



**BY-LAW NO. 1**

October 2023

## **TABLE OF CONTENTS**

I.	DEFINITIONS.....	1
1.	Definitions.....	1
II.	CORPORATE SEAL.....	2
2.	Corporate Seal.....	2
III.	CORPORATION OFFICES.....	3
3.	Head Office.....	3
4.	Other Offices.....	3
IV.	PARTICIPATING JURISDICTIONS.....	3
5.	Criteria... ..	3
6.	Termination of Participation Agreements.....	4
7.	Timing... ..	5
V.	COMMITTEES.....	5
8.	Establishment.....	5
9.	Advisory Committees.....	5
10.	Participation by Insurance Regulatory Authorities in Advisory Committees.....	6
11.	Remuneration of Committee Members.....	6
VI.	CONSULTATION WITH INSURANCE REGULATORY AUTHORITIES.....	6
12.	Participation in Board Meetings.....	6
13.	Insurance Regulatory Authority May Convene Meeting.....	6
14.	Scope of Discussions at Meetings.....	6
15.	Federal Regulatory Authority.....	6
VII.	CONDITIONS OF MEMBERSHIP.....	7
16.	Other Insurers May be Excluded.....	7
17.	Members.....	7
18.	Effective Date of Membership.....	7
19.	Only One Contract of Membership Necessary.....	7
20.	Designated Representatives.....	7
21.	Number of Votes.....	8
22.	Meaning of Total Direct Written Premiums.....	8
23.	Notice of Votes to be Sent.....	8
24.	Withdrawal and Termination of Membership.....	8
25.	Past Obligations to Continue Notwithstanding Termination of Membership.....	9
VIII.	BOARD OF DIRECTORS.....	9
26.	Duties of Directors.....	9
27.	Composition of Board.....	9
27A.	Majority to be Industry Directors.....	10
28.	Directors' Remuneration.....	10
29.	Nomination of Directors.....	10
30.	Eligibility.....	10
31.	Standard of Care.....	10
32.	Vacancies.....	10

33.	Resignation from Board .....	11
34.	Removal from Board.....	11
35.	Meetings of Directors .....	11
36.	Quorum, Voting by Directors and Casting Vote.....	11
37.	Telephone, etc. Meeting.....	11
IX.	MEETINGS OF MEMBERS.....	11
38.	Annual Meeting.....	11
39.	Notice of Meetings of Members .....	12
40.	Designated Representatives .....	12
41.	Quorum .....	12
X.	OFFICERS .....	12
42.	Chair.....	12
43.	Other Officers and Remuneration.....	12
XI.	MEMORANDUM OF OPERATION.....	13
44.	Enacted by Board of Directors.....	13
45.	Contents .....	13
46.	Amendment.....	13
XII.	BY-LAW AND EFFECTIVE DATE .....	14
47.	Amendment of By-Laws.....	14
XIII.	FINANCIAL YEAR .....	14
48.	Financial Year.....	14
XIV.	AUDITORS .....	14
49.	Auditors.....	14
XV.	SIGNATURE AND CERTIFICATION OF DOCUMENTS .....	14
50.	Signature & Certification of Documents.....	14
51.	Signature & Certification of Documents.....	15
XVI.	PROTECTION OF OFFICERS AND DIRECTORS .....	15
52.	Indemnity of Directors and Officers .....	15
53.	Advance of Costs .....	15
54.	Limitation.....	15
55.	Indemnification... ..	16
56.	Right to Indemnity .....	16
57.	Insurance .....	16
XVII.	REPEAL.....	16
58.	Repeal .....	16
XVIII.	MISCELLANEOUS .....	
59.	Miscellaneous .....	17
60.	Miscellaneous .....	17

Schedule I      Contracts of Membership – Provincially Incorporated Companies and Federally Incorporated Companies and Foreign Companies Operating on a Branch Basis

Schedule II     Participation Agreement (Membership Deemed by Legislation)

Schedule III    Participation Agreement (Membership Imposed by Condition of License)

