

**PROPERTY AND CASUALTY INSURANCE COMPENSATION CORPORATION/
SOCIÉTÉ D'INDEMNISATION EN MATIÈRE D'ASSURANCES IARD**

**CONSOLIDATED MEMORANDUM OF OPERATION
SEPTEMBER 9, 2005**

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SCHEDULE A

Kinds of Insurance Policies Excluded from Definition of
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MEMORANDUM OF OPERATION
Enacted by the Board of Directors

I. DEFINITIONS

1. (1) In this Memorandum of Operation and any of the rules and regulations prescribed by the board of directors pursuant to paragraph 41 hereof, unless the context otherwise specifies or requires:
 - (a) “board of directors” means the duly constituted board of directors of the Corporation;
 - (b) “By-Law No. 1” means By-Law No. 1 of the Corporation;
 - (c) “Ceiling Amount” has the meaning attributed thereto in paragraph 7(1);
 - (d) “Claim” means any unpaid claim which arises in consequence of an incident which involves a risk or peril insured against by a Covered Policy provided that the Corporation shall have discretion not to make a Compensation Payment in respect of any amount due to any reinsurer, insurer, insurance pool or underwriting association in each case that is not a Member, as subrogation recoveries or otherwise;
 - (e) “Claimant” means a Policyholder or a Third Party Claimant;
 - (f) “Compensation Payment” means a voluntary payment made by the Corporation contemplated by paragraphs 7 or 9;
 - (g) “Controlled Insurer” means a General Insurer over which an Insurance Regulatory Authority (including, for the purposes hereof, the Superintendent of Financial Institutions for Canada), acting under statutory authority or court order, has taken control of the assets of the General Insurer, and, for greater certainty, a General Insurer that is a Controlled Insurer by virtue of the Insurance Regulatory Authority of one Jurisdiction (or the Superintendent of Financial Institutions for Canada) having taken such control shall still be considered to be a Controlled Insurer as regards another Jurisdiction, notwithstanding that the Insurance Regulatory Authority of the latter mentioned Jurisdiction did not take such control;
 - (h) “Corporation” means the Property and Casualty Insurance Compensation Corporation/Société d’indemnisation en matière d’assurances IARD;
 - (i) “Covered Claim” is a Claim under the coverage in a Covered Policy and arising either prior to the date a Winding Up Order is made as to the Member which becomes an Insolvent Insurer that issued the Covered Policy or within such period of time thereafter as may be set by the board of directors for each Insolvent Insurer, and

- (i) all Covered Claims attributable to a single incident and arising under a Covered Policy or Covered Policies with the same named insured shall be considered to constitute a single Covered Claim;
 - (ii) a Covered Claim shall be considered to be for an amount equal to the lesser of the amount of the Covered Claim and the amount that could be recovered with respect thereto under the terms of the particular Covered Policy after deducting any applicable deductibles thereunder; and
 - (iii) for greater certainty, Unearned Premiums do not constitute a Covered Claim;
- (j) “Covered Policy” means a contract or policy of insurance made, or under applicable insurance legislation deemed to be made, in a Participating Jurisdiction (other than a contract or policy of a Member made, or under applicable insurance legislation deemed to be made, in a Jurisdiction which is no longer a Participating Jurisdiction pursuant to action taken under subparagraphs 6(1) or 6(2) of By-Law No. 1 where that Member becomes an Insolvent Insurer after the Termination Date or Jurisdiction Withdrawal Date, as the case may be) and issued by a Member other than:
- (i) the kinds of insurance contracts or policies listed and defined in Schedule A annexed hereto;
 - (ii) INTENTIONALLY DELETED
 - (iii) any contract or policy, written or provided by or on behalf of the “Insurer” within the meaning of *The Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35, as amended (the “Insurer”), which constitutes “insurance” within the meaning of such Act or similar policies written, or under applicable insurance legislation deemed to be written in the province of Saskatchewan, by General Insurers which, had they been written or provided by the Insurer would constitute “insurance” within the meaning of such Act;
 - (iv) any contract or policy, written or provided by or on behalf of the “Corporation” within the meaning of the *Manitoba Public Insurance Corporation Act*, R.S.M. 1987, c. P215, as amended (the “Corporation”) which constitutes “universal compulsory automobile insurance” within the meaning of such Act or similar policies written, or under applicable insurance legislation deemed to be written in the province of Manitoba, by General Insurers which, had they been written or provided by the Corporation would constitute “universal compulsory automobile insurance” within the meaning of such Act;
 - (v) any contract or policy, whether written or provided by the Corporation, the Insurer or a General Insurer, which increase or extend the coverage or insurance described in paragraphs (iii) and (iv); or

- (vi) any contract or policy of automobile insurance made, or under applicable insurance legislation deemed to be made, in any Jurisdiction by a Government Owned Insurer, other than such contract or policy of automobile insurance made or deemed to be made in the province of British Columbia which would constitute “extension insurance” within the meaning of the *Insurance (Motor Vehicle) Act* R.S.B.C. 1996 c. 231.
- (k) “Designated Representative” has the meaning attributed thereto in paragraph 20 of By-Law No. 1;
- (l) “General Insurer” means an insurer licensed by a Jurisdiction to provide any of the kinds of insurance which would be provided in a Covered Policy but does not include a Government Owned Insurer, an insurer which has been excluded from membership in the Corporation by an Insurance Regulatory Authority pursuant to paragraph 16 of By-Law No. 1, a reciprocal or inter-insurance exchange or an insurer whose business is limited to that of reinsurance;
- (m) “Government Owned Automobile Insurer” means a Government Owned Insurer which provides automobile insurance and no other kinds of insurance;
- (n) “Government Owned Insurer” means any corporation or entity in which the government of a Jurisdiction has a controlling interest (including by way of the direct or indirect control of a corporation and by way of a right to appoint a majority of the directors (however designated) of a corporation) which provides the kinds of insurance which would be provided in a Covered Policy;
- (o) “Insolvent Insurer” means a Member against which a Winding Up Order has been made and “Insolvent” and “Insolvency” have corresponding meanings;
- (p) “Insurance Regulatory Authority” means the insurance regulatory authority of a Jurisdiction;
- (q) “Jurisdiction” means a province or territory of Canada;
- (r) “Jurisdiction Withdrawal Date” has the meaning ascribed thereto in sub-paragraph 6(2) of By-Law No. 1;
- (s) “Liquidation” means the winding up of an Insolvent Insurer pursuant to the WUA;
- (t) “Liquidator” means the liquidator of the assets of the Insolvent Insurer appointed under the WUA;
- (u) “Members” has the meaning attributed thereto in paragraph 17 of By-Law No. 1;
- (v) “Participating Jurisdiction” has the meaning attributed thereto in sub-paragraph 5(3) of By-Law No. 1;

