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239 Accident fund

(1) The Board must continue and maintain the accident fund

(a) for payment of compensation, outlays and expenses under the compensation provisions,

(b) for payment of expenses incurred in the Board's administration of this Act, and

(c) for payment to the government required under section 283(2) *[appeal tribunal expenses]* or 350(4) *[workers' advisers and employers' advisers expenses]*.

(2) The Board is solely responsible for the management of the accident fund and must manage it with a view to the best interests of the workers' compensation system.

240 Board estimate of amounts needed for accident fund

(1) For the purpose of assessment under section 241, the Board must every year make an estimate of sufficient funds to do the following:

(a) meet all amounts payable from the accident fund during the year;

(b) provide a reserve in aid of industries or classes which may become depleted or extinguished;

(c) provide a reserve to be used to meet the loss arising from a disaster or other circumstance that the Board considers would unfairly burden the employers in a class;

(d) provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability;

(e) provide in each year capitalized reserves sufficient to meet the periodic payments of compensation accruing in future years in respect of all injuries which occur during the year;

(f) provide and maintain a reserve for payment of retirement benefits.

(2) If it is found, on an estimate made by the Board, that more than sufficient funds have been provided for the purposes set out in subsection (1) (a) to (d), the excess may be transferred to the capitalized reserves of the fund.

241 Annual employer assessments for accident fund purposes

(1) For the purpose of continuing and maintaining an adequate accident fund, the Board must every year assess and levy on and collect from employers and independent operators in each class established under section 244 *[classification of industries]* sufficient funds as estimated for the year under section 240.

(2) An assessment under this section must be rated on payroll, rated on a unit of production or made in another manner the Board considers proper.

242 Additional assessment amounts

(1) If the Board considers that there are not sufficient funds to provide the compensation required to be paid under the compensation provisions,

(a) the Board may levy on and collect from employers within the scope of the compensation provisions sufficient funds for this purpose without regard to the date of injury or the period during which the employer carried on an industry within the scope of those provisions,

(b) the levy and collection may be by way of addition to the usual assessment or by levy of special or additional assessment, and

(c) the levy and collection may be made in the manner and at the times the Board considers equitable.

(2) If the estimated assessments in a class prove insufficient, the Board

(a) may make further assessments and levies as necessary, or

(b) may temporarily advance the amount of a deficiency out of any reserve provided for that purpose and add that amount to any subsequent assessments.

(3) The following apply if special circumstances, including legislative change, result in claims being made or liabilities being imposed on the accident fund in excess of what the Board considers should reasonably be funded by assessments levied during the current year:

(a) the Board must raise sufficient funds by assessments during that year to meet the estimated payments due within the year;

(b) the Board need not establish within the year reserves to meet future payments on those claims or liabilities and may instead establish those reserves by assessments levied over a period of years.

243 General rules in relation to assessments

(1) Assessments

(a) may be made in the manner and form and by the procedure the Board considers adequate and expedient, and

(b) may be general as applicable to a class or subclass, or special as applicable to an industry or part or department of an industry.

(2) If the Board considers this to be expedient, assessments may be collected in half-yearly, quarterly or monthly instalments, or otherwise.

(3) If the Board considers that the funds in a class are sufficient for the time being, an instalment may be reduced or cancelled or its collection deferred.

244 Classification of industries

(1) The following classes are established for the purpose of assessment in order to maintain the accident fund:

Class 1: Primary resources

Class 2: Manufacturing

Class 3: Construction

Class 4: Transportation and warehousing

Class 5: Trade

Class 6: Public sector

Class 7: General sector

Class 8: Canadian Pacific Railway Limited, Teck Resources Limited

Class 9: BNSF Railway Company

Class 10: Air Canada, Canadian National Railway, Via Rail Canada Inc.

Class 11: British Columbia Assessment Authority, British Columbia Ferry Services Inc., Government of British Columbia, Workers' Compensation Board.

(2) The Board may do one or more of the following:

(a) establish new classes in addition to those referred to in subsection (1);

(b) divide classes into subclasses and divide subclasses into further subclasses;

(c) consolidate or rearrange any existing classes and subclasses;

(d) assign an employer, independent operator or industry to one or more classes or subclasses;

(e) withdraw any of the following from a class and transfer it to another class or subclass or form it into a separate class or subclass:

(i) an employer, independent operator or industry;

(ii) a part of the class;

(iii) a subclass or part of a subclass;

(f) withdraw any of the following from a subclass and transfer it to another class or subclass or form it into a separate class or subclass:

(i) an employer, independent operator or industry;

(ii) a part of the subclass;

(iii) another subclass or part of another subclass.

