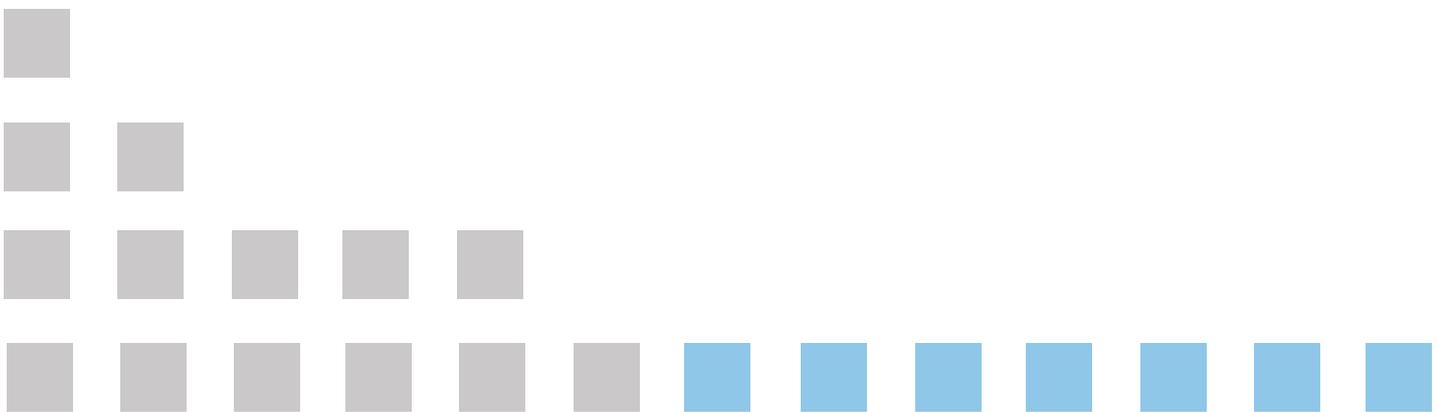


# Managing General Agent (MGA) - Expectations Paper



## Contents

1. Introduction .....	2
2. Objective and desired outcome of our regulatory approach .....	2
3. Scope.....	2
4. Key definitions .....	2
5. Conduct of business.....	3
6. Insurance Distribution Directive (IDD).....	3
7. Conflicts of interest.....	3
8. Corporate Governance and Substance .....	4
9. Outsourcing .....	5
10. Using an insurance manager .....	6
11. Appointed representatives, brokers and ongoing oversight .....	7
12. Risk transfer and customer money rules.....	7
13. Application process.....	8

## 1. Introduction

This paper sets out the Gibraltar Financial Services Commission's (GFSC) expectations and supervisory approach for Managing General Agents (MGAs). MGAs are insurance intermediaries and therefore fall within scope of the Financial Services (Insurance Distribution) Regulations 2020.

Our approach is underpinned by our regulatory objectives, in particular the protection of consumers and the protection of the good reputation of Gibraltar.

It should be noted that the guidance contained within this expectation paper does not replace or substitute, but supplements the existing guidance issued by recognised bodies such as European Insurance and Occupational Pensions Authority (EIOPA) <sup>1</sup> and International Association of Insurance Supervisors (IAIS) or existing legislation, rules and regulations such as the Financial Services Act 2019 and Financial Services (Insurance Distribution) Regulations 2020.

This paper will be of interest to potential applicants and GFSC regulated MGAs, insurance managers and also those connected to the insurance industry. It may also be of interest to service providers for the insurance industry.

<sup>1</sup> Only Pre-Brexit EIOPA guidance is applicable.

## 2. Objective and desired outcome of our regulatory approach

### Objective

Our overarching objective is a risk based and proportionate authorisation and on-going supervisory approach for MGAs.

### Outcome

The outcome we want to achieve in adopting this approach is the authorisation and supervision of well run, appropriately governed and sustainable MGA businesses that possess consumer-centric attitudes that deliver transparency, accessibility and fairness to their customers.

## 3. Scope

This expectation paper is for MGAs who write wholesale and/or retail business.

## 4. Key definitions

For ease of understanding, the below provides descriptions of some key terms used within this paper.

**Managing General Agent (MGA):** an Insurance Intermediary that has been granted underwriting authority by an Insurance Company. MGAs can, to an extent, select the risks and parties they are prepared to underwrite. MGAs can also perform other functions ordinarily handled by Insurance companies, like appointing distributors, underwriting, designing products and managing claims.

An MGA is an agency whose primary function and focus is the provision of underwriting services and whose primary fiduciary duty is to the Insurance Company.