- (w) “Person” means any individual, corporation, partnership, association, or voluntary organization;
- (x) “Policyholder” means a Person, other than an Ineligible Person contemplated by paragraph 37, who is:
 - (A) except with respect to Unearned Premiums, an insured in a Covered Policy; or
 - (B) with respect to Unearned Premiums only, a named insured in a Covered Policy,or that Person's successors, assigns, personal representative or executor, as the case may be;
- (y) “Premium” means the consideration for a Covered Policy;
- (z) “Prudential Criteria” means the requirements, rules, tests, criteria or standards designed to promote the financial health of General Insurers, adopted by a Jurisdiction in consultation with the Insurance Bureau of Canada (prior to the incorporation of the Corporation) or with the Corporation (after its incorporation) and imposed by that Jurisdiction as a requirement that must be met by the General Insurers licensed by it;
- (aa) “reciprocal or inter-insurance exchange” means a group of subscribers exchanging reciprocal contracts of indemnity or inter-insurance with each other through the same attorney and includes, in the province of Quebec, an insurance fund (as defined in an *Act respecting insurance*, R.S.Q., c. A-32, as amended);
- (bb) “Termination Date” has the meaning ascribed thereto in sub-paragraph 6(1) of By-Law No. 1;
- (cc) “Third Party Claimant” means a Person, other than an Ineligible Person (as defined in paragraph 37), who has a claim against a Policyholder arising in respect of a Covered Claim or who, by operation of law, has a direct cause of action against an Insolvent Insurer in respect of a Covered Claim or that Person's successors, assigns, personal representative or executor, as the case may be;
- (dd) “Third Party” means a Person against whom a Policyholder has a right to make a claim for recovery of damages in respect of an occurrence contemplated by a Covered Policy or that Person's successors, assigns, personal representative or executor, as the case may be;
- (ee) “Unearned Premium” means that portion of the total Premium paid under a Covered Policy issued by an Insolvent Insurer for which the Policyholder has not received coverage provided for in the Covered Policy;

- (ff) “Unearned Premium Limit” has the meaning attributed thereto in paragraph 7(4);
 - (gg) “Winding Up Order” means an order made by a court of competent jurisdiction under the WUA; and
 - (hh) “WUA” means the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended or consolidated from time to time.
- (2) Any capitalized terms not defined herein shall have the meaning ascribed or attributed thereto in By-Law No. 1.
 - (3) For the purposes of determining when an act or occurrence has taken place in relation to the making of a Winding Up Order, and when a Winding Up Order is made, a Winding Up Order against which all rights of appeal have been exhausted shall be deemed to have been made when initially granted by a court of competent jurisdiction under the WUA. For the purpose of determining when a General Insurer is a Controlled Insurer, an Insurance Regulatory Authority shall be deemed to have taken control of the assets of such insurer on the day the Insurance Regulatory Authority takes possession of such assets.

II. STATEMENT OF PURPOSE

- 2. The purpose of this Memorandum of Operation is to establish guidelines and procedures whereby the Corporation can make voluntary Compensation Payments in respect of Covered Claims and Unearned Premiums in order to provide a reasonable level of compensation to certain Claimants who have suffered losses in circumstances where a Member has become an Insolvent Insurer. The guidelines and procedures set forth herein are to be given a generous and liberal interpretation in accordance with the spirit of the Corporation's objects.

III. PROCEDURES WITH THE LIQUIDATOR

Procedures to Establish Amount of Covered Claims and Unearned Premiums

- 3. As soon as is practicable after the Insolvency of a Member the Corporation shall consult with the Liquidator or proposed Liquidator to ascertain what procedure he intends to follow in determining the validity and amount of Covered Claims and Unearned Premiums and to request that he adopt a procedure which will facilitate the making of prompt Compensation Payments by the Corporation and the recovery by the Corporation of amounts paid as contemplated by paragraph 10.

Reliance by Corporation on Liquidator's Settlements

- 4. Where the procedure established by the Liquidator after the consultations referred to in paragraph 3 is acceptable to the Corporation, the Corporation may rely on the Liquidator's assessment of the dollar amount of the Covered Claim and the Unearned Premium he is prepared to accept in the Liquidation and where the Corporation so relies, for the purposes of paragraph 7, the Liquidator's amount in respect of the Covered Claim shall be deemed to be “the Amount of the Covered Claim” and the Liquidator's amount in respect of the Unearned Premium shall be deemed to be the “Amount of the Unearned Premium”.

Verification by Corporation

5. Where the procedure adopted by the Liquidator to determine the validity and dollar amount of the Covered Claim or the Unearned Premium is unacceptable to the Corporation, or if the procedure is acceptable but the Corporation wishes to verify any Covered Claim or Unearned Premium, the Corporation may adopt or employ any procedures to make such verifications, in which case, notwithstanding paragraph 4, the “Amount of the Covered Claim” and “Amount of the Unearned Premium” for the purposes of paragraph 7 shall be deemed to be the amount determined by the Corporation and not the Liquidator.