**PROPERTY AND CASUALTY INSURANCE COMPENSATION CORPORATION**

**BY-LAW NO. 1**

**I. DEFINITIONS**

1. In this By-Law No. 1 unless the context otherwise specifies or requires:
  - a) “Act” means the *Canada Not-for-Profit Corporations Act*, or any statute which may be substituted therefore, including the regulations made thereunder as amended from time to time;
  - b) “articles” means the original or restated Articles of Incorporation, Articles of Amendment, Articles of Amalgamation, Articles of Continuance, Articles of Reorganization, Articles of Arrangement, Articles of Dissolution or Articles of Revival of the Corporation and includes any amendments thereto;
  - c) “board of directors” means the duly constituted board of directors of the Corporation;
  - d) “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;
  - e) “Corporation” means the Property and Casualty Insurance Compensation Corporation/Société d’indemnisation en matière d’assurances IARD;
  - f) “Covered Policy” has the meaning attributed thereto in the Memorandum of Operation;
  - g) “Designated Representative” has the meaning attributed thereto in paragraph 20;
  - h) “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, a reciprocal or inter-insurance exchange or an insurer whose business is limited to that of reinsurance;
  - i) “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;
  - j) “Insolvent Insurer” means a Member against which a Winding-Up Order has been made and “Insolvent” and “Insolvency” have corresponding meanings;
  - k) “Insurance Regulatory Authority” means the insurance regulatory authority of a Jurisdiction;

- l) “Jurisdiction” means a province or territory of Canada;
- m) “Liquidator” means the liquidator of an Insolvent Insurer appointed under the *WUA*;
- n) “Members” has the meaning attributed thereto in paragraph 17;
- o) “Memorandum of Operation” means the memorandum of operation enacted by the board of directors, as amended, revised, restated or replaced from time to time;
- o.1) “Non-Industry Director” means a director who is not an employee or officer or director of a Member or association of Members, but includes the President and other officers appointed pursuant to paragraph 43, if they are elected by the Members to be directors.
- p) “Participating Jurisdiction” has the meaning attributed thereto in sub-paragraph 5(3);
- q) “Participation Agreement” has the meaning attributed thereto in sub-paragraph 5(1);
- r) “Person” means any individual, corporation, partnership, association, or voluntary organization;
- s) “Policyholder” means a Person, other than an Ineligible Person (as defined in the Memorandum of Operation), who is a named insured in a Covered Policy or his or its successors, assigns, personal representative or executor, as the case may be;
- t) “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) and imposed by that Jurisdiction as a requirement that must be met by the General Insurers licensed by it;
- u) “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., ch.A-32, as amended);
- u.1) “Special Resolution” has the meaning attributed to such term in the Act.
- v) “Winding Up Order” means an order made by a court of competent jurisdiction under the *WUA*; and
- w) “WUA” means the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended or consolidated from time to time.

## II. CORPORATE SEAL

2. The seal of the Corporation shall be in such form as shall be prescribed by the board of directors and shall have the words “Property and Casualty Insurance Compensation Corporation/Société d’indemnisation en matière d’assurances IARD”. The custody of the seal of the Corporation shall be the responsibility of the Secretary-Treasurer of the Corporation.

### III. CORPORATION OFFICES

#### Head Office

3. The head office of the Corporation shall be located at the City of Toronto in the Province of Ontario at the place therein where the operations of the Corporation may from time to time be carried on.

#### Other Offices

4. The Corporation may establish such other offices and agencies elsewhere in Canada as the board of directors may deem expedient by resolution.

### IV. PARTICIPATING JURISDICTIONS

#### Criteria

5. (1) The board of directors may cause the Corporation to enter into a memorandum of agreement with a Jurisdiction which provides for participation by that Jurisdiction in the compensation arrangements made available by the Corporation (a "Participation Agreement") where it is satisfied that:
  - (a) the Jurisdiction has imposed on all of the General Insurers licensed by it the Prudential Criteria;
  - (b) either
    - (i) the Jurisdiction has enacted legislation making all General Insurers licensed by it members of the Corporation and making all assessments levied by the Corporation against those members a statutory debt directly enforceable by the Corporation; or
    - (ii) the Jurisdiction has imposed on the licenses of all General Insurers, a condition requiring that the General Insurer be a party to a contract of membership in substantially the form of the contract of membership contained in Schedule I hereto and maintain membership in the Corporation in good standing;
  - (c) the Jurisdiction has required its Government Owned Insurers (other than its Government Owned Automobile Insurers) to enter into a contract of membership similar to the contract contemplated by sub-paragraph 5(1)(b)(ii) above;
  - (d) the Jurisdiction has agreed that its Insurance Regulatory Authority will exercise his or her powers and duties to assist the Corporation in requiring insurers to fulfil their obligations as members of the Corporation; and
  - (e) the Jurisdiction has agreed that prior to amending, the Prudential Criteria imposed by it, it will consult with the board of directors or representatives or appointees thereof.

