

# DIGEST OF INSURANCE LAW

## CANADA

Courtesy of  
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Toronto, Ontario, Canada

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

Act came into force June 1, 1992 and repeals and replaces Foreign Insurance Companies Act and Canada and British Insurance Companies Act and applies to every company incorporated or continued under it for purpose of carrying on business of insurance and includes fraternal benefit societies. Under §573 a company incorporated elsewhere than in Canada, including an association and an exchange, shall not in Canada insure a 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. Principal exemptions relate to marine insurance, to insurance against injury to persons or loss of or damage to property, or liability therefor, caused by nuclear energy, to extent such insurance is in opinion of Superintendent of Financial Institutions, not available within Canada, and to fire insurance on property in Canada effected outside Canada and without any solicitation whatsoever, direct or indirect, on part of Company.

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 and auditor pursuant to §633, established location of chief agency and complied with other relevant requirements. Assets vested in trust to consist of unencumbered securities of or guaranteed by Canada or a province, or other securities at the accepted value on conditions established by the Superintendent. Companies that deposited securities with Receiver General under predecessor Act shall apply for return of same within a certain period.

By §609, every foreign life insurance company shall, in relation to its life insurance, accident and sickness insurance, and loss of employment insurance risks in Canada, maintain assets in Canada total value of which is at least equal to aggregate of following amounts: (a) amount equal to reserve for outstanding policies in Canada less deduction of all claims company has against such policies; (b) amount equal to provision for claims incurred but unpaid; (c) amount equal to total of other liabilities of company in Canada relating to these classes; and (d) amount equal to margin company is required to maintain in accordance with §608.

By §609, every foreign life insurance company shall, in relation to its insurance risks in Canada that fall within a class of insurance other than life insurance, accident and sickness insurance and loss of employment insurance, maintain assets in Canada total value of which is at least equal to aggregate of the following amounts: (a) amount of the reserve for actuarial and other policy liabilities of company in respect of that class, determined on same basis as reserve included in annual return of company; (b) amount equal to total amount of other liabilities of company in respect of that class; and (c) amount equal to margin that company is required to maintain in accordance with §608.

By §609, every foreign property and casualty insurance company shall, in respect of insuring in Canada of risks that fall within a class of insurance, maintain assets in Canada the total value of which is at least equal to aggregate of following amounts: (a) amount of reserve for actuarial and other policy liabilities of company in respect of that class, determined on same basis as reserve included in the annual return of company; (b) amount equal to total amount of other liabilities of company in respect of that class; and (c) amount equal to margin that company is required to maintain in accordance with §608.

Act contains provision for increase and release of deposits, for valuation of securities deposited or shown as assets in statement of Company. §§608, 609, 610 and 650.

Annual statements of affairs of company in relation to its Canadian business are required to be sent to Office of Superintendent, showing assets, liabilities, income and expenditures at least 21 days before annual meeting. §335(1). 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 670 provides that Superintendent of Financial Institutions shall cause a register to be maintained in respect of each company or society for which an order has been made approving the commencement and carrying on of business. The register shall contain a copy of the incorporating instrument of company and information as referred to in subsection 668(1)(a), (c) and (e) to (h) contained in latest return sent to Superintendent pursuant to §668, which register all persons are entitled to examine and make copies of. Section 674 provides that Superintendent shall annually make or cause to be made such examination and enquiry into the business 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, in opinion of Superintendent, a company or person is pursuing or about to pursue an act or course of conduct that is an "unsafe or unsound practice in conducting the business of the company in Canada," §676(1)(c) and (d) empowers the Superintendent to issue directions of compliance, after the person or company has had opportunity to make representations in respect of the subject matter thereof (unless in Superintendent's

opinion, the resultant time interval in allowing representations would be prejudicial to public interest, in which case a temporary direction is issued). The Superintendent may apply to a superior court to secure compliance with a direction and an appeal from the decision of such court lies to the appropriate appellate court in the particular case. §678.

Appeal lies to the Federal Court of Canada from ruling of Minister concerning disposition of shareholdings. §1020.

Foreign life insurance companies are required to maintain accounts, funds and securities in respect of life insurance business in Canada separate and distinct from accounts, funds and securities of other classes of business. §593.

Act contains special sections concerning fraternal benefit societies.

Where Superintendent is of opinion that assets in Canada of company are not sufficient to give adequate protection to its policyholders in Canada, Superintendent may, by order, direct the company to increase its capital within a specified time and Superintendent may, at the discretion of the minister, take control of company's assets in Canada. §§515, 609 and 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 "Winding-up and Restructuring Act". Under §655, Superintendent may rescind order approving insurance in Canada of risks by foreign company if company does not provide information to Superintendent as required by §664, provide annual return as provided by §665, permit examination authorized by §§648 or 674, or provide information requested for such examination.

The Act sets out description of investments authorized to be included in assets of company.