Acting as Inspector

6. The Corporation may be appointed and act as an inspector in the estate of an Insolvent Insurer on such terms as the President of the Corporation shall approve. One or more senior officers of the Corporation shall act on behalf of the Corporation in carrying out this duty, but the board of directors shall provide such guidance on carrying out this duty to such senior officer or officers as the board of directors deems appropriate.

IV. PAYMENTS TO CLAIMANTS

Payments to Policyholders

7. (1) Subject to paragraph 8, once the Amount of a Covered Claim has been determined in accordance with paragraphs 4 or 5, as the case may be, the Corporation may make a voluntary payment or payments (including on an interim basis) to a Policyholder in respect of that Covered Claim in an aggregate amount equal to the lesser of (i) the Amount of the Covered Claim, and (ii) \$250,000 (the “Ceiling Amount”), or, if the Covered Claim arises under a contract or policy of automobile insurance made or deemed under applicable insurance legislation to have been made in the province of British Columbia, \$50,000 (the “B.C. Auto Ceiling Amount”).
- (2) The board of directors shall, from time to time, review the appropriateness of the Ceiling Amount or the B.C. Auto Ceiling Amount and may adjust them upwards.
- (3) Notwithstanding anything else contained herein, where a Policyholder is a resident or deemed resident of the province of Quebec and where a Covered Claim arises under a contract of insurance issued by or made with a Member which provides an indemnity for bodily injury arising out of an automobile accident, whether the accident occurred within or outside of the Province of Quebec, the Ceiling Amount or the B.C. Auto Ceiling Amount, and the amount of the Covered Claim shall each be reduced, for the purposes of paragraph 7(1), by the amount of compensation the resident or deemed resident is entitled to receive in respect of the accident from the Société de l'assurance automobile du Québec (the “SAAQ”) under Title II of the *Automobile Insurance Act*, S.Q. 1991, c. 64, as amended, notwithstanding that the resident or deemed resident is, by the terms of the contract, entitled to the indemnity in addition to any compensation from the SAAQ as aforesaid.
- (4) Subject to paragraph 8, once the Amount of the Unearned Premium has been determined in accordance with paragraphs 4 and 5, as the case may be, the Corporation may make a voluntary payment to a Policyholder in respect thereof in an amount equal to the lesser of

(i) 70% of the Amount of the Unearned Premium, and (ii) \$700 (the “Unearned Premium Limit”).

- (5) The board of directors shall, from time to time, review the appropriateness of the Unearned Premium Limit and may adjust it upwards.

Conditions Precedent to Compensation Payment to Policyholder

8. No Compensation Payment shall be made to a Policyholder until the Corporation is in receipt of documentation or a court order has been made, that, in each case to the satisfaction of the Corporation, entitles it to receive the benefit of any distribution or other benefit provided through the winding up and liquidation with respect to the applicable Covered Policy or Policies or to enable the Corporation to deal with the Liquidator in place of the Policyholder and contains such other provisions that the Corporation considers necessary or appropriate.

Payments to Third Party Claimants

9. Where the Corporation is of the view that all or any portion of a Compensation Payment should be made to one or more Third Party Claimants instead of to the Policyholder, the Corporation may refuse to make a Compensation Payment to the Policyholder and may pay all or a portion of the Compensation Payment to one or more Third Party Claimants upon receipt of the documents or order described in paragraph 8 and additional documentation that, to the satisfaction of the Corporation, entitles it to receive the benefit of any distribution or other benefit provided through the winding up and liquidation with respect to the applicable Covered Policy or Policies or to enable the Corporation to deal with the Liquidator in place of the Third Party Claimant and contains such other provisions that the Corporation considers necessary or appropriate.

V. RECOVERY OF CERTAIN FUNDS FROM LIQUIDATOR

Ensuring Recovery From the Liquidator

10. The Corporation shall ensure that the Liquidator has received notice of the particulars of any assignment to the Corporation contemplated by paragraph 8, whether by documentation or court order, and do all other acts required to ensure that:
- (i) the assignment is recognized by the Liquidator; and
 - (ii) the Corporation is listed on the Statement of Creditors and Claimants prepared by the Liquidator so as to ensure that the Corporation receives the proceeds of any ultimate distribution of the assets of the Insolvent Insurer made by the Liquidator in respect of Covered Claims or Unearned Premiums for which Compensation Payments have been made.

Duty of Corporation to Account to Claimants

11. Any funds received by the Corporation from the Liquidator pursuant to a distribution out of the assets of the Insolvent Insurer in respect of a Covered Claim or Unearned Premium of a particular Policyholder which in the aggregate exceed the Compensation Payment(s) paid to or on behalf of the Policyholder in respect of that Covered Claim or Unearned Premium shall be paid over

forthwith to the Policyholder or, if directed by the Policyholder, to one or more Third Party Claimants.

VI. OTHER ARRANGEMENTS WITH LIQUIDATOR

12. (1) Early Access to Estate Funds

The Corporation may enter into an arrangement with the Liquidator which provides a procedure whereby the Liquidator can distribute funds out of the assets of an Insolvent Insurer to the Corporation, prior to the date on which such a distribution would be made in the normal course of a Liquidation, in order to expedite the making of Compensation Payments and to defer or reduce the necessity for bank borrowings or assessments by the Corporation on its Members. Where the Corporation and the Liquidator agree on such a procedure, the Corporation shall be empowered to execute and deliver to the Liquidator, any contract, guarantee or other instrument in writing, and to do all acts or deeds, necessary to give effect to such procedure.

(2) Notice to Policyholders

The Corporation shall endeavour to cause a notice to be sent by ordinary mail to each Policyholder of an Insolvent Insurer, as soon as possible after a Winding Up Order has been made against the Insolvent Insurer (and to the extent possible no later than a day on which, if the notice was mailed on that day, the Corporation is satisfied that the notice would be received by the Policyholders at least two weeks prior to the date on which claims under Covered Policies of such Insolvent Insurer will cease to be Covered Claims) containing information as to the existence of the Corporation, a warning that Claims arising after a certain date following the date of the Winding Up Order will not be subject to compensation by the Corporation, a recommendation that alternative insurance coverage be obtained with another insurer and any other matter which is appropriate in the circumstances.