- (2) The form of each Participation Agreement shall be appropriate to, and shall reflect, the manner by which each Jurisdiction intends to meet the criteria in sub-paragraph 5(1) and the circumstances of the particular case. An example of a Participation Agreement to be entered into with a Jurisdiction which proposes to enact legislation in the manner specified in sub-paragraph 5(1)(b)(i) is attached as Schedule II. An example of a Participation Agreement to be entered into with a Jurisdiction on the basis specified in sub-paragraph 5(1)(b)(ii) is attached as Schedule III.
- (3) Any Jurisdiction which has entered into a Participation Agreement shall be deemed to be a “Participating Jurisdiction” on the day the Participation Agreement, as provided for therein, takes effect.
- (4) Without limiting the generality of paragraph 5 and as is reflected in Schedule III, where a Participation Agreement is to be entered into on the basis contemplated by sub-paragraph 5(1)(b)(ii), the Participation Agreement shall provide, amongst other things, that it does not take effect until each General Insurer licensed by and each Government Owned Insurer (other than each Government Owned Automobile Insurer) carrying on business in the Jurisdiction has actually entered into and delivered the contract of membership contemplated by sub-paragraphs 5(1)(b)(ii) or 5(1)(c), as the case may be.

#### Termination of Participation Agreements

6. (1) By the Corporation – Each Participation Agreement shall provide that it may be terminated by the Corporation, by prior written notice to that effect delivered to the Insurance Regulatory Authority of the Participating Jurisdiction which is a party thereto, where that Participating Jurisdiction no longer meets the criteria set forth in sub-paragraphs 5(1)(b) and (c). Upon receipt or deemed receipt of the notice (as specified below) by the Insurance Regulatory Authority, that Participating Jurisdiction shall cease to be a Participating Jurisdiction on the ninetieth day following receipt of the notice (the “Termination Date”). Any such notice shall be personally served on the Insurance Regulatory Authority (which notice shall be deemed to have been received by the Insurance Regulatory Authority on the date on which personal service is made).
- (2) By a Participating Jurisdiction – Any Participating Jurisdiction may terminate its Participation Agreement by thirty days’ prior written notice to that effect delivered to the Corporation. Upon receipt or deemed receipt by the Corporation of the notice contemplated by this sub-paragraph 6(2), the Participating Jurisdiction giving such notice shall, subject to sub-paragraphs 6(3) and 6(4), cease to be a Participating Jurisdiction on the ninetieth day following receipt of the notice (the “Jurisdiction Withdrawal Date”). The rules as to delivery and receipt of the notice shall be the same as those specified in sub-paragraph 6(1).
- (3) The termination of a Participation Agreement under sub-paragraphs 6(1) or 6(2) shall in no way affect the obligations to the Corporation of the Jurisdiction which is a party to the agreement to assist the Corporation in the recovery of assessments levied on Members licensed by that Jurisdiction and to honour any guarantees previously given by it to the Corporation.
- (4) The termination of a Participation Agreement under sub-paragraphs 6(1) or 6(2) shall not affect the membership status of the Members licensed by it except in the manner contemplated by subparagraph 24(2)(b) and paragraph 25.



### Timing

7. 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 he takes possession of such assets.

## V. COMMITTEES

### Establishment

8. The board of directors may from time to time by resolution appoint committees from the directors and officers of the Corporation for the purpose of carrying out the objects of the Corporation and delegate to them such powers as the board of directors deems appropriate from time to time. Such committees shall exercise such powers as shall be delegated to them by the board of directors from time to time. The board of directors may from time to time by resolution abolish such committees and, if the board of directors deems advisable, appoint alternative committees in their place. Meetings of such committees shall be held at such places and on such dates as each committee may determine. Any vacancies in such committees shall be filled by resolution of the board of directors. The Insurance Regulatory Authorities shall not be entitled to participate in, or receive notice of, the meetings of such committees. Such committees may include, without limitation:
  - (a) an executive committee comprised of the Chair, the Deputy Chair, the President and such additional directors as are determined by resolution of the board of directors;
  - (b) an audit committee; and
  - (c) an investment monitoring committee.

### Advisory Committees

9. Where a Member has become an Insolvent Insurer and where the board of directors deems it appropriate, the board of directors may establish an advisory committee for the purpose of dealing with the Corporation's obligations in respect of the Insolvency. An advisory committee shall consist of at least three members of the board of directors and at least two other individuals who shall represent the Members licensed in the Participating Jurisdictions which are affected by the Insolvency. The board of directors may delegate any of its responsibilities and powers to any such advisory committee.

Participation by Insurance Regulatory Authorities in Advisory Committees

10. Where an advisory committee is established pursuant to paragraph 9, each Insurance Regulatory Authority of a Participating Jurisdiction affected by the Insolvency, or his representative designated for that purpose, shall be entitled to convene and participate in any meeting thereof in accordance with the provisions of Article VI as though any reference in Article VI to “Insurance Regulatory Authority” includes an Insurance Regulatory Authority’s representative designated under this paragraph, as though any reference in Article VI to a “meeting” referred to a meeting of an advisory committee and as though any reference in Article VI to “board of directors” referred to an advisory committee.

