

Insurance Council

BRITISH COLUMBIA

Guidelines for Life Insurance Agencies: Role and Responsibilities in the Distribution of Life Insurance in British Columbia

V.1.1

©2022 Insurance Council of British Columbia

Table of Contents

DEFINITIONS..... 2

1.0 INTRODUCTION 3

2.0 PURPOSE 3

3.0 LICENSEE RESPONSIBILITIES 3

 3.1 Licensing requirements for a life insurance agency 3

 3.2 Nominee responsibilities..... 4

4.0 DUTIES 4

 4.1 An agency’s duty to insurers 4

 4.2 Duties that can be carried out by the agency 5

 4.3 An agency’s duty to “know your agent” 5

5.0 DETERMINING SUITABILITY, MONITORING AND ACCOUNTABILITY 6

 5.1 Determining suitability 6

 5.2 Ongoing monitoring 7

 5.3 Accountability for business accepted from agents 8

6.0 RESOURCES 8

APPENDIX 1 9

DEFINITIONS

Insurance Council Code of Conduct (“Code of Conduct”): This document establishes standards of conduct for the business of insurance to be followed by licensees. Council Rule 7(8) requires all licensees to comply with the Code of Conduct in addition to the Insurance Council Rules.

Insurance Council Rules: A set of rules that sets out licence conditions and requirements for all insurance licensees in BC, in addition to requirements already set out under the provincial *Financial Institutions Act* and other legislation.

Insurance agent (“Agent”): A person, other than an insurance company or an extraprovincial insurance corporation, who solicits, obtains or takes an application for insurance, or negotiates for or procures insurance, or signs or delivers a policy, or collects or receives a premium.

Insurance agency (“Agency”): A licensed corporation or partnership, or an individual sole-proprietor agent that meets the nominee requirements set out in Insurance Council Rules.

Managing general agent (“MGA”): For the purposes of these guidelines, a licensed life insurance agency that is directly contracted with an insurer to facilitate insurance transactions between life agents and insurers.

Insurer: An individual, corporation or other entity carrying on insurance business.

Nominee: A licensee nominated to exercise the rights and privileges of an insurance licence issued to an insurance agency or an insurance adjusting firm.

Person: Includes a corporation, partnership, society, association or other organization or legal entity.

1.0 INTRODUCTION

The Insurance Council of British Columbia (“Insurance Council”) 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 life insurance agencies holding different insurer/agency contracts resulting in inconsistent compliance and oversight of the distribution of insurance by life insurance agencies. These guidelines are broadened to include all life insurance agencies including those that hold managing general agent (“MGA”) contracts with insurers, associate general agent (“AGA”) contracts, sub-AGAs, multi-level marketing distribution models and producer groups.

These guidelines come into effect April 8, 2022 and will replace *Council Notice ICN 12-001 Role and Responsibilities of Managing General Agents in the Distribution of Life Insurance in British Columbia (2012)*.

2.0 PURPOSE

This guidance is intended for life insurance agencies who are developing policies and procedures, facilitating contracts between life insurance agents and insurers, and deciding how to implement specific practices in the distribution of insurance.

These guidelines outline appropriate standard of practice for life insurance agencies 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.

3.0 LICENSEE RESPONSIBILITIES

All Insurance Council of BC licensees must be aware of and comply with the Insurance Council’s Rules, Code of Conduct, the *Insurance Act*, and the *Financial Institutions Act* in accordance with section 13.2 of the Code of Conduct.

3.1 Licensing requirements for a life insurance agency

Life insurance agencies must meet all agency licensing requirements, which include:

- Appointing a licensed nominee who meets the minimum nominee requirements as set out in the Insurance Council Rules and is responsible for all activities of the agency;
- Holding errors and omissions (“E&O”) insurance; and
- Holding a contract with at least one insurer authorized to do business in British Columbia.

3.2 Nominee responsibilities

The nominee is responsible for all insurance activities of the agency as outlined in the Insurance Council Rules and Section 5.3.3 of the Code of Conduct. This includes making sure all insurance activities of the agency 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;
- The agency and its licensees are properly supervised and operate in accordance with the conditions and restrictions on their licences;
- Corporate errors and omissions insurance is maintained;
- The agency holds at least one contract with an insurer; and
- Mandatory notifications are provided to the Insurance Council in accordance with Insurance Council Rules.

4.0 DUTIES

4.1 An agency's duty to insurers

An agency owes a duty of good faith to an insurer. Section 8 of the Code of Conduct, Usual Practice: Dealing with Insurers, requires all licensees, including agencies 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, agencies also have a responsibility to avoid a conflict of interest with an insurer, as set out in Sections 7.3 and 8.3 of the Code of Conduct. Agencies must put the clients' interests first at all times, including when agencies hold contracts with multiple insurers or have shared ownership with an insurer.

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

While an agency's contracts may vary between insurers, insurers are ultimately responsible for all aspects of their products including design, performance and all marketing material. As agencies distribute marketing material on behalf of the insurer, an agency should make every effort to ensure the material is a clear and accurate representation of the product and/or the concept presented. Where there is any doubt about the clarity or accuracy of the material, the agency should seek clarification from the insurer or cease distributing the marketing materials. Sections 7.3.6 and 7.3.7 of the Code of Conduct require licensees to make full and

fair disclosure of all material facts to enable clients to make informed decisions regarding their insurance, and that licensees must not use sales materials or illustrations that are misleading or unnecessarily confusing.

