers are liable to share equally up to the limit of the smaller policy limit,

and if there are more than 2 insurers liable, clauses (a) and (b) apply with all necessary modifications.

## Subrogation

Subrogation of  
insurer to  
rights of  
recovery

**651(1)** An insurer who makes any payment or assumes liability for making any payment under a contract is subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce those rights.

**(2)** When the net amount recovered whether by action or on settlement is, after deduction of the costs of the recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining must be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them.

**(3)** When the interest of an insured in any recovery is limited to the amount provided under a clause in the contract described in section 638(2), the insurer has control of the action.

**(4)** When the interest of an insured in any recovery exceeds that referred to in subsection (3) and the insured and the insurer cannot agree as to

- (a) the solicitors to be instructed to bring the action in the name of the insured,
- (b) the conduct and carriage of the action or any related matters,
- (c) any offer of settlement or the apportionment of an offer of settlement, whether an action has been commenced or not,
- (d) the acceptance or the appointment of any money paid into Court,
- (e) the apportionment of costs, or
- (f) the launching or prosecution of an appeal,

either party may apply to the Court for the determination of the matters in question, and the Court may make any order it considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action or proposed action or in any offer of settlement.

**(5)** On an application under subsection (4), the only parties entitled to notice and to be heard on the application are the insured and the insurer, and no material or evidence used or taken on the application is admissible on the trial of an action brought by or against the insured or the insurer.

(6) A settlement or release given before or after an action is brought does not bar the rights of the insured or the insurer, as the case may be, unless they have concurred in the settlement or release.

### **Automobile Insurance Board**

#### **Definitions**

**652** In sections 653 to 661,

- (a) “Board” means the Alberta Automobile Insurance Board referred to in section 653(1);
- (b) “minimum insurance” means the insurance referred to in sections 627(1) and 629;
- (c) “rates” means the price charged for a motor vehicle liability policy or any coverage under that policy.

#### **Alberta Automobile Insurance Board**

**653(1)** The Lieutenant Governor in Council may establish a board to be known as the “Alberta Automobile Insurance Board” consisting of the members that the Lieutenant Governor in Council appoints.

(2) The Lieutenant Governor in Council may

- (a) designate one of the members of the Board as chair and another as vice-chair, and
- (b) fix the remuneration and provide for the payment of expenses to be paid to the members who are not employees of the Government.

(3) In accordance with the *Public Service Act* there may be appointed the staff and other persons required by the Board.

(4) Subject to the approval of the Lieutenant Governor in Council, the Board may from time to time appoint one or more experts or persons having special technical or other knowledge to inquire into and report to the Board in respect of any matter before the Board or in respect of which the Board considers it necessary to have information for the proper carrying out of its duties.

(5) A person appointed by the Board pursuant to subsection (4) must be paid the remuneration specified by the Lieutenant Governor in Council.

(6) A majority of members constitutes a quorum of the Board for the purpose of exercising its powers and performing its duties.

(7) An order, direction, approval or other instrument that the Board is permitted or required to make may be made on its behalf by the chair, the vice-chair or any other member of the Board.

(8) An order, direction, approval or other instrument purporting to be signed by the chair, the vice-chair or a member of the Board on behalf of the Board is admissible in evidence in any proceedings as prima facie proof

(a) that the order, direction, approval or instrument is the act of the Board or of a quorum of the Board, and

(b) that the person signing it was authorized to do so

without proof of the appointment of the individual signing as a member of the Board, or the individual's designation as chair or vice-chair, as the case may be, or of the individual's signature.

(9) The Board may make rules governing its procedures.

(10) The chair, vice-chair and every other member of the Board has the power of a commissioner under the *Public Inquiries Act*.

Board powers    **654**    The Board has the power

(a) to investigate any matter it thinks fit respecting automobile insurance in Alberta, including rates, benefits and availability of automobile insurance, and

(b) to prohibit

(i) an insurer from charging any rate for the minimum insurance above a rate filed pursuant to section 655,

(ii) any change in class of an automobile from the classification of that automobile filed pursuant to section 655, or

(iii) any change that would have the effect of increasing a rate for the minimum insurance for any insured or class of insured or that would have the effect of changing an automobile from one class to another,

unless the increase or change has first been approved by the Board under section 656(4) or (5).

Rates    **655**    Every licensed insurer of automobiles must file with the Board the full schedule of rates it intends to apply to every motor

vehicle liability insurance policy to be issued by it in Alberta showing separately

- (a) the number and types of classes of automobiles proposed to be insured by the insurer in respect of which the minimum insurance applies, and
- (b) the rates proposed to be charged for the minimum insurance with respect to each class of automobile.

Approval of  
rates

**656(1)** No insurer may

- (a) charge the proposed rates filed under section 655 or any other rate for the minimum insurance, or
- (b) change an automobile from one class to another or add to or in any manner change the number or type of classes of automobiles filed with the Board,

unless

- (c) the Board has approved
  - (i) the rates,
  - (ii) the classification of automobiles, and
  - (iii) the rates attaching to each class of automobile,

or

- (d) the rates, the classification of automobiles and the rates attaching to each class of automobile have been filed with the Board for 60 days and the Board has neither approved nor disapproved the filing or any part of the filing.

**(2)** When an insurer receives an approval or is permitted to proceed pursuant to subsection (1), the insurer must not

- (a) increase its rates with respect to the minimum insurance either generally or with respect to a particular class of automobile,
- (b) change the class of any automobile with respect to the minimum insurance, or
- (c) make any other change that would have the effect of increasing any rate for the minimum insurance or changing any class of any automobile with respect to the minimum insurance,

without first applying to the Board and receiving its approval pursuant to subsection (4) or (5).

(3) Where the Board is not satisfied that an insurer has filed all the matters referred to in this section, or requires additional details or information, it may, by order directed to the insurer, require the additional information and details.

(4) If an insurer wishes

- (a) to increase any rate for the minimum insurance,
- (b) to change the class of any automobile or the number or types of classes of automobile,
- (c) to change any rate attaching to any particular class of automobile, or
- (d) to make any other change that would have the effect of increasing any rate for the minimum insurance or any change that would have the effect of changing the number or type of class of automobile with respect to the minimum insurance,

it may apply to the Board for approval of the increase, change of class or classification or the number or type of classes of automobile or any other change, and the Board in its discretion by order may

- (e) approve the application or any part of the application, or
- (f) disapprove the application or any part of the application.

(5) When an insurer makes an application to the Board pursuant to subsection (4) and the application has not been approved or disapproved during a period of 60 days from the date the application is filed, the application is deemed to have been approved and the increase in rates, change of class or classification of automobile or the type or number of classes of automobile or any other change applied for pursuant to subsection (4) may be made by the insurer on expiration of the 60-day period.

(6) When an application by an insurer has been approved pursuant to this section, the Board may at any time after the approval investigate

- (a) the rates of the insurer for the minimum insurance,
- (b) the division into classes of automobile and the classification of automobiles and the number and type of

classes of automobile with respect to the minimum insurance, or

- (c) the rates for the minimum insurance attaching to any particular class of automobile,

and, despite any prior approval, may order the insurer to reduce or change its rates, to change the classification of any automobile or the class or number or type of automobile or make any other change with respect to the minimum insurance in the manner directed by the Board.

Offences

**657** An insurer who

- (a) fails to file its rates pursuant to section 655,
- (b) charges the proposed rate prior to its approval in contravention of section 656(1),
- (c) increases the rate payable for the minimum insurance in contravention of section 656(2),
- (d) adds to or in any manner changes the class of automobile, the classification of an automobile or the number or type of classes of automobile in contravention of section 656(2),
- (e) makes any change in a rate or class or classification of automobile without approval pursuant to section 656(4) and (5), or
- (f) in any manner fails to comply with an order or direction of the Board,

is guilty of an offence.

Annual report

**658(1)** The Board must make and submit to the Minister an annual report on the operation of the Board.

**(2)** The Minister must lay the report before the Legislative Assembly if it is then in session or if it is not, within 15 days of the opening of the next following session.

Appeal

**659(1)** Except as provided in this section,

- (a) every decision, order, approval, direction or proceeding of the Board is final, and
- (b) no decision, order, approval, direction or proceeding of the Board may be questioned or reviewed, restrained or

removed by prohibition, injunction, certiorari or any other process or proceeding in any court.

(2) On a question of jurisdiction or on a question of law, an appeal lies from the Board to the Court of Appeal.

(3) Leave to appeal may be obtained from a judge of the Court of Appeal if

(a) an application is made within one month after the making of the decision, order, approval, direction or proceeding sought to be appealed from, or within any further time that the judge under special circumstances allows, and

(b) notice of the application is given to the parties and to the Board.

(4) The costs of the application are in the discretion of the judge.

Reduced rate **660(1)** Nothing in section 654, 655 or 656 prevents an insurer from charging a reduced rate for the minimum insurance

(a) when a person owns 2 or more automobiles classified for the minimum insurance under the same or a different class, or

(b) when a person owns 2 or more automobiles under 2 or more policies with the same insurer.

(2) Despite subsection (1), when an insurer charges a reduced rate for the minimum insurance, the insurer must not increase the rate unless the increase is approved under section 656(4) or (5).

Application of  
Government  
approved  
industry plan

**661(1)** An insurer licensed under this Act to carry on automobile insurance must participate in and is subject to the terms and conditions of any Government approved industry plan to ensure a market for automobile insurance to all owners of automobiles in Alberta and for operators of automobiles in Alberta who hold operator's licences issued under the *Motor Vehicle Administration Act*.

(2) A copy of the constitution, by-laws, rules and regulations of a proposed plan must be filed with the Superintendent for approval.

(3) On acceptance of the filing and approval by the Superintendent under subsection (2), the plan is deemed to be a Government approved industry plan to ensure a market for automobile insurance to all owners of automobiles in Alberta and for operators of automobiles in Alberta who hold operator's licences issued under the *Motor Vehicle Administration Act*.



(4) A copy of a proposed change to be made in the constitution, by-laws, rules or regulations of a plan or a notice of termination of a plan must be filed with the Superintendent at least 15 days before the change or termination is proposed to be effective, and that change or termination must not take place unless approved by the Superintendent.

(5) When an insurance agent receives an application and effects coverage under a plan by binding a risk, the agent is bound by the applicable terms and conditions of the plan in existence at that time for the duration of the coverage so placed.

(6) All rates charged for automobile insurance under a plan are subject to the approval of the Board, and, except for section 656(1)(d), sections 655, 656, 657 and 659 apply, with all necessary modifications, to those rates.

(7) Nothing in this section relieves an insurer from ensuring that the provisions of this Subpart relating to filing and the matters required by sections 655 and 656 are complied with.

## **SUBPART 6**

### **ACCIDENT AND SICKNESS INSURANCE**

#### **Definitions**

**662** In this Subpart,

- (a) “application” means a written application for insurance or for the reinstatement of insurance;
- (b) “beneficiary” means a person designated or appointed in a contract or by a declaration, other than the insured or the insured’s personal representative, to whom or for whose benefit insurance money payable in the event of death by accident is to be paid;
- (c) “blanket insurance” means that class of group insurance that covers loss arising from specific hazards incidental to or defined by reference to a particular activity or activities;
- (d) “contract” means a contract of insurance;
- (e) “creditor’s group insurance” means insurance effected by a creditor in which the lives or well-being or the lives and well-being of a number of the creditor’s debtors are insured severally under a single contract;
- (f) “declaration” means an instrument signed by the insured

(i) with respect to which an endorsement is made on the policy,

(ii) that identifies the contract, or

(iii) that describes the insurance or insurance fund or a part of the insurance or insurance fund,

in which the insured designates or alters or revokes the designation of the insured's personal representative or a beneficiary as one to whom or for whose benefit the insurance money that is payable in the event of death by accident is to be paid;

(g) "family insurance" means insurance in which the lives or well-being or the lives and well-being of the insured and one or more persons related to the insured by blood, marriage or adoption are insured under a single contract between an insurer and the insured;

(h) "group insurance" means insurance, other than creditor's group insurance and family insurance, in which the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

(i) "group person insured" means a person (the "primary person") who is insured under a contract of group insurance and on whom a right is conferred by the contract, but does not include a person who is insured under the contract as a person dependent on or related to the primary person;

(j) "instrument" includes a will;

(k) "insurance" means accident insurance, sickness insurance or accident insurance and sickness insurance;

(l) "insured",

(i) in the case of group insurance means, in the provisions of this Subpart relating to the designation of beneficiaries or of personal representatives as recipients of insurance money and their rights and status, the group person insured, and

(ii) in all other cases means the person who makes a contract with an insurer;

(m) "person insured" means a person in respect of an accident to whom, or in respect of whose sickness, insurance money

is payable under a contract, but does not include a group person insured.

Application of  
Subpart

**663(1)** Despite any agreement, condition or stipulation to the contrary, this Subpart applies to a contract made in Alberta on or after October 1, 1970, and this section and sections 662, 664, 665, 673, 676, 677, 679, 682 and 684 to 701 apply also to a contract made in Alberta before that day.

(2) Sections 309, 310, 311, 312, 314, 320a and 320d of *The Alberta Insurance Act* (RSA 1955 c159) in force on January 1, 1970 apply to a contract made in Alberta before October 1, 1970.

(3) This Subpart does not apply to

- (a) accidental death insurance,
- (b) creditor's group insurance,
- (c) disability insurance, or
- (d) insurance provided under section 640, 641 or 642.

Application of  
Subpart

**664** In the case of a contract of group insurance made with an insurer authorized to transact insurance in Alberta at the time the contract was made, this Subpart applies in determining

- (a) the rights and status of beneficiaries and personal representatives as recipients of insurance money, if the group person insured was resident in Alberta at the time the group person insured became insured, and
- (b) the rights and obligations of the group person insured if the group person insured was resident in Alberta at the time the group person insured became insured.

Issue of policy

**665** An insurer entering into a contract must issue a policy.

Exceptions  
and particulars  
in policy

**666(1)** This section does not apply to

- (a) a contract of group insurance, or
- (b) a contract made by a fraternal society.

(2) An insurer must set out the following in the policy:

- (a) the name or a sufficient description of the insured and of the person insured;

- (b) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
- (c) the amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid;
- (d) the conditions on which the contract may be reinstated if it lapses;
- (e) the term of the insurance or the method of determining the day on which the insurance commences and terminates.

Particulars in  
group policy

**667** In the case of a contract of group insurance, an insurer must set out the following in the policy:

- (a) the name or a sufficient description of the insured;
- (b) the method of determining the group persons insured and persons insured;
- (c) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
- (d) the period of grace, if any, within which the premium may be paid;
- (e) the term of the insurance or the method of determining the day on which the insurance commences and terminates.

Termination  
and  
replacement of  
group policies

**668(1)** In this section,

- (a) “original maximum benefit period” means, in relation to a contract of group insurance, the maximum period provided under the contract for the payment of any benefit payable under the contract in respect of loss of income;
- (b) “specified time period” means, in relation to a contract of group insurance, a continuous period of 6 months following the termination of the contract or a benefit provision in the contract, or any longer continuous period provided for in the contract instead of the 6-month period.

**(2)** When a contract of group insurance or a benefit provision in a contract of group insurance is terminated, the insurer continues, as though the contract or benefit provision had remained in full force and effect, to be liable to or in respect of any group person

insured under the contract to pay benefits under the contract relating to

- (a) loss of income because of disability,
- (b) death,
- (c) dismemberment, or
- (d) accidental damage to natural teeth,

arising from an accident or sickness that occurred before the termination of the contract or benefit provision, if the disability, death, dismemberment or accidental damage to natural teeth is reported to the insurer within the specified time period.

(3) Despite subsection (2), an insurer does not remain liable, under a contract or benefit provision described in that subsection, to pay a benefit for loss of income for the recurrence, after the termination of that contract or benefit provision, of a disability that recurs after a continuous period of 6 months, or a longer period provided for in the contract, during which the group person insured was not disabled.

(4) An insurer who is liable under subsection (2) to pay a benefit for loss of income as a result of the disability of a group person insured is not liable to pay benefits for any period longer than the period remaining of the original maximum benefit period in respect of the disability of the group person insured.

(5) If a contract of group insurance (in this section called the “replacement contract”) is entered into within 31 days of the termination of another contract of group insurance (in this section called the “other contract”) and insures the same group or part of the group insured under the other contract,

- (a) the replacement contract is deemed to provide that any person who was insured under the other contract at the time of its termination is insured under the replacement contract from and after the termination of the other contract if
  - (i) the insurance on that person under the other contract terminated solely by reason of the termination of the other contract, and
  - (ii) the person is a member of a class eligible for insurance under the replacement contract,
- (b) every person who was insured under the other contract and who is insured under the replacement contract is entitled to

receive credit for satisfaction of any deductible earned before the effective date of the replacement contract, and

- (c) no person who was insured under the other contract may be excluded from eligibility under the replacement contract solely because of not being actively at work on the effective date of the replacement contract,

but if the replacement contract provides that the full benefits required to be paid pursuant to subsection (2) by the insurer of the other contract are to be paid under the replacement contract instead, the insurer of the other contract is not liable to pay those benefits.

Certificate  
covering group  
insurance

**669(1)** Except as provided in subsection (2), in the case of a contract of group insurance an insurer must issue for delivery by the insured to each group person insured a certificate or other document in which is set out the following:

- (a) the name of the insurer and a sufficient identification of the contract;
- (b) the amount or the method of determining the amount of insurance on the group person insured and on any person insured;
- (c) the circumstances under which the insurance terminates and the rights, if any, on the termination of the group person insured and of any person insured.

**(2)** This section does not apply to a contract of blanket insurance or to a contract of group insurance of a non-renewable type issued for a term of 6 months or less.

Exceptions or  
reductions

**670(1)** Subject to section 671 and except as otherwise provided in this section, the insurer must set out in the policy every exception or reduction affecting the amount payable under the contract, either in the provision affected by the exception or reduction or under a heading such as "Exceptions" or "Reductions".

**(2)** If the exception or reduction affects only one provision in the policy, it must be set out in that provision.

**(3)** If the exception or reduction is contained in an endorsement, insertion or rider, the endorsement, insertion or rider must, unless it affects all amounts payable under the contract, make reference to the provisions in the policy affected by the exception or reduction.