Remuneration of Committee Members

11. Committee members shall serve as such without remuneration and no committee member shall directly or indirectly receive any profit from his position as such; provided that when authorized by resolution of the board of directors, a committee member may be paid reasonable expenses incurred by him in the performance of his duties. Nothing herein contained shall be construed to preclude any committee member from serving the Corporation as an officer or in any other capacity and receiving compensation therefore.

**VI. CONSULTATION WITH INSURANCE REGULATORY AUTHORITIES**

Participation in Board Meetings

12. (1) Each Insurance Regulatory Authority shall be entitled to receive, by mail, courier, fax or e-mail, reasonable notice of, to attend and to participate in, any meeting of the board of directors, but no Insurance Regulatory Authority shall be entitled to cast any votes at that meeting. No action on any matter discussed at any meeting of the board of directors shall be taken unless the board of directors has satisfied itself that each Insurance Regulatory Authority has been sent reasonable notice of the meeting. Each such notice shall be accompanied by an agenda of the matters to be discussed at the meeting.
- (2) Notwithstanding paragraph 12(1), the board of directors shall be entitled to meet in the absence of, and without notifying, the Insurance Regulatory Authorities for the purpose of considering and discussing any matter. The board of directors shall not be entitled to act on any matter, however, other than in accordance with paragraph 12(1).

Insurance Regulatory Authority May Convene Meeting

13. Any Insurance Regulatory Authority may convene a meeting of the board of directors by giving at least fourteen (14) days’ previous written notice thereof to the Chair of the board of directors.

Scope of Discussions at Meeting

14. At any meeting, the board of directors shall be free to discuss any matter relating to the Corporation’s Members which is relevant to the objects of the Corporation.

Federal Regulatory Authority

15. For the purpose of this Article VI, the term “Insurance Regulatory Authority” shall be deemed to include the Superintendent of Financial Institutions of Canada.

## VII. CONDITIONS OF MEMBERSHIP

### Other Insurers May be Excluded

16. Where an Insurance Regulatory Authority of a Participating Jurisdiction is satisfied that one or more insurers licensed by it is party to or a participant in a compensation plan or scheme other than that provided by the Corporation, he may exclude them from the requirement that it or they be a Member of the Corporation; notwithstanding anything else contained herein, any insurer so excluded shall be deemed not to be a Member of the Corporation and, for greater certainty, the Corporation shall have no responsibilities with respect thereto if that insurer becomes Insolvent.

### Members

17. (1) Subject to paragraph 17(2) and paragraph 24, the Corporation's "Members" shall be all General Insurers licensed by, and all Government Owned Insurers (other than Government Owned Automobile Insurers) carrying on business in a Participating Jurisdiction, and which are Members by virtue of the Legislation referred to in sub-paragraph 5(1)(b)(i) or the contract of membership referred to in sub-paragraphs 5(1)(b)(ii) or 5(1)(c), as the case may be, and, for greater certainty, includes a Controlled Insurer.
- (2) Notwithstanding sub-paragraph 17(1), the Corporation's Members may include the Insurance Corporation of British Columbia.

### Effective Date of Membership

18. Membership in the Corporation shall be deemed to be effected on the later of:
- (i) the day the Participation Agreement signed by a Jurisdiction which licenses the particular General Insurer or in which the particular Government Owned Insurer carries on business takes effect; and
  - (ii) the day the particular General Insurer or Government Owned Insurer is a Member by virtue of the legislation referred to in sub-paragraph 5(1)(b)(i) or the contract of membership referred to in sub- paragraphs 5(1)(b)(ii) and 5(1)(c), as the case may be.

### Only One Contract of Membership Necessary

19. A Member which is licensed in more than one Participating Jurisdiction shall not be required to enter into the contract of membership contemplated by sub-paragraph 5(1)(b)(ii) more than once; provided that where a General Insurer is a Member by virtue of the legislation of a particular Participating Jurisdiction contemplated by sub-paragraph 5(1)(b)(i), and where that General Insurer is also licensed by any other Participating Jurisdiction which has entered into a Participation Agreement on the basis contemplated by sub-paragraph 5(1)(b)(ii), the General Insurer shall be required to enter into the contract of membership contemplated by sub-paragraph 5(1)(b)(ii) at least once.

### Designated Representatives

20. Each Member shall choose one individual from amongst its officers or employees (a "Designated Representative") to receive notices of, to attend and to vote at any meeting of Members on its behalf. A Member may change its Designated Representative at any time by giving notice of the change to the Corporation and providing the Corporation with whatever documentation the Corporation may reasonably require.