**Insurance Intermediary' Insurance Company and Insurance Manager** have the same meaning as in the Financial Services Act 2019.

## 5. Conduct of business

Consumers need to have confidence in the firms they deal with and services and products provided to them. As the financial services regulator our key regulatory objective is to ensure the protection of consumers and we must be confident that firms regulated by us take responsibility for providing good customer outcomes and are “doing the right thing”.

It is vital that MGAs consider their own conduct and, where appropriate and depending on whether they are dealing with retail or wholesale customers, considering the conduct within the distribution chain and activities undertaken by outsourced service providers. This should include the whole of the insurance product life cycle such as the product development and promotion through to advice, sales and after sales communications and service as well as the handling of claims and complaints.

Poor conduct outcomes may result from the culture of the firm, characteristics of the insurance products themselves, as well as from the distribution models chosen for bringing them to the market.

### Conduct risk framework

MGAs are expected to have in place a conduct risk framework (either separately or as part of their risk management framework) to assist them in the identification and management of its conduct risks.

MGAs are expected to define conduct risk in the context of their own business and need to understand and demonstrate how they manage, mitigate and report on it. Responsibilities for managing conduct risk should be integrated into existing governance structures.

Effective conduct risk frameworks consider culture, governance, product design, sales, post-sale servicing, including claims management. (Note that this is not a prescriptive list of activities, and it is for firms to identify the particular conduct risks present within their operating environment.)

## 6. Insurance Distribution Directive (IDD)

The EU Insurance Distribution Directive (2016/97) (IDD) covers the regulatory requirements for firms designing, distributing and selling insurance products. The IDD came into effect on 1 October 2018.

IDD requirements have been transposed into Gibraltar legislation through the Financial Services (Insurance Distribution) Regulations 2020, which can be found here: <https://www.gibraltarlaws.gov.gi/legislations/financial-services-insurance-distribution-regulations-2020-4777>

## 7. Conflicts of interest

Firms must consider the possible conflicts of interest that could arise from their business strategy and operations and have in place suitable processes, systems and controls to ensure that these are identified and mitigated. Firms should also familiarise themselves with the specific IDD conflicts of interest rules, prescribed by the Financial Services (Insurance Distribution) Regulations 2020.

### Capital requirements

An MGA is required to hold the minimum financial capacity requirements set out in the Financial Services (Insurance Distribution) Regulations 2020.

Subject to the above, we also expect firms to hold a minimum level of financial resources equivalent to 3 months' worth of operating expenses or the level required to ensure that the firm could be wound down in a controlled and solvent manner.

We advise that applicants discuss the level of capital with us ahead of submitting their application.

## 8. Corporate Governance and Substance

We expect that MGAs that are authorised by the GFSC can be effectively supervised by us.

We expect MGAs to have arrangements in place to facilitate their effective supervision in Gibraltar by the GFSC, which is considered to include immediate access to all systems, records and relevant information.

We expect that Gibraltar MGAs are controlled by their boards and senior management from Gibraltar. We therefore expect that MGAs have a substantive presence with a majority of an applicant's senior role holders based in Gibraltar.

In assessing a substantive presence, we take a pragmatic, holistic and proportionate approach to this question that takes into account the MGA's size, nature and complexity of its business model and structure.

Whilst the seniority, expertise and level of staffing required by MGAs depends on the nature, scale and complexity of their business, we expect firms to be adequately resourced and that decision-making takes place in the Gibraltar entity. We would also expect MGAs which distribute directly to retail consumers to carefully assess the numbers of staff required to provide a good customer experience to consumers, to have adequate business continuity planning which would allow the firm to continue to do so throughout a variety of adverse scenarios and to be able to deal with complaints.

We expect MGA boards to be free of corporate directorships (i.e. no corporate director service companies may be appointed to the board and the board should consist of directors who are individuals).

Firms may also want to ensure that they are familiar with our guidance on mind and management and four eyes criteria. This can be found at:

<https://www.fsc.gi/apply/application-process> - the "Guidance for applying", "Mind and Management" and "Four Eyes" sections.

### Board of directors

We expect that the board of directors consist of the right number and mix of experience on the board, with individuals drawn from different disciplines according to the needs of the firm. The actual number of directors will be dependent on the size, nature and complexity of the business in accordance with the principle of proportionality. The role of executive director is a Regulated Function and the holder is a Regulated Individual under Gibraltar financial services legislation.