**(4)** The exception or reduction mentioned in section 683 need not be set out in the policy.

(5) This section does not apply to a contract made by a fraternal society.

**Statutory  
conditions**

**671** Subject to section 672, the conditions set out in this section are deemed to be part of every contract other than a contract of group insurance, and must be printed on or attached to the policy forming part of the contract under the heading "Statutory Conditions".

**Statutory Conditions**

**THE CONTRACT** 1(1) The application, this policy, any document attached to this policy when issued, and any amendment to the contract agreed on in writing after the policy is issued, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions.

**WAIVER** (2) The insurer shall be deemed not to have waived any condition of this contract, either in whole or in part, unless the waiver is clearly expressed in writing signed by the insurer.

**COPY OF APPLICATION** (3) The insurer shall, on request, furnish to the insured or to a claimant under the contract a copy of the application.

**MATERIAL FACTS** 2 No statement made by the insured or person insured at the time of application for the contract shall be used in defence of a claim under or to avoid this contract unless it is contained in the application or any other written statements or answers furnished as evidence of insurability.

**CHANGES IN OCCUPATION** 3(1) If after the contract is issued the person insured engages for compensation in an occupation that is classified by the insurer as more hazardous than that stated in this contract, the liability under this contract is limited to the amount that the premium paid would have purchased for the more hazardous occupation according to the limits, classification of risks and premium rates in use by the insurer at the time the person insured engaged in the more hazardous occupation.

(2) If the person insured changes his occupation from that stated in this contract to an occupation classified by the insurer as less hazardous and the insurer is so advised in writing, the insurer shall either

(a) reduce the premium rate, or

- (b) issue a policy for the unexpired term of this contract at the lower rate of premium applicable to the less hazardous occupation,

according to the limits, classification of risks, and premium rates used by the insurer at the date of receipt of advice of the change in occupation, and shall refund to the insured the amount by which the unearned premium on this contract exceeds the premium at the lower rate for the unexpired term.

**RELATION OF EARNINGS TO INSURANCE** 4 Where the benefits for loss of time payable hereunder, either alone or together with benefits for loss of time under another contract, including a contract of group accident insurance or group sickness insurance or of both and a life insurance contract providing disability insurance, exceed the money value of the time of the person insured, the insurer is liable only for that proportion of the benefits for loss of time stated in this policy that the money value of the time of the person insured bears to the aggregate of the benefits for loss of time payable under all such contracts and the excess premium, if any, paid by the insured shall be returned to him by the insurer.

**TERMINATION BY INSURED** 5 The insured may terminate this contract at any time by giving written notice of termination to the insurer by registered mail to its head office or chief agency in the province, or by delivery thereof to an authorized agent of the insurer in the province, and the insurer shall on surrender of this policy refund the amount of premium paid in excess of the short-rate premium calculated to the date of receipt of such notice according to the table in use by the insurer at the time of termination.

**TERMINATION BY INSURER** 6(1) The insurer may terminate this contract at any time by giving written notice of termination to the insured and by refunding concurrently with the giving of notice the amount of premium paid in excess of the pro rata premium for the expired time.

(2) The notice of termination may be delivered to the insured, or it may be sent by registered mail to the latest address of the insured on the records of the insurer.

(3) Where the notice of termination is delivered to the insured, 5 days' notice of termination shall be given; where it is mailed to the insured, 10 days' notice of termination shall be given, and the 10 days shall begin on the day following the date of mailing of notice.

**NOTICE AND PROOF OF CLAIM** 7(1) The insured or a person insured, or a beneficiary entitled to make a claim, or the agent of any of them, shall



(a) give written notice of claim to the insurer

(i) by delivery thereof, or by sending it by registered mail to the head office or chief agency of the insurer in the province, or

(ii) by delivery thereof to an authorized agent of the insurer in the province,

not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability,

(b) within 90 days from the date a claim arises under the contract on account of an accident, sickness or disability, furnish to the insurer such proof as is reasonably possible in the circumstances of the happening of the accident or the commencement of the sickness or disability, and the loss occasioned thereby, the right of the claimant to receive payment, his age and the age of the beneficiary if relevant, and

(c) if so required by the insurer, furnish a satisfactory certificate as to the cause or nature of the accident, sickness or disability for which claim may be made under the contract and as to the duration of such disability.

**FAILURE TO GIVE NOTICE OR PROOF** (2) Failure to give notice of claim or furnish proof of claim within the time prescribed by this Statutory Condition does not invalidate the claim if the notice or proof is given or furnished as soon as reasonably possible, and in no event later than one year from the date of the accident or the date a claim arises under the contract on account of sickness or disability if it is shown that it was not reasonably possible to give notice or furnish proof within the time so prescribed.

**INSURER TO FURNISH FORMS FOR PROOF OF CLAIM** 8 The insurer shall furnish forms for proof of claim within 15 days after receiving notice of claim, but where the claimant has not received the forms within that time he may submit his proof of claim in the form of a written statement of the cause or nature of the accident, sickness or disability giving rise to the claim and of the extent of the loss.

**RIGHTS OF EXAMINATION** 9 As a condition precedent to recovery of insurance money under this contract,

(a) the claimant shall afford to the insurer an opportunity to examine the person of the person insured when and so often as it reasonably requires while the claim hereunder is pending, and

- (b) in the case of death of the person insured, the insurer may require an autopsy subject to any law of the applicable jurisdiction relating to autopsies.

**WHEN MONEY PAYABLE OTHER THAN FOR LOSS OF TIME** 10 All money payable under this contract, other than benefits for loss of time, shall be paid by the insurer within 60 days after it has received proof of claim.

**WHEN LOSS OF TIME BENEFITS PAYABLE** 11 The initial benefits for loss of time shall be paid by the insurer within 30 days after it has received proof of claim, and payment shall be made thereafter in accordance with the terms of the contract but not less frequently than once in each succeeding 60 days while the insurer remains liable for the payments if the person insured when required to do so furnishes before payment proof of continuing disability.

**LIMITATION OF ACTIONS** 12 An action or proceeding against the insurer for the recovery of a claim under this contract shall not be commenced more than one year after the date the insurance money became payable or would have become payable if it had been a valid claim.

Omission or  
variation of  
conditions

**672(1)** When a statutory condition is not applicable to the benefits provided by the contract it may be omitted from the policy or varied so that it will be applicable.

(2) Statutory Conditions 3, 4 and 9 may be omitted from the policy if the contract does not contain any provisions respecting the matters dealt with in those Statutory Conditions.

(3) Statutory Conditions 5 and 6 must be omitted from the policy if the contract does not provide that it may be terminated by the insurer prior to the expiry of any period for which a premium has been accepted.

(4) Statutory Conditions 3, 4, 5, 6 and 9, and subject to the restriction in subsection (5), Statutory Condition 7, may be varied, but if by reason of the variation the contract is less favourable to the insured, a person insured or a beneficiary than it would be if the condition had not been varied, the condition is deemed to be included in the policy in the form in which it appears in section 660.

(5) Statutory Condition 7(1)(a) and (b) must not be varied in policies providing benefits for loss of time.

(6) Statutory Conditions 10 and 11 may be varied by shortening the time periods in those Statutory Conditions, and Statutory

Condition 12 may be varied by lengthening the time period in that Statutory Condition.

(7) The title of a statutory condition must be reproduced in the policy along with the statutory condition, but the number of a statutory condition may be omitted.

(8) In the case of a contract made by a fraternal society,

- (a) the following provision must be printed on every policy in substitution for Statutory Condition 1(1):

THE CONTRACT 1(1) This policy, the Act or instrument of incorporation of the society, its constitution, by-laws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions.

and

- (b) Statutory Condition 5 must not be printed on the policy.

Notice of  
statutory  
conditions

**673** In the case of a policy of accident insurance of a non-renewable type issued for a term of 6 months or less or in relation to a ticket of travel, the statutory conditions need not be printed on or attached to the policy if the policy contains the following notice printed in conspicuous type:

Notwithstanding any other provision herein contained, this contract is subject to the statutory conditions in the *Insurance Act* respecting contracts of accident insurance.

Termination  
for non-  
payment

**674(1)** When a policy evidencing a contract or a certificate evidencing the renewal of a contract is delivered to the insured and the initial premium, or in the case of a renewal certificate, the renewal premium for the contract has not been fully paid,

- (a) the contract or the renewal evidenced by the certificate is as binding on the insurer as if the premium had been paid although delivered by an officer or an agent of the insurer who did not have authority to deliver it, and
- (b) the contract may be terminated for the non-payment of the premium by the insurer on 10 days' notice of termination given in writing to the insured and mailed postage prepaid and registered to the latest address of the insured on the records of the insurer, and the 10 days begin on the day following the date of mailing the notice.

(2) This section does not apply to a contract of group insurance or to a contract made by a fraternal society.

Unpaid  
premiums

**675(1)** An insurer may

- (a) deduct unpaid premiums from an amount that it is liable to pay under a contract, or
- (b) sue the insured for unpaid premiums.

(2) When a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part of the premium is deemed never to have been paid.

(3) Subsection (1)(a) does not apply to a contract of group insurance.

(4) This section does not apply to a contract made by a fraternal society.

Insurable  
interest

**676** Without restricting the meaning of the expression “insurable interest”, a person (the “primary person”) has an insurable interest in the primary person’s own life and well-being and in the life and well-being of

- (a) the primary person’s child or grandchild,
- (b) the primary person’s spouse,
- (c) any person on whom the primary person is wholly or in part dependent for, or from whom the primary person is receiving, support or education,
- (d) the primary person’s officer or employee, and
- (e) any person in whom the primary person has a pecuniary interest.

Lack of  
insurable  
interest

**677(1)** Subject to subsection (2), if at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

(2) A contract is not void for lack of insurable interest

- (a) if it is a contract of group insurance, or

(b) if the person insured has consented in writing to the insurance.

(3) When the person insured is under the age of 16 years, consent to the insurance may be given by one of the parents of the person insured or by someone standing in loco parentis to the person insured.

### **Policies on Lives of Minors**

Capacity of  
minor

**678** Except in respect of the minor's rights as beneficiary, a minor who has attained the age of 16 years has the capacity of an adult

(a) to make an enforceable contract, and

(b) in respect of a contract.

### **Misrepresentation and Non-Disclosure**

Non-disclosure

**679(1)** An applicant for insurance on the applicant's own behalf and on behalf of each person to be insured, and each person to be insured, must disclose to the insurer in any application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within the applicant's or person to be insured's knowledge that is material to the insurance and is not so disclosed by the other.

(2) Subject to sections 680 and 683, a failure to disclose, or a misrepresentation of, a fact referred to in subsection (1) renders a contract voidable by the insurer.

(3) In the case of a contract of group insurance, a failure to disclose or a misrepresentation of a fact referred to in subsection (1) with respect to a group person insured or a person insured under the contract does not render the contract voidable, but if evidence of insurability is specifically requested by the insurer, the insurance in respect of such a person is, subject to section 680, voidable by the insurer.

Incontestability

**680(1)** Subject to section 683 and except as provided in subsection (2),

(a) when a contract, including renewals of the contract, except a contract of group insurance, has been in effect continuously for 2 years with respect to a person insured, a failure to disclose or a misrepresentation of a fact with respect to that person required by section 679 to be

disclosed does not, except in the case of fraud, render the contract voidable;

- (b) when a contract of group insurance, including renewals of the contract, has been in effect continuously for 2 years with respect to a group person insured or a person insured, a failure to disclose or a misrepresentation of a fact with respect to that group person insured or person insured required by section 679 to be disclosed does not, except in the case of fraud, render the contract voidable with respect to that group person insured or person insured.

(2) If a claim arises from a loss incurred or a disability beginning before a contract, including renewals of the contract, has been in force for 2 years with respect to the person in respect of whom the claim is made, subsection (1) does not apply to that claim.

**Reinstatement**     **681** Sections 679 and 680 apply, with all necessary modifications, to a failure to disclose or a misrepresentation at the time of reinstatement of a contract and the period of 2 years to which reference is made in section 680 commences to run in respect of a reinstatement from the date of reinstatement.

**Pre-existing conditions**     **682** When a contract contains a general exception or reduction with respect to pre-existing disease or physical conditions and the person insured or group person insured suffers or has suffered from a disease or physical condition that existed before the date the contract came into force with respect to that person and the disease or physical condition is not excluded by name or specific description from the insurance respecting that person,

- (a) the prior existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part for a loss incurred or a disability beginning after the contract, including renewals of the contract, has been in force continuously for 2 years immediately prior to the date of loss incurred or commencement of disability with respect to that person, and
- (b) the existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part if the disease or physical condition was disclosed in the application for the contract.

**Misstatement of age**     **683(1)** Subject to subsections (2) and (3), if the age of the person insured has been misstated to the insurer then, at the option of the insurer, either

- (a) the benefits payable under the contract must be increased or decreased to the amount that would have been provided for the same premium at the correct age, or
- (b) the premium may be adjusted in accordance with the correct age as of the date the person insured became insured.

(2) In the case of a contract of group insurance, if there is a misstatement to the insurer of the age of a group person insured or person insured, the provisions, if any, of the contract with respect to age or misstatement of age apply.

(3) When the age of a person affects the commencement or termination of the insurance, the correct age governs.

### **Beneficiaries**

Designation of beneficiary

**684(1)** Unless otherwise provided in the policy, an insured may in a contract or by a declaration designate the insured's personal representative or a beneficiary to receive insurance money payable in the event of death by accident and may from time to time alter or revoke the designation by declaration.

(2) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

(3) A designation in a will is of no effect against a designation made later than the making of the will.

(4) If a designation is contained in a will and the will is subsequently revoked by operation of law or otherwise, the designation is revoked.

(5) If a designation is contained in an instrument that purports to be a will and the instrument, if it had been valid as a will, would have been subsequently revoked by operation of law or otherwise, the designation is revoked.

Designation of "heirs", etc.

**685(1)** A designation in favour of the "heirs", "next of kin" or "estate", or the use of words of similar meaning in a designation are deemed to be a designation of the personal representative.

(2) If a beneficiary predeceases the person insured or group person insured, as the case may be, and no disposition of the share of the deceased beneficiary in the insurance money is provided for in the contract or by declaration, the share is payable

- (a) to the surviving beneficiary,
- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares, or
- (c) if there is no surviving beneficiary, to the insured or group person insured, as the case may be, or the personal representative of the insured or group person insured.

**(3)** A beneficiary designated under section 684 may on the death by accident of the person insured or group person insured enforce for the beneficiary's own benefit, and a trustee appointed pursuant to section 686 may enforce as trustee, the payment of insurance money payable to the beneficiary or trustee, and the payment to the beneficiary or trustee discharges the insurer to the extent of the amount paid, but the insurer may set up any defence that it could have set up against the insured or the insured's personal representative.

Trustee for  
beneficiary

**686** An insured may in a contract or by a declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by a declaration.

Payment of  
insurance  
money

**687(1)** Until an insurer receives at its head or principal office in Canada an instrument or an order of a court affecting the right to receive insurance money, or a notarial copy or a copy verified by statutory declaration of any such instrument or order, it may make payment of the insurance money and is as fully discharged to the extent of the amount paid as if there were no such instrument or order.

**(2)** Subsection (1) does not affect the rights or interests of any person other than the insurer.

**(3)** When an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, the assignee has priority of interest as against

- (a) any assignee other than one who gave notice earlier in like manner, and
- (b) a beneficiary.

**(4)** When a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this Subpart, and the assignee is deemed to be the insured.



(5) A provision in a contract to the effect that the rights or interests of the insured, or, in the case of a contract of group insurance, the group person insured are not assignable is valid.

Insurance  
money not  
part of estate

**688(1)** When a beneficiary is designated, any insurance money payable to the beneficiary is not, from the time of the happening of the event on which it becomes payable, part of the estate of the insured and is not subject to the claims of the creditors of the insured.

(2) While there is in effect a designation of beneficiary in favour of any one or more of a spouse, child, grandchild or parent of the person insured or group person insured, the rights and interests of the insured in the insurance money and in the contract so far as either relate to accidental death benefits are exempt from writ proceedings.

Enforcement  
of contract

**689** A group person insured may, in the group person insured's own name, enforce a right given by a contract to the group person insured or to a person insured under the contract as a person dependent on or related to the group person insured, subject to any defence available to the insurer against any of them.

Simultaneous  
deaths

**690** Unless a contract or a declaration otherwise provides, if a person insured or group person insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with section 685(2) as if the beneficiary had predeceased the person insured or group person insured.

Payment into  
Court

**691(1)** When the insurer admits liability for the insurance money, or any part of the insurance money, and it appears to the insurer that

- (a) there are adverse claimants,
- (b) the whereabouts of the person entitled are unknown, or
- (c) there is no person capable of giving or authorized to give a valid discharge for the insurance money who is willing to do so,

the insurer may apply ex parte to the Court for an order for payment of the money into Court, and the Court may on the notice, if any, it considers necessary, make an order accordingly.

(2) The Court may fix without taxation the costs incurred on or in connection with any application or order made under subsection (1)

and may order the costs to be paid out of the insurance money or by the insurer or otherwise as it considers just.

(3) A payment made pursuant to an order under subsection (1) discharges the insurer to the extent of the payment.

Insurance  
money  
payable to  
minor

**692(1)** When an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a valid discharge for the insurance money who is willing to do so, the insurer may, at any time after 30 days from the date of the happening of the event on which the insurance money becomes payable, pay the money less the applicable costs mentioned in subsection (2) into Court to the credit of the minor.

(2) The insurer may retain out of the insurance money for costs incurred on payment into Court under subsection (1) the sum of \$10 when the amount does not exceed \$1000, and the sum of \$15 in other cases, and payment of the remainder of the money into Court discharges the insurer.

(3) No order is necessary for payment into Court under subsection (1), but the accountant or other proper officer must receive the money on the insurer's filing with the accountant or proper officer an affidavit showing the amount payable and the name, date of birth and residence of the minor, and on the payment's being made the insurer must forthwith notify the Public Trustee and deliver a copy of the affidavit to the Public Trustee.