(3) If the Board exercises authority under subsection (2), it may make the adjustment and disposition of the funds, reserves and accounts of the classes and subclasses affected that the Board considers just and expedient.

245 Employer obligation to provide payroll estimates and reports

(1) An employer must do the following:

(a) keep at all times at a place in British Columbia complete and accurate particulars of the employer's payrolls;

(b) notify the Board of the current location of the place referred to in paragraph (a);

(c) provide to the Board an estimate of the probable amount of the payroll of each of the employer's industries within the scope of the compensation provisions, together with any further information required by the Board,

(i) when the employer becomes an employer within the scope of those provisions, and

(ii) at other times as required by Board regulation of general application or by an order of the Board limited to a specific employer;

(d) provide to the Board certified copies of reports of the employer's payrolls, on or after the end of each calendar year and at the other times and in the manner required by the Board.

(2) If an employer fails to comply with subsection (1),

(a) the employer must pay, as a penalty for the failure, the percentage of the assessment prescribed by Board regulation or determined by the Board, and

(b) the Board may make its own estimate of the payrolls and make its assessment and levy based on that estimate, in which case the employer is bound by the estimate, assessment and levy.

(3) If an employer fails to comply with subsection (1), or if a statement made under the requirements of that subsection is not true and accurate, the employer commits an offence for every such failure to comply and for every such statement.

246 Use of payroll information for purpose of assessment

(1) In computing the amount of the payroll for the purpose of assessment, regard must be had only to that portion of the payroll that represents workers and employment within the scope of the compensation provisions.

(2) If a worker's wages are greater than the maximum wage rate for the year as determined under section 209, a deduction may be made where practical in respect of the portion in excess of that rate.

(3) If the wages of a worker are shown to be greater than the maximum wage rate referred to in subsection (2), the Board may make a deduction where practical in respect of the portion in excess of that rate.

(4) If a worker works at a nominal wage or no wage, the Board may fix the amount of the worker's average earnings for purposes of the compensation provisions.

247 Variation of assessment rates

(1) The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class, as the Board considers just.

(2) If the Board considers that a particular industry or plant is circumstanced or conducted such that the hazard or cost of compensation differs from the average of the class or subclass to which the industry or plant is assigned, the Board

(a) must establish a special rate, differential or assessment for that industry or plant to correspond with the relative hazard or cost of compensation of the industry or plant, and

(b) for the purpose referred to in paragraph (a), may also adopt a system of experience rating.

(3) The Board may, in a manner that the Board determines,

(a) vary the rates of assessment as between different employers, or

(b) levy supplementary assessments

according to the estimated exposure of workers to industrial noise.

(4) The Board may make that variance or levy under subsection (3) whether or not hearing protection is worn.

248 Class accounts for accident fund

(1) Separate accounts must be maintained of the amounts collected and expended in respect of every class, reserve and special fund, but the accident fund is, for the purpose of paying compensation, one fund and indivisible.

(2) If a deficit occurs in the account of a class or subclass, the Board

(a) may charge to that class or subclass interest on the amount of the deficit at a rate that will reimburse the accident fund for any loss sustained by reason of the deficit, and

(b) may apportion the amount of the interest received and credit that amount to the class or subclass or special fund from which money was advanced to meet the deficit.

249 Compensation charged to different employer class or subclass

(1) This section applies if the Board considers that

(a) a substantial amount of compensation has been awarded under the compensation provisions as a result of the injury or death of a worker, and

(b) the injury or death was caused or substantially contributed to by a serious breach of duty of care of

(i) an employer, or

(ii) an independent operator to whom the compensation provisions apply by Board direction under section 4(2)(a)

that is in a different class or subclass from that of the worker's employer.

(2) The Board may order that the compensation be charged, in whole or in part, to the class or subclass of an employer referred to in subsection (1)(b)(i) or an independent operator referred to in subsection (1)(b)(ii).

250 Apportionment in other circumstances

(1) If compensation is paid

(a) under section 141 *[mining industry silicosis]* in relation to a worker who was exposed to the inhalation of silica dust in 2 or more classes or subclasses of industry in British Columbia, or

(b) under section 142 *[lung disease from exposure to dust conditions]* in relation to a worker who was exposed to dust conditions in 2 or more classes or subclasses of industry in British Columbia,

the Board may apportion the cost of compensation among the funds provided by those classes or subclasses on the basis of the duration and severity of the exposure in each.