### Regulated Functions and Regulated Individuals

Part 8 of the Financial Services Act requires all regulated firms to have regulated (approved) individuals carrying out specified regulated functions. It is important to note that the same individual can be responsible for more than one regulated function (provided they have the capacity to do so). The list of regulated functions which a firm must have a regulated individual in place for varies slightly depending on the sector. In addition, the regulated functions listed in schedule 15 of the Act can be waived by the GFSC if it is appropriate to do so.

Depending on the size, nature, governance structure and specific operations undertaken by the MGA, an MGA **may** need to have a regulated individual in place for the following functions:

- Chairman of the Board – Where an applicant has this role, consideration should be given as to whether the role should be separate from that of the of the Chief Executive Officer (CEO)/ Managing Director (MD) role
- CEO/MD
- Head of Finance (e.g. Chief Financial Officer (CFO)/Finance Director (FD))<sup>2</sup>
- Head of Underwriting (e.g. Chief Underwriting Officer (CUO)) – this will be dependent on whether the MGA has delegated underwriting authority and discretion as to how this is applied by the insurance company or carrier.
- Head of Claims – This role will be dependent on whether the MGA has delegated claims settling authority and is able to settle claims on the insurance company or carrier’s behalf.
- Head of Compliance (this function is mandatory)<sup>2/3</sup>

Other Regulated Functions and Regulated Individuals may be required such as Chair of Risk Committee Chair of Audit Committee and Chief Operating Officer, but this will be dependent on the size, nature and complexity of the MGA’s operations.

An MGA must have at least one executive director.

<sup>2</sup> These roles may be conducted by an individual from the insurance manager

<sup>3</sup> Depending on the size, nature complexity of the firm, it would be possible for the same individual to conduct both roles

## 9. Outsourcing

An MGA is considered to be outsourcing to a third party when they are involved in an arrangement where a service provider performs a material process, service or activity on behalf of the MGA that the MGA would otherwise carry out itself.

MGAs may outsource various functions and services to third party providers and inter-group companies ranging from, but not limited to, claims handling; complaints management; product design; marketing and distribution. We would not expect an MGA to outsource underwriting activity.

### Risk identification and management

The outsourcing of functions by one firm to another can create an increased level of complexity due to the division of responsibilities and knowledge. This can also lead to increased risk of shortcomings in the delivery of products or services to customers.

MGAs who use outsourced, and other third party service providers, should take responsibility for managing the risk arising from those arrangements. Greater levels of risk management are needed when a firm increases its dependence on outsourced and third party service providers.

The requirements include identifying and managing the associated risks throughout the life span of outsourcing arrangements from beginning to end.

Examples of key risks in outsourcing are:

- Conflicting goals of the MGA and outsource provider, and/or of the key individuals within either or both organisations;
- Failure to implement appropriate oversight of the outsource provider;
- Poor service quality from the outsource provider;
- Practices of the outsource provider are inconsistent with those of the MGA;

- Regulations and legislation are not adequately complied with by the outsource provider;
- Inadequate financial or operational capacity to fulfil obligations; and
- Technology failure.

We expect MGAs to have effective, proportionate risk-based controls in place that appropriately mitigate any risks. MGAs should consider the nature, scale and complexity of their business when meeting their obligations for outsourcing and third parties.

### **Appointing outsourced providers**

We expect the MGA to have adequate due diligence procedures in place when appointing third parties.

MGAs are expected to assess whether the outsource provider is able and suitable to carry out the delegated function or task, taking into account the degree of responsibility involved. MGAs must not focus predominantly or exclusively on underwriting and prudential matters, with limited or no consideration to operational, customer or conduct matters. Nor, should due diligence be a “tick box” exercise solely focusing on the outsource provider’s solvency. Due diligence must be risk based and consider, for example, the range of delegation being authorised, the number of customers involved, the products and relevant operational issues.

The extent and limits of the responsibilities of any delegation should be made clear to those concerned.

### **Defining role and responsibilities**

We expect MGAs to clearly define the accountabilities and responsibilities delegated to the outsourced provider within a formal outsourced services agreement or similar.

Contractual agreements surrounding outsourcing must accurately reflect the extent of the arrangement in place and the responsibilities flowing from it, service standards and reporting obligations.

We expect the TOBA (or similar) to be regularly reviewed and kept up to date.

### **Ongoing oversight**

We expect the MGA to have adequate ongoing oversight of third parties. This oversight should be supported by regular, granular management information (MI) and Key Risk Indicators (KRIs), which should be reviewed, understood and challenged where necessary. The firm should consider outsourced service providers when designing and approving their internal audit and compliance plans.

## **10. Using an insurance manager**

### **What role can an insurance manager play?**

We anticipate some MGAs will seek assistance from an insurance manager to help with their permission application and establishing in Gibraltar.