Beneficiary  
under  
disability

**693** When it appears that a representative of a beneficiary who is under disability may accept payments on behalf of the beneficiary under the law of the domicile of the beneficiary, the insurer may make payment to the representative, and the payment discharges the insurer to the extent of the amount paid.

Payments not  
exceeding  
\$2000

**694** Even though insurance money is payable to a person, the insurer may if the contract so provides, but subject always to the rights of an assignee, pay an amount not exceeding \$2000 to

- (a) a relative by blood or adoption or connection by marriage of a person insured or the group person insured, or
- (b) any person appearing to the insurer to be equitably entitled to the insurance money by reason of having incurred expense for the maintenance, medical attendance or burial of a person insured or the group person insured, or to have a claim against the estate of a person insured or the group person insured in relation to those expenses,

and the payment discharges the insurer to the extent of the amount paid.

Payment of  
insurance  
money

**695(1)** Subject to subsection (2), insurance money is payable in Alberta.

(2) In the case of a contract of group insurance, insurance money is payable in the province in which the group person insured was resident at the time the group person insured became insured.

(3) Unless a contract otherwise provides, a reference in the contract to dollars means Canadian dollars whether the contract by its terms provides for payment in Canada or elsewhere.

(4) When a person (the “primary person”) entitled to receive insurance money is not domiciled in Alberta, the insurer may pay the insurance money to the primary person or to any person who is entitled to receive it on behalf of the primary person under the law of the domicile of the payee, and the payment discharges the insurer to the extent of the amount paid.

(5) When insurance money is by the contract payable to a person who has died or to the person’s personal representative and the deceased person was not at the date of death domiciled in Alberta, the insurer may pay the insurance money to the personal representative of that person appointed under the law of the person’s domicile, and the payment discharges the insurer to the extent of the amount paid.

Action for  
payment

**696** Regardless of where a contract was made, a claimant who is resident in Alberta may bring an action in Alberta if the insurer was authorized to transact insurance in Alberta at the time the contract was made or at the time the action is brought.

Insurer giving  
information

**697** An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received that affects the insurance money.

Undue  
prominence

**698** The insurer must not in the policy give undue prominence to any provision or statutory condition as compared to other provisions or statutory conditions, unless the effect of that provision or statutory condition is to increase the premium or decrease the benefits otherwise provided for in the policy.

Relief from  
forfeiture

**699** If there has been imperfect compliance with a statutory condition as to any matter or thing done or omitted to be done by the insured, person insured or claimant with respect to the loss insured against and a consequent forfeiture or avoidance of the insurance in whole or in part, and a court before which a question

relating to the imperfect compliance is tried considers it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on any terms it considers just.

Disability  
benefits

**700** If a policy issued after January 1, 1974 includes provision for disability benefits to be payable only during confinement of the insured, the provision does not bind the insured and the benefits in respect of disability under the policy during the disability are payable regardless of whether the insured is confined or not.

Presumption  
against  
agency

**701** No officer, agent, employee or servant of the insurer and no person soliciting insurance, whether or not the person is an agent of the insurer, is, to the prejudice of the insured, person insured or group person insured, deemed to be the agent of the insured or of the person insured or group person insured in respect of any question arising out of the contract.

## **SUBPART 7**

### **LIVESTOCK INSURANCE**

Application of  
Subpart

**702** This Subpart applies to livestock insurance and to any insurer carrying on the business of livestock insurance in Alberta.

Scope of  
insurance

**703(1)** Every insurer licensed under this Act for the transaction of livestock insurance may, within the limits and subject to the conditions to which the licence is subject, insure against loss of livestock by fire, lightning, accident, disease or other means, except that of design on the part of the insured, or by the invasion by an enemy or by insurrection.

**(2)** An insurer licensed under this Act to transact mutual fire insurance may, within the limits and subject to the conditions to which the licence is subject, insure against loss of livestock by fire and lightning only, except loss by fire caused by design on the part of the insured, or by the invasion by an enemy or by insurrection.

Application of  
Subpart 3 to  
livestock  
insurance

**704** The following provisions of Subpart 3 apply to livestock insurance contracts:

- (a) the provisions as to the form and contents of the policy;
- (b) the provision as to the conditions including the statutory conditions, except where inapplicable to the nature of the risk.

Application of Subpart 10	<b>705</b> Subpart 10 applies to all contracts of livestock insurance issued by mutual fire insurers.
Term of contract	<b>706</b> Contracts of insurance must not in any case exceed the term of 3 years.
Renewals	<p><b>707(1)</b> A contract made for one year or any shorter period may be renewed from time to time at the discretion of the directors by renewal receipt instead of by policy on the insured's paying the required premium or giving a premium note.</p> <p><b>(2)</b> All payments or renewal by cash or premium notes must be made at or before the end of the period for which the policy was granted or renewed, otherwise the policy is void.</p>
Form of mutual contracts	<b>708</b> A contract of livestock insurance issued under this Subpart by a mutual fire insurer may be issued as a separate policy or may form part of the insured's fire insurance policy, subject to the provisions of this Subpart.
Notice of claim	<p><b>709(1)</b> A person claiming under a contract of livestock insurance must furnish notice of the claim to the insurer within 10 days after loss.</p> <p><b>(2)</b> Failure to give the notice within the time specified does not invalidate the claim if it is shown that it was not reasonably possible to give the notice within that time and that notice was given as soon as was reasonably possible.</p>

## SUBPART 8

### HAIL INSURANCE

Application of Subpart	<p><b>710(1)</b> This Subpart applies to hail insurance and to every insurer carrying on the business of hail insurance in Alberta except the Agriculture Financial Services Corporation.</p> <p><b>(2)</b> For the purposes of this Subpart, "premium" as defined in section 1 includes a negotiable instrument accepted by the insurer or its general agent as payment of the premium.</p>
Property insurable	<b>711(1)</b> Every insurer may, within the limits and subject to the restrictions set out in its licence, insure or reinsure

- (a) crops of wheat, oats, barley, flax, rye or speltz, field peas, buckwheat, grasses or clover grown for seed, field corn or sunflower grown for seed or fodder, or
- (b) field or garden or horticultural crops other than those specified in clause (a).

(2) In the case of the crops mentioned in subsection (1)(b), the Superintendent may approve a form of contract appropriate to insure those crops, and in that event the statutory conditions must be read with those modifications necessary to give effect to the terms and conditions of a contract in the form so approved.

(3) The insurer may by an endorsement on the policy, and in consideration of an additional premium, insure the crop

- (a) for any period during which it is lying in windrows, or
- (b) for any period during which it is in sheaves either on the ground or in stooks.

(4) The insurer may by an endorsement on the policy, and in consideration of a additional premium, insure the crop against loss or damage incidental to crops arising from other causes, and in that case the statutory conditions must be read with those modifications necessary to give effect to the terms and conditions of the endorsement.

Insurable  
interest

**712(1)** The contract is void if, at the time at which it would otherwise take effect, the insured has not an insurable interest in the crop insured.

(2) If the insured has an insurable interest in the crop insured when the contract takes effect, it is not necessary for the validity of the contract that any person to whom the insurance money is payable, whether by the terms of the contract or by assignment, have an insurable interest in the crop.

Application for  
contract

**713(1)** No insurer may effect a contract of insurance unless the insurer has been tendered an application for the contract in writing signed by the applicant or the applicant's agent.

(2) A copy of the application or of that part of the application that is material to the contract must be embodied in, endorsed on or attached to the policy when issued by the insurer, and forms part of the contract.

(3) The application must set out

- (a) the name and address of the applicant;

- (b) an itemized description of the location and area of each part of the crop to be insured and the amount of insurance applied for on each hectare;
- (c) whether or not the crop has been hailed prior to the time of the application;
- (d) the insurable interest of the applicant;
- (e) the name of the person or persons to whom the insurance money is payable;
- (f) with the approval of the Superintendent, any further information the insurer requires.

Information to  
appear on  
face of policy

**714(1)** On the face of every policy there must appear

- (a) the name of the insurer;
- (b) the name of the insured;
- (c) the name of the person or persons to whom the insurance money is payable;
- (d) the premium or other consideration for the insurance;
- (e) the subject-matter of the insurance;
- (f) the maximum amount or amounts that the insurer contracts to pay;
- (g) the date of the commencement of liability;
- (h) the event on the happening of which payment is to be made;
- (i) the term of the contract.

**(2)** There must appear on every application and on every policy in a prominent position and in prominent type the name and address of the insurer's head or branch office or general agency from which the policy is to be or is issued.

Delivery of  
application to  
insurer

**715** Every insurance agent who takes an application on behalf of an insurer must deliver it to the insurer, or forward it to the insurer by mail, not later than the day following the day on which it is taken.

Effective date  
of contract

**716(1)** If an insurance agent of an insurer mails an application for insurance on crops mentioned in section 711(1)(a) to the head or branch office or the general agency of the insurer in Alberta and tenders with the application payment of the premium in cash, or by post office order, postal note, express order, bank money order, certificate of deposit of a bank or certified cheque, a contract of insurance in accordance with the application takes effect at 12 noon of the day following the date of the mailing, and in that case, the post office date stamp determines the date of mailing.

(2) The insurer may decline the application on its receipt, and if the application is declined the insurer must forthwith give notice of that decision by registered letter, or by prepaid telegram if possible, to the applicant at the applicant's address as given in the application and to the insurance agent tendering the application, in which case the contract of insurance mentioned in subsection (1) continues in force only until 12 noon of the day following the receipt of the notice by the applicant.

(3) Despite subsection (2), notice in writing that the application has been declined may be personally delivered to the applicant by the insurance agent, and in that event the contract of insurance mentioned in subsection (1) continues in force only until 12 noon of the day following receipt of the notice by the applicant.

(4) The premium tendered with the application must be returned to the applicant or held by the insurer for the applicant for premium purposes solely and is payable on the direction of the applicant to any insurer to whom an application for insurance is subsequently tendered.

(5) If the applicant subsequently tenders an application for insurance to another insurer and endorses on the application a notice that the premium is held as mentioned in subsection (4), the amount so held is, for the purpose of this section, deemed to have been tendered with the application.

Reduction or  
increase in  
amount of  
premium

**717** If the amount of premium tendered with an application made in accordance with section 716 is not the correct amount, the insurance must, unless readjusted before loss occurs, be either reduced or increased to the amount the premium actually tendered would pay for, according to the correct rate of premium applicable to the risk.

Consideration  
of applications

**718(1)** If an agent of an insurer tenders an application with payment of the premium otherwise than as specified in section 716, or if the applicant tenders the application and payment of the premium, to the head or branch office or the general agency of the



insurer in Alberta, the application must immediately be stamped with the date of its receipt.

(2) Subject to subsection (3), the application must be accepted or declined not later than the day following the date of its receipt and must be so stamped.

(3) When the applicant tenders with the application an order on a third party as payment of the premium, the application must be accepted or declined on the day following the date of receipt from the third party of notice of acceptance or of refusal to accept the order for payment.

Notice to  
applicant

**719(1)** If the application is accepted, the insurance applied for takes effect at 12 noon of the day on which the application is accepted.

(2) If the application is declined, the applicant must be notified on the day on which the application is declined, at the address as given in the application.

(3) If there is a telegraph office at the address of the applicant, the notice declining the application must be given by prepaid telegram, otherwise it must be forwarded in writing by registered letter.

(4) If the insurer does not notify the applicant that the application has been declined, the insurer is conclusively presumed to have accepted the application.

Policy in  
accordance  
with  
application

**720** A policy issued to an insured on an application in writing is deemed to be in accordance with the application unless the insurer forthwith gives notice to the insured in writing of the particulars in which the policy and application differ.

Expiration of  
hail insurance  
policies

**721(1)** Subject to subsection (2), all policies of hail insurance expire at 12 noon on September 15 in the year in which they are made.

(2) If any portion of the insured crop is cut before that date then, subject to section 711(3), the liability of the insurer ceases in respect of that portion when it is cut, and the insurance on each hectare of the remaining area continues until the crop on the remaining area is cut but not beyond that date unless extended pursuant to subsection (3).

(3) The insurer may, by an endorsement on the policy, in consideration of an additional premium, extend the term of the contract beyond the date specified in this section.

Partial  
payment of  
loss clause

**722(1)** A policy may contain a partial payment of loss clause to the effect that the insurer must pay only an agreed proportion of any loss that is sustained or the amount of the loss after deduction of a sum specified in the policy, in either case not exceeding the amount of the insurance, in which case there must be printed or stamped on the face of the policy in conspicuous type in red ink or bold type, the words: "This policy contains a partial payment of loss clause".

**(2)** The partial payment of loss clause is not, for the purposes of this Act, a variation of or an addition to the statutory conditions.

Rates of  
premium

**723(1)** Every insurer must, before May 1 in each year, file with the Superintendent the rates of premium to be charged in designated areas in Alberta, and those rates are effective during the current calendar year unless in the meantime the rates are changed and the Superintendent is notified of the change at least 10 days before the change becomes effective.

**(2)** When a rate has been reduced after notification, the new rate is applicable to all contracts issued by the insurer within the designated areas, and the insurer must return to each insured within the designated areas the amount by which the premium paid by each insured exceeds the premium at the lower rate.

Rate of  
commission

**724(1)** Every insurer must, before May 1 in each year, file with the Superintendent the rate of commission payable to its insurance agents in respect of its contracts issued during the current year.

**(2)** No insurer may, directly or indirectly, pay or allow or offer or agree to pay or allow any compensation or anything of value to any person for acting or attempting or assuming to act as its insurance agent in excess of that offered, paid or allowed to any one of its insurance agents on risks for which similar rates of premium are payable.

**(3)** If on investigation by the Superintendent an insurer is found to have contravened subsection (2), the same rate of commission must be paid to all insurance agents on risks for which similar rates of premium are charged.

Notice of  
cancellation or  
alteration

**725** When a loss has, with the consent of the insurer, been made payable to some person other than the insured, the contract must not be cancelled or altered to the prejudice of that person without reasonable notice to that person by the insurer.

Adjustment of loss	<b>726</b> When an adjustment of loss under a contract has been made, a copy of the adjustment, signed by the adjuster and the insured or the insured's agent, must be given to the insured or the insured's agent.
Refund of premium	<p><b>727(1)</b> If the actual area of the crop insured under any item of a policy is found to be less than the area mentioned in the application under that item, the insurer must repay to the insured the premium paid on the excess area.</p> <p><b>(2)</b> If the actual area of the crop insured under any item of a policy is found to be greater than the area mentioned in the application, the amount of insurance on each hectare is reduced pro rata in its relation to the actual area, unless the area insured is clearly identified in the application or by a diagram on the application.</p>
Statutory conditions	<p><b>728</b> The conditions set out in this section</p> <ul style="list-style-type: none"> <li>(a) are deemed to be part of every contract in force in Alberta, and</li> <li>(b) must be printed on every policy under the heading "Statutory Conditions",</li> </ul> <p>and no stipulations to the contrary, or provisions for a variation, addition or omission, are binding on the insured, nor is anything contained in the description of subject-matter of the insurance effective in so far as it is inconsistent with, varies, modifies or avoids any such condition.</p>

### **Statutory Conditions**

**MISDESCRIPTION OR MISREPRESENTATION**    1    Where an applicant in his application falsely describes the location and area of the crop, to the prejudice of the insurer, or knowingly misrepresents or fails to disclose in the application any fact required to be stated therein, the insurance shall be void as to the item of the application in respect of which the misdescription, misrepresentation or omission is made.

**WAIVER OF CONDITIONS**    2    No term or condition of the policy shall be deemed to have been waived by the insurer, either in whole or in part, unless the waiver is clearly expressed in writing signed by or on behalf of the insurer at its head or branch office or general agency from which the policy was issued.

OFFICER PRESUMED AN AGENT 3 Any officer or general agent of the insurer who assumes on behalf of the insurer to enter into a written agreement relating to any matter connected with the insurance shall be deemed, prima facie, to be the agent of the insurer for the purpose.

4 No claimant shall be entitled to indemnity under the policy for any loss or damage which is found to be less than 5% of the crop on the hailed area or any portion thereof and in no case for less than \$10, except where the area insured is 16 hectares or less.

CONDITIONS OF INDEMNITY 5 No claimant shall be entitled to indemnity under the policy

- (a) when the crop is wholly destroyed by any agency other than hail,
- (b) when the crop is over-ripe, or
- (c) when the crop or any portion thereof has been so injured by causes other than hail that the crop or such portion, as the case may be, would not yield profit over and above the actual cost of cutting, threshing and marketing it.

NOTICE OF CLAIM OF LOSS 6 Any person claiming under the policy shall give notice of claim in writing to the head or branch office or the general agency of the insurer from which the policy was issued within 3 days of the occurrence of loss, stating the number of the policy, the day and hour of the storm, the estimated damage to each portion of the insured crop and the names of other insurers carrying insurance on the hailed area, provided that failure to give notice within such time shall, subject to condition 9, not invalidate the claim if it is shown that it was not reasonably possible to give notice within that time and that notice was given as soon as was reasonably possible.

RIGHT OF ACCESS OF INSURER 7 After any loss or damage to the insured crop, the insurer shall have immediate right of access and entry by accredited representatives sufficient to enable them to survey and examine the crop and to make an estimate of the loss or damage.

INSURER AND INSURED TO ASCERTAIN PERCENTAGE 8 Within 30 days after the receipt of notice of loss or damage the insurer and the insured or their accredited representatives shall together ascertain and agree on the percentage of loss or damage sustained on the area of the crop or any portion thereof insured under any item of the policy. The amount of indemnity shall be ascertained on the agreed percentage of the insurance on each hectare of the area sustaining loss or damage by hail, subject to any partial payment of loss clause contained in the

policy or subject to the determination of the amount of the loss or damage by appraisal as hereinafter provided. No account shall be taken of the cost of cutting or threshing the portion not destroyed or damaged. The determination of the percentage of loss or damage may be deferred to a later date agreed on by the insurer and the insured.

