

INSURANCE COUNCIL OF BRITISH COLUMBIA

ROLE AND RESPONSIBILITIES OF MANAGING GENERAL AGENTS (“MGA”) IN THE DISTRIBUTION OF LIFE INSURANCE IN BRITISH COLUMBIA

I. BACKGROUND

In October 2010, the Insurance Council of British Columbia (“Council”) published the discussion paper, *Regulatory Model Governing Distribution of Life Insurance Products and Related Activities by British Columbia Life Insurance Agents*. One of the issues addressed by the paper was the role of MGAs in the distribution of life insurance products.

MGAs represent a distinct and significant segment of the distribution model. Many of an MGA’s functions were previously carried out by insurers, however, MGAs require a life insurance agent’s (“life agent”) licence. Council therefore recognizes that MGAs require clarification of their regulatory duties and responsibilities.

The purpose of this Notice is to provide direction on Council’s expectations regarding how MGAs conduct insurance business. A number of duties and responsibilities of an MGA are identified and guidelines are provided to assist MGAs in ensuring their activities are in accordance with the usual practice of the business of insurance. These guidelines are intended to provide MGAs with a better understanding of their regulatory responsibilities and how to best meet their obligations as life insurance agents.

II. MGAs

a) *Definition*

Council defines an MGA as a licensed life insurance agent 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. From a regulatory position, an individual can also be an MGA but this is not common practice within the industry. This definition does not include Associate General Agents (“AGAs”). AGAs are considered retail life agents and have the same obligations to the insurance buying public.

While MGAs are licensed, they rarely deal with the public. MGAs do not typically solicit or communicate directly with the public regarding pending applications or existing insurance policies. Unlike all other licensees, an MGA’s primary clients are life agents and insurers.

NOTICE

MGA contracts vary from insurer to insurer but generally include some or all of the following delegated duties:

- granting a life agent, on behalf of an insurer, the authority to represent that insurer;
- facilitating the submission of contracting requirements between life agents and insurers;
- processing and tracking business submitted by life agents;
- providing life agents with sales support;
- facilitating the flow of information between insurers and life agents;
- pooling of commission payments for life agents from various insurers;
- providing compliance support to insurers in the event of a client complaint;
- assisting in the adjusting of claims on behalf of an insurer (this is not common, but does occur in certain situations involving group life insurance).

MGAs conduct insurance business in a different manner than retail life agents. An MGA is primarily a middleman for insurers and life agents, which requires a different duty of care from that of a retail life agent.

MGAs can be either a corporation or partnership and therefore require a licensed nominee. To be a nominee, an individual must have held an active life agent licence for a minimum of five of the previous seven years. Council expects that insurers will take into consideration the nature of a nominee's experience in addition to the length of time licensed, before granting an MGA contract.

An MGA must also meet all other licensing requirements, such as errors and omissions ("E&O") insurance. Council considered whether MGAs should be required to have higher E&O insurance than the minimum requirement, but did not identify any reason to increase the existing requirements. The E&O insurance requirement is a minimum and Council expects all licensees to review their E&O insurance to determine if the minimum requirement is adequate for their level and type of business as well as their operational and client needs.

Council has found that some MGAs engage in retailing of insurance by soliciting the public directly or servicing existing business. While an MGA may engage in such activity, Council does not view it as part of the role of an MGA. Where an MGA engages in retailing of insurance, it must meet the same requirements and duty of care to the public as any retail life agent.

b) *Duty to Insurers*

Due to the contractual relationship, an MGA's primary duty is to the insurer. An MGA is contracted to provide a number of services on behalf of an insurer, including contracting life agents and facilitating the processing of insurance applications. MGAs have a duty to each insurer to fulfill all contractual responsibilities in accordance with the usual practice of the business of insurance, as set out in the *Financial Institutions Act*. Where an MGA fails to meet its contractual obligations to an insurer, it can have a bearing on an MGA's suitability to hold an insurance licence. 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 (paper or electronic).

Notwithstanding the above, Council believes there are functions that should not be contracted by insurers to MGAs. Activities such as underwriting, policy issuance, final determination of claims and final product development belong to, and should remain the responsibility of, the insurer. Council acknowledges that MGAs often play a role in product development but the responsibility for final product development must rest with the insurer. Should an MGA engage in any of these activities, Council will view it as conduct falling outside the usual practice of the business of insurance.

While MGAs are accountable for the responsibilities contained in their contracts, Council believes insurers are ultimately responsible for all of the functions contracted to and completed by MGAs. Failure by an MGA to meet a contractual obligation is not a valid reason for an insurer to not address a policyholder's complaint.

c) *MGA's Duty to "Know Your Agent"*

Contracting Life Agents

Many MGAs determine which life agents obtain contracts with insurers, with some having the ability to grant a contract to a life agent on behalf of an insurer. MGAs often play a significant role in both determining a life agent's suitability to obtain a contract and, consequently, who qualifies for a life agent's licence.