VII. ASSESSMENTS ON MEMBERS

Funding of Compensation Payments and Deeming Provisions

13. (1) Compensation Payments paid to or on behalf of Policyholders pursuant to paragraphs 7 and 9 shall be funded by bank borrowings on terms acceptable to the Corporation, funds recovered from the Liquidator pursuant to paragraphs 10 or 12(1) (after deducting any amounts the Corporation is obliged to pay over to Policyholders as required by paragraph 11), and assessments levied on its Members as contemplated by this Part VII and by Part VIIA.

(2) For the purpose of this Part VII, where a Jurisdiction ceases to be a Participating Jurisdiction pursuant to action under sub-paragraphs 6(1) or 6(2) of By-Law No. 1, as the case may be, and where the Corporation is obliged to make Compensation Payments in respect of Covered Policies made, or under applicable insurance legislation deemed to be made, in that Jurisdiction because a Member has become an Insolvent Insurer prior to the Termination Date or Jurisdiction Withdrawal Date, as the case may be, reference in this

Part to “Participating Jurisdiction” shall be deemed to include the Jurisdiction referred to above.

- (3) The termination of a Member's membership in the Corporation shall in no way derogate from or affect that Member's obligations to the Corporation which have arisen prior to the date the membership was terminated and which, as at such date, have not been fulfilled or satisfied; accordingly, such obligations shall continue in full force and effect after the Member's membership has been terminated until fulfilled or satisfied.

Estimate by Board of Directors

14. (1) As soon as is practicable after a Member becomes an Insolvent Insurer, the board of directors shall estimate an amount (the “Total Assessment”) which reflects the maximum exposure of the Corporation anticipated by the board of directors in respect of the Insolvency of a particular Member. The board of directors shall then allocate the Total Assessment among each Participating Jurisdiction in which the Insolvent Insurer was writing policies (the “Contributing Participating Jurisdictions”) (the amount so allocated in respect of each Contributing Participating Jurisdiction is referred to as a “General Assessment”).
- (2) The allocation of General Assessments shall be made in the proportion that the board of directors’ estimate of Covered Claims and Unearned Premiums arising pursuant to Covered Policies made, or under applicable insurance legislation deemed to be made, in a particular Contributing Participating Jurisdiction is to the Total Assessment.
- (3) As soon as is practicable after a Member, which has made or is deemed under applicable insurance legislation to have made contracts or policies of automobile insurance in the province of British Columbia, becomes an Insolvent Insurer, the board of directors shall estimate an amount (the “B.C. Auto Assessment”) which reflects the maximum exposure of the Corporation anticipated by the board of directors in respect of Covered Policies which are contracts or policies of automobile insurance made or deemed under applicable insurance legislation to have been made in the province of British Columbia.

Levy on Members

15. The Corporation shall levy assessments on each Member which is licensed (or, in the case of Member which is a Government Owned Insurer, which carries on business) in a Contributing Participating Jurisdiction as defined in sub-paragraph 14(1) (a “Contributing Member”) and shall make separate assessments on each Contributing Member in respect of each Contributing Participating Jurisdiction in which it is licensed in accordance with paragraph 16.

Amount of Assessment

16. (1) The amount of the assessment to be made on each Contributing Member in respect of each Contributing Participating Jurisdiction other than the province of British Columbia shall be calculated in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

where:

- A is the assessment to be borne by the Contributing Member in respect of the particular Contributing Participating Jurisdiction (the “Contributing Member’s Assessment”);
 - B is the General Assessment allocated to the particular Contributing Participating Jurisdiction;
 - C is the Total Direct Written Premiums of the Contributing Member in respect of the particular Contributing Participating Jurisdiction; and
 - D is the Total Direct Written Premiums of all Contributing Members in respect of the particular Contributing Participating Jurisdiction.
- (2) The amount of the assessment to be made on each Contributing Member in respect of the province of British Columbia shall be calculated in accordance with the following formula:

$$A = \frac{B \times C}{D} + \frac{E \times F}{G}$$

where:

- A is the assessment to be borne by the Contributing Member in respect of the province of British Columbia (the “Contributing Member’s Assessment”);
- B is the General Assessment allocated to British Columbia minus the B.C. Auto Assessment;
- C is the Total Direct Written Premiums of the Contributing Member in respect of the province of British Columbia minus the Total Direct Written Premiums for B.C. Auto Insurance of the Contributing Member;
- D is the Total Direct Written Premiums of all Contributing Members in respect of the province of British Columbia minus the Total Direct Written Premiums for B.C. Auto Insurance of all Contributing Members;
- E is the B.C. Auto Assessment;
- F is the Total Direct Written Premiums for B.C. Auto Insurance of the Contributing Member; and
- G is the Total Direct Written Premiums for B.C. Auto Insurance of all Contributing Members.

Meaning of “Total Direct Written Premiums”

17. For the purpose of paragraphs 14, 16 and 21, the phrase “Total Direct Written Premiums” in respect of any particular Contributing Participating Jurisdiction means the total premiums written (excluding reinsurance premiums assumed and without deduction of premiums in respect of Covered Policies held by Ineligible Persons or for amounts paid by way of reinsurance premiums

ceded) in respect of all Covered Policies made or deemed to be made in that Contributing Participating Jurisdiction which have been reported in respect of the particular Contributing Member's fiscal year preceding the date of the assessment and "Total Direct Written Premiums for B.C. Auto Insurance" means the total premiums written (excluding reinsurance premiums assumed and without deduction of premiums in respect of Covered Policies held by Ineligible Persons or for amounts paid by way of reinsurance premiums ceded) in respect of all Covered Policies which are contracts or policies of automobile insurance made or under applicable insurance legislation deemed to have been made in the provide of British Columbia which have been reported in respect of the particular Contributing Member's fiscal year preceding the date of the assessment.