**PROOF OF LOSS MADE** 9 A person making a claim under the policy shall, within 30 days after the occurrence of a loss or within 30 days of the deferred adjustment date, unless such time is extended in writing by the insurer, furnish a statutory declaration, hereinafter called proof of loss, on a form furnished by the insurer, setting forth the date and number of the policy, the date of the occurrence of the loss or damage, the location and area of the crop damaged, the estimated percentage of loss or damage sustained on the area of the crop or any portion thereof insured under any item of the policy and whether the crop was damaged by hail prior to the time of the application. If the claimant fails to furnish proof of loss he shall forfeit any claim under the policy.

**PROOF OF LOSS MAY BE WAIVED** Provided that if the insurer, within the said 30 days or at the time of the deferred adjustment, has ascertained the loss acceptable to the claimant or if the amount of loss has been determined by appraisal as hereinafter provided, the insurer shall be deemed to have waived proof of loss, unless proof of loss is requested by the insurer in writing.

**PROOF OF LOSS MAY BE MADE BY AGENT OF INSURED** 10 Proof of loss must be made by the insured, although the loss is payable to a third person, except that, in case of the absence of the insured or his inability to make the same, proof may be made by his agent, such absence or inability being satisfactorily accounted for, or in the like case if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

**FRAUD OR FALSE STATEMENT** 11 Any fraud or wilfully false statement in a proof of loss shall vitiate the claim of the person making such proof of loss.

**PAYMENT OF MONEY WITHIN PERIOD** 12 The insurer shall pay the insurance money for which it is liable under the policy within 60 days after the proof of loss has been received by it or where an appraisal is had under condition 15, within 30 days after the award is rendered by the appraisers.

**INSURED LIABLE FOR EXPENSES INCURRED** 13 If the insured claims for loss or damage under the policy and it is found that he is not entitled to indemnity under the conditions of the

policy, the insured shall be liable for the expenses incurred in the adjustment of his claim.

**CANCELLATION OF POLICY** 14 A policy may be cancelled at any time by the insured named therein by giving written notice to that effect to the head or branch office or the general agency of the insurer from which the policy was issued and the insurer shall, on surrender of the policy, refund the excess of paid premium above the customary short rate premium for the time the policy has been in force. If a note or other undertaking was accepted as payment of the premium the insured shall pay the insurer the earned portion of the premium and on payment or tender of such amount the insurer shall return such note or undertaking to pay, or if the insured does not pay or tender the amount, the insurer shall endorse on the note or other undertaking a credit of the amount of the unearned portion of the premium.

**APPRAISAL IN CASE OF DISAGREEMENT** 15 In the event of a disagreement as to the percentage of damage by hail to any of the crops insured, whether the right to recover on the policy is disputed or not, such percentage shall, when so required by either party, be ascertained by an appraisal which shall be conducted as follows:

- (i) the party desiring appraisal shall within 3 days of such disagreement deliver or cause to be delivered by mail or otherwise to the other party a notice in writing requiring an appraisal to be made and appointing an appraiser who is a taxpayer in the Province, who shall act either alone or with an appraiser chosen by the other party to estimate the percentage of the damage;
- (ii) not later than 3 days after receipt of such notice the other party shall, if he so desires, appoint an appraiser to represent him and, within the said period, shall notify the first party of such appointment by notice in writing delivered by mail or otherwise;
- (iii) in the latter case the appraisers shall together estimate the percentage of damage and failing to agree shall submit their differences to an umpire, and the award in writing of any 2 shall determine the percentage of the damage. Such umpire shall be chosen by the appraisers, or in case they cannot agree, then on the application of either appraiser, by the Superintendent of Insurance;
- (iv) if only one appraiser has been chosen, both parties shall share equally his expenses; if 2, each party shall pay the expense of the appraiser chosen by him; both parties shall bear equally the expense of the umpire if an umpire is required;

- (v) should either party after receipt of written notice from the other, neglect or refuse to choose an appraiser within the time above specified the percentage of damage shall be estimated and determined by the appraiser chosen by the party giving notice;
- (vi) the actual appraisal of such damage shall be commenced within 2 days after both appraisers have been chosen, or after the expiration of the time herein allowed for such choice;
- (vii) the periods of time specified in this condition may on application be extended at the discretion of the Superintendent of Insurance.

**ACTION BROUGHT WITHIN ONE YEAR** 16 Every action or proceeding against the insurer in respect of loss or damage to the crops insured under the policy shall be commenced within one year next after the occurrence of the loss or damage and not afterwards.

**ASSIGNMENT OR CHANGE OF PROPERTY** 17 If the crop insured or the interest of the insured in such crop is assigned without the written permission of the head or branch office or general agency of the insurer from which the policy is issued, such assignment shall not be binding on the insurer; but this condition does not apply to change of title by succession or by operation of the law, or by reason of death.

## **SUBPART 9**

### **WEATHER INSURANCE**

- |  |   |
|--|---|
| Application of Subpart                   | <b>729</b> This Subpart applies to weather insurance and to any insurer carrying on the business of weather insurance in Alberta, but does not apply to weather insurance provided by an endorsement to a contract of fire insurance.   |
| Insurability                             | <b>730</b> Every insurer licensed under this Act for the transaction of weather insurance may, within the limits and subject to the conditions to which the licence is subject, insure against any atmospheric disturbances, discharges or conditions that the contract of insurance specifies. |
| Application of fire insurance provisions | <p><b>731</b> The following provisions of this Act apply to weather insurance contracts:</p> <ul style="list-style-type: none"> <li>(a) the provisions of Subpart 3 as to the form and contents of the policy;</li> </ul>   |

- (b) the provisions of Subpart 3 as to conditions, including the statutory conditions, except where inapplicable to the nature of the risk;
- (c) the provisions of Subpart 10 relating to premium notes and assessments, if the insurance is on the premium note plan.

Additional  
conditions

**732** The following additional conditions form part of every weather insurance contract:

- (a) the insurance may be terminated by the insurer by giving 7 days' notice to that effect;
- (b) the insurer is not liable for loss or damage occurring to buildings or structures or to their contents where the buildings or structures have been weakened by subsequent alterations unless permission to make the alterations has been previously granted in writing signed by an authorized agent of the insurer.

Duration of  
contract

**733** A contract of weather insurance must not in any case exceed the term of 3 years.

Fixed  
payments on  
premium notes

**734(1)** On every premium note taken by the insurer there is payable at the commencement of each year of insurance a cash payment amounting to at least 0.2% of the sum insured or pro rata when the cash payment is paid in advance for a longer term, and the balance of the premium note is subject to assessment by the directors.

(2) Despite subsection (1), when the amount of insurance in force exceeds \$3 000 000 and the total assets of the insurer do not fall below 2% of the total amount at risk, reduction of the cash payment may be made to 0.125% of the sum insured per year or pro rata for a longer term.

## SUBPART 10

### MUTUAL INSURANCE

#### Contracts

Application of  
Subpart 3

**735(1)** The provisions of Subpart 3 apply to all mutual fire insurance contracts.

(2) Despite anything contained in this Act, sections 743 to 753 apply to all mutual and cash-mutual corporations operating in



Alberta whether incorporated under the laws of Alberta or the laws of any other province, or of Canada.

**Minimum rates** **736(1)** The minimum rate to be charged for insuring ordinary frame buildings and their contents must not be less than 40¢ per \$100 of insurance per year, and the minimum rates on that and other property must be increased or decreased relative to the increased or decreased risk according to the nature of the property.

**(2)** Despite subsection (1), any company that creates and maintains a reserve fund of at least \$5000 for the first \$1 000 000 of insurance in force and an additional \$2000 for each additional \$1 000 000 or part of \$1 000 000 in force may charge the rates the board of directors decides.

**Liability when policy is cancelled** **737(1)** If a policy is cancelled or voided by the company, the liability of the insured on the insured's premium note or undertaking ceases from the date of the cancellation or avoidance on account of any loss that occurs to the company after the cancellation or avoidance, but the insured is nevertheless liable to pay the insured's proportion of the losses and expenses of the company to the time of cancelling or avoiding the policy.

**(2)** On payment of the insured's proportion of all assessments then payable and to become payable in respect of losses and expenses sustained up to the cancellation or avoidance of the policy, the insured is entitled to a return of the insured's premium note or undertaking and that proportion of the premium paid by the insured that has not been absorbed by the losses and expenses of the company up to the time of the cancellation or avoidance, and a condition to that effect must be endorsed on the policy.

**Assignment of property insured** **738(1)** If the company becomes entitled to avoid a policy for alienation or partial alienation of the insured property or of any interest in the insured property, then, on the return of the policy to the company to be cancelled, unless the directors elect to continue the policy, the insured is entitled to receive the insured's premium note or notes on payment of the insured's proportion of all losses and expenses that have accrued prior to the surrender.

**(2)** The assignee may have the policy transferred to the assignee, and the assignee, on application to the directors and on giving proper security to their satisfaction for that proportion of the premium note or undertaking that remains unpaid, and with the consent of the directors within 30 days after the alienation, may have the policy ratified and confirmed to the assignee.

**(3)** By the ratification and confirmation of the policy the assignee is entitled to all the rights and privileges and is subject to all the

liabilities and conditions to which the original insured party was entitled and subject.

(4) Despite subsections (1) to (3), if the assignee is a mortgagee, the directors may permit the policy to remain in force and to be transferred to the assignee by way of additional security without requiring any premium note or undertaking from the assignee or without the assignee becoming in any manner personally liable for premiums or otherwise, but in that case the premium note or undertaking and liability of the mortgagor in respect of the premium note or undertaking continue and are in no way affected.

### Premium Notes and Assessments

Premium notes	<b>739</b> The company may accept the premium note of the insured for insurance and may undertake contracts in consideration of the premium note, and those notes are assessable for the losses, expenses and reserve of the company in the manner provided in this Subpart.
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Payment on premium note	<b>740(1)</b> At the time the application for insurance is made the applicant must make a first payment of not less than 10% on the premium note or undertaking.
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(2) The first payment may be made in cash and must be remitted to the company together with the application.

(3) The first payment must be credited on the first assessment levied under section 746.

(4) Not more than 60% of any premium note may be paid in cash at the time of the application or of effecting the insurance.

Form of premium note	<b>741</b> The directors may collect a portion of the premium in cash and take a premium note for the remainder of the premium, and if the amount so collected is more than sufficient to pay all losses and expenses during the continuance of the policy, the surplus becomes part of the reserve fund.
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Assessments on premium notes	<b>742</b> The directors may make assessments on premium notes before losses have happened or expenses have been incurred, and any surplus from the assessments becomes part of the reserve fund.
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Assessment	<b>743(1)</b> All premium notes must be assessed by the directors at the intervals and for the sums that they determine, and for any further sums that they consider necessary and that are authorized by this Act, for losses, expenses and reserve during the currency of the
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policies for which the notes were given and in respect of which they are liable to assessment.

(2) Every member of the company who has given a premium note must pay the sums from time to time payable by the member to the company during the continuance of the member's policy and in accordance with the assessment.

Notice of  
assessment

**744** Notice of every assessment must state the date on which it is payable and must be mailed to each member who has given a premium note at the member's post office address as given in the member's original application or otherwise given in writing to the company.

Assessment  
notices to  
mortgagee

**745** If the insured property has been mortgaged by the member and the company has assented to the mortgage, the notices of assessments must also be mailed to the mortgagee if the mortgagee's post office address is known to the company.

Payment of  
assessment

**746(1)** If an assessment is not paid within 30 days after the date of payment mentioned in the notice referred to in section 744, the contract of insurance in respect of which the assessment has been made is void as to any claim for loss occurring during the time of non-payment, but the contract is revived when the assessment is paid unless the secretary gives notice to the contrary to the member assessed in the manner provided in this Act.

(2) Nothing in this section relieves the insured from liability to pay the assessment or any subsequent assessments, nor is the insured entitled to recover the amount of any loss or damage that happens to property insured under the contract while the assessment remains due and unpaid, unless the directors determine otherwise.

(3) A notice of assessment mailed as required by section 744 is sufficient if it states the registered number of the contract, the amount of the assessment and the time when and the place where it is payable.

Proportioning  
assessment

**747** The assessment must always be in proportion to the amount of the premium notes held by the company, but when a company alters its premium notes rate and still holds in respect of subsisting contracts premium notes at the prior rate, the company, as between the respective premium notes so differing in rate, may make and levy such differential assessments as will in risks of the same amount and of the same class of hazard equalize the cost of insurance to the makers of the respective premium notes.

## Recovery of Assessments

Recovery of assessments	<b>748</b> If for 30 days after an assessment becomes payable a member who has given a premium note refuses or neglects to pay the assessment, the company may sue for and recover the assessment with costs, and the proceedings are not a waiver of any forfeiture incurred by non-payment.
Proof	<b>749</b> In an action to recover the assessment, the certificate of the secretary of the company specifying the assessment and the amount due on the note in respect of the assessment is admissible in evidence as prima facie proof of the amount due on the note.
Return of premium note	<b>750</b> Forty days after the expiration of the term of insurance the premium note given for the insurance policy must on application be given up to the grantor of the premium note if all assessments levied and all losses and expenses with which the note is chargeable have been paid.
Retention of premium note	<b>751</b> If there is a loss on property insured, the directors may retain the amount of the premium note until the time has expired for which insurance has been made, and at the expiration of that time the insured has the right to demand and receive that part of the retained sum that has not been assessed for.
Lien	<b>752</b> No premium note creates a lien on the land on which the insured property is situated.
Judicial district	<b>753(1)</b> Any action on a premium note or for an assessment on a premium note may be entered, tried and determined in the judicial district in which the head office or any agency of the company is situated.  <b>(2)</b> The word “action” in this section includes a proceeding under Part 4 of the <i>Provincial Court Act</i> .

## PART 6

### ENFORCEMENT AND ADMINISTRATION

#### SUBPART 1

#### ENFORCEMENT

Definitions	<b>754</b> In this Subpart, “regulated person” means  (a) a person who is required to be licensed under this Act,
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- (b) a person who has entered into a contract of insurance referred to in section 61 or 63,
- (c) an insurer referred to in section 62 who reinsures contracts,
- (d) a person exchanging a reciprocal contract of indemnity or inter-insurance referred to in section 79 or 80, or
- (e) a person who acts or offers to act as an insurance agent or adjuster.

### Division 1 Determining Compliance and Examinations

Exercising  
examiner's  
powers

**755** An examiner may exercise the powers in sections 758 and 759 for the following purposes:

- (a) to determine if there is compliance with this Act and the regulations;
- (b) to conduct an examination under section 756 or 757;
- (c) to examine any matter relating to a contract of insurance, including the settlement or adjustment of any claim made under a contract of insurance.

Annual  
examinations

**756** The Minister must each year direct an examiner to examine the business or affairs of each provincial company in order to determine, for purposes related to the administration of this Act,

- (a) the company's condition and ability to meet its obligations,
- (b) whether the company is following sound business and financial practices,
- (c) the procedures and standards of the management of the company, and
- (d) whether or not the company is in compliance with this Act, the regulations, any order under this Act and any term, condition or restriction of its licence.

Special  
examination

**757** The Minister may direct an examiner to examine the business or affairs of a provincial company or its subsidiary for the purposes of

- (a) safeguarding the interests of the company's policyholders,

- (b) safeguarding the assets of the company or of the subsidiary, or
- (c) determining whether the company is able to meet its obligations.

**Demand for  
information**

**758(1)** An examiner may, for the purposes referred to in section 755, direct any of the following to provide to the examiner, within a reasonable period of time that is stipulated in the direction, any information specified by the examiner:

- (a) a regulated person, a subsidiary of a regulated person, a related party, within the meaning of that term in Part 2, Subpart 12, of a regulated person or a holding body corporate of a regulated person;
  - (b) a present or former director, auditor, officer, employee or creditor of a regulated person or the regulated person's subsidiary or holding body corporate;
  - (c) an insured.
- (2) A person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.
- (3) Where a person served with a direction under this section does not provide the information in accordance with the direction, the Minister may on 2 days' written notice to that person, without affecting any sanction that the person may be subject to under this Act, apply to the Court for an order under subsection (4).
- (4) The Court may order the person to provide the information subject to any conditions the Court considers appropriate if the Court is satisfied that the information is in the possession or under the control of the person and is relevant to a purpose referred to in section 755.
- (5) An examiner may copy or otherwise record any information provided under this section and must, within a reasonable time, return the originals of any documents that have been provided under this section to the person who provided them.

**Entry into  
premises**

**759(1)** Subject to subsection (6), an examiner may, for the purposes referred to in section 755, enter at any reasonable time any premises or place of a regulated person, a subsidiary or holding body corporate of a regulated person or any other premises or place that the examiner believes on reasonable grounds contains records,

documents or property of a regulated person or a subsidiary or holding body corporate of a regulated person.

(2) An examiner who enters any premises or place under this section may require the owner or manager of the premises or place and any other person in the premises or at the place

- (a) to give the examiner all reasonable assistance and to make reasonable efforts to answer all the examiner's questions,
- (b) to produce for inspection or examination all records or documents that are or may be relevant, and
- (c) to produce any property of the regulated person or subsidiary or holding body corporate of the regulated person.

(3) An examiner may in the course of inspecting or examining records or documents under subsection (2)

- (a) make copies of or take notes from them, or
- (b) temporarily remove them.

(4) Where an examiner removes records or documents under subsection (3), the examiner

- (a) must give a receipt for them to the person from whom they were taken,
- (b) may make copies of, take photographs of or otherwise record them, and
- (c) must, within a reasonable time, return them to the person to whom the receipt was given.

(5) A person who receives a request from an examiner under this section must comply with it.

(6) When the premises or place referred to in subsection (2) is a dwelling-place, the examiner must not enter the dwelling-place without the consent of the occupant of the dwelling-place.

Court order

**760(1)** If an examiner

- (a) is refused entry into any premises or place referred to in section 759,
- (b) is not given consent to enter a dwelling-place,

- (c) has reasonable grounds to believe that the examiner
  - (i) will be refused entry into any premises or place referred to in section 759, or
  - (ii) will not be given consent to enter a dwelling-place,or
- (d) is impeded or has reasonable grounds to believe that the examiner will be impeded in carrying out the examination,

the examiner may apply to the Court for an order authorizing the examiner to enter the premises, place or dwelling-place to carry out the examination.