(2) If compensation is paid under section 145 *[non-traumatic hearing loss]* in relation to a worker's hearing loss caused by exposure to causes of hearing loss in 2 or more classes or subclasses of industry in British Columbia, the Board may apportion the cost of compensation among the funds provided by those classes or subclasses on the basis of the duration or severity of the exposure in each.

251 Levy of contribution from specific employer

(1) This section applies if

(a) an injury, death or disablement from occupational disease in respect of which compensation under Part 4 *[Compensation to Injured Workers and Their Dependants]* is payable occurs to a worker, and

(b) the Board considers that the injury, death or occupational disease was due substantially to

(i) the gross negligence of an employer,

(ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or

(iii) the failure of an employer to comply with the orders or directions of the Board, or with the regulations made under Part 2 *[Occupational Health and Safety]*.

(2) The Board may levy on and collect from that employer as a contribution to the accident fund all or part of the amount of the compensation payable in respect of the injury, death or occupational disease, to a maximum of $69 946.25.

(3) The payment of an amount levied under this section may be enforced in the same manner as the payment of an assessment may be enforced.

252 Assessment notice to employers

(1) The Board must notify each employer of the amount of each assessment due in respect of the employer's industry and the time when it is payable.

(2) A notice under subsection (1) may be sent by mail to the employer, and is deemed to be given to the employer on the day the notice is mailed.

253 Assessment operates by Board notice

(1) If the Board

(a) notifies an employer of assessment rates or percentages determined by the Board in respect of the industries in which the employer is engaged, and

(b) informs the employer of the manner in which the assessment is calculated and the date the assessment is payable,

the notice constitutes an assessment under this Part, and the employer must, within the time frame set out in the notice,

(c) make a return on the form provided or prescribed by the Board, and

(d) remit the amount of the assessment.

(2) An employer who neglects or refuses to comply with subsection (1) is liable for the penalty prescribed by Board regulation or determined by the Board, and that penalty is enforceable as an assessment under this Part.

254 Annual adjustment of assessments

(1) As soon as practicable in each year, the Board must adjust the amount of the assessments for the preceding calendar year based on the estimated requirements of the class and on the correctly ascertained payroll of each industry.

(2) In relation to the adjustment under subsection (1), as applicable,

(a) the employer must promptly make up and pay to the Board any deficiency, or

(b) the Board must refund to the employer any surplus, or credit the surplus on the succeeding assessment, as the case may require.

255 Interest may be charged on amounts owed on assessment

(1) This section applies if

(a) the payroll of an industry ascertained under section 254(1) is greater than the estimated payroll on which an employer in that industry was assessed, or

(b) an employer remits less than the amount of the assessment due to the Board.

(2) The Board may, on the adjustment under section 254(1), charge to the employer interest on the amount of the deficiency in the assessment at a rate the Board considers will reimburse the accident fund for any loss sustained by reason of the deficiency.

(3) Interest under subsection (2) must be added to the amount of the deficiency and becomes a part of that amount.

255.1 Demand on third party

(1) If the Board has reason to believe that a person is or is likely to become indebted to an employer that owes an amount to the Board under this Act, the Board may demand in writing that the person pay to the Board, on account of the employer's liability to the Board, all or part of the money otherwise payable to the employer.

(2) A person on whom a demand is made under this section must, if indebted to the employer, pay to the Board or to someone specified by the Board the amount demanded, within 15 days after the later of

(a) the date the demand is served, and

(b) the date the person named in the demand becomes indebted to the employer.

(3) The Board's receipt for money paid by a person in response to a demand made under this section is proof that the person's liability to the employer that owes money to the Board is discharged to the extent of the amount stated in the receipt.

(4) For the purposes of this section, a savings institution is indebted to an employer that owes money to the Board for money or a beneficial interest in money in the savings institution

(a) on deposit to the credit of that employer when a demand is served under this section,

(b) held in trust by a depositor for that employer when a demand is served under this section, or

(c) deposited to the credit of that employer after a demand is served under this section.

(5) A demand made under this section continues in effect until it is satisfied or until it is cancelled by the Board.