Reliance on Reports

18. For the purpose of determining the Total Direct Written Premiums or the Total Direct Written Premiums for B.C. Auto Insurance of Contributing Members, the Corporation shall be entitled to rely on the reports thereof filed with the insurance regulatory authority of the relevant Contributing Participating Jurisdiction.

Interest on Assessments Etc. and Grievance Procedures

19. (1) A Contributing Member may contest the amount of its Contributing Member's Assessment or any draws thereon by notifying the Corporation in writing to that effect and by stipulating in such notice the reason or reasons therefor but, notwithstanding the sending of such notice, the Contributing Member shall pay the draws levied in respect of its Contributing Member's Assessment when due and payable and shall not withhold any such amounts pending the outcome of the determination contemplated by sub-paragraph 19(2).
- (2) As soon as is practicable after receipt by the Corporation of a notice referred to in sub-paragraph 19(1), a committee of three persons appointed by the board of directors for the purposes hereof shall investigate the Contributing Member's complaint and meet with its Designated Representative to discuss the matter. Following such meeting, the committee shall render a decision in respect of the matter and notify the Contributing Member thereof.
- (3) In the event that the committee decides that the Corporation should refund any amounts previously paid by the Contributing Member, the Corporation shall do so with interest at the rate specified in sub-paragraph 21(4).
- (4) Any determination made by the Corporation, the board of directors and any committee thereof with respect to any assessment made on its Members shall be final and binding on all parties and interests.

Notice of Assessment

20. (1) The Corporation shall notify, in writing, each Contributing Member of the Contributing Member's Assessment(s) levied against it as calculated under paragraph 16. No monies in respect of a Contributing Member's Assessment shall be due and payable by the Contributing Member until the Corporation levies draws on the Contributing Member Assessment in accordance with paragraph 21.

- (2) Notwithstanding sub-paragraph 20(1) or paragraph 21, a Contributing Member Assessment shall be deemed to have been effected on the date the assessment is approved by the board of directors and any accounting therefor in the books of a Contributing Member shall be made in respect of the fiscal year in which such approval is made.

Draws

21. (1) The Corporation may levy draws from time to time in respect of each Contributing Member's Assessment as is deemed necessary by the board of directors. However, the aggregate of the draws levied in respect of each Contributing Member's Assessment in any fiscal year of the Contributing Member shall not, subject to sub-paragraph 21(2), exceed 1½% of the Contributing Member's Total Direct Written Premiums in respect of the relevant Contributing Participating Jurisdiction for that Contributing Member's preceding fiscal year. Any draws made against and paid by a Contributing Member shall reduce its Contributing Member's Assessment by the amount paid; the balance of the Contributing Member's Assessment shall be carried forward so that draws may be made thereon in subsequent years; provided that the balance carried forward shall not be applied to any other Contributing Member so as to increase that other's Contributing Member's Assessment.
- (2) Where, by reason of a Contributing Member having ceased to do business in a Contributing Participating Jurisdiction, its Total Direct Written Premiums in respect of that Contributing Participating Jurisdiction for a particular fiscal year have been reduced or eliminated, the board of directors may, for the purpose of sub-paragraph 21(1), apply the percentage referred to therein to the Contributing Member's Total Direct Written Premiums in respect of the relevant Contributing Participating Jurisdiction for the fiscal year preceding the date the Contributing Member ceased to do business therein.
- (3) The Corporation shall send, from time to time, a written notice to each Contributing Member of the draws levied in respect of the Contributing Member's Assessment and all draws shall be due and payable by the Contributing Member on the thirtieth day following the date appearing in the notice.
- (4) The Corporation shall charge, and each Contributing Member shall pay, interest on any overdue draw at a rate of interest equal, from time to time, to the rate of interest charged at that time to the Corporation in respect of its bank borrowings (or, if the Corporation has no outstanding bank borrowings, the best available rate of interest which would be charged to the Corporation by its banks if bank borrowings were made).

Refund of Contributing Member Assessments

22. Where the board of directors is of the view that the aggregate of the funds obtained through Contributing Member Assessments or interest thereon and held by it exceed the Corporation's requirements in satisfying any indebtedness of the Corporation and in making Compensation Payments, the Corporation shall refund the excess to each Contributing Member on a pro rata basis calculated in a manner consistent with paragraph 16. The board of directors is authorized to make such refunds with respect to the insolvency of a particular Member prior to the Liquidator obtaining a court order that concludes the winding-up of that Member.

Adjustment of Total and Other Assessments

23. The board of directors may, at any time, adjust the amount of the Total Assessment in accordance with the information then available to it. In such case, the Corporation shall make a corresponding adjustment to the General Assessments and each Contributing Member's Assessment.

Administrative Assessments

24. The Corporation shall be entitled to levy on its Members, on an annual basis, administrative assessments in such amounts and on such basis as may be determined by the board of directors.

VIIA. COMPENSATION FUND ASSESSMENT

Background and Compensation Fund Assessment

25. (1) The Corporation and the Members recognize that circumstances may arise from time to time in which either:
- (a) the funds available to the Corporation to make Compensation Payments from Contributing Members' Assessments under Part VII may not be sufficient to compensate Claimants who have suffered losses in circumstances where a Member has become an Insolvent Insurer; or
 - (b) it is desirable for the Corporation to make Compensation Payments to Claimants before funds have become available for such purpose from Contributing Members' Assessments under Part VII.

The Compensation Fund established in accordance with this Part shall be available in such circumstances.

- (2) The Members agree, therefore, to the establishment by the Corporation of a fund (the "Compensation Fund"), which shall be funded by assessments ("Compensation Fund Assessments") of Members as and when approved by Members in accordance with this Part and which will be available to the Corporation to make Compensation Payments, all as described in this Part.