An MGA accepts a significant responsibility when it contracts with a life agent. As an example, most MGA contracts make the MGA responsible for all commission chargebacks a life agent may incur with an insurer. This represents a financial risk to the MGA.

MGAs have a responsibility, and it is in their best interest, to ensure contracted life agents are qualified, competent and knowledgeable. As part of their review process, MGAs must verify a life agent is licensed. Other steps may include obtaining references from other MGAs, insurers or life insurance agencies, determining if past disciplinary issues exist and undertaking credit and criminal record checks. Council expects MGAs to practice prudent procedures when determining a life agent's suitability.

It is a condition of obtaining a life agent's licence that an applicant demonstrates an insurer is prepared to contract with them. MGAs are instrumental in both assisting life agents obtain their first contract with an insurer and helping them obtain their first licence. Council therefore relies on MGAs to act prudently when facilitating a life agent's contract with an insurer.

Failure of an MGA to conduct appropriate due diligence before contracting with a life agent, whether new or experienced, may bring into question an MGA's suitability. Council has encountered situations where life agents have lost the authority to represent an insurer for reasons that bring into question their suitability to hold a licence. If another MGA subsequently enables that life agent to obtain a new contract without conducting a proper review, it may create a risk to the public.

Accountability for Business Accepted from Life Agents

After a life agent is contracted, it is the responsibility of the MGA to "know the life agent." Life agents are not created equal. Life agents have different education, training and experience. In accepting insurance business from a life agent, an MGA must be satisfied the insurance business submitted is consistent with the MGA's understanding of the life agent's knowledge, experience and abilities.

Although an MGA is not directly involved in the discussions and recommendations that occur between a life agent and the client, an MGA has a critical role in each transaction. MGAs can play an indirect role in ensuring a client's best interests are served by implementing "know your life agent" criteria. 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.
- the amount of direct experience the MGA has had with a life agent. An MGA will more carefully scrutinize insurance business submitted by a newly contracted life agent over one with whom the MGA has been doing business with for years.
- the "expertise" of a life agent. If a life agent has only submitted one type of business and starts to place business in another area of life insurance, the MGA must be satisfied the life 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.

In a limited way, 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. While this accountability is different from that of a retail life agent or life insurance agency, an MGA could face disciplinary action where it is determined that an MGA:

- i) acted contrary to the provisions of a contract with an insurer or
- ii) failed to properly review a transaction which it knew or ought to have known was outside a life agent's skill level, ability or knowledge

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

Duty to Report Life Agents

MGAs are in a good position to identify issues or problems with a life agent. Based on industry feedback, Council found many MGAs and insurers believe it is not an MGA's responsibility to report life agents to Council. Many feel it is the MGA's role to report concerns to the insurer and the insurer should determine whether to inform Council.

Council believes an MGA has an obligation to report concerns regarding the suitability (trustworthiness, competency and ethics) of a life agent to Council. When such issues arise, it is not in the best interest of the industry or public to simply terminate the life agent. Concerns should be reported by way of a written submission to Council. Where an MGA is uncertain if the concerns are relevant, it is encouraged to speak with Council staff.

d) Duty of Life Agents

MGAs play a role in monitoring the insurance applications they process for life agents and life agents have an obligation to ensure an MGA has full knowledge of the business they are transacting. Recent Council investigations revealed life agents submitted applications or redemptions directly to the insurer, in part to avoid the scrutiny of their MGA. In one case, when an MGA specifically advised a life agent it would not process an application, the life agent submitted it directly to the insurer.

Where a life agent knows or has reason to believe that an insurance transaction is the responsibility of the MGA (i.e., the MGA will receive compensation, the life agent's remuneration will be paid through an MGA or the MGA could be subject to a chargeback as a result of the transaction), the application should go through that MGA. In the event that it is in the client's best interest for a life agent to deal directly with an insurer, the life agent should provide a copy of the transaction to the MGA at the same time the application is submitted to the insurer.

Life agents are reminded they must conduct their insurance business in accordance with their contracts with insurers and MGAs. Failure to comply with contracts or policies and guidelines established by an MGA may bring into question their suitability as a life agent.

III. THE USUAL PRACTICE OF THE BUSINESS OF INSURANCE

The above is intended to provide a framework of standards for MGAs to consider as part of their operational policies and procedures. This Notice provides MGAs guidelines to assist them in determining how best to conduct their insurance business.

Council is confident from its discussion with MGAs and the life insurance industry in general that MGAs already conduct themselves in a manner that meets or exceeds Council's expectations. This Notice provides additional clarity and direction to the industry.

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