Number of Votes

21. The number of votes each Member is entitled to cast through its Designated Representative at any meeting of Members shall be calculated in accordance with the following formula:

$$A = \frac{B}{C} \times 1,000,000$$

Where

- A is the number of votes the Designated Representative is entitled to cast at the particular meeting of Members;
- B is the total direct written premiums of the particular Member in respect of all Participating Jurisdictions; and
- C is the total direct written premiums of all Members in respect of all Participating Jurisdictions, provided that, notwithstanding the foregoing, a Member which is a Controlled Insurer or an Insolvent Insurer shall not be entitled to any votes.

Meaning of Total Direct Written Premiums

22. For the purpose of paragraph 21, the phrase “total direct written premiums” in respect of all Participating Jurisdictions means the total premiums written (excluding reinsurance premiums assumed and without deduction of amounts paid by way of reinsurance premiums ceded) in respect of all Covered Policies made, or under applicable insurance legislation deemed to be made, in all Participating Jurisdictions which have been reported in respect of a particular Member’s fiscal year preceding the date of the meeting of Members.

Notice of Votes to be Sent

23. The Corporation shall calculate the number of votes capable of being cast by each Designated Representative in accordance with paragraph 21 and advise each Designated Representative accordingly, prior to date of meeting.

Withdrawal and Termination of Membership

24. (1) During the period a Member is licensed, in any Participating Jurisdiction, to carry on the business of insurance of a kind which would be provided for in a Covered Policy, the Member shall not be entitled to withdraw its membership from the Corporation and the Corporation shall not be entitled to terminate that Member’s membership in the Corporation.
- (2) A Member’s membership in the Corporation shall be deemed to be terminated
- (a) on the 183<sup>rd</sup> day following the cancellation or other termination of the Member’s licence by a Participating Jurisdiction if such cancellation or other termination results in that Member not being licensed in any Participating Jurisdiction; or
- (b) on the day that Member is, by reason of the Participating Jurisdictions in which the Member is licensed having ceased to be Participating Jurisdictions and not by reason that the Member’s licence has been cancelled or otherwise terminated, no longer licensed by any Participating Jurisdiction.

Past Obligations to Continue Notwithstanding Termination of Membership

25. 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.
- 25.1 If requested by PACICC, each Member shall provide the Corporation with a copy of the regulatory forms (P&C returns) information it submits to the Insurance Regulatory Authority which regulates it for solvency.
- 25.2 In the case of a Member in financial distress, if requested by PACICC and if the Insurance Regulatory Authority which regulates the Member for solvency indicates its non-objection in writing, the Member, when applicable, shall provide the Corporation with a copy of the following information or documents, including any amendment to such documents or any replacement thereof: Appointed Actuary Report (AAR), Detailed information about unearned premiums and Financial Condition Testing Report (FCT).
- 25.3 Notwithstanding paragraphs 25.1 and 25.2, a Member is not required to disclose information for which that Member would be entitled to claim privilege from disclosure in litigation, or where disclosure is prohibited by law.
- 25.4 The Corporation shall keep confidential all information it receives from a Member pursuant to paragraph 25.1 and 25.2, and shall not disclose it to a third party, nor to an Industry Director, unless it receives express written authorization or direction from the Member or as required by law.

**VIII. BOARD OF DIRECTORS**

Duties of Directors

26. The board of directors shall be responsible for the governance of the Corporation and supervise the management of the activities and affairs of the Corporation. The board of directors may, from time to time, develop and adopt charters and/or policies of the board of directors setting out in greater detail its roles and responsibilities that are not addressed in the preceding paragraph.

Composition of Board

27. (a) The board of directors shall consist of:
- (i) eight (8) representatives of Members, or such other number of representatives of Members which is not less than four (4) nor greater than eight (8), as may be determined from time to time by resolution of the board; and
  - (ii) seven (7) individuals who are not representatives of Members, or such other number of individuals who are not representatives of Members which is not less than one (1) nor greater than seven (7);

- (b) Subject to paragraph (a) above, the number of directors can be set by a Special Resolution of the board of directors.
- (c) Directors shall be elected for three (3) year terms and the terms of directors shall be staggered so that approximately one-third of the directors are elected at each annual general meeting.

#### Majority to be Industry Directors

27A. A majority of the board of directors shall be Industry Directors.