Compensation Fund Assessment

26. (1) A Compensation Fund Assessment shall be levied in a particular year (the "Assessment Year") and shall comprise for each Member the percentage determined in accordance with the authorizing resolution adopted under paragraph 27 (the "Authorized Percentage") of that Member's Total Direct Written Premiums reported for the preceding year (the "Base Year"). For the purpose of this sub-paragraph, "Total Direct Written Premiums" means total premiums written (excluding reinsurance premiums assumed and without deduction of premiums in respect of Covered Policies held by Ineligible Persons or for amounts paid by way of reinsurance premiums ceded) in respect of all Covered Policies made or deemed to be made in all Participating Jurisdictions in which the Member was licensed in the Base Year. For the purpose of determining "Total Direct Written Premiums" of

Members, the Corporation shall be entitled to rely on the reports thereof filed with the insurance regulatory authority of the relevant Participating Jurisdiction.

- (2) The total of all Compensation Fund Assessments, together with any income or other amounts earned thereon, shall form the Compensation Fund.
- (3) The Corporation shall maintain separate accounts regarding all transactions involving the Compensation Fund.
- (4) The Compensation Fund shall be an asset of the Corporation and shall not constitute trust funds.

Approval of Compensation Fund Assessments

27. (1) A Compensation Fund Assessment may be levied as to any particular Assessment Year only with the consent of the Members given by an authorizing resolution sanctioned by an affirmative vote of at least two-thirds of the votes cast by Designated Representatives at a meeting of Members. The authorizing resolution shall specify or authorize the directors to determine the percentage to be used in determining the amount of the assessment payable by each member under sub-paragraph 26(1). This resolution shall be binding on all Members.
- (2) A Compensation Fund Assessment is authorized with 1998 as the Assessment Year and 1997 as the Base Year and the assessment percentage shall be 0.15%.

Investment of Compensation Fund

28. The board of directors will have authority to invest the Compensation Fund in accordance with investment guidelines adopted from time to time by the Board of Directors. Until such time as investment guidelines are adopted, the investment of the Compensation Fund will be limited to debt obligations of or guaranteed by Canada or a province of Canada.

Use of Compensation Fund Where Assessments are Insufficient

29. (1) If, in any year, the cumulative amounts of assessments to be made with respect to any Participating Jurisdiction (arrived at by aggregating item B in paragraph 16 as it is determined for each and every assessment in that year) is, by reason of the restriction on draws levied in sub-paragraph 21(1), greater than the amount that can be levied with respect to that Participating Jurisdiction in the year, then the Board of Directors may determine to draw on the Compensation Fund for all or any portion of the short-fall (the amount so drawn being referred to as the "CF Draw" for the particular Participating Jurisdiction).
- (2) Where a CF Draw has been made, the Corporation may estimate the additional income that would have been earned by the Compensation Fund if it had available for investment during the year an amount equal to the amount of the CF Draw. Such amount is referred to as the "Adjustment Amount", which may be increased or decreased from year to year as further CF Draws are made or as amounts become available under sub-paragraph 29(5).

- (3) Where a CF Draw has been made, the Corporation shall, in each following year, make an additional assessment on each Member with respect to the particular Participating Jurisdiction which shall be calculated in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

where:

- A is the assessment to be borne by the Member in respect of the particular Participating Jurisdiction;
- B is the Adjustment Amount (if any) attributable to the particular Participating Jurisdiction;
- C is the Total Direct Written Premiums of the Member in respect of the particular Participating Jurisdiction; and
- D is the Total Direct Written Premiums of all Members in respect of the particular Participating Jurisdiction.
- (4) For the purpose of sub-paragraph (3), the phrase “Total Direct Written Premiums” in respect of any particular Participating Jurisdiction means the total premiums written (excluding reinsurance premiums assumed and without deduction of premiums in respect of Covered Policies held by Ineligible Persons or for amounts paid by way of reinsurance premiums ceded) in respect of all Covered Policies made or deemed to be made in that particular Participating Jurisdiction which have been reported in respect of the particular Member's fiscal year preceding the date of the assessment.
- (5) The Corporation may levy draws from time to time in respect of each Member's assessment under sub-paragraph (3) as is deemed necessary by the board of directors. However, the aggregate of the draws levied in respect of each Member's assessment in any fiscal year of that Member shall not, after allowing for all other draws levied in that year with respect to that Member under sub-paragraph 21(1), exceed the amount permitted under sub-paragraphs 21(1) and (2).
- (6) The amount paid by a member in respect of a draw made against it under sub-paragraph 29(5) shall be added to the Compensation Fund and the Adjustment Amount shall be reduced by that amount.

Use of Compensation Fund to Bridge Assessment Delays

30. (1) If, with respect to any Insolvency, the Board of Directors determines that it would be desirable to make Compensation Payments to Claimants before funds have become available for such purpose from Contributing Members' Assessments under Part VII, the Board of Directors may determine to draw an amount from the Compensation Fund for the purpose of making Compensation Payments to such Claimants (the amount so drawn being referred to as a “Bridge Draw”).

- (2) Where a Bridge Draw has been made, the Corporation may estimate the additional income that would have been earned by the Compensation Fund if it had available for investment during the year an amount equal to such Bridge Draw. Such amount is referred to as the "Bridge Adjustment Amount".
- (3) Each Bridge Draw and related Bridge Adjustment Amount for a particular Insolvency shall be repaid to the Compensation Fund from Contributing Members' Assessments under Part VII for such Insolvency forthwith after funds from such Contributing Members' Assessments which are not required for Compensation Payments are received by the Corporation.

Notice of Compensation Fund Assessment

31. (1) The Corporation shall notify each Member in writing of the amount of its Compensation Fund Assessment. Each Member shall be required to pay to the Corporation the amount of its Compensation Fund Assessment within 30 days of receipt of the notice. In the case of the Compensation Fund Assessment for 1998, one-third of the Compensation Fund Assessment shall be payable in each of the years 1998, 1999 and 2000.
- (2) If a Member wishes to contest the amount of its Compensation Fund Assessment, the provisions of paragraph 19 will apply, with necessary modifications.
- (3) Sub-paragraph 21(4) applies, with the necessary modifications, to any amounts not paid on time under this Part.