(2) The Court may, if it considers it necessary in the circumstances, hear an interim application under subsection (1) on 2 days' notice and make an interim order granting such relief as the Court considers appropriate pending the determination of the application.

(3) An interim order under subsection (2) may be made ex parte if the Court considers it appropriate in the circumstances.

(4) On hearing an application, the Court may do one or more of the following:

- (a) authorize the examiner to enter the premises, place or dwelling-place to carry out the examination, and may authorize the use of force so long as the examiner is accompanied by a peace officer;
- (b) direct any occupant to assist the examiner in any manner the Court directs;
- (c) restrain any person from impeding the examiner from entering the premises, place or dwelling-place or from carrying out the examination;
- (d) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;
- (e) award costs in respect of the matter.

Examiner's  
report

**761(1)** An examiner who carries out an examination under section 756 or 757 must make a written report to the Minister that sets out the examiner's findings.



(2) In the case of an examination involving a provincial company or a subsidiary or holding body corporate of a provincial company, the Minister may provide a copy of the examiner's report to the company, subsidiary or holding body corporate.

Protection  
from liability

**762** No action lies against an examiner who carries out an examination under this Division, or any person lawfully assisting an examiner, for any act done, or alleged neglect or default occurring, in good faith in the course of exercising powers or carrying out duties under the examination.

## **Division 2**

### **Appraisal of Assets**

Appraisal of  
assets

**763(1)** When a provincial company or its subsidiary takes a mortgage on real property, the lending value of the real property is for the purposes of this section the value obtained by multiplying the market value of the real property by 75% or any lower percentage that the company or its subsidiary determines to be appropriate in the circumstances.

(2) If, with respect to a provincial company or its subsidiaries, the Minister considers that

- (a) the value placed on any of the real property owned by the company or any of its subsidiaries is too great,
- (b) the amount secured by a mortgage on any real property, together with interest due and accrued on the mortgage, is greater than the lending value of the real property, or
- (c) the market value of any other asset is less than the amount shown in the books of the company or any of its subsidiaries,

the Minister may require the company to secure an appraisal of the assets by one or more competent valuers, or the Minister may arrange for the appraisal at the expense of the company.

(3) If the Minister arranges for the appraisal, the provincial company must co-operate with and provide any assistance, documents or information required by the person performing the appraisal.

(4) Having regard to the appraised value, the Minister may

- (a) substitute the appraised value of the assets for the company's valuation,

- (b) write down the value of a loan referred to in subsection (2)(b) by an amount the Minister considers appropriate, or
- (c) determine whether the requirements of Part 2, Subpart 10 are met,

and where the Minister takes such action, the Minister must direct the company to adjust the book value of the assets or the loan accordingly.

### Division 3 Ministerial Orders

Minister's  
order to  
comply

**764(1)** If, in the Minister's opinion, a person has committed or is committing any act or pursuing any course of conduct that

- (a) contravenes this Act or the regulations,
- (b) might reasonably be expected, if continued, to result in a state of affairs that would be in contravention of this Act or the regulations,
- (c) is a market conduct activity that has or might reasonably be expected, if continued, to prejudice or adversely affect people who are insured or are interested in acquiring insurance,
- (d) contravenes an undertaking given under this Act, or
- (e) contravenes prescribed industry guidelines,

the Minister may give the person a notice under subsection (3).

**(2)** If, in the Minister's opinion, a provincial company is committing any act or pursuing any course of conduct that

- (a) places the company in a position where it is carrying on business in an unsound manner, or
- (b) might reasonably be expected, if continued, to prejudice or adversely affect the interests of policyholders,

the Minister may give the company a notice under subsection (3).

**(3)** If subsection (1) or (2) applies, the Minister may give a notice to the person referred to in subsection (1) or to the provincial company referred to in subsection (2) of the Minister's intention to make a permanent order ordering the person or company to do the following:

- (a) to cease doing any act or pursuing any course of conduct specified in the notice;
  - (b) to perform acts specified in the notice that, in the Minister's opinion, are necessary to remedy the situation.
- (4) If a provincial company has a substantial investment in a body corporate referred to in section 421(3) and, in the Minister's opinion, the body corporate is carrying on business in an unsound manner, the Minister may give a notice to the company of the Minister's intention to make a permanent order ordering the company to do the following:
- (a) to dispose of the substantial investment within a specified time;
  - (b) to cease doing any act or pursuing any course of conduct specified in the notice;
  - (c) to perform acts specified in the notice that, in the Minister's opinion, are necessary to remedy the situation.
- (5) If, in the Minister's opinion, the public interest may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Minister may, without notice, make a temporary order dealing with the matters in subsection (3) or (4), and the order takes effect immediately on being made.
- (6) Where an order under this section would ultimately require compliance by a subsidiary whose business activities are regulated by or under or are otherwise subject to supervision under the *Loan and Trust Corporations Act* or the *Securities Act*, the Minister must not give a notice under subsection (3) or make a temporary order under subsection (5) without the prior consent in writing of the Minister responsible for the administration of the *Loan and Trust Corporations Act* or the Chair of the Alberta Securities Commission, as the case may be.
- (7) The Minister must forthwith give notice to the person or provincial company of a temporary order made under subsection (5).
- (8) A person or provincial company who receives
- (a) notice of intention under subsection (3) or (4) to make a permanent order, or
  - (b) notice that a temporary order has been made under subsection (5)

and who wishes to have a hearing before the Minister must serve a written request for the hearing on the Minister within 15 days of receipt of the notice.

(9) A temporary order made under subsection (5) becomes a permanent order at the end of the 15th day after it is made unless the person or provincial company to whom it is directed requests a hearing under subsection (8).

(10) Where

(a) no hearing is requested in accordance with subsection (8),  
or

(b) a hearing is held pursuant to a request in accordance with subsection (8) and the Minister is of the opinion that a permanent order should be made,

the Minister may make a permanent order, and the order takes effect immediately on being made or at a later date specified in the order.

(11) Where a hearing is requested under subsection (8) in respect of a temporary order, the Minister may extend the temporary order until the hearing is concluded.

(12) The Minister must give a copy of an order under this section in respect of an insurer or provincial company to each director of the insurer or company.

(13) The Minister may, after giving the person or provincial company named in a permanent order under this section an opportunity to be heard, confirm, modify or revoke the order.

Compliance  
undertakings

**765(1)** If the circumstances in section 764(1), (2) or (4) arise, the person referred to in section 764(1) and the provincial company referred to in section 764(2) or (4) may provide a compliance undertaking related to the act, course of conduct or substantial investment.

(2) A compliance undertaking must be in writing and it binds the person or provincial company from the time it is approved by the Minister.

(3) As long as the person or provincial company who is the subject of a compliance undertaking complies with the terms of the undertaking, no prosecution under this Act may be brought against the person or company in respect of the matters that gave rise to the undertaking.

(4) The fact that a compliance undertaking is entered into does not prevent the Minister from making orders or taking other action under this Act against the person or provincial company

- (a) on matters not covered by the undertaking,
- (b) on matters covered by the undertaking where the undertaking is not complied with,
- (c) on matters covered by the undertaking where all the facts related to the matters covered by the undertaking were not known by the Minister at the time the undertaking was entered into, or
- (d) if there has been a deterioration in the condition of the person or provincial company.

(5) The Minister may, on the request of the person or provincial company who is the subject of a compliance undertaking, approve an amendment of the terms of the undertaking.

Protecting  
property

**766(1)** In this section, “investigated person” means

- (a) a provincial company referred to in subsection (2)(a), (b) or (c) and any subsidiary of that company,
- (b) the other person referred to in subsection (2)(c) who is conducting business with a provincial company, or
- (c) an insurer or reciprocal insurance exchange referred to in subsection (2)(d).

(2) The Minister may issue a direction under subsection (5)

- (a) if the Minister is about to order an examination under section 757 of a provincial company or its subsidiary, or during or after such an examination,
- (b) if the Minister is about to cancel or suspend or has cancelled or suspended the licence of a provincial company,
- (c) if proceedings in respect of a contravention of this Act or the regulations that are connected with or that arise out of any business conducted by a provincial company or other person are about to be or have been instituted against the company or other person, or
- (d) if proceedings are about to be or have been instituted against any unlicensed insurer or unlicensed reciprocal

insurance exchange that is undertaking insurance in Alberta or carrying on business in Alberta.

(3) In the circumstances referred to in subsection (2), the Minister may apply to the Court for the appointment of a receiver, receiver-manager or trustee to hold or manage, as the case may be, all or part of the real and personal property of the investigated person on any terms or conditions that the Court approves.

(4) An application to the Court may be made ex parte if the Court considers it proper to do so.

(5) If subsection (2) applies, the Minister may, in writing,

(a) direct any person having on deposit or under the person's control or for safekeeping any funds, securities or assets of the investigated person to hold the funds, securities or other assets, or

(b) direct the investigated person

(i) to refrain from withdrawing such funds, securities or assets from any person who has them on deposit or under its control or for safekeeping, or from otherwise dealing with them, or

(ii) to hold all funds, securities or assets in the control of the investigated person,

until the Minister in writing revokes the direction or consents to the release of the funds, securities or assets.

(6) A direction issued under subsection (5) does not apply to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and in the case of a direction to a financial institution, the direction applies only to the offices, branches or agencies of the financial institution that are named in the direction.

(7) Any person named in a direction issued under subsection (5) may apply to the Minister for clarification as to the application of the direction to particular funds, securities or assets.

(8) On the application of a person directly affected by a direction issued under subsection (5), the Minister may make an order on any terms and conditions the Minister considers appropriate revoking the direction or consenting to the release of any funds, securities or assets.

(9) In any of the circumstances mentioned in subsection (2), the Minister may notify, in writing, the Registrar of Land Titles or the Registrar of the Metis Settlements Land Registry that action is being or is about to be taken that may affect land belonging to the investigated person referred to in the notice, and

- (a) the Registrar of Land Titles must register the notice against the title to the land in the name of the investigated person, and
- (b) the Registrar of the Metis Settlements Land Registry must record the notice against any registered interest in the name of the investigated person.

(10) A notice registered under subsection (9)(a) has the same effect as a certificate of *lis pendens*.

(11) When a notice is recorded against an interest in the Metis Settlements Land Registry under subsection (9)(b), no dealings in respect of that interest by the owner of the interest may be recorded in the Registry without the consent of the Minister until the recording of the notice is cancelled.

(12) The Minister may in writing modify or cancel the notice that has been registered by the Registrar of Land Titles or recorded by the Registrar of the Metis Settlements Land Registry.

Order for  
compliance

**767(1)** Where it appears to the Minister that a person has contravened

- (a) a consent or approval given or an order made under this Act,
- (b) a compliance undertaking entered into, or
- (c) a term or condition imposed on the licence of an insurer,

the Minister may apply to the Court for an order under subsection (2).

(2) The Court may grant an order

- (a) directing the person to comply with the consent, approval, order, undertaking or term or condition or restraining the person from contravening the consent, approval, order, undertaking or term or condition, and
- (b) where the person is a body corporate, directing the directors and officers of the body corporate to cause the

body corporate to comply with or to cease contravening the consent, approval, order, undertaking or term or condition.

#### **Division 4 Taking Control of Assets**

Order for  
possession  
and control

**768(1)** The Lieutenant Governor in Council may, without holding a hearing, order the Minister,

- (a) in the case of a provincial company, to take possession and control of the assets of the company, or
- (b) in the case of an extra-provincial company, on the request of the regulator from the jurisdiction in which the company was incorporated, to take possession and control of the assets of the company in Alberta.

**(2)** The Lieutenant Governor in Council may make an order under subsection (1)(a) only if

- (a) the company has defaulted on payment of any of its liabilities;
- (b) the company's assets are not satisfactorily accounted for;
- (c) the company's assets are not sufficient, having regard to all the circumstances, to give adequate protection to the company's policyholders;
- (d) there has been a transfer or issue of shares to which section 257 applies or a purchase, acquisition or redemption to which section 244 applies and approval has not been obtained as required by those sections;
- (e) the company is in contravention of this Act or the regulations;
- (f) the company contravenes an order of the Minister or the Court under this Act.

**(3)** The Minister must forthwith give a copy of an order made under subsection (1) to the company that is subject to the order and, in the case of a provincial company, to each director of the company.

**(4)** An order under subsection (1) takes effect on the day it is made, and no such order may be stayed, varied or set aside by any court.



(5) For the purposes of this section, the Minister may appoint a person to value and appraise the assets and liabilities of the company and to report on its condition and its ability to meet its liabilities.

(6) The company must co-operate with the person appointed under subsection (5) and provide the person with any assistance, documents or information the person requires to carry out the person's duties.

(7) Nothing in this section affects the right of the Lieutenant Governor in Council to vary or rescind, at any time, an order made under subsection (1).

**Powers of  
Minister -  
provincial  
companies**

**769(1)** When the Minister takes possession and control of the assets of a provincial company under section 768, the Minister is responsible for the management of the business and affairs of the company and

(a) must perform all the duties and functions and may exercise all the powers of the board, and

(b) may perform all the duties and functions and exercise all the powers of the committees of the board, the officers, employees and agents and the participating policyholders and shareholders at general meetings.

(2) The Minister generally has all the powers and must do all things that are necessary or expedient to protect the rights and interests of the policyholders, customers and creditors and to conserve the assets of the provincial company.

(3) For the purposes of carrying out duties under this section, the Minister may appoint one or more persons to manage the business and affairs of the provincial company, and each person so appointed is a representative of the Minister.

(4) The Minister may fix the remuneration and expenses of a person appointed under subsection (3), other than a person who is employed in the public service of Alberta or by a Provincial agency as defined in the *Financial Administration Act*.

(5) Subject to subsection (7), the directors must not exercise any of their powers or perform any of their duties or functions while the assets of the provincial company are under the possession and control of the Minister, except to the extent that they are requested to do so in writing by the Minister.

(6) A provincial company must ensure that an ordinary or special resolution or a resolution of any of the committees of the board

passed while the assets of the company are under the possession and control of the Minister is approved by the Minister before it is acted on, and a resolution is ineffective until it is so approved.

(7) Each director, officer and employee of a provincial company must give the Minister and any person appointed by the Minister under subsection (3) all information and assistance that they require in the performance of their duties and functions under this section.

Powers of  
Minister -  
extra-  
provincial  
company

**770(1)** When the Minister takes possession and control of the assets of an extra-provincial company in Alberta under section 768, the Minister holds and controls those assets on behalf of the regulator from the jurisdiction in which the company was incorporated.

(2) Subject to subsection (3), the directors must not exercise any of their powers or perform any of their duties or functions in respect of the assets of the extra-provincial company in Alberta while those assets are under the possession and control of the Minister, except to the extent that they are requested to do so by the Minister.

(3) Each director, officer and employee of an extra-provincial company must give the Minister all information and assistance that the Minister requires in the performance of the Minister's duties and functions under this section.

Application to  
the Court

**771** Despite any other provision of this Act, if the Minister has taken possession and control of the assets of a provincial company under section 768, the Minister may apply to the Court for an order

- (a) authorizing some other person to conduct the business of the company on the terms and conditions the Court considers appropriate,
- (b) authorizing and directing the sale of the assets of the company in whole or in part,
- (c) staying any civil proceedings against the company while the Minister is in possession and control of the assets of the company, or
- (d) authorizing or directing any other action the Court considers appropriate and in the best interests of the policyholders or shareholders.

Termination of possession and control

**772(1)** If the Lieutenant Governor in Council believes that a provincial company whose assets are under the Minister's possession and control meets the requirements of this Act and that it is otherwise proper for the company to resume possession and control of its assets and the conduct of its business, the Lieutenant Governor in Council may restore to the company the possession and control of its assets, and in that case the powers of the Minister under section 769 cease.

(2) If the Lieutenant Governor in Council believes that further efforts to rehabilitate a provincial company whose assets are under the Minister's possession and control would be futile, the Lieutenant Governor in Council may

- (a) direct the Minister to apply to the Court for an order liquidating and dissolving the company, or
- (b) restore to the company the possession and control of its assets in order that the company may engage in a course of action agreed to by the Lieutenant Governor in Council,

and in that case the powers of the Minister under section 769 cease.

(3) If the regulator of the jurisdiction in which an extra-provincial company has been incorporated advises the Minister that it is no longer necessary for the Minister to have possession and control of the assets of the company in Alberta, the Lieutenant Governor in Council may order that the Minister no longer has possession and control of those assets.

Payment of expenses of proceeding

**773** The provincial or extra-provincial company whose assets the Minister has taken possession and control of is liable to the Government for the expenses of the Government incurred in carrying out sections 768 to 772 and the Government may recover the expenses by civil action for debt.

## **Division 5 Remedial Actions**

Definitions

**774** In this Division,

- (a) "action" means an action under this Act or any other law;
- (b) "complainant" means
  - (i) the Minister,

- (ii) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a provincial company or of any of its affiliates,
- (iii) a director or an officer or a former director or officer of a provincial company or of any of its affiliates,
- (iv) a participating policyholder or former participating policyholder of a provincial company, or
- (v) any other person who, in the opinion of the Court, is a proper person to make an application under section 775 or 776.

Derivative  
action

**775(1)** Subject to subsection (2), a complainant may apply to the Court for leave to

- (a) bring an action in the name of and on behalf of a provincial company or any of its subsidiaries, or
- (b) intervene in an action to which a provincial company or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company or subsidiary.

**(2)** No leave may be granted under subsection (1) unless the Court is satisfied that

- (a) the complainant has given reasonable notice to the directors of the provincial company or its subsidiary of the complainant's intention to apply to the Court under subsection (1) if the directors of the company or its subsidiary do not bring, diligently prosecute, defend or discontinue the action,
- (b) the complainant is acting in good faith, and
- (c) it appears to be in the interests of the provincial company or its subsidiary that the action be brought, prosecuted, defended or discontinued.

