Insurance Council
BRITISH COLUMBIA

# Guidelines for Managing General Agents
# Role and Responsibilities in the Distribution of Life Insurance in British Columbia

## DRAFT FOR CONSULTATION

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# GUIDELINES FOR MANAGING GENERAL AGENTS: ROLE AND RESPONSIBILITIES IN THE DISTRIBUTION OF LIFE INSURANCE IN BRITISH COLUMBIA

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## BACKGROUND

The Insurance Council of British Columbia ("Insurance Council") first introduced its guidelines for managing general agents ("MGA") in 2012 (as per Council Notice ICN 12-001 *Role and Responsibilities of Managing General Agents in the Distribution of Life Insurance in British Columbia*). Since then, the Insurance Council has found that there are differing interpretations of the role and responsibilities of MGAs resulting in inconsistent compliance and oversight of the distribution of insurance by MGAs.

As a result, the Insurance Council has updated its guidelines for MGAs with respect to their role and responsibilities in the distribution of life insurance in British Columbia. This guide is intended for MGAs who are developing policies and procedures and deciding how to implement specific practices in the distribution of insurance.

These guidelines outline appropriate standard of practice for MGAs in the distribution of life insurance in British Columbia. Failure to adhere to the guidelines will be viewed as a breach of the usual practice of the business of insurance and could result in disciplinary action.

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## DEFINITIONS

**Managing General Agent**: A licensed life insurance agent or agency that is directly contracted with an insurer to facilitate insurance transactions between life agents and insurers.

**Insurer:** A person or company that underwrites an insurance risk.

**Nominee:** A licensee responsible for all insurance activities of the MGA as per Council Rules.

## THE MGA

### What is a Managing General Agent?

A managing general agent ("MGA") is a licensed life insurance agent or agency that is directly contracted with an insurer to facilitate insurance transactions between life agents and insurers. An MGA may be either a corporation or a partnership. An individual can also be an MGA, but this is not common practice within the industry.

Where an MGA delegates functions to any other entity, such as an associate general agent, the term MGA will be used to refer to the other entity as appropriate. The delegation to another entity does not change the MGA's regulatory obligations.

## LICENSING REQUIREMENTS

### What are the licensing requirements for a managing general agent?

MGAs must meet all agency licensing requirements, which includes:

- Appointing a licensed nominee who meets the minimum nominee requirements as set out in Council Rules;
- Holding errors and omissions ("E&O") insurance; and
- Holding a contract with at least one insurer authorized to do business in British Columbia.

### What does a nominee do?

The nominee is responsible for all insurance activities of an MGA as outlined in the Insurance Council's Rules. This includes making sure all insurance activities of the MGA are appropriately

supervised, there are sufficient procedures to facilitate compliance with Insurance Council requirements, and the public's interest is properly served. This includes ensuring:

- Agents hold an active insurance licence;
- Corporate errors and omissions insurance is maintained;
- The MGA holds at least one contract with an insurer; and
- Mandatory notifications are provided to the Insurance Council in accordance with the Council Rules.

## DUTIES

### What is an MGA's duty to insurers?

Due to their contractual relationship, an MGA owes a duty of good faith to an insurer. Section 8.2 of the Insurance Council's Code of Conduct, Duty to Insurers, requires all licensees, including MGAs to make reasonable inquiries into the risk, provide full and accurate information, promptly deliver all insurance documents and monies due, represent the insurer's products fairly and accurately, adhere to the authority granted by the insurer and promptly report any claims.

Consistent with all Insurance Council licensees' duty to protect the public, MGAs also have a responsibility to avoid a conflict of interest with an insurer, as set out in Section 7.3 and 8.3 of the Insurance Council's Code of Conduct. MGAs must put the clients' interests first at all times, including when MGAs hold contracts with multiple insurers or have shared ownership with an insurer.