Special Provisions

32. (1) The board of directors, acting reasonably, but in their discretion, may determine how amounts received from Members under Part VII are to be allocated between Compensation Payments generally and the Compensation Fund.
- (2) Where an issue arises with respect to the interpretation or application generally of this Part that is not specifically addressed in this Part, the board of directors, acting reasonably, may resolve the matter on a basis that it considers to be appropriate in light of the facts of the particular case, or may enact a rule or policy, which will be binding on all Members, to resolve the issue, provided that the rule or policy is not inconsistent with this Part.

Income

33. None of the income (excluding the amount of any taxable capital gains) of the Corporation will be payable to, or otherwise available for the personal benefit of, any Member.

Compensation Fund Not Refundable

34. Members shall not be entitled to any return or refund of their Compensation Fund Assessments or of amounts in the Compensation Fund.

VIII. OTHER EXCLUSIONS

Late Filing of Claim with Liquidator, Etc.

35. Subject to paragraph 39, the Corporation need not make any Compensation Payment in respect of a Covered Claim or Unearned Premium where, by reason of a Policyholder having failed to notify the Liquidator of his Covered Claim or Unearned Premium within the time period specified in the WUA or because of some other delinquent act by the Policyholder, the Policyholder's right to receive proceeds of any ultimate distribution of the assets of the Insolvent Insurer (and the corresponding right of the Corporation to such proceeds under the documentation or court order contemplated by paragraph 8) is prejudiced.

Financial Difficulties

36. If the making of Compensation Payments, either actual or anticipated, is at any time likely to cause financial difficulties for the property and casualty industry in a Participating Jurisdiction, or for the Corporation, to the detriment of the public, the Corporation shall participate in discussions with the Insurance Regulatory Authority of that Participating Jurisdiction or all Participating Jurisdictions, as the case may be, with a view to an appropriate modification of the Compensation Payment arrangements provided for herein, and while such discussions take place, the Corporation may defer the making of Compensation Payments as is appropriate in the circumstances.

IX. INELIGIBLE PERSONS

Exclusion of Ineligible Persons

37. For the purposes of this Memorandum of Operation, an "Ineligible Person" is a Person who holds a contract or policy of insurance which is a Covered Policy issued by a Member which has become an Insolvent Insurer and as to which the board of directors of the Corporation concludes that any of the terms of such contract or policy (including extent of coverage, premium rates and other terms) were influenced by the nature of the relationship between the Member and the Person and are more favourable to the Person than the terms the Member would have made available in the absence of that relationship.

Explanation of Reasons

38. Where the board of directors determines that a person is an Ineligible Person pursuant to paragraph 37, the Corporation shall notify the Insurance Regulatory Authority of the relevant Contributing Participating Jurisdiction to that effect and explain the reasons for such determination in the particular matter.

X. HARDSHIP CASES

39. Where the board of directors is satisfied that the loss suffered by a Claimant or a type of Claimant as a result of the Insolvency of a Member constitutes a hardship case, and where for whatever reason a Compensation Payment is either unavailable or inadequate, the board of directors may, by unanimous approval, authorize the Corporation to compensate that Claimant or type of Claimant, or

to increase the Compensation Payment otherwise available, as the case may be, in or to an amount established by the board of directors not exceeding the Ceiling Amount.

XI. STEPS PRIOR TO CONTROL OR WINDING UP ORDER

40. The Corporation may take reasonable steps with respect to a Member in financial distress, prior to such Member becoming a Controlled Insurer or an Insolvent Insurer, to facilitate the achievement of the Corporation's objects with respect to such Member, including, without limitation, the following:
- (a) assist in the sale, transfer or reinsurance of a book of business written by such Member which is covered by the Corporation on such terms and conditions as may be approved by the board of directors of the Corporation;
 - (b) issue guarantees or otherwise provide financial support in respect of a book of business written by such Member which is covered by the Corporation on such terms and conditions as may be approved by the board of directors of the Corporation; and
 - (c) monitor, discuss and gather information in respect of such Member, subject to the Corporation maintaining the confidentiality of all information relating to such Member obtained by it hereunder, provided, however, that this duty of confidentiality shall not apply to any information which (i) was lawfully in the public domain at the time of communication to the Corporation, (ii) lawfully enters the public domain through no fault of the Corporation subsequent to the time of communication to the Corporation, (iii) was lawfully in the Corporation's possession free of any obligation of confidence at the time of communication to the Corporation, (iv) was lawfully communicated to the Corporation free of any obligation of confidence subsequent to the time of initial communication to the Corporation, or (v) was lawfully communicated to any person free from any obligation of confidence subsequent to the time of communication to the Corporation.

XII. RULES AND REGULATIONS

41. The board of directors may prescribe such rules and regulations not inconsistent with this Memorandum of Operation which may be necessary or desirable in implementing the procedures referred to herein or which deal with any matter contained herein.

XIII. MISCELLANEOUS

42. In this Memorandum of Operation, the singular shall include the plural and the plural the singular; the masculine shall include the feminine.
43. (1) Notwithstanding paragraphs 8 or 11 or any other provision of this Memorandum of Operation, the Corporation shall not make any payment to any Person, or retain any payment made to the Corporation, if the making or retention of such payment would result in a windfall or double payment to, or double recovery by, such Person or the Corporation, and in lieu of making or retaining any such payment the Corporation may, subject to paragraph 43(2), make such payments, or direct that such payments be made on its behalf, as is appropriate in the circumstances (collectively, "Payments in Lieu").

- (2) A Payment in Lieu, as defined in paragraph 43(1), shall not be made to a person subject to the *Civil Code of Quebec*, S.Q. 1991, c. 64, as amended, who is a Third Party, within the meaning of paragraph 1(1)(dd). In such case, the Payment in Lieu shall be made to the Liquidator.