255.2 Failure to comply with demand

(1) If a person on whom a demand is made under section 255.1 does not comply with the demand,

(a) the Board may enforce recovery of the amount stated in the demand as if it were an unpaid assessment owed to the Board by the person, and

(b) sections 108 and 264 of this Act apply to the recovery of that amount.

(2) If a person on whom a demand is made under section 255.1 denies indebtedness to an employer that owes money to the Board, the Board may require that person to produce information the Board considers necessary to establish that there is no indebtedness.

256 Collection after change in owners or employers

(1) This section applies if a change of ownership or employership has occurred in an industry.

(2) The Board may, as applicable,

(a) levy any deficiency in an assessment on any of the successive owners or employers, or

(b) pay or credit the amount that is surplus to the assessment to any one or more of those owners.

(3) Unless there is an agreement between the successive owners or employers determining the apportionment of assessment, assessment is apportionable between or among the successive owners, as nearly as may be, in accordance with the proportions of the payrolls of the respective periods of ownership or employership.

257 Collection from municipal contractors

(1) This section applies to work within the scope of the compensation provisions that is performed under contract for

(a) a municipal corporation, or

(b) a board or commission having the management of any work or service operated for a municipal corporation.

(2) An assessment in respect of the work may be paid by the corporation, board or commission referred to in subsection (1), as the case may be, and the amount of the assessment may be deducted from money due the contractor in respect of the work.

258 Contractor and other liability for assessment

(1) The following applies if work within the scope of the compensation provisions is undertaken for a person by a contractor:

(a) both the contractor and the person for whom the work is undertaken are liable for the amount of an assessment in respect of the work;

(b) the assessment may be levied on and collected from either of them, or partly from each;

(c) in the absence of a term in the contract for the work to the contrary, the contractor is, as between the contractor and the person for whom the work is performed, primarily liable for the amount of the assessment.

(2) The following applies if work within the scope of the compensation provisions is performed under subcontract:

(a) both the contractor and the subcontractor are liable for the amount of an assessment in respect of the work;

(b) the assessment may be levied on and collected from either of them, or partly from each;

(c) in the absence of a term in the subcontract for the work to the contrary, the subcontractor is, as between the subcontractor and the contractor, primarily liable for the amount of the assessment.

(3) The workers of a contractor or subcontractor may, at the discretion of the Board, be deemed to be workers of another person if

(a) the contractor or subcontractor is doing work in or for the purposes of an industry carried on by the other person,

(b) the industry is within the scope of the compensation provisions, and

(c) the contractor or subcontractor is not assessed with respect to the work.

(4) For the purposes of this section, a person, contractor or subcontractor includes an employer within the scope of the compensation provisions.

258.1 Director's liability

(1) Subject to this section, if a corporation has failed to pay an amount owed to the Board under this Act, the directors of the corporation at the time the corporation was required to pay the amount are jointly and severally liable with that corporation to pay that amount.

(2) A director is not liable under subsection (1) unless one of the following has occurred:

(a) a certificate has been filed under section 108 (1) (b) or 264 (3) with respect to the amount the corporation is liable to pay and execution for that amount has been returned unsatisfied in whole or in part;

(b) the corporation has been dissolved or has commenced liquidation proceedings in any jurisdiction;

(c) the corporation has, under the *Bankruptcy and Insolvency Act* (Canada),

(i) made an assignment in bankruptcy,

(ii) filed a notice of intention to make a proposal with the official receiver, or

(iii) made a proposal under Division 1 of Part III of that Act;

(d) a bankruptcy order has been made against the corporation under the *Bankruptcy and Insolvency Act* (Canada);

(e) the corporation has obtained a court order granting a stay of proceedings under section 11.02 of the *Companies' Creditors Arrangement Act* (Canada);

(f) the corporation has been or is subject in any jurisdiction to a proceeding similar in nature to a proceeding referred to in paragraphs (c) to (e) of this subsection.

(3) A director is not liable under subsection (1) if the director exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances to prevent the corporation's failure to pay an amount owed to the Board.

(4) No action lies and no proceeding may be commenced to recover an amount payable by a director under subsection (1) after 2 years have elapsed since the date that the director ceased to be a director of the corporation.

(5) If a director pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings,

(a) the director is entitled to the same priority to which the Board would have been entitled if the amount had not been paid, and

(b) if a certificate that relates to that amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, and the Board may make that assignment.