An MGA is often contracted to provide a number of services on behalf of an insurer, including contracting life agents and facilitating the processing of insurance applications. It is incumbent upon an MGA to clearly understand an insurer's expectations under the MGA contract and, where necessary, seek written clarification.

While an MGA's responsibilities may vary between insurers, insurers are ultimately responsible for all aspects of their products including design, performance and all marketing material. As MGAs distribute marketing material on behalf of the insurer, an MGA is responsible for ensuring the material is a clear and accurate representation of the product.

## What duties can be delegated to MGAs?

Examples of duties that can be delegated to MGAs include the following, but will vary depending on the insurer's contract with the MGA:

- Compliance support
- Screening and monitoring agents
- Training and education of agents on insurance products and best practices
- Development and implementation of best practices
- Development and implementation of policies and procedures
- Audits of agents' files
- Anti-money laundering compliance

## What duties cannot be delegated to MGAs?

The following functions should not be delegated to MGAs:

- Underwriting;
- Policy issuance;
- Final determination of claims; and,
- Final product development.

## What is an MGA's Duty to "Know Your Agent"?

Many MGAs determine which agents obtain contracts with insurers, with some having the ability to grant a contract to a life agent on behalf of an insurer. MGAs play a significant role in determining a life agent's suitability to obtain a contract. The Insurance Council therefore relies on MGAs to act prudently when facilitating a life agent's contract with an insurer.

MGAs should conduct appropriate due diligence before contracting with a life agent, whether new or experienced, to ensure the life agent has not lost the authority to represent an insurer for reasons that bring into question their suitability to hold a licence.

MGAs have a responsibility to ensure contracted life agents are qualified, competent and knowledgeable. As such, prudent procedures should be undertaken when determining a life agent's suitability.

## DETERMINING SUITABILITY AND RISK

An MGA's compliance program should be risk-based. The Insurance Council recommends that MGAs adopt the approach outlined in the Canadian Life and Health Insurance Association (CLHIA)'s reference document *MGA Compliance: A Risk-based Approach for Compliance Programs in the MGA Channel* and summarized below.

Following its risk assessment of an agent, the MGA should decide on an appropriate level of oversight to manage that risk, including implementing practices that will provide the MGA a reasonable assurance that the risk is being managed.

### Screening and Monitoring in a Risk-based Approach

#### What is Screening?

The Insurance Council expects MGAs to have compliance procedures in place that include screening practices. Screening practices are intended to assist an MGA in determining if an agent is suitable to act as an insurance agent and decide whether or not to offer a contract to the agent, and if so, assess the risk presented by the agent. Screening activities include researching an agent's background to identify potential concerns such as bad credit, criminal charges or disciplinary action as well as to confirm their insurance licensing requirements have been met.

An MGA should take the following steps to screen an agent:

- Confirm the agent's licensing history,
- Confirm whether the agent requires a supervisor,
- Check other regulators (in Canada and internationally) for disciplinary action,
- Check the agent's financial health by completing a credit check,
- Complete a criminal record check and assess any record of conviction to determine suitability,
- Conduct reference checks with current and prior agencies, MGAs, insurers and supervisors,
- Confirm the agent is up to date with continuing education,
- Confirm the agent has errors and omissions insurance.

Effective screening practices should provide reasonable grounds to believe that the agent is suitable and provide the MGA with information to make informed decisions about contracting and subsequent monitoring.

If screening reveals reasonable grounds to believe an agent is not suitable, the MGA should not enter into a contract with the agent. If screening does not reveal the agent is unsuitable, but uncovers issues with an agent, the MGA should use the information to make decisions about risk-based monitoring that effectively manages the risk.

Exclusive reliance on self-reporting by the agent will not generally be sufficient for effective screening. To verify the information in the self-reports and obtain additional information that might be relevant to assessing the agent's suitability, MGAs should make inquiries with other insurers and MGAs with whom the agent has or has had contracts and/or with references provided by the agent. Regulatory authorities' databases for licensing and disciplinary decisions should also be checked to confirm the accuracy of self-reported information.