Schedule A

KINDS OF INSURANCE POLICIES EXCLUDED FROM DEFINITION OF "COVERED POLICY"

For the purposes of sub-paragraph 1(1)(j) of the Memorandum of Operation of the Property and Casualty Insurance Compensation Corporation to which this Schedule is annexed, the following kinds of insurance policies shall be deemed to be excluded from the definition of "Covered Policy":

- Accident and Sickness Insurance
- Aircraft Insurance
- Credit Insurance
- Crop Insurance
- Directors' and Officers' Insurance
- Employer's Liability Insurance
- Errors and Omissions Insurance
- Fidelity Insurance
- Financial Guarantee Insurance
- Life Insurance
- Loss of Employment Insurance
- Marine Insurance
- Mortgage Insurance
- Personal Accident Insurance
- Sickness Insurance
- Surety Insurance
- Title Insurance

For the purpose of this Schedule:

"Accident and Sickness Insurance" means insurance coming within the class of personal accident insurance and sickness insurance, when written by an organization which is authorized to write (i) only accident and sickness insurance or (ii) life insurance.

"Aircraft Insurance" means insurance against

- (a) liability arising out of
 - (i) bodily injury to, or the death of, a person, or
 - (ii) the loss of, or damage to, property,caused by an aircraft or the use or operation thereof; or
- (b) the loss of, or damage to, an aircraft.

"Credit Insurance" means insurance against loss to a person who has granted credit where the loss is the result of the insolvency or default of the person to whom credit is given but does not include insurance coming within the class of mortgage insurance.

"Crop Insurance" means insurance against the loss of, or damage to, crops in the field caused by drought, flood, hail, wind, frost, lightening, excessive rain, snow, hurricane, tornado, wildlife, fire, insect, infestation, plant disease or other peril.

“Directors' and Officers' Insurance” means an undertaking by an insurer

- (a) to indemnify the directors and officers of a company in respect of losses resulting from any claim made against them for a negligent or wrongful act; or
- (b) to indemnify a company for all loss for which the company may be required or permitted by law to indemnify its directors and officers in respect of claims made against them, for a negligent or wrongful act.

“Errors and Omissions Insurance” means an undertaking by an insurer to pay on behalf of an insured sums which the insured is legally obligated to pay as damages because of any act, error or omission of the insured, or of any other person for whose acts, errors or omissions the insured is legally responsible, and arising out of the performance or intended performance of professional services for others, or failure to perform such professional services as ought to have been performed in the insured's professional capacity; provided that for the purposes hereof, the term “professional services” does not include professional medical services.

“Employer's Liability Insurance”

- (a) means insurance against liability arising out of bodily injury to, or the disability or death of, an employee of the insured occurring as a result of or in the course of his employment; and
- (b) if included in a contract that provides insurance against liability arising out of bodily injury to, or the disability or death of, an employee of the insured, includes insurance coming within the class of personal accident insurance covering an employee of the insured where the insurance is limited to accidents occurring as a result of or in the course of his employment whether or not liability exists.

“Fidelity Insurance” means

- (a) insurance against loss caused by the unfaithful performance of duties by a person in a position of trust; or
- (b) insurance whereby an insurer undertakes to guarantee the proper fulfilment of the duties of an officer.

“Financial Guarantee Insurance” means an undertaking by an insurer to perform an agreement or contract or to discharge a trust, duty or obligation upon default of the person liable for such performance or discharge or to pay money upon that default or in lieu of that performance or discharge or where there is loss or damage through that default, but does not include credit insurance.

“Life Insurance” means an undertaking by an insurer to pay insurance money,

- (a) on death; or
- (b) on the happening of an event or contingency dependent on human life; or
- (c) at a fixed or determinable future time; or
- (d) for a term dependent on human life,

and, without restricting the generality of the foregoing, includes 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 and such an undertaking shall be deemed always to have been life insurance.

“**Loss of Employment Insurance**” means insurance against the involuntary loss of employment by a person when the loss of employment benefit is limited to all or part of the debt of the person, when written by an organization which is authorized to write (i) life insurance or (ii) loss of employment insurance and accident and sickness insurance only.

“**Marine Insurance**” means insurance against

- (a) liability arising out of
 - (i) bodily injury to, or the death of, a person, or
 - (ii) the loss of, or damage to, property, or
- (b) the loss of, or damage to, property,

occurring during a voyage or marine adventure at sea or on an inland waterway or during delay incident thereto or during transit, otherwise than by water, incident to such a voyage or marine adventure.

“**Mortgage Insurance**” means insurance against loss caused by default on the part of a borrower under a loan secured by a mortgage upon real property, a hypothec upon immovable property or an interest in real or immovable property.

“**Personal Accident Insurance**” means

- (a) insurance against loss resulting from bodily injury to, or the death of, a person caused by an accident; or
- (b) insurance whereby an insurer undertakes to pay a certain sum or sums of money in the event of bodily injury to, or the death of, a person caused by an accident.

“**Sickness Insurance**” means

- (a) insurance against loss resulting from the illness or disability of a person other than loss resulting from death,
- (b) insurance whereby an insurer undertakes to pay a certain sum or sums of money in the event of the illness or disability of a person, or
- (c) insurance against expenses incurred for dental care,

other than illness or disability or dental care arising out of an accident.

“**Surety Insurance**” means insurance whereby an insurer undertakes to guarantee

- (a) the due performance of a contract or undertaking, or
- (b) the payment of a penalty or indemnity for any default,

but does not include insurance coming within the class of credit insurance or mortgage insurance.

“**Title Insurance**” means insurance against loss or damage caused by

- (a) a defect in the title to real property;
- (b) the existence of a lien, encumbrance or servitude upon real property;
- (c) a defect in the execution of a mortgage, hypothec or deed of trust in respect of real property; or
- (d) any other matter affecting the title to real property or the right to the use and enjoyment of real property.