

# DIGEST OF INSURANCE LAW

## CANADA

Courtesy of  
[McMillan LLP](#)  
Toronto, Ontario

### INSURANCE COMPANIES ACT S.C. 1991 CHAPTER 47

Act came into force June 1, 1992 and repeals and replaces *Foreign Insurance Companies Act* and *Canadian and British Insurance Companies Act* and is reviewed and revised every five years. Superintendent of Financial Institutions given extensive regulatory authority and discretion. Superintendent also regulates all banks and federal trust and loan companies and cooperatives.

Canadian insurance companies – Act contains extensive provisions relating to the incorporation, governance, operation and solvency of federal insurance companies. Most Canadian insurance companies are federal.

Foreign companies – Under §573 a company incorporated elsewhere than in Canada, including an association and an exchange, shall not insure in Canada a risk (interpreted federally to mean where insurance activity is undertaken not the location of risk) unless Superintendent of Financial Institutions has approved, by order, the insurance in Canada of risks by the company, except as provided in §572, which contains certain exemptions. These exemptions relate to insurance against injury to persons or loss of or damage to property, or liability for such injury, loss or damage, caused by nuclear energy, including ionizing radiation and contamination by radioactive substances, to the extent that, in the opinion of the Superintendent, that insurance is not available within Canada. Foreign marine companies are no longer exempt from licensing and regulation. Section 573 provides that every company registered and holding certificate of registry from Ministry of Finance under predecessor Act is deemed to be registered under Act and company remains subject to any and all other conditions and limitations contained in certificate or other authorization. Section 581 provides that, before a company is approved to insure risks in Canada it must show that it has vested in trust assets having a prescribed value, appointed an actuary pursuant to §623, appointed an auditor pursuant to §633, established location of chief agency and complied with other relevant requirements.

By §608 - 610, every foreign company shall maintain assets in Canada in an amount specified by regulations and guidelines and directives issued by Superintendent. Assets must be vested in trust in Canadian financial institution chosen by company. Release of assets requires the consent of Superintendent.

Annual and quarterly returns in respect to its Canadian business are required to be sent electronically to Superintendent §664, 665. In addition to such statements, Superintendent may require further statements containing information necessary to ascertain status of company's financial affairs. §671(1).

Every company must keep at its chief agency in Canada original records and documents sufficient to enable chief agent to prepare and furnish required statement of Canadian business and to enable such statement to be verified therefrom. §647.

Section 674 provides that Superintendent shall annually make or cause to be made such examination and enquiry into the business and affairs of each company as Superintendent deems necessary to be satisfied that provisions of Act are being observed and that insurance business in Canada of company is in sound financial condition and, after conclusion of examination and inquiry shall report thereon to Minister of Finance.

Where Superintendent is of opinion that assets in Canada of company are not sufficient to give adequate protection to the company's policyholders in Canada, Superintendent has variety range of regulatory powers including: (i) entering into a "prudential agreement" with company §675.1; (ii) issuing directives §676; (iii) court enforcement §678; (iv) removing chief agent §678.11; and (v) taking control of branch and its assets §679.

Under §684.1, within any period during which Superintendent has control of company's assets, Minister may request Attorney General of Canada to apply to court for winding-up order under the *Winding-up and Restructuring Act*.