(6) If a director is liable for an amount under subsection (1),

(a) the Board may enforce recovery of the amount as if it were an unpaid assessment owed to the Board by the person, and

(b) sections 108 and 264 apply to the recovery of that amount.

259 Employer still liable if assessment not made

If for any reason an employer liable to assessment is not assessed in any year,

(a) the employer is nevertheless liable to pay the Board the amount for which the employer should have been assessed, and

(b) payment of that amount may be enforced in the same manner as the payment of an assessment may be enforced.

260 Temporary industries â€“ requirement for payment or security

(1) This section applies if

(a) an employer engages in an industry within the scope of the compensation provisions and has not been assessed in respect of the industry, and

(b) the Board considers that the industry is to be carried on only temporarily.

(2) The Board may require the employer to

(a) pay to the Board an amount sufficient to pay the assessment for which the employer would be liable if the industry had been in existence when the most recent assessment under section 241 *[annual employer assessments for accident fund purposes]* was made, or

(b) give security for payment to the Board of the amount described in paragraph (a).

(3) An employer who fails to comply with a requirement of the Board under subsection (2) commits an offence.

261 Penalty for default in payment or return

(1) Subject to subsection (3), if an assessment levied under the compensation provisions is not paid at the time when it becomes payable, the defaulting employer must pay, as a penalty for the default, the applicable percentage of the following, as prescribed by Board regulation or determined by the Board:

(a) the amount unpaid;

(b) the assessment for the preceding year;

(c) the projected assessment for the current year.

(2) A penalty under subsection (1)

(a) may be added to the amount of the assessment and become a part of the assessment, and

(b) if the penalty is not added to the assessment, must be enforced in the same manner as the payment of an assessment is enforced.

(3) If satisfied that the default was excusable, the Board may in a specific case relieve the employer in whole or in part from liability under this section.

262 Employer assessment in relation to injury not reported as required

(1) This section applies if the Board pays compensation under section 150(8) *[payment of compensation where employer defaults in reporting]*.

(2) If compensation is paid under section 150(8) before 3 days after the Board receives the report required by that section, that compensation may

be levied and collected from the employer by way of additional assessment as a contribution to the accident fund, and payment may be enforced in the same manner as other assessments.

(3) If the Board is satisfied that the delay in reporting was excusable, it may relieve the employer in whole or in part of the additional assessment imposed under this section.

263 Employer payment for compensation provided during period of default

(1) This section applies if an employer

(a) refuses or neglects to make or provide a payroll estimate or other record required to be provided by the employer under section 245(1) *[employer obligation to provide payroll estimates and reports]*, or

(b) refuses or neglects to pay

(i) an assessment,

(ii) the provisional amount of an assessment, or

(iii) an instalment or part of an assessment or a provisional amount of an assessment.

(2) Subject to subsection (4), the employer must, in addition to any penalty or other liability to which the employer may be subject, pay the Board the full amount or capitalized value, as determined by the Board, of the compensation payable in respect of an injury or occupational disease to a worker in the employer's employ that happens during the period of the default referred to in subsection (1).

(3) The payment of an amount required to be paid under subsection (2) may be enforced in the same manner as the payment of an assessment may be enforced.

(4) If satisfied that the default was excusable, the Board may in a specific case relieve the employer in whole or in part from liability under this section.

264 Collection of assessments by legal action or certificate

(1) If an assessment or part of an assessment is not paid in accordance with the terms of the assessment and levy, the Board has a right of action against the defaulting employer in respect of the amount unpaid, together with costs of the action.

(2) If default is made in the payment of an assessment or part of an assessment, the Board may issue a certificate stating

(a) that the assessment was made,

(b) the amount remaining unpaid on account of the assessment, and

(c) the person by whom the amount was payable.

(3) A certificate under subsection (2), or a copy of it certified by the secretary of the Board under the seal of the Board to be a true copy, may be filed with any district registrar of the Supreme Court.

(4) On filing under subsection (3), the certificate becomes an order of the Supreme Court and may be enforced as a judgment of that court against the person named in the certificate for the amount stated in the certificate.

265 Priority as to amounts due to the Board

(1) Despite anything contained in any other Act, the following amounts due by an employer to the Board or, if an assignment has been made under subsection (7), to its assignee constitute a lien in favour of the Board or its assignee:

(a) an amount due on an assessment made under this Act;

(b) an amount which an employer is required to pay to the Board under this Act;

(c) an amount which an employer is required to pay to the Board on a judgment.

