

circulation near their HO and the Superintendent will publish the order in the Canada Gazette.

Supervision During Operations

1. A Register is maintained by the Superintendent for each licensed issuer
2. *Certain level of assets as well as reserves must be maintained for unearned premiums and losses*
3. *Insurance companies may only purchase certain types of investments*
4. *Insurer must prepare annual financial statements (returns)*
5. *Assets of the company must be valued as set out in the Insurance Act (for the purposes of annual returns)*
6. *Liabilities of the companies must be valued as set out in the Insurance Act (for the purposes of annual returns)*
7. *Company actuary must file with the financials an annual report regarding the company reserves.*
8. *The company auditor must file with the financials a report stating that the return fairly represents the financial position of the company*
9. *Superintendent may request any additional information it feels is necessary*
10. *Superintendent's office carries out annual inspections of the company's premises.*
11. *Superintendent can direct a company to cease any practice that is a violation of the Act or jeopardizes its financial position.*
12. *Failure to comply with the directions of the OSFI risks the company being taken over by the Superintendent and possibly liquidated.*

Supervision of Foreign Insurance Companies

-much the same as Canadian companies

- The OSFI must be satisfied that the treatment of Canadian insurers in the foreign company's home jurisdiction is as favorable (reciprocal treatment).
- Assets of the foreign insurer must be put in trust of an approved Canadian financial institution.
- Power of Attorney must be changed each time a new representative is appointed or the location of head office is changed.
- Assets in Canada can only be released upon the approval of the Superintendent.

Agency/Brokerage Agreement – the agreement between the agent/broker and the company that they represent. It sets out the obligations between the two parties. Brokers may have contracts with few insurance companies or very many insurers. The agreement should spell out the obligations clearly. Basic items covered should include:

1. Parties to the agreement
2. Classes of business to be written
3. Binding authority
4. Premium collection and credit terms
5. Remuneration (commission)
6. Termination
7. Other addenda
 - a. Direct bill plans
 - b. Contingent profit/commission
 - c. Bonuses

The authority granted to an agent/broker is set out in agreement. The agreement can take two forms, express or implied.

Express Agreement – when the terms of the agreement have been specifically spelled out and agreed to by both parties either in writing or verbally.

Implied Agreement – parties conduct themselves in such a way that it is understood that a principal-agent relationship exists (not expressed by either party)

Binding authority gives the agent/broker the authority to place the insurance company at risk before notifying the insurer that they have done so. A "**Binder**" is written confirmation that the insurance has been effected (cover note).

OBLIGATIONS OF THE INSURER & BROKER

Insurer – must pay the broker the agreed fee for business placed. There may be an agreement to assist with the payment of certain expenses.

Broker/Agent – Act within the terms of the contract. Follow instructions with respect to the classes of business to be written. Collect premiums and hold them in a trust account. Remit premiums collected within a specified time. Advise the insurer promptly of business written and submit applications promptly. Advise the insurer of claims promptly. Act responsibly. Do not delegate authority.

BROKER/AGENT PREMIUMS

Premiums belong to the insurance company. Brokers/Agents however collect the premiums in most cases. Brokers/Agents must place premiums collected in a trust account until forwarded to the insurance company. Trust accounts must be separate and distinct from the operating account. Deposits to the operating account come from commissions earned. Commission is the income paid to the broker by the insurance company for the sale of policies. It is stated as a percentage of the total premium and is spelled out in the agency agreement.

Commission sales can vary between different classes of business, i.e. auto, home, commercial, etc.

Business = 20% Home = 20% Auto = 15%

Profit commission – additional income paid to a broker if they sell or produce a certain profit level for the insurance company. When collecting premiums both the agent and broker are considered to be representing the insurance company. Strict penalties result if premiums are not remitted properly. Brokers/agents can have one of 3 forms of organisation:

1. **Sole proprietorship** – a business owned by one person
 - a. Pros: - ease of setup, flexibility and freedom, little government control, results are based solely on the hard work of the owner.
 - b. Cons: - owner has unlimited liability, owner and employees responsible for all functions, expansion limited due to lack of capital.
2. **Partnership** – two or more people carrying on a business jointly
 - a. Pros: - more capital available, more skills available, minimum legal restrictions (need to be registered), more capacity for expansion.
 - b. Cons: - unlimited liability, possible disagreements between partners, limited means of obtaining capital (no ability to issue bonds or sell stock), lack of continuity (partners come and go).
3. **Corporation** – an artificially created legal entity. Can be sued, incur debt and create a profit without involving the assets of the owners. Recognised by Limited (Ltd.), Incorporated (Inc.) or Corporation (Corp.) following the name.
 - a. Pros: - limited liability, continuity, tax status (much more favorable for corporations than individuals), more ways to raise capital (stocks, bonds, collateral shares).
 - b. Cons: - initial costs are high, government regulation and control is strict, privacy (financial statements must be made available to the public if trading publicly).