4.2 Duties that can be carried out by the agency

Insurer contracts often include duties that are delegated to the agency but vary depending on the contract. As a result, the contract may include delegated duties that may not be in line with best practices and should not be carried out or accepted by the agency.

Examples of delegated duties that can or should be carried out by agencies include the following:

- 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
- Anti-money laundering compliance.

4.3 An agency's duty to "know your agent"

Many agencies contribute to determining which agents obtain contracts with insurers, with some having the ability to grant a contract to an agent on behalf of an insurer. Agencies play a significant role in determining a life agent's suitability to obtain a contract. Sections 5.3.3 and 5.3.4 of the Code of Conduct require that nominees of agencies be responsible for all activities of the agency and ensure the agency and its licensees are properly supervised and operate in accordance with the conditions and restrictions on their licences. Licensees who have supervisory duties must fulfil those duties competently. Improper practice by supervised licensees may bring a supervisor's competence into question if the conduct occurred due to inadequate supervision, including lack of policies, procedures and training. Therefore, agencies are expected to act prudently when facilitating an agent's contract with an insurer.

To ensure compliance with Sections 5.3.3 and 5.3.4 of the Code of Conduct, agencies should conduct appropriate due diligence before facilitating a contract with an 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.

Section 5.2 of the Code of Conduct requires licensees to conduct all insurance activities in a competent manner. Agencies have a responsibility to ensure life agents are qualified, competent and knowledgeable before facilitating or recommending that they hold a contract with an insurer. As such, prudent procedures should be undertaken when determining an agent's suitability.

5.0 DETERMINING SUITABILITY, MONITORING AND ACCOUNTABILITY

When onboarding a new agent, agencies should review a number of factors to determine whether the agent is suitable, and if so, the level of risk the agent poses. Following its risk assessment of an agent, the agency should decide on an appropriate level of oversight to manage that risk, including implementing practices that will provide the agency a reasonable assurance that the risk is being managed.

5.1 Determining suitability

Agencies are expected to have compliance procedures in place that include screening agents as part of its onboarding activities to determine if an agent is suitable to act as an insurance agent. Where the agency has the authority to grant a contract on behalf of an insurer, the agency can use the information to 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.

When considering facilitating the offering of a contract to a new agent, an agency may consider conducting the following research to determine suitability.

If the agent already holds a licence with the Insurance Council:

- Confirm the agent's licensing history with Insurance Council or another jurisdiction.
- Confirm whether the agent requires a supervisor.
- Check other Canadian regulators 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, insurers and supervisors.
- Confirm the agent is up to date with continuing education.
- Confirm the agent holds valid errors and omissions insurance.

If the individual is not yet licensed with the Insurance Council:

- Ensure the individual has met the Insurance Council's licensing requirements and has been issued a licence prior to engaging in insurance business.
- Once licensed, and before conducting insurance business, confirm the agent holds valid errors and omissions insurance.
- If the individual has been licensed previously in British Columbia or another Canadian jurisdiction, check other Canadian regulators for disciplinary action.
- Check the agent's financial health by completing a credit check.

Exclusive reliance on self-reporting by the agent will not generally be sufficient for effective screening. To verify self-reported information and obtain additional information that might be relevant to assessing the agent's suitability, agencies should check 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.

Section 5.3.3 of the Code of Conduct states that nominees are responsible to the Insurance Council for all activities of the insurance agency and must ensure the agency and its licensees are properly supervised and operate in accordance with the conditions and restriction on their licences. If the research reveals that an agent is not suitable, the agency should not facilitate offering a contract to the agent. If the agent is not unsuitable, but the research uncovers issues with an agent, the agency should use the information to create a plan for agent oversight and monitoring that effectively manages the risk.

Agencies must use their discretion when determining the suitability of an agent. Some factors that might make an agent unsuitable are outlined in Appendix 1.

5.2 Ongoing monitoring

The purpose of ongoing 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 agency manage the risk it has identified and may vary depending on the risk identified during the onboarding process. The agency should decide what monitoring practices make sense to effectively manage the risks it has identified.

An agency's choice of specific monitoring practices will depend on that agency's assessment of risk. This assessment should take into account information about the agent that is gathered in the initial screening and onboarding 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 agency, the number of agents, where the agents work, the sales and marketing support the agency provides and the types of products and services involved in typical transactions. For example, a small agency operating out of a single office and specializing in a limited product may have a different risk assessment than agencies operating with different business models.

While considering its monitoring practices, agencies must also consider its requirements under Sections 7 and 8 of the Code of Conduct which require licensees to protect clients' interests and privacy, evaluate clients' needs, disclose all material information and act with integrity, competence and the utmost good faith and set out licensees' duty to insurers and clients.

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.

5.3 Accountability for business accepted from agents

When processing insurance business from an agent, agencies should consider the following factors:

- The work experience of an agent, including the amount and type of insurance experience, education and training;
- Whether an 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 agency 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.

Agencies may be held accountable if an insurance transaction is found not to be in a client’s best interest. For example, an agency could be held accountable if it was determined an agency:

- 1) Acted contrary to the provisions of a contract with an insurer contrary to Section 8 of the Code of Conduct, 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.

Agencies 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.

Where an agency is uncertain if the concerns are relevant, it is encouraged to speak with the 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.

6.0 RESOURCES

- [Insurance Council Rules and Code of Conduct](#)
- [Insurance Council notices](#)
- [Financial Institutions Act](#)
- [Insurance Act](#)

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.
- **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 agency 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 when 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.