(1.1) A lien described in subsection (1) is payable in priority over all liens, charges or mortgages of every person, whenever created or to be created, with respect to the property or proceeds of property, real, personal or mixed, used in or in connection with or produced in or by the industry with respect to which the employer was assessed or the amount became payable.

(1.2) Subsection (1.1) does not apply in respect of the following:

(a) liens for wages due to workers by their employer;

(b) liens under section 50(1) of the *Temporary Foreign Worker Protection Act*.

(2) A lien under subsection (1) for the amount due the Board or its assignee continues to be valid and in force with respect to each assessment until the expiration of 5 years from the end of the calendar year for which the assessment was levied.

(3) The exception in subsection (1.2)(a) respecting liens for wages due to workers by their employer does not apply in respect of a lien for wages that is, by section 87(5) of the *Employment Standards Act*, postponed to a mortgage or debenture.

(4) The exception in subsection (1.2)(b) respecting liens under section 50(1) of the *Temporary Foreign Worker Protection Act* does not apply in respect of a lien for wages that is, by section 50(4) of the *Temporary Foreign Worker Protection Act*, postponed to a mortgage or debenture.

(5) Where the employer is a corporation, the word **"property"** in subsection (1) includes the property of any director, manager or other principal of the corporation where the property is used in, or in connection with, the industry with respect to which the employer was assessed or the amount became payable, or was so used within the period in respect of which assessments are unpaid.

(6) Without limiting subsection (1), the Board may enforce its lien by proceedings under the *Court Order Enforcement Act*.

(7) The Board may assign its lien rights to a person, contractor or subcontractor who has fully discharged their liability for the amount of an assessment under section 258 by payment of it.

266 Court order restraining industry if employer defaults

(1) The Supreme Court may make an order under subsection (2) if

(a) an employer defaults in the payment of an assessment,

(b) an execution, issued on a judgment entered with respect to the assessment, is returned with a certificate from a sheriff or the sheriff's deputy that the sheriff or deputy was unable wholly to satisfy the execution, and

(c) an industry, or an activity in an industry, within the scope of the compensation provisions is commenced or continues to be carried on by one or more of the following persons:

(i) the judgment debtor;

(ii) if the judgment debtor is a company, within the meaning of the *Business Corporations Act*, an individual who is a member of the board of directors of the judgment debtor as a result of having been elected or appointed to that position;

(iii) if the judgment debtor is a corporation other than a company, within the meaning of the *Business Corporations Act*, a person who is a member of the board of directors or other governing body of the judgment debtor, regardless of the title by which that person is designated;

(iv) the chair or a vice chair of the board of directors or other governing body of the judgment debtor, if that chair or vice chair performs the functions of the office on a full-time basis, regardless of the title by which that person is designated;

(v) the president of the judgment debtor, regardless of the title by which that person is designated;

(vi) a vice president in charge of a principal business unit of the judgment debtor, including sales, finance or production, regardless of the title by which that person is designated;

(vii) an officer of the judgment debtor, whether or not the officer is also a director of the judgment debtor, who performs a policy-making function in respect of the judgment debtor and who has the capacity to influence the direction of the judgment debtor, regardless of the title by which that person is designated;

(viii) a person who is not described in any of subparagraphs (ii) to (vii) of this paragraph but who performs the functions described in any of those subparagraphs, and who participates in the management of the judgment debtor, other than a person who

(A) participates in the management of the judgment debtor under the direction or control of a shareholder or a person described in any of subparagraphs (ii) to (vii),

(B) is a lawyer, accountant or other professional whose primary participation in the management of the judgment debtor is the provision of professional services to the judgment debtor,

(C) is, if the judgment debtor is bankrupt, a trustee in bankruptcy who participates in the management of the judgment debtor or exercises control over its property, rights and interests primarily for the purposes of the administration of the bankrupt's estate, or

(D) is a receiver, receiver manager or creditor who participates in the management of the judgment debtor or exercises control over any of its property, rights and interests primarily for the purposes of enforcing a debt obligation of the judgment debtor.

(2) In the circumstances described in subsection (1), the Supreme Court, on an application made on behalf of the Board, without the commencement of an action, may make an order restraining one or more persons described in subsection (1)(c) from carrying on an industry, or

an activity in an industry, within the scope of the compensation provisions until the amount due on the execution, all the assessments made by the Board and the costs of the application are paid.