To determine an advisor's suitability and risk it is recommended the MGA use the CLHIA Advisor Screening Questionnaire (ASQ). The ASQ is a standardized screening survey that insurers use in all distribution channels.

**What is Monitoring?**

The purpose of monitoring is to detect and prevent potential problems from becoming actual problems that harm the customer. Monitoring is an ongoing process. It is intended to help an MGA manage the risk it has identified. Unlike screening, monitoring practices may vary depending on the risk identified during the agent screening. The MGA should decide what monitoring practices make sense to effectively manage the risks it has identified.

An MGA's choice of specific monitoring practices will depend on that MGA's assessment of risk. This assessment should take into account information about the agent that is gathered in the initial screening process as well as information that is gathered in the course of ongoing monitoring. The assessment of risk may also take into account a number of additional factors including the business structure of the MGA, the number of agents, where the agents work, the sales and marketing support the MGA provides and the types of products and services involved in typical transactions. For example, a small MGA operating out of a single office and specializing in a limited product may have a different risk assessment than MGAs operating with different business models.

Whereas initial screening is intended to provide a complete picture of the agent at a single point in time, ongoing monitoring can identify signs that there might be a problem.

**Accountability for Business Accepted from Life Agents**

MGAs are responsible for business processed on behalf of an insurer and may be held accountable if an insurance transaction is found not to be in a client's best interest. For example, an MGA could be held accountable if it was determined an MGA:

1) Acted contrary to the provisions of a contract with an insurer, or
2) Failed to properly review a transaction that it knew or ought to have known was outside an agent's skill level, ability, or knowledge

which resulted in the client's interests not being well served.

When processing insurance business from a life agent, MGAs should consider the following factors:

- the work experience of a life agent, including the amount and type of insurance experience, education and training;
- whether a life agent is a sole proprietor or part of an established life insurance agency with access to additional support services and oversight;
- the "expertise" of an agent. If an agent has only submitted one type of business and starts to place business in another area of life insurance, the MGA should be satisfied the agent is competent in the new product;
- sudden changes in volume, either a significant increase in the business being placed or significant cancellations in the business;

**Reporting an Agent**

MGAs should report concerns regarding the suitability of an agent to the Insurance Council. These include issues related to an agent's trustworthiness, competency, and ethics. Concerns should be reported by way of a written submission to the Insurance Council.

When reporting concerns about an agent, MGAs should exercise judgement in determining what constitutes a concern that should be reported. CLHIA Guideline G8 describes factors that affect suitability and gives advice about assessing the risk associated with these factors. These examples are included in Appendix 1.

Where an MGA is uncertain if the concerns are relevant, it is encouraged to speak with Insurance Council staff. As a general principle, given the overall importance of compliance programs as a means of protecting the customer, when there is any doubt, it is best to err on the side of caution and report the concern.

## SUMMARY

MGAs play an important role in the distribution of insurance. Oversight of advisors is a critical component of public protection by ensuring sufficient compliance programs are in place to assess and manage the risk that an advisor presents.

MGAs are expected to adhere to the requirements of these guidelines, which outline appropriate practice. In particular, they should have an understanding of licensing requirements and duties, carry out practices to determine suitability and risk, and conduct ongoing monitoring.