#### Directors' Remuneration

28. Industry Directors shall not receive any remuneration for their services, but shall be reimbursed for their reasonable expenses of attendance at each regular or special meeting of the board of directors. Non-Industry Directors shall receive such remuneration as may be determined, from time to time, by Special Resolution of the board of directors. Nothing herein shall be construed to preclude any director from serving the Corporation as an officer or in any similar capacity and receiving compensation therefore. A Special Resolution of the board of directors is required for changes to the remuneration paid to Non-Industry Directors.

#### Nomination of Directors

29. The board of directors shall nominate individuals for election or re-election as directors at the next annual general meeting of Members and shall ensure that its nominees adequately represent all Participating Jurisdictions. In addition, any Designated Representative of a Member may nominate one or more individuals for election as a director at any annual general meeting of Members, but in order for the nomination to be valid, it must be in writing and received by the Secretary-Treasurer at least five (5) days before that annual general meeting.

#### Eligibility

30. In addition to requirements under the Act, for an employee of a Member to be eligible to be elected or appointed as a director, that individual must be a senior official of such Member.

#### Standard of Care

31. Every director and officer, in exercising their powers and discharging their duties to the Corporation, shall:
- a) act honestly and in good faith with a view to the best interest in the Corporation; and
  - b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

#### Vacancies

32. If any vacancy on the board of directors occurs for whatever reason, the remaining directors may fill the vacancy with any individual meeting the criteria outlined in paragraph 30.

Resignation from Board

33. A director may resign by delivering a written resignation to any other director but the resigning director shall remain in office until the dissolution or agreement of the meeting at which his successor is chosen by the board of directors.

Removal from Board

34. A director may be removed from office if, at a special general meeting of Members, a resolution is passed by at least three quarters of the votes available to be cast at the meeting.

Meetings of Directors

35. Meetings of the board of directors may be held at any time and place to be determined by the Chair of the board of directors provided that ten (10) days' prior notice of such meeting shall be given to each director. Notice may be given by oral means or by telephone, telegram, telegraph or other similar means. A director may waive notice of a meeting at any time and in any manner and attendance of a director at a meeting constitutes a waiver by that director of notice of that meeting.

Quorum, Voting by Directors and Casting Vote

36. (1) At any regular meeting of the board of directors, the presence or participation of a majority of directors (50 percent plus one member) shall constitute a quorum. At any special meeting of the board of directors, the presence or participation of a majority of directors (50 percent plus one member), with a majority present or participating being Industry Directors, shall constitute a quorum. A special meeting of the board of directors shall be called if any of the following issues are to be decided: determining the amount/mix of pre- and post-liquidation financial capacity required by the Corporation to respond to a Member insolvency; decisions on whether the Corporation's coverage and benefits need to be enhanced; and decisions on the amount of remuneration to be paid to Independent Directors.
- (2) All decisions of the board of directors, in order to be effective, shall be passed by the affirmative votes of a majority of the directors present at the meeting.
- (3) The Chair of the board of directors shall have a casting vote at any meeting of directors.

Telephone, etc. Meeting

37. A meeting of the board of directors or of a committee, as the case may be, may be held in person or by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to hear each other simultaneously and instantaneously, or any combination thereof, and a director or other person participating in such a meeting by such means is deemed for the purposes of this By-Law No. 1 to be present at that meeting.

**IX. MEETINGS OF MEMBERS**Annual Meeting

38. The annual meeting of the Members of the Corporation shall be held at the head office of the Corporation or elsewhere in Canada as the board of directors may designate at such time and date as shall be fixed by the board of directors. At such meeting the Designated Representatives shall elect a board of directors and shall receive a report of the directors.

### Notice of Meetings of Members

39. Notice of the time and place of a meeting of members shall be given to each Member entitled to vote at the meeting by the following means:

- a. by mail, courier or personal delivery to the Designated Representative of each member entitled to vote at the meeting, to such Designated Representative's address as shown in the records of the Corporation, during a period of 21 to 60 days before the day on which the meeting is to be held; or
- b. by telephonic, electronic or other communication facility to the Designated Representative of each member entitled to vote at the meeting, to such Designated Representative's recorded address for that purpose, during a period of 21 to 35 days before the day on which the meeting is to be held.

Notice of the time and place of a meeting of members shall also be given to the auditor and directors during a period of 21 to 60 days before the day on which the meeting is to be held.

### Designated Representative

40. Subject to paragraph 39, no Member shall be entitled to attend or vote at any annual or special general meeting of Members otherwise than through its Designated Representative.

### Quorum

41. Twenty percent of the Members represented by Designated Representatives present in person or by proxy at the meeting shall constitute a quorum. At all meetings of members every question shall be determined by a majority of votes unless otherwise specifically provided by the Act or by the by-laws of the Corporation.