**(3)** In connection with an action brought or intervened in under this section, the Court may at any time make any order it thinks fit, including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order authorizing the complainant or any other person to control the conduct of the action;

- (b) an order giving directions for the conduct of the action;
- (c) an order directing that any amount adjudged payable by a defendant in the action must be paid, in whole or in part, directly to a former or present security holder of the provincial company or its subsidiary instead of to the company or its subsidiary;
- (d) an order requiring the provincial company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

Relief by Court  
from  
oppression or  
unfairness

**776(1)** A complainant may apply to the Court for an order under this section.

**(2)** Where, on an application under subsection (1), the Court is satisfied that in respect of a provincial company or any of its affiliates

- (a) any act or omission of the company or any of its affiliates effects or threatens to effect a result,
- (b) the business or affairs of the company or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner, or
- (c) the powers of the directors of the company or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any participating policyholder, security holder or creditor, the Court may make an order to rectify the matters complained of.

**(3)** On an application under subsection (1), the Court may make any interim or final order it considers appropriate, including, without limitation, any or all of the following orders:

- (a) an order restraining the conduct complained of;
- (b) an order to regulate the company's affairs by amending its by-laws;
- (c) an order appointing directors in place of or in addition to all or any of the directors then in office;
- (d) an order directing an issue or exchange of securities;

- (e) an order directing the provincial company to purchase securities of a security holder;
- (f) an order directing the provincial company or any other person to pay to a security holder any part of the money paid by the security holder for securities;
- (g) an order directing the company, subject to section 253(3), to pay a dividend to its participating policyholders or shareholders or a class of its participating policyholders or shareholders;
- (h) an order varying or setting aside a transaction or contract to which the provincial company is a party and compensating the company or any other party to the transaction or contract;
- (i) an order requiring the provincial company, within a time specified by the Court, to produce to the Court or an interested person financial statements or an accounting in any other form the Court determines;
- (j) an order compensating an aggrieved person;
- (k) an order directing rectification of the registers or other records of the provincial company;
- (l) an order requiring the trial of any issue;
- (m) an order for the liquidation and dissolution of the provincial company.

Notice of  
application

**777** Where a person other than the Minister makes an application under section 775 or 776, that person must give notice of the application to the Minister, and the Minister may appear and be heard in person or by counsel.

Costs

**778(1)** A complainant is not required to give security for costs in any application made or action brought or intervened in under section 775 or 776.

**(2)** In an application made or an action brought or intervened in under section 775 or 776, the Court may at any time order the provincial company or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for the interim costs on final disposition of the application or action.

Stay, etc., of  
application or  
action

**779(1)** An application made or an action brought or intervened in under section 775 or 776 must not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the provincial company or its subsidiary has been or may be approved by the shareholders of the company or the subsidiary, but evidence of approval by the shareholders may be taken into account by the Court in making an order under section 775 or 776.

**(2)** An application made or an action brought or intervened in under section 775 or 776 must not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given on any terms the Court considers appropriate, and if the Court determines that the interests of any complainant may be substantially affected by the stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

## SUBPART 2

### OFFENCES AND PENALTIES

Offences

**780** A person who contravenes any of the following provisions is guilty of an offence:

(a) in Part 1,

(i) in Subpart 1, sections 18, 31(1), 36, 39(1) and (5), 40, 41, 43(1), (2) and (4), 44(1), 45, 46(1), 47(1), 49, 50 and 56;

(ii) in Subpart 2, sections 68(2), 71, 72, 73, 74(1) and 75;

(iii) in Subpart 3, sections 79, 88, 91(1), 94(1) and (5), 95, 96, 98, 99, 100(1), 102, 103 and 104;

(b) in Part 2,

(i) in Subpart 1, sections 110(1), 112, 113(1), 114, 115, 116(1), 117 and 118;

(ii) in Subpart 2, sections 132(1), 133, 135, 136, 137, 138, 140(4) and (5), 176(1), (3) and (5), 181(1), 187(3), 207, 211(1) and 213;

(iii) in Subpart 3, sections 216, 217(1) and (2), 218(1), 219(1), 220(1), 221, 222(3) and (6), 223, 224 and 225;

- (iv) in Subpart 4, sections 232(1) and (3), 233(1), 234(3), 235(1), (2) and (3), 238(2), 241(1) and (2), 242(3), 243(1) and (4), 245(2) and (3), 246(3), 247(2), 249(3), 250(1), (2), (3) and (4), 253(2) and (3), 257(1), (2), (3) and (4), 262(1) and 263(2) and (3);
- (v) in Subpart 5, sections 268(a) and (b), 270, 274(2) and (3), 275(1), 276(1), 282(2), 284(1), 292(1), 294(1), 295, 296, 297, 298, 300(2) and (3), 304(1), 305(1) and (2), 306(1) and 307(2), (3), (4) and (5);
- (vi) in Subpart 6, sections 309(2), 310(1) and (2), 315(1) and (2), 316(2), 326(2), 327(1) and (2), 341(2), 343, 346(3) and (4), 347(3) and (4), 348, 350(2), 351(1) and 354(1) and (4);
- (vii) in Subpart 8, sections 372(1), 375(1), 378(1), 379, 381(2), 382(1), 383, 385(1), 386(1) and (3), 387, 388(2), 389 and 390(1) and (2);
- (viii) in Subpart 9, sections 393, 398(2), 401, 402, 403, 404(1), 405, 407(1), 408 and 409;
- (ix) in Subpart 10, sections 413(3) and 414(2) and (6);
- (x) in Subpart 11, sections 416(1), 417, 418(1), 419(1), 420(1), 421(1), 422, 425(1), 426, 427, 428, 429, 430 and 431(2);
- (xi) in Subpart 12, sections 437, 439(2), 442(1), (3), (4), (5) and (6), 444, 445(1), (3) and (5) and 446(1), (2) and (5);
- (c) in Part 3, sections 452, 455(1), (2), (3) and (4), 457, 458(3), 460, 462(1), (2) and (3), 470(2), 473(2), 474(1), (2) and (3), 475(1) and (4), 476, 477, 478(1), 479, 481(2), 485, 486, 487, 488, 489, 490 and 491;
- (d) in Part 4, sections 499, 500, 501(2) and (3), 502(2), 505(2), 506, 508 and 509;
- (e) in Part 5, Subpart 2, sections 538(1), (2) and (3), 539 and 540(2) and (3);
- (f) in Part 6, Subpart 1, sections 758(2), 759(5), 768(6), 769(5), (6) and (7) and 770(2) and (3);
- (g) in Part 7, sections 822(2), (3), (4) and (5) and 825(4).



Offences

**781** A person who

- (a) contravenes an order or direction made under section 21(4), 327(2), 423, 507, 764, 766 or 788,
- (b) contravenes a regulation specified by the Lieutenant Governor in Council under section 790,
- (c) contravenes a written undertaking given under this Act,
- (d) fails to report to the Minister or Superintendent as required by this Act,
- (e) being a licensed insurer, contravenes any term or condition to which a licence is subject, or
- (f) being a provincial company, contravenes any term or condition to which its instrument of incorporation is subject

is guilty of an offence.

Statements of  
financial  
standing

**792** Every person who represents orally or in writing that

- (a) the issue of a licence to an insurer,
- (b) the printing or publication of a financial statement of a provincial company in a report of the Minister, or
- (c) the supervision or regulation of the business of an insurer by this Act or the regulations or by the Minister

is a warranty or guarantee of the financial standing of the insurer or of its ability to provide for the payment of its contracts at maturity is guilty of an offence.

False or  
deceptive  
statements

**783(1)** A person who makes any wilfully false or deceptive statement in any register, book of account, accounting record, minute, financial statement or other record or document respecting the affairs of a licensed insurer or in any statement, return, report or reply to the Minister is guilty of an offence.

**(2)** A director, officer or employee of a licensed insurer and every member or employee of a firm of accountants appointed as the auditor of a provincial company who

- (a) prepares, signs, approves or concurs in any register, book of account, accounting record, minute, financial statement or other record or document respecting the affairs of the insurer, or any statement, return, report or reply to the

Minister, that the person knows to contain a false or deceptive statement, or

- (b) uses a record or document referred to in clause (a) with intent to deceive or mislead any person,

is guilty of an offence.

Trafficking in  
life insurance  
policies

**784** Any person, other than a licensed life company, who

- (a) through advertisements or other means makes it known that the person is willing to purchase life insurance policies or the benefits under those policies, or
- (b) traffics or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation of the benefits under those policies to any person

is guilty of an offence.

Liability of  
directors and  
officers

**785** If a body corporate commits an offence under this Act, then, whether or not the body corporate has been prosecuted or convicted in respect of the offence, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the commission of the offence is guilty of the offence.

General  
penalty

**786(1)** A person who is convicted of an offence is liable to a fine of not more than \$200 000.

**(2)** If an act or omission is an offence under this Act or the regulations and the act or omission is of a continuing nature, each day or part of a day that it continues constitutes a separate offence.

Limitation on  
prosecution

**787** A prosecution in respect of an offence under this Act must not be commenced after 3 years from the date that the facts that constitute the alleged offence become known to the Minister.

Order to  
comply and  
make  
restitution

**788** A justice that convicts a defendant of an offence under this Act or the regulations may, in addition to any other penalty the justice may impose, order the defendant

- (a) to comply with, within a specified time, the provision of this Act or the regulations on which the conviction is based, and

- (b) on the application of an aggrieved person, to make restitution to a maximum of \$100 000 for loss of or damage to property suffered by the applicant as a result of the commission of the offence.

**Administrative penalties**

**789(1)** Where the Minister is of the opinion that a person has contravened a prescribed provision of this Act or the regulations, the Minister may by notice in writing given to that person require that person to pay to the Government an administrative penalty by a date specified in the notice in the amount set out in the notice for each day or part of a day the contravention occurs or continues.

(2) A person who pays an administrative penalty by the date specified in the notice in respect of a contravention must not be charged under this Act with an offence in respect of that contravention.

(3) A notice of an administrative penalty must not be issued after 2 years from the later of

- (a) the date on which the contravention to which the notice relates occurred, and
- (b) the date on which evidence of the contravention first came to the attention of the Minister.

**Regulations**

**790** The Lieutenant Governor in Council may make regulations

- (a) providing that the contravention of any provision of the regulations under this Act constitutes an offence;
- (b) prescribing the form and contents of notices of administrative penalties for the purpose of section 789;
- (c) prescribing contraventions of provisions of this Act or the regulations in respect of which an administrative penalty may be imposed and prescribing the amounts, or the manner of determining the amounts, of the administrative penalties that may be imposed, not to exceed \$10 000 for each contravention;
- (d) respecting any other matter necessary for the administration of the system of administrative penalties.

**SUBPART 3**  
**ADMINISTRATION, APPEALS AND GENERAL MATTERS**  
**Administration**

Delegation of  
powers

**791(1)** Subject to subsections (2) and (3), the Minister may delegate in writing any power, duty or function conferred or imposed on the Minister by this Act or the regulations to any person and may authorize the person to further delegate the power, function or duty.

(2) The Minister must not delegate the power

(a) to make regulations,

(b) to make an order under section 764,

(c) to make recommendations to the Lieutenant Governor in Council,

(d) to make a direction under section 766, or

(e) to make an application to the Court under section 767.

(3) The only powers, duties and functions that the Minister may delegate to an insurance council are specified under section 498(m).

Super-  
intendent of  
Insurance

**792(1)** The Minister may appoint a Superintendent of Insurance and a Deputy Superintendent of Insurance.

(2) The Superintendent may delegate any power, duty or function conferred or imposed on the Superintendent by this Act or the regulations to any person and may authorize the person to further delegate the power, duty or function.

(3) The Deputy Superintendent of Insurance has all of the powers, duties and functions of the Superintendent.

Examiners

**793(1)** The Minister may appoint one or more examiners.

(2) An appointment may name an individual or the holder of an office or position to be an examiner.

(3) The Superintendent and Deputy Superintendent are examiners.

**794(1)** The Minister must maintain a register known as the “Insurance Register”.

**(2)** The Register must contain the following information with respect to insurers:

- (a) the name of each insurer that has been issued a licence;
- (b) all terms, conditions and restrictions imposed on the licence of the insurer;
- (c) the classes of insurance that the insurer is authorized to carry on in Alberta;
- (d) the name and address of the insurer’s attorney for service;
- (e) the address of the insurer’s chief agency in Alberta;
- (f) information on the suspension or cancellation of the licence of an insurer;
- (g) any compliance undertaking provided by an insurer;
- (h) any other prescribed information.

**(3)** The Register must contain the following information with respect to special brokers:

- (a) the name and business address of each special broker that has been issued a special broker’s licence;
- (b) the classes of insurance in respect of which the special broker is authorized to transact business;
- (c) information on the suspension or cancellation of the licence of a special broker;
- (d) any other prescribed information.

**(4)** The Register must contain the following information with respect to reciprocal insurance exchanges:

- (a) the name of each exchange that has been issued a licence under Part 1, Subpart 3;
- (b) the name and address of the principal attorney of each exchange that has been issued a licence under Part 1, Subpart 3;
- (c) the classes of insurance that the exchange is authorized to undertake;

- (d) if an exchange has an attorney for service, the name and address of the attorney;
  - (e) information on the suspension or cancellation of the licence of an exchange;
  - (f) any compliance undertaking provided by an exchange;
  - (g) any other prescribed information.
- (5) The Register must contain the following information with respect to insurance agents and adjusters:
- (a) the name and address of each insurance agent and adjuster that has been issued a certificate of authority;
  - (b) all terms and conditions imposed on the certificate of authority of the insurance agent or adjuster;
  - (c) in the case of an insurance agent, the classes of insurance in respect of which the insurance agent is authorized to transact business;
  - (d) the name and address of the insurance agent's or adjuster's designated representative, if there is one;
  - (e) information on the suspension or cancellation of a certificate of authority;
  - (f) any compliance undertaking provided by an insurance agent or adjuster;
  - (g) any other prescribed information.
- (6) The Register may be maintained in any form that the Minister considers to be appropriate so long as copies of the Register can be made.

Inspection and  
copies of  
Register

**795** The Minister must on the request of any person

- (a) allow the person to inspect the information in the Insurance Register, and
- (b) provide a copy of the information in the Insurance Register.

Extension of time	<p><b>796</b> If something is required to be done under this Act or the regulations within a certain period of time, the Minister may, on written application of the person who must do the thing, made before the expiration of the period of time, extend the time within which the thing must be done.</p>
Approval and consent	<p><b>797(1)</b> If this Act or the regulations provide for the giving of approval or consent by the Minister, the Minister may make the approval or consent subject to any terms and conditions the Minister considers appropriate.</p> <p>(2) An approval or consent must be in writing.</p> <p>(3) Before refusing an approval or consent or granting an approval or consent subject to terms and conditions, the Minister must give the person seeking the approval or consent notice of the proposed decision and an opportunity to be heard on the matter.</p>
Orders, etc., binding on successors	<p><b>798</b> An order, consent, undertaking, compliance undertaking or approval made or given under this Act, or a term, condition or restriction imposed on the licence of a licensed insurer is binding on the successors of the person or insurer to whom it relates.</p>
Publication by Minister	<p><b>799(1)</b> The Minister may authorize the publication of notices, reports, correspondence, results of hearings, sanctions, decisions and any other matter considered by the Minister to be in the public interest.</p> <p>(2) The Minister may prepare and publish a report respecting the insurance undertaken by each licensed insurer during the previous year.</p>
Matters under oath	<p><b>800(1)</b> The Minister may require that a document or a fact stated in a document required by this Act or the regulations to be sent to the Minister be verified by affidavit or declaration.</p> <p>(2) For the purposes of this Act, the Superintendent and the Deputy Superintendent may administer oaths and take and receive affidavits and declarations.</p>
Fees	<p><b>801(1)</b> The Minister may establish and charge fees for filing or issuing any licence or other document under this Act or the regulations or for any approval, consent, service or other thing given or done by or under the authority of the Lieutenant Governor in Council, the Minister or the Superintendent under this Act or the regulations.</p>

(2) Despite any other provision in this Act or the regulations, the Lieutenant Governor in Council, Minister or Superintendent may refuse to file or issue a licence or other document or give or provide an approval, consent, service or thing under this Act or the regulations unless the fee established under subsection (1) or a fine imposed on the person requesting the action on a conviction of an offence under this Act or the regulations is paid.

(3) Subject to section 802, a person who is charged a fee under subsection (1) must pay the fee

(a) before the filing or other thing is given or done, or

(b) within the time specified by the Minister.

Penalty

**802** All fees imposed by this Act on an insurer or reciprocal insurance exchange become due and payable immediately on the undertaking of insurance by the insurer or reciprocal exchange and, if the fees are not paid within 30 days from the time they become due and payable, a sum equal to 50% of the fees remaining unpaid becomes a penalty that forms a part of the fees and is recoverable with the fees.

Forms

**803(1)** The Minister may establish forms for the purposes of this Act and the regulations.

(2) When the Minister establishes a form under subsection (1), that form must be used for the purposes of this Act and the regulations.

Filing by  
electronic  
means

**804** Any document that is required to be filed with or submitted to the Minister under this Act or the regulations may be filed by an electronic means and in a format approved by the Minister.

Priority of  
Government  
claim

**805(1)** If, with respect to any provincial company, the Government pays money by way of expenditure certified by the Minister as having been incurred by the Government in the course of the Minister's administration of this Act that directly relates to the company, the money so paid may be recovered by the Government from the company by an action in debt.

(2) Claims by the Government against a provincial company in respect of any money referred to in subsection (1) rank, on the winding-up of the company, immediately after the remuneration of the liquidator and of the receiver and manager, if any, and before any other claims.