The basic function of a broker is to assist in the completion of insurance contract between their clients and insurers. While performing this duty, the Broker/Agent must operate within the scope of the contract with the insurer and within the authority of the license granted. Broker/Agents must be careful not to overstep their authorities. To be successful the Broker/Agent must excel in the areas of:

- Production – product knowledge, production target (set goals), prospecting and selling, time control, curiosity
- Service – product knowledge and market capabilities, contact with the customers, prompt claim reporting, clients will seek out other Broker/Agents if they are not satisfied

The Law and the Judicial System

The Law - The expressed will of society governing relationships among members of that society.

There are 2 Broad Categories of Law:

- » Substantive
- » Procedural

Substantive law deals with the rights and duties that each person has in society.

- » **Right** to Vote
- » **Right** to own property
- » **Right** to enter into contracts
- » **Duty** to obey laws
- » **Duty** to perform contractual obligations
- » **Duty** to not injure others

Substantive law can be further broken down between public and private law.

- 1 Public - the conduct of government and its relations with private persons
 - Constitutional
 - Criminal
 - Administrative (legislation)
1. Private - the law as it applies to individuals and legal entities (like corporations). Also referred to as "civil law".
 - Sue for damages

Procedural law - the methods of protecting and enforcing rights and duties.

- Court of Quebec hears civil matters where the amounts claimed are less than \$15,000.
- Also has exclusive jurisdiction over small claims, juvenile offenders, and provincial laws.
- Court of Quebec is comprised of provincially appointed judges.

The Federal Court System

- » Comprised of
 - Supreme Court of Canada
 - Federal Court of Canada

Supreme Court of Canada

- Final court of appeal from the appeal divisions of the provincial & federal courts
- Consists of the Chief Justice of the Supreme Court of Canada and eight subordinate justices who are all federally appointed.
- Hears criminal and civil cases and renders opinions on constitutional matters.
- Before a civil case can be appealed to the Supreme Court it must give its permission.

Federal Court of Canada

- Handles issues that fall under federal jurisdiction
- (*crown cases, copyrights etc.,*)
- Has a trial division and an appeal division.
- Decisions of the trial division can be appealed to the appeal division.

Insurance concerned with Civil Law

All individuals in society have obligations to their fellow citizens. There are two types of obligations:

1. Tort (imposed by society)
2. Contract (assumed voluntarily)

The Law of Contract: Common Law

- *Subrogation* upholds the principle of indemnity

Subrogation - the right of an insurer, after paying a loss, to assume the rights of an Insured to recover from the responsible party.

- ✓ Where there is more than one Insurance Company insuring an object the doctrine of *Contribution* applies.

Contribution - the Insurance Company that paid out the loss has the right to recover from other involved insurers based on their prorated share of the loss.

Reinsurance; Industry Organizations; The Customer

Reinsurance - "To insure again by transferring to another insurance company all or part of the liability assumed"

Agreement between an Insurance Company & a Reinsurance Company that does not directly affect the Customer

Insurance Companies may buy reinsurance

- direct from a reinsurer or
- from a reinsurance broker

Cede - When an insurance company transfers liability to another insurer (a reinsurer).

Cession - The amount of the liability transferred.

Retention - The amount the original insurance company keeps to insure on its own.

Assumes - When a reinsurer accepts a portion of another companies business.

Retrocession - When a reinsurance company cedes part of its business to another reinsurer.

Retrocessionaire - The reinsurance company that accepts a reinsurers business

Reasons for Reinsuring

Main reason - To Spread Risk

Secondary Reasons

1. Increase Insurers Capacity
2. Maintain Proper Reserve Balance
3. Reduce Impact of Large Losses