## **X. OFFICERS**

### Chair

42. At the first meeting of the board of directors following the expiration of the term of a Chair, the board of directors shall choose a Non-Industry Director to act as Chair for a three-year term. The Chair shall perform such duties as prescribed by the board of directors. The board of directors may remove the Chair at any meeting called for that purpose, and may elect or appoint another Non-Industry Director in their place.

42.1 The individual appointed by the board of directors as President or other officer, pursuant to paragraph 43, may not be appointed as Chair or as chair of any committee.

### Other Officers and Remuneration

43. The board of directors shall appoint a President and may, from time to time, establish other offices of the Corporation it deems advisable and shall prescribe duties for officers appointed or elected to such offices, and remove any officers at any meeting called for that purpose, and may elect or appoint others in their place or places. The remuneration of all officers shall be fixed by the board of directors.



## **XI. MEMORANDUM OF OPERATION**

### Enacted by Board of Directors

44. The board of directors shall enact by resolution a Memorandum of Operation which sets forth the detailed rules and procedures which are to be followed by the Corporation in making voluntary payments to certain Policyholders and other claimants in respect of claims under certain insurance policies which are unpaid by reason of a Member becoming an Insolvent Insurer.

### Contents

45. Without limiting the generality of paragraph 44, the board of directors shall be entitled to include in the Memorandum of Operation or any amendment thereto, provisions
- (i) defining the types of insurance policies to which the Corporation is to be responsive;
  - (ii) defining the types of claims to which the Corporation is to be responsive and their method of calculation;
  - (iii) establishing procedures with the Liquidator or proposed Liquidator whereby his assessment of the validity and amounts of claims of policyholders and other claimants can be relied on by the Corporation;
  - (iv) establishing procedures for the verification by the Corporation of the validity and amounts of claims;
  - (v) establishing criteria for the making of voluntary compensation payments to or on behalf of policyholders and establishing conditions precedent thereto;
  - (vi) establishing procedures for the funding of compensation payments through bank borrowings, assessments on Members and recovery of funds from the Liquidator on a distribution out of the assets of an Insolvent Insurer;
  - (vii) establishing any other arrangements or procedures with its Members, a Liquidator or an Insurance Regulatory Authority which will facilitate the purpose of the Corporation; and
  - (viii) any other matter not inconsistent with this By-Law No. 1.

### Amendment

46. The Memorandum of Operation enacted by the provisional board of directors may be amended from time to time by a Special Resolution of the board of directors with the concurrence of the Insurance Regulatory Authorities of each Participating Jurisdiction. An Insurance Regulatory Authority which has not concurred with or rejected a proposed amendment or repeal within three months of being sent such proposed amendment or repeal shall be deemed to have concurred with such proposed amendment or repeal for the purposes of this paragraph.

**XII. BY-LAW AND EFFECTIVE DATE**Amendment of By-law

47. (1) Subject to the Articles, the board of directors may, by Special Resolution, make, amend or repeal any By- Law that regulates the activities and affairs of the Corporation. Any such By- Law amendment or repeal shall be effective from the date of the Resolution of the board of directors until the next meeting of the Members where it may be confirmed, rejected or amended by the Members by Resolution. If the By- Law, amendment or repeal is confirmed or confirmed as amended by the Members, it remains effective in the form in which it was confirmed. The By-Law amendment or repeal ceases to have affect if it is not submitted to the Members at the next meeting of Members or if it is rejected by the Members at the meeting.

This paragraph does not apply to a By-Law that requires a Special Resolution of the Members according to subsection 197(1) of the *Act* because amendments or repeals of such paragraphs of the By-Law only are effective when confirmed by the Members.

(2) Notwithstanding sub-paragraph 47(1), this By-Law No. 1 may not be amended or repealed without the concurrence of the Insurance Regulatory Authorities of each Participating Jurisdiction. An Insurance Regulatory Authority which has not concurred with or rejected a proposed amendment or repeal within three months of being sent such proposed amendment or repeal shall be deemed to have concurred with such proposed amendment or repeal for the purposes of this subparagraph 47(2).

**XIII. FINANCIAL YEAR**Financial Year

48. The financial year of the Corporation shall be the calendar year.

**XIV. AUDITORS**Auditors

49. The Designated Representatives shall, at each annual general meeting of Members, appoint an auditor to audit the accounts of the Corporation to hold office until the next annual general meeting provided that the directors may fill any casual vacancy in the office of auditor. The remuneration of the auditor shall be fixed by the board of directors. The board of directors shall cause a copy of the annual audited financial statements of the Corporation to be delivered to each Insurance Regulatory Authority.