## Appeals

Review by  
review board

**806(1)** The Minister must serve each person who is directly affected by the following decisions with a written notice of the decision and the reasons for the decision:

- (a) an order of the Minister under section 21(4);
- (b) the Minister's rejection of an application for licence on the basis of non-compliance with section 25(b);
- (c) the Minister's decision under section 54(6) or (7);
- (d) the Minister's refusal to approve a proposed continuance under section 147(1)(b);
- (e) the Minister's refusal to approve an agreement under section 161 on the basis of section 161(3)(a);
- (f) the Minister's refusal to approve a voluntary liquidation and dissolution under section 187;
- (g) the refusal to issue or amend an instrument of incorporation in respect of a provincial company because the proposed name of the provincial company does not comply with section 211(1);
- (h) the refusal to licence an insurer because the name of the insurer does not comply with section 211(1);
- (i) the decision to issue a certificate of change of name of a provincial company under section 211(3);
- (j) the Minister's refusal of consent under section 257 on the basis of section 262(2);
- (k) an order of the Minister under section 423;
- (l) the Minister's designation, or refusal to revoke the designation, of a person as a related party under section 435;
- (m) the making of a permanent order under section 753(10);
- (n) any other prescribed decision of the Minister.

(2) A person who is directly affected by a decision referred to in subsection (1) and who feels aggrieved by the decision may object to the decision by serving on the Minister a notice of objection, specifying the decision objected to and the grounds for the

objection, within 90 days after being served with the notice of the decision.

(3) The Minister must, within 30 days of being served with a notice of objection, appoint a review board to conduct a review of the matter objected to, unless the Minister decides within that period to reverse the decision.

(4) A review board consists of one person designated by the Minister as presiding officer and not fewer than 2 nor more than 4 other persons.

(5) The Minister must not appoint to any review board persons who are employed in a part of the public service of Alberta under the Minister's administration.

(6) The Minister may pay fees and travelling and living expenses that the Minister considers proper to the members of a review board.

(7) The Minister must set a period, not exceeding 90 days, within which the review board is to conduct the review and give its written decision, and may extend that period or any extension of that period, before its expiry, by further periods not exceeding 45 days.

(8) Sections 3, 4, 7, 8, 9, 10 and 11 of the *Public Inquiries Act* apply to a review under this section.

(9) The review board may confirm, rescind or vary the decision reviewed.

(10) The review board must, forthwith after making its decision, serve a copy of its decision, including the reasons for it, on the objector and the Minister.

(11) Subject to this section and the regulations, a review board may make rules governing its own procedure and business.

Recording of  
evidence

**807** Oral evidence taken before the Minister or before a review board established under section 806 may be recorded by a stenographer or otherwise recorded, and copies of a transcript of the evidence must be furnished to the parties to the proceeding on request and on the terms and for the same fees as are applicable to transcripts in proceedings in the Court.

Consent to  
apply to Court  
directly

**808(1)** An objector may, in a notice of objection under section 806, apply to the Minister for consent to apply directly to the Court under section 809 without having a review conducted under section 806, and if the Minister considers the matter should go directly to the Court, the Minister may, by notice in writing to that objector, consent to a direct application to the Court.

(2) Where the Minister gives consent under subsection (1), the objector waives the right to a review under section 806.

(3) Where

(a) any period established under section 806(7) expires without having been extended or further extended under that subsection, and

(b) the review board has not made its decision,

the objector has a right to elect to apply directly to the Court pursuant to section 809 or to allow the review board to give its decision after the expiration of that period.

Application to  
Court

**809(1)** An objector who receives a copy of a review board's decision under section 806, the Minister and an objector to whom section 808 applies may apply to the Court for an order under this section.

(2) Where the application is made by an objector to whom section 808(1) applies, the application must be accompanied by the consent given under that subsection.

(3) An application under this section must

(a) be filed in the office of the clerk of the Court and served on the other persons who received a copy of the decision within 30 days after the applicant received the decision or the expiry of the period referred to in section 806(7), as the case may be, or within any longer period the Court allows, and

(b) be made returnable within 90 days after the date of filing of the application.

(4) On hearing the application the Court may confirm, rescind or vary the decision of the review board and may make any other order it considers appropriate.

- Stay**                    **810(1)**    Subject to this section, neither an objection nor an application to the Court operates as a stay of the decision objected to or appealed from.
- (2)**    The review board or the Court, as the case may be, may grant a stay in respect of a decision referred to in section 806(1)(a), (i), (l) or (m) or any other prescribed decision.
- (3)**    Where a review board decides against the Minister in the case of a decision referred to in section 806(1)(b), (g), (h), (i) or (n) and the Minister applies to the Court under section 809 in respect of the decision, the Minister need not act under the provisions referred to in those clauses pending the Court's decision.

### **General**

- Published notice as evidence**                    **811**    A notice published in The Alberta Gazette over the name of the Minister or Superintendent is prima facie proof of the facts stated in the notice.
- Certificate evidence**                    **812**    A certificate of the Minister or the Superintendent is admissible as evidence in any civil, criminal or administrative action or proceeding without proof of the signature or official character of the person appearing to have signed it, and the certificate is prima facie proof of the facts set out in the certificate.
- Copies of documents as evidence**                    **813**    Copies of, or extracts from, any book, record, instrument or document in the office of the Minister or of or from any instrument or document issued under this Act, if certified by the Minister to be true copies or extracts, have the same legal effect as the original.
- Photocopies of documents**                    **814**    If a notice or document is required under this Act to be sent to the Minister, the Minister may accept a copy of the notice or document.
- Court applications**                    **815**    An application to the Court made under this Act or the regulations may be made by originating notice.
- Confidentiality of information**                    **816(1)** In this section,
- (a) "insurer information" means information that the Minister or the Minister's officials obtain or create for the purpose of administering or enforcing this Act and the regulations and that relates to the business or affairs of an insurer, a

reciprocal insurance exchange or a dissolved insurer or to an application for incorporation of a provincial company;

(b) “Minister’s officials” means

(i) any person acting under the Minister’s direction or authority for the purposes of the administration or enforcement of this Act and the regulations,

(ii) the Superintendent and Deputy Superintendent of Insurance, and

(iii) any person who exercises a power, duty or function delegated under this Act or the regulations.

(2) Insurer information is confidential and neither the Minister, nor the Minister’s officials, may disclose or provide insurer information to any person except in accordance with this section.

(3) The Minister may disclose and provide insurer information to the Minister’s officials and the Minister’s officials may disclose and provide insurer information to the Minister and other Minister’s officials.

(4) The Minister, and with the approval of the Minister, the Minister’s officials may disclose or provide insurer information to

(a) the insurer, reciprocal insurance exchange or applicants applying for the incorporation of a provincial company that are the subject of the information,

(b) the auditor or actuary of an insurer for the purposes of carrying out the functions of auditor or actuary, as the case may be,

(c) a law enforcement authority for the purposes of law enforcement,

(d) the government of any other province or of Canada, or an agency of such a government for a purpose approved by the Minister,

(e) any employee or member of the Alberta Securities Commission for the purposes of the administration or enforcement of the *Securities Act*,

(f) any employee in the public service of Alberta who is involved in the administration of the *Loan and Trust Corporations Act* for the purposes of the administration or enforcement of that Act,

- (g) any employee in the public service of Alberta who is involved in the administration of the *Credit Union Act* for the purposes of the administration or enforcement of that Act, or
  - (h) any prescribed person for any prescribed purpose.
- (5) A person to whom information is communicated or provided under subsection (3) for a specified purpose and any person acting under that person's authority or direction or to whose notice information comes as a result of any relationship with that person may use the information only for that purpose.
- (6) Where, for the purposes of the administration of this Act or the regulations, the Minister receives information from the government of or a public body of Canada or any other province, neither the Minister nor the Minister's officials may disclose the information other than with the consent of that government or public body.
- (7) This section does not apply to disclosure or provision of insurer information when the information
- (a) is provided under section 761(2),
  - (b) is disclosed or provided from the Insurance Register under section 795, or
  - (c) is disclosed or provided in a report or other thing that is published under section 799.
- (8) Despite the *Freedom of Information and Protection of Privacy Act*, that Act does not apply to insurer information.

### **Compensation Associations**

Agreements  
with  
compensation  
associations

**817** The Minister may enter into agreements with compensation associations relating to a plan for the compensation by compensation associations of policyholders and eligible claimants of insolvent insurers.

Compensation  
association  
regulations

**818** The Lieutenant Governor in Council may make regulations

- (a) designating a compensation association that has entered into an agreement with the Minister under section 817 as a compensation association for one or more classes of insurance;

- (b) designating an insurer as being adequately covered by a plan of compensation other than that provided by reason of membership in a designated compensation association.

Compensation  
associations

**819(1)** When an entity has been designated by the regulations as a compensation association for a class of insurance, every insurer, while licensed to carry on that class of insurance and for 180 days after ceasing to be licensed, is a member of that compensation association.

(2) Subsection (1) does not apply to an insurer that is designated by a regulation under section 818(b) or whose business is limited to that of reinsurance.

(3) Every member of a designated compensation association is bound by the by-laws and memorandum of operation of the compensation association.

(4) A member of a designated compensation association must pay to the compensation association all assessments and levies made against the member by the compensation association.

(5) If a member fails to pay an assessment or levy within 30 days of the mailing of the notice of the assessment or levy to the member,

- (a) the designated compensation association may claim the amount of the assessment or levy, with interest, as a debt due from the member, and

- (b) the Minister may suspend the member's licence subject to any terms or conditions the Minister considers appropriate or cancel the member's licence.

(6) The debt due under subsection (5)(a) does not cease to be due on the termination of the member's membership.

(7) Before suspending or cancelling a member's licence under subsection (5)(b), the Minister must notify the insurer of the proposed suspension or cancellation and provide the insurer with an opportunity to make representations to the Minister.

(8) When an insurer's licence is cancelled under subsection (5)(b), the insurer must cease to carry on business in Alberta, except so far as is necessary for the winding-up of its business in Alberta.

(9) When an insurer's licence is suspended under subsection (5)(b), the insurer must cease to carry on business in Alberta in accordance with the terms and conditions of the suspension.

## **Regulations**

**Regulations**      **820** The Lieutenant Governor in Council may make regulations respecting any matter that is to be prescribed for the purposes of this Subpart.

## **PART 7**

### **FINANCIAL RESPONSIBILITY CARDS**

**Definitions**      **821** In this Part,

- (a) “licensed insurer” means an insurer that holds a licence authorizing the insurer to undertake automobile insurance;
- (b) “non-Alberta policy” means an owner’s policy evidencing a contract of insurance that is not made in Alberta;
- (c) “unlicensed insurer” means an insurer that does not hold a licence that authorizes the insurer to undertake automobile insurance.

**Owner’s policy**      **822(1)** In this section, “insured” means a person named as the insured in an owner’s policy.

**(2)** Every licensed insurer that issues an owner’s policy must at the time of issue of the policy also issue and deliver to the insured a financial responsibility card and, on request by that insured, any additional copies of the card required to be provided under the regulations.

**(3)** Every licensed insurer that issues an owner’s policy must provide to the insured the information required by the regulations relating to financial responsibility cards when the policy is being cancelled or the insured is given a notice of renewal.

**(4)** When an insured to whom a financial responsibility card has been issued pursuant to this section ceases to be insured by the owner’s policy in respect of which the card was issued, that person must forthwith destroy the card and every copy of the card issued to that person.

**(5)** Any insurer that has issued a financial responsibility card or an insurance agent who represents the insurer must provide to a peace officer any information requested concerning the cancellation or lapse of the owner’s policy with respect to which the financial responsibility card was issued.



**(6)** A financial responsibility card issued pursuant to this section must be in a form approved by the Superintendent.

Non-Alberta  
policy -  
licensed  
insurer

**823** A financial responsibility card that is issued by a licensed insurer in respect of a non-Alberta policy and that is in a form approved by the Superintendent is deemed to have been issued pursuant to this Part and may be used to indicate financial responsibility in Alberta.

Non-Alberta  
policy -  
unlicensed  
insurer

**824(1)** A financial responsibility card that is issued by an unlicensed insurer in respect of a non-Alberta policy is deemed to have been issued pursuant to this Part and may be used to indicate financial responsibility in Alberta if

- (a) the card is in a form approved by the Superintendent or is otherwise acceptable to the Superintendent, and
- (b) the unlicensed insurer provides the Superintendent with a power of attorney and undertaking that meets the requirements of the regulations.

**(2)** If an unlicensed insurer has provided the Superintendent with a power of attorney and undertaking that meets the requirements of the regulations, notice or process in any action or proceeding in Alberta against the unlicensed insurer or its insured arising out of an automobile accident in Alberta may be effectually served on the insurer or the insured, or on both of them,

- (a) by leaving 3 copies of the notice or process with the Superintendent, and
- (b) if the unlicensed insurer is not a party to the action or proceeding, by leaving with the Superintendent a written statement signed by the person who issued or caused to be issued the notice or process that sets out the full name and address of the unlicensed insurer against whose insured the action or proceeding is taken.

**(3)** On receipt of notice or process under subsection (2), the Superintendent must forthwith mail 2 copies of it by registered mail to the unlicensed insurer at the insurer's address last known to the Superintendent.

**(4)** The plaintiff in any action or proceeding against an unlicensed insurer that has provided the Superintendent with an undertaking that meets the requirements of the regulations may give evidence of the undertaking, and the undertaking is, for all purposes of the action or proceeding, deemed to be a covenant for valuable consideration made by the unlicensed insurer with the plaintiff.

(5) If an unlicensed insurer that has provided the Superintendent with a power of attorney and undertaking that meets the requirements of the regulations defaults under them, no financial responsibility card issued by the unlicensed insurer may be accepted as proof of financial responsibility in Alberta so long as that default continues, and the Superintendent must forthwith notify the proper officers in charge of the registration of automobiles and the licensing of drivers in all jurisdictions in Canada, and in the United States of America where the financial responsibility cards are accepted as proof of financial responsibility, of the default.

Fund  
maintained by  
corporation

**825(1)** In this section, “motor vehicle” means a motor vehicle as defined in the *Motor Vehicle Administration Act*.

(2) A corporation is entitled to a financial responsibility card that is issued by the Superintendent if

- (a) the corporation is a prescribed corporation,
- (b) the corporation maintains a separate fund for the purpose of satisfying from that fund liabilities that the corporation may incur resulting from bodily injury to or the death of any person, or damage to property, occasioned by or arising out of the ownership, maintenance, operation or use of a motor vehicle, and
- (c) in the opinion of the Superintendent, the fund is adequate to satisfy all liabilities that the corporation is likely to incur, subject, in the case of each motor vehicle registered in the name of the corporation, to the limits as to amount and the accident insurance benefits specified in Part 5, Subpart 5.

(3) If the Superintendent is satisfied that the requirements of subsection (2) are met, the Superintendent must issue and deliver to the corporation a financial responsibility card and, on the request of the corporation, any additional copies of the card required by the regulations to be provided.

(4) When the fund of a corporation that has been issued a financial responsibility card under subsection (2) ceases to meet the requirements of subsection (2)(b) or (c), the corporation must forthwith deliver to the Superintendent for cancellation its financial responsibility card and all copies of the card issued to the corporation.

- Regulations      **826**    The Lieutenant Governor in Council may make regulations
- (a)    governing any matter with respect to the issuance of and the cancellation of financial responsibility cards;
  - (b)    respecting the provision of copies of financial responsibility cards to an insured for the purposes of section 822 and to a prescribed corporation for the purposes of section 825;
  - (c)    respecting the information that a licensed insurer must provide to an insured when the policy is being cancelled or the insured is given a notice of renewal;
  - (d)    respecting the power of attorney and undertaking that unlicensed insurers are to provide for the purposes of section 824;
  - (e)    prescribing corporations for the purposes of section 825.

## PART 8

### TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS, REPEALS AND COMING INTO FORCE

#### SUBPART 1

#### TRANSITIONAL PROVISIONS

- Definitions      **827**    In this Subpart,
- (a)    “continued special Act company” means a special Act company that is continued under this Subpart;
  - (b)    “former *Insurance Act*” means the *Insurance Act* (RSA 1980 cI-5);
  - (c)    “special Act company” means an insurer incorporated by a special Act of the Legislature;
  - (d)    “unlicensed special Act company” means
    - (i)    Altasure Insurance Company,
    - (ii)    Innovative Insurance Corporation,
    - (iii)    Merchants and Traders Assurance Company, or

- (iv) a special Act company incorporated by a special Act of the Legislature that was enacted after April 1, 1999 and before this Subpart comes into force.

Continuation  
of licensed  
special Act  
companies

**828** Every special Act company that holds a licence under the former *Insurance Act* when this Subpart comes into force is continued as a provincial company under this Act, and the Lieutenant Governor in Council must issue a certificate of continuance for each of those companies.

Continuation  
of unlicensed  
special Act  
companies

**829(1)** Despite the provisions of any special Act, an unlicensed special Act company is dissolved one year after this Subpart comes into force or any longer period specified by the Lieutenant Governor in Council not exceeding one additional year unless, before the expiration of the period, the company is continued under this section.

**(2)** An unlicensed special Act company may be continued as a provincial company if the company submits an application to the Minister that contains

- (a) the information, material and evidence specified by the Minister;
- (b) a plan for the future conduct and development of the business of the company;
- (c) its proposed financial year.

**(3)** The Lieutenant Governor in Council may, on the recommendation of the Minister, issue a certificate of continuance continuing an unlicensed special Act company as a provincial company.

Certificate of  
continuance

**830(1)** A certificate of continuance issued under this Subpart must set out the name of the company, its financial year and whether the company is a mutual provincial company.

**(2)** The Lieutenant Governor in Council may set out in the certificate of continuance any term or condition that the Lieutenant Governor in Council considers appropriate to deal with the particular circumstances of the company.

Effect of  
certificate of  
continuance

**831(1)** On the date set out in the certificate of continuance,

- (a) a continued special Act company becomes a provincial company as if it had been incorporated under Part 2, Subpart 2, Division 1, and
  - (b) the certificate of continuance is the instrument of incorporation of the company.
- (2) A certificate of continuance is conclusive proof for the purposes of this Act and for all other purposes that the company has been continued under this Act on the date set out in the certificate of continuance.

Effect of  
continuance

**832** When a special Act company is continued under this Subpart,

- (a) the property of the special Act company continues to be the property of the provincial company,
- (b) the provincial company continues to be liable for the obligations of the special Act company,
- (c) an existing cause of action or claim by or against the special Act company or any liability to prosecution is unaffected,
- (d) a civil, criminal or administrative action or proceeding pending by or against the special Act company may continue to be prosecuted by or against the provincial company, and
- (e) a conviction against, or any ruling, order or judgment in favour of or against, the special Act company may be enforced by or against the provincial company.