# APPENDIX 1 |

## FACTORS THAT MAY AFFECT AN AGENT'S SUITABILITY

The following list of factors could affect an agent's suitability:

- **Sales trends** - Trends in sales can provide indirect evidence about the appropriateness of product recommendations and other advice.
- **Fraud** - Intentional deception or misrepresentation which an individual knows to be false or does not believe to be true and is made knowing that it may be detrimental to the other party and that it could result in some unauthorized benefit to the advisor, or some other person.
- **Misappropriation of Client Funds** - Taking money or other property received from the client and using it for any purpose other than that specified by the client.
- **Forgery** - Knowingly making a false document with intent that (a) it will in any way be used or acted upon as genuine, to the prejudice of a person, or (b) some person will be induced, by the belief that it is genuine, to do or to refrain from doing something.
- **Money Laundering/Terrorist Financing** - Money laundering is the processing of criminal proceeds to disguise their illegal origin. Terrorist financing is the collection or distribution of funds with the intent or knowledge that the funds will be used by a terrorist or to carry out a terrorist act.
- **Privacy or Confidentiality** - Any transmittal of personal information, whether intentional or unintentional, for purposes other than those consented to by the individual described by the information.
- **Conflict of Interest** - Intentionally failing to provide to customers disclosure of business relationships with insurers and all conflicts of interest or potential conflicts of interest associated with a transaction or recommendation as set out in the CLHIA Reference Document: Advisor Disclosure.
- **Tied Selling** - Making the purchase of one product conditional on the purchase of another product.

- **Inducements** - Making, or offering to make, any payment of money or gift of value, directly or indirectly, to convince a customer to purchase insurance except to the extent permitted by law.

- **Undisclosed and/or Systematic Replacements** - Failure to provide full and fair disclosure to the customer and insurer as required by provincial and territorial laws or systematic internal or external replacements that are detrimental to the customer.

- **Twisting** - Persuading a customer to terminate a policy solely for the purpose of selling another policy without regard to possible disadvantages to the customer. It can also involve using the values, either through loans or through the re-direction of dividends, of one policy to purchase another.

- **Churning** - Initiating, for personal gain, transactions so that the volume or frequency of trades is excessive in view of the character of the account and the customer's personal objectives.

- **Holding Out** - Intentional misleading of the customer using any media (e.g., business cards, websites, social media, etc.) in regard to credentials or designations or authority, or the ability to provide advice or service.

- **Unfair or Deceptive Statements** - Failure to provide full and accurate disclosure so the customer can make an informed decision about the purchase of a product or service.

- **Illustrations** - Unauthorized changes by an advisor to company-provided illustrations, or manipulation by an advisor of software beyond its defined parameters to create an unreasonable expectation about the benefits or advantages of the policy.

- **Misrepresentation** - Failure of the advisor to provide full, complete and accurate information to the MGA or the insurer.

- **Improper Paperwork** - Any practice that thwarts, intentionally or unintentionally, the evidentiary intent of a signature. This includes but is not limited to the use of pre-signed forms, signature witnesses made at a time other than when the customer signs the document, and improper initialing of error corrections. Where the transaction is conducted and evidenced electronically, a similar standard applies. Delays in delivering policies may be

a sign of sloppiness and can create a risk for clients as the delay lengthens the period between the time the policy was explained and whey it is available for review.

- **Product-Client Suitability** - Failure to consider the customer's needs, ensure fair treatment and make appropriate recommendations.
- **Undue Influence** - Encouraging a customer to act on a recommendation in a situation where the advisor knows or ought to know that the customer is unable to understand the character, nature, language or effect of the transaction or proposed transaction;
- **Coercion** - Compelling a customer to act on a recommendation.
- **Incompetence** - Any lack of technical or general knowledge or judgment required to carry out sound business practices and make recommendations based on needs-based sales practices.
- **Fronting** - Submission of an application for insurance and receipt of commission by a licensed advisor on behalf of an unlicensed person who solicited the sale. Also, submission of an application by a licensed advisor on behalf of another licensed advisor who does not have a contract with the insurer to whom the application is submitted. More generally, fronting is allowing another person to solicit business and submit it to an insurer under the advisor's name.
- **Stranger Owned Life Insurance** - Facilitating a customer's application for a stranger owned life insurance ("STOLI") policy. STOLI is generally considered to be an act, practice or plan to initiate a life insurance policy in order to obtain a loan, advance or other payment with the intent of transferring.