**XV. SIGNATURE AND CERTIFICATION OF DOCUMENTS**

50. Cheques on bank accounts, drafts drawn or accepted by the Corporation, promissory notes given by it, acceptances, bills of exchange, orders for the payment of money and other instruments of a like nature may be made, signed, drawn, accepted or endorsed, as the case may be, by such officer or officers, person or persons as the directors may by resolution from time to time name for that purpose. Cheques, promissory notes, bills of exchange, orders for the payment of money and other

negotiable paper may be endorsed for deposit to the credit of any one of the Corporation's bank accounts by such officer or officers, person or persons, as the directors may by resolution from time to time name for that purpose, or they may be endorsed for such deposit by means of a stamp bearing the Corporation's name.

51. The Chair, the Deputy-Chair, the President or any director, together with the Secretary-Treasurer or any other director, shall have authority to sign in the name and on behalf of the Corporation all instruments in writing and any instruments in writing so signed shall be binding upon the Corporation without any further authorization or formality. The board of directors shall have power from time to time by resolution to appoint any other officer or officers or any person or persons on behalf of the Corporation either to sign instruments in writing generally or to sign specific instruments in writing. Any signing officer may affix the corporate seal to any instrument requiring the same. The term "instruments in writing" as used in this bylaw shall, without limiting the generality of the term, include contracts, documents, powers of attorney, deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property (real or personal, immovable or movable), agreements, tenders, releases, receipts and discharges for the payment of money or other obligations, conveyances, transfers and assignments of shares, stocks, bonds, debentures or other securities, instruments of proxy and all paper writing.

## **XVI. PROTECTION OF DIRECTORS AND OFFICERS**

### Indemnity of Directors and Officers

52. The Corporation shall indemnify a present or former director or officer of the Corporation, or another individual who acts or acted at the Corporation's request as a director or an officer or in a similar capacity of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the Corporation or other entity.

### Advance of Costs

53. The Corporation may advance money to a director, an officer or other individual for the costs, charges and expenses of a proceeding referred to in paragraph 52 provided such individual agrees in advance, in writing, to repay the monies if the individual does not fulfil the conditions of paragraph 54.

### Limitation

54. The Corporation may not indemnify an individual under paragraph 52 unless the individual:
- a. acted honestly and in good faith with a view to the best interests of the Corporation or, as the case may be, to the best interests of the other entity for which the individual acted as director or officer or in a similar capacity at the Corporation's request; and
  - b. in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that their conduct was lawful.

### Indemnification

55. The Corporation may, with the approval of a court, indemnify an individual referred to in paragraph 52, or advance money under paragraph 53, in respect of an action by or on behalf of the Corporation or other entity to procure a judgment in its favour to which the individual is made a party because of the individual's association with the Corporation or other entity as described in paragraph 52, against all costs, charges and expenses reasonably incurred by the individual in connection with the action, if the individual fulfils the conditions set out in paragraph 54.

### Right to Indemnity

56. Despite paragraph 5, an individual referred to in that paragraph is entitled to indemnity from the Corporation in respect of all costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the individual is subject because of the individual's association with the Corporation or other entity as described in that paragraph, if the individual seeking indemnity:

- a. was not judged by the court or other competent authority to have committed any fault or to have omitted to do anything that the individual ought to have done; and
- b. fulfils the conditions set out in paragraph 56.

### Insurance

57. The Corporation shall purchase and maintain insurance for the benefit of an individual referred to in paragraph 52 against any liability incurred by the individual:

- a. in the individual's capacity as a director or an officer of the Corporation; or
- b. in the individual's capacity as a director or an officer, or in a similar capacity, of another entity, if the individual acts or acted in that capacity at the Corporation's request.

## **XVII REPEAL**

### Repeal

58. Upon this By-Law coming into force, all previous By-Laws of the Corporation are repealed. However, such repeal shall not affect the previous operation of such By-Laws or affect the validity of any act done or right, privilege, obligation or liability acquired or incurred under the validity of any contract or agreement made pursuant to such By-Laws prior to such repeal. All officers and persons acting under such repealed By-Laws shall continue to act as if appointed under the provisions of this By-Law and all Resolutions of the Members or board of directors with continuing effect passed under such repealed By-Laws shall continue good and valid, until amended or repealed, except to the extent inconsistent with this By-Law.

**XVIII. MISCELLANEOUS**

59. In this By-Law No. I the singular shall include the plural and the plural the singular; the masculine shall include the feminine and the feminine shall include the masculine.
60. Each of this By-Law No. I, the Memorandum of Operation referred to in paragraph 44 and any rules and regulations enacted pursuant to the Memorandum of Operation shall be made available in the French language, and in construing such documents, the French and English language versions thereof shall be equally authoritative.