Application of  
Part 2,  
Subpart 2,  
Division 2

**833** Part 2, Subpart 2, Division 2 applies, with the necessary changes, to an unlicensed special Act company that is continued under this Subpart.

By-laws

**834** A continued special Act company must file with the Minister a copy of all of its by-laws within 6 months of the company's being continued.

Shares with  
nominal or par  
value

**835** On the continuation of a special Act company under this Subpart, shares with a nominal or par value of the company are deemed to be shares without nominal or par value.

Paid-up capital	<b>836</b> For the purposes of section 235, the amount in the capital account for each class and series of shares of a continued special Act company is deemed to equal the paid-up capital of each class and series of shares of the company immediately prior to the continuation of the company.
Deemed consent - significant interest	<b>837</b> If on the continuation of a special Act company under this Subpart a person has a significant interest in the company, the Minister is, for the purposes of section 257, deemed to have given a consent in respect of the significant interest.
Voting by participating policyholder	<b>838</b> Despite section 281, the holder of a participating policy that was issued by a continued special Act company before the company was continued is entitled to more than one vote, or to a fraction of a vote, at a meeting of participating policyholders or shareholders of the company in accordance with the terms of the policy or the provisions of the instrument of incorporation or the by-laws of the company that were not repealed and did not otherwise cease to have effect before the continuation of the company.
Appointment of directors and officers continued	<b>839</b> Despite any other provision of this Act, the directors and officers of a special Act company that are in office when the company is continued under this Subpart remain in office until the first annual meeting of participating policyholders and shareholders of the company.
Directors' remuneration	<b>840</b> The resolution of the participating policyholders or shareholders of a continued special Act company establishing the remuneration of the directors that was passed pursuant to section 147 of the former <i>Insurance Act</i> continues to have effect until the first meeting of the participating policyholders and shareholders following the continuation of the company.
Participating policies	<b>841</b> Despite sections 300(1) and 309(2)(c), the directors of a continued special Act company that issues participating policies must, within 6 months after the continuation of the company, establish a policy for determining the dividends and bonuses to be paid to the participating policyholders.
By-laws	<b>842(1)</b> If a by-law of a special Act company is in effect when the company is continued under this Subpart, the by-law continues in effect until amended or repealed, unless it contravenes or is inconsistent with a provision of this Act.

(2) A by-law made by the directors of a special Act company under section 140 of the former *Insurance Act* and not confirmed at a general meeting of the company in accordance with section 141 of that Act before the company is continued under this Subpart continues to have effect, unless it contravenes or is inconsistent with the provisions of this Act, until the first meeting of the participating policyholders and shareholders following the continuation of the company.

(3) A by-law referred to in subsection (2) must be submitted to the participating policyholders and shareholders at the first meeting of the participating policyholders and shareholders following the continuation of the company.

(4) Sections 341(3) and (4) and 342 apply in respect of a by-law referred to in this section as if it were a by-law made under section 341.

Deemed  
by-laws

**843(1)** Any matter provided for in the special Act of a special Act company that, under this Act, would be provided for in the by-laws of a provincial company is, on the continuation of the company under this Subpart, deemed to be provided for in the by-laws of the company.

(2) If a by-law of the continued special Act company made in accordance with sections 341 and 342 amends or repeals any matter referred to in subsection (1), the by-law prevails.

Auditor

**844** Despite any provision in this Act, the auditor of a continued special Act company continues to be the auditor of the company until

(a) the company's first annual meeting of participating policyholders and shareholders, or

(b) the office of auditor becomes vacant,

whichever occurs first.

Actuary

**845** Despite any provision in this Act, the actuary of a continued special Act company continues to be the actuary of the company.

Triennial  
solicitation of  
policyholders

**846** Subject to section 292(2), section 292(1) applies in respect of a participating policy issued before the coming into force of section 292 and requires a provincial company, within 3 years after the coming into force of section 292 and at least once every 3 years

afterward, to do the things referred to in section 292(1) in relation to such a participating policy.

Continuation  
of licences  
and  
certificates

**847(1)** The licence of an insurer under Part 2 of the former *Insurance Act* is continued as a licence under Part 1, Subpart 1 of this Act.

(2) Despite subsection (1), the licence of a mutual benefit society that was subject to Part 14 of the former *Insurance Act* is cancelled.

(3) The licence of a special insurance broker under the former *Insurance Act* is continued as a special broker's licence under Part 1, Subpart 2 of this Act.

(4) The licence of a reciprocal insurance exchange under Part 15 of the former *Insurance Act* is continued as a licence under Part 1, Subpart 3 of this Act.

(5) The certificate of authority of an insurance agent under Part 16 of the former *Insurance Act* is continued as an insurance agent's certificate of authority under Part 3 of this Act.

(6) The adjuster's certificate of an adjuster under Part 16 of the former *Insurance Act* is continued as an adjuster's certificate of authority under Part 3 of this Act.

Application of  
section 501

**848** Section 501 applies only to refunds paid in respect of contracts of insurance entered into or renewed after the coming into force of section 501.

Regulations

**849** The Lieutenant Governor in Council may make regulations

- (a) respecting the transition of matters under the former *Insurance Act* to this Act;
- (b) respecting the continuation and licensing of special Act companies under this Act;
- (c) respecting the revival of a special Act company that has not been continued under this Act and whose special Act has been repealed under this Act, including
  - (i) having the revival be effective to the date that the special Act was repealed;
  - (ii) the winding-up and dissolution of a revived special Act company.



## SUBPART 2

### CONSEQUENTIAL AMENDMENTS

Amends RSA  
1980 c2  
(Supp)

**850 The *Agricultural and Recreational Land Ownership (Consequential Amendments) Act* is amended in section 2**

- (a) in subsection (2) by striking out “Section 35(1)” and substituting “Section 20(2)”;**
- (b) in subsection (3) by striking out “Section 99(2)” and substituting “Section 44(3)”.**

Amends RSA  
1980 cA-17

**851 The *Alberta Corporate Tax Act* is amended in section 86(1)**

- (a) in clause (a) by striking out “in the *Insurance Act*” and substituting “by the regulations under the *Insurance Act*”;**
- (b) in clause (d)(i) by striking out “or operating as underwriting members of the Canadian Insurance Exchange or any other plan approved by the Minister charged with the administration of the *Insurance Act*”;**
- (c) in clauses (e) and (f) by striking out “in the *Insurance Act*” and substituting “by the regulations under the *Insurance Act*”;**
- (d) in clause (g) by striking out “which the Provincial Treasurer by order recognizes as a risk distribution plan for the purposes of this Part” and substituting “that is approved under section 661 of the *Insurance Act*”;**
- (e) in clause (h) by striking out “in the *Insurance Act*” and substituting “by the regulations under the *Insurance Act*”.**

Amends SA  
1997 cA-37.9

**852(1) The *Alberta Treasury Branches Act* is amended by this section.**

**(2) Section 12 is amended**

- (a) by renumbering it as section 12(1);**
- (b) in subsection (1)(e) by striking out “agent” and substituting “insurance agent”;**
- (c) by adding the following after subsection (1):**
  - (2) Notwithstanding subsection (1), Alberta Treasury Branches may hold a restricted insurance agent’s certificate**

of authority under the *Insurance Act* and, if Alberta Treasury Branches holds such a certificate, it may act as an insurance agent only to the extent authorized by the certificate.

**(3) Section 18(2)(b)(ii) is amended by striking out “insurance company” and substituting “insurer”.**

**(4) Section 34(f) is amended by striking out “agents” and substituting “insurance agents”.**

Amends RSA  
1980 cC-20

**853 The *Companies Act* is amended in section 4**

**(a) by striking out “the *Insurance Act* or”;**

**(b) by striking out “and to which the *Insurance Act* does not apply,”.**

Amends SA  
1989 cC-31.1

**854 The *Credit Union Act* is amended in section 46**

**(a) in subsection (6) by striking out “agent, broker” and substituting “insurance agent”;**

**(b) by adding the following after subsection (6):**

**(6.1)** Notwithstanding subsection (6), a credit union may hold a restricted insurance agent’s certificate of authority under the *Insurance Act* and a credit union that holds such a certificate and its officers, directors and employees may act as an insurance agent only to the extent authorized by the certificate.

Amends SA  
1998 cF-1.05

**855(1) The *Fair Trading Act* is amended by this section.**

**(2) Section 66(2) is amended by adding “insurance” before “agent”.**

**(3) Section 110(1)(a) is repealed and the following is substituted:**

**(a)** to an insurer licensed under the *Insurance Act*, to an insurance agent who holds an insurance agent’s certificate of authority under the *Insurance Act* or to an adjuster who holds an adjuster’s certificate of authority under the *Insurance Act* or to the employees of any of them acting in the regular course of their employment,

Amends SA  
1990 cF-9.5

**856(1) The *Financial Consumers Act* is amended by this section.**

**(2) Section 2(i)(i) is amended by striking out “defined in” and substituting “defined by the regulations under”.**

**(3) Section 37(6)(c) is repealed and the following is substituted:**

(c) an insurer as defined in the *Insurance Act*, other than a fraternal society as defined in the *Insurance Act*,

Amends RSA  
1980 cF-22.7

**857 The *Funeral Services Act* is amended by repealing section 2(1) and substituting the following:**

Exemptions

**2(1)** This Act does not apply to a fraternal society licensed under the *Insurance Act* or to a mutual benefit society.

Amends RSA  
1980 cH-13

**858 The *Hydro and Electric Energy Act* is amended in section 21(f) by striking out “insurance company” and substituting “insurer”.**

Amends RSA  
1980 cI-7

**859 The *Interpretation Act* is amended in section 28(2) by adding “subpart,” after “part,” wherever it occurs.**

Amends RSA  
1980 cL-5

**860 The *Land Titles Act* is amended in section 30(2)(c) by striking out “Superintendent of Insurance” and substituting “Minister responsible for the *Insurance Act*”.**

Amends SA  
1991 cL-26.5

**861(1) The *Loan and Trust Corporations Act* is amended by this section.**

**(2) Section 1(1)(u) is repealed and the following is substituted:**

(u) “insurer” means an insurer within the meaning of that term in the *Insurance Act*;

**(3) Section 194 is amended**

**(a) by renumbering it as section 194(1);**

**(b) in subsection (1)(b) by adding “or carry on business as an insurance agent or adjuster within the meaning of those terms under the *Insurance Act*” after “insurer”;**

**(c) by adding the following after subsection (1):**

(2) Notwithstanding subsection (1), a registered corporation may hold a restricted insurance agent's certificate of authority under the *Insurance Act* and a registered corporation that holds such a certificate may act as an insurance agent only to the extent authorized by the certificate.

**(4) Section 204(2)(b)(ii) is amended by striking out “insurance company” and substituting “insurer”.**

**(5) Section 207(4)(d) is amended by striking out “other than a broker or adjuster,”.**

**(6) Section 257(3)(b)(ii) is repealed and the following is substituted:**

(ii) the *Insurance Act*, to the Minister responsible for the *Insurance Act*, or

**(7) Section 278(3) is amended by striking out “Superintendent of Insurance” and substituting “Minister responsible for the *Insurance Act*”.**

Amends RSA  
1980 c12  
(Supp)

**862 The *Metric Conversion Amendment Act* is amended by repealing section 1(13).**

Amends RSA  
1980 cM-15

**863 The *Mines and Minerals Act* is amended in section 24(2)(f) by striking out “insurance company” and substituting “insurer”.**

Amends RSA  
1980 cM-21

**864(1) The *Motor Vehicle Accident Claims Act* is amended by this section.**

**(2) Section 1(c) is amended**

(a) by adding “regulations under the” after “as defined by the”;

(b) by striking out “as defined in the *Insurance Act*” and substituting “as defined by the regulations under the *Insurance Act*”.

**(3) Section 31(2)(l) is amended by striking out “Part 7” and substituting “Part 5, Subpart 5”.**

**865(1) The *Motor Vehicle Administration Act* is amended by this section.**

**(2) Section 1 is amended**

**(a) in clause (d) by striking out “Part 4 of this Act or”;**

**(b) in clause (g)**

**(i) in subclause (i) by striking out “Part 7” and substituting “Part 5, Subpart 5” and by adding “or” at the end of subclause (i);**

**(ii) by repealing subclause (ii);**

**(iii) by repealing subclause (iii) and substituting the following:**

(iii) is a corporation that meets the requirements of section 825(2) of the *Insurance Act*;

**(3) Section 34 is amended**

**(a) in subsection (3) by striking out “under section 68(8)” and substituting “referred to in section 823 or 824 of the *Insurance Act*”;**

**(b) in subsection (4)(c) is amended by striking out “under section 68(8)” and substituting “referred to in section 823 or 824 of the *Insurance Act*”.**

**(4) Section 60 is amended**

**(a) in clause (a) by striking out “a person” and substituting “an insurer”;**

**(b) in clause (c) by striking out “Part 7” and substituting “Part 5, Subpart 5”.**

**(5) Sections 67 to 69 are repealed.**

**(6) Section 70(5)(a) is amended by striking out “this Part or”.**

**(7) Section 71(3) is amended by striking out “to whom a financial responsibility card has been issued under section 68(8)” and substituting “who holds a financial responsibility card referred to in section 823 or 824 of the *Insurance Act*”.**

**(8) Section 72(a) is repealed.**

**(9) Section 76(1)(c)(v) is amended by striking out “issued pursuant to Part 4 of this Act or Part 7 of the *Insurance Act*”.**

**(10) Section 97 is amended by striking out “68(4) or 71(2)” and substituting “71(2) of this Act or section 822(4) of the *Insurance Act*”.**

Amends RSA  
1980 cO-4

**866 The *Off-highway Vehicle Act* is amended in section 1(1)**

**(a) in clause (d) by striking out “Part 7” and substituting “Part 5, Subpart 5”;**

**(b) in clause (e) by striking out “a person” and substituting “an insurer”;**

**(c) in clause (p) by striking out “Part 7” and substituting “Part 5, Subpart 5”.**

Amends RSA  
1980 cO-5

**867 The *Oil and Gas Conservation Act* is amended in section 15(f) by striking out “insurance company” and substituting “insurer”.**

Amends SA  
1980 cS-3.1

**868 The *School Act* is amended in section 44(1)(b)(ii) by striking out “Part 15” and substituting “Part 1, Subpart 3”.**

Amends SA  
1981 cS-6.1

**869 The *Securities Act* is amended by repealing section 1(i.1) and substituting the following:**

**(i.1) “insurance company” means an insurer as defined in the *Insurance Act* that is licensed under that Act;**

Amends RSA  
1980 cS-31

**870 The *Survivorship Act* is amended in section 4 by striking out “sections 284 and 376” and substituting “sections 599 and 690”.**

### SUBPART 3

#### REPEALS

Repeal of Acts

**871 The following Acts are repealed:**

**(a) *An Act to incorporate The Alberta-Canadian Insurance Company*;**

**(b) *The Alberta Fire and Accident Insurance Company Limited, Act*;**

- (c) *An Act to incorporate The Alberta Guarantee and Fidelity Company;*
- (d) *The Alberta Motor Association Insurance Company Act;*
- (e) *The Alberta West Coast Insurance Corporation Act;*
- (f) *An Act to incorporate "Alco Mutual Hail Insurance Company";*
- (g) *An Act to Incorporate the Calgary Fire Insurance Company;*
- (h) *An Act to Incorporate the Canada Security Assurance Company;*
- (i) *An Act to Incorporate the Canada West Insurance Company;*
- (j) *Canadian Health Assurance Corporation Act;*
- (k) *The Cardinal Life Insurance Company Act;*
- (l) *The Cosmopolitan Life Assurance Company Act;*
- (m) *Fair & Millikin Insurance Company Act;*
- (n) *An Act to incorporate the Farmers' Fire and Hail Insurance Company;*
- (o) *An Act entitled "50-50 Mutual Hail Insurance Society";*
- (p) *The Financial Life Assurance Company Act;*
- (q) *First Canadian Insurance Corporation Act;*
- (r) *An Act to Incorporate the Great North Insurance Company;*
- (s) *An Act to incorporate The Home Assurance Company of Canada;*
- (t) *Maycroft Insurance Company Limited Act;*
- (u) *The Mennonite Mutual Relief Insurance Company Act;*
- (v) *An Act to Incorporate the Merchants Fire Insurance Company;*
- (w) *An Act respecting The Occidental Fire Insurance Company;*

- (x) *Peace Hills General Insurance Company Act*;
- (y) *An Act to incorporate The Premier Insurance Company*;
- (z) *The Professional Life Insurance Company Act*;
- (aa) *The Rocky Mountain General Insurance Company Act*;
- (bb) *The Sterling Life Assurance Company Act*;
- (cc) *The Stockgrowers' Insurance Company of Canada Ltd. Act*;
- (dd) *The Summit Life Assurance Company Act*;
- (ee) *An Act to incorporate The United Assurance Company*;
- (ff) *The United Equity Life Insurance Company Act*;
- (gg) *An Act respecting the Wawanesa Mutual Insurance Company*;
- (hh) *An Act to Incorporate the Western Canada Fire Insurance Company*;
- (ii) *An Act to Incorporate the Western Union Insurance Company*;
- (jj) *The Western Union Life Insurance Company Act*;
- (kk) *An Act to Incorporate The Windsor Insurance Company*.

Repeal of Acts  
on  
Proclamation

**872** The following Acts are repealed on Proclamation:

- (a) *Altasure Insurance Company Act*;
- (b) *Innovative Insurance Corporation Act*;
- (c) *Insurance Act* (RSA 1980 cI-5);
- (d) *An Act to incorporate the Merchants and Traders Assurance Company*;
- (e) any special Act of the Legislature that was enacted after April 1, 1999 and before Subpart 1 comes into force that incorporates a special Act company.



Repeal of  
section

**873** Section 413 is repealed on Proclamation.

#### **SUBPART 4**

#### **COMING INTO FORCE**

Coming into  
force

**874** This Act, except section 414, comes into force on Proclamation.