An insurance manager can give advice and exercise some compliance functions on behalf of an MGA who has appointed them. Where an MGA undertakes underwriting or any customer facing duties, such as complaints or claims management, we do not expect this to be outsourced to an insurance manager.

## Outsourcing to an insurance manager

MGAs may also choose to outsource activities such as accounting, risk and regulatory compliance to an insurance manager. We expect MGAs which consider outsourcing certain roles or functions to an insurance manager, to define the roles and responsibilities and exercise ongoing board oversight in the same way as if it were appointing any other third party service provider.

## 11. Appointed representatives, brokers and ongoing oversight

We expect MGAs to have robust procedures in place for appointing, defining roles and responsibilities and to conduct ongoing oversight of appointed representatives and brokers.

Where MGAs provide services into the United Kingdom (UK), we expect MGAs to only appoint (or sub-delegate to) representatives and brokers who are regulated and have a permission as insurance intermediaries by the Financial Conduct Authority (FCA) in the UK.

Firms who conduct business into other jurisdictions are expected to follow the general good provisions of the jurisdictions they provide services into. Therefore, if a firm is providing services into the UK they will need to consider, plan for and react appropriately to FCA rules and guidelines for example: <https://www.fca.org.uk/firms/insurance-distribution-directive/idd-general-good-requirements>.

We expect MGAs to conduct regular reviews and audits of appointed representatives and brokers.

## 12. Risk transfer and customer money rules

The Financial Services (Insurance Distribution) Regulations 2020 impose requirements on MGAs (and other types of insurance intermediaries) when they deal with customer money.

When dealing with customer money, an MGA or other type of insurance intermediary will have the choice to comply with either the new risk transfer requirements (explained in this part) or the original customer money (CM) requirements, both of which are set out in the regulations. The latter are in chapter 2 of Part 5 (the “original CM requirements”).

Under the new risk transfer requirements, the MGA would need to enter into a written agreement, with the insurer it acts for, to hold customer money as an agent on behalf of the insurer (a “risk transfer agreement”; the “agreement”). The regulations require the agreement to authorise the MGA to-

- act as agent for the insurer in respect of the customer’s money; and
- to state the types of customer money that are to be held as agent by the MGA (i.e. premiums and/or claims and premium refunds).

Where such an agreement is in place for only one type of customer money, the MGA will not have to comply with the original CM requirements as set out in the regulations for that type of customer money, but it would have to comply with those requirements for the other types of customer money not included in the agreement.

If this agreement is made and it covers all types of customer money, the customers will be protected in the following ways:

- the premiums which the MGA receives are treated as being received by the insurer when they are received by the MGA; and
- claims money and premium refunds received by the MGA will only be treated as received by the customer when they are paid over.

The agreement must clearly specify the above.

If an agreement is not in place, the customers will be protected by the safeguards provided by the original CM requirements.

### **Appointed intermediaries**

A risk transfer agreement may provide for customer money which is received by an MGA's appointed intermediary (i.e. an IDD authorised intermediary which conducts business on its behalf) to be held as agent for the insurance undertaking. This would need to be specified in the agreement between the MGA and insurer. If this is the case the appointed intermediary must give written notice (in the same way which is set out below), to any customer who may be affected by that agreement.

### **Notice to customers**

An MGA which holds (or will hold) money in accordance with a risk transfer agency agreement would also need to give written notice to any customer who may be affected by the agreement:

- that the MGA holds the customer's money as agent of the insurance undertaking; and
- of the nature of that agency and, in particular, of the different types of customer money to which the agreement applies (i.e. whether it covers all three examples referred to above, or only the receipt of premiums).

Notice may be given in a customer agreement, the intermediary's terms of business, or by any other appropriate means. This notice is consistent with the regulatory requirements set out in the FCA Handbook in the UK.

It is desirable that an MGA dealing with retail customers should agree the terms of the notification with the relevant insurers before informing the customers.

### **Complying with the risk transfer requirements for some transactions and the original CM requirements for others**

As set out above, an MGA can opt to carry on business in accordance with a risk transfer agreement for some types of customer money transactions but not all. In this case, it would have to comply with the original CM requirements for the other transactions. Similarly, it could also opt to carry on business in accordance with a risk transfer agreement for some of its customers (in respect of all types of customer money transactions), but then comply with the original CM requirements for other customers (in respect of all the types of customer money transactions). However, if an MGA opts for this flexible approach, it is required to have adequate administrative systems and controls in place that ensure that money held for customers and in respect of transactions conducted on either basis is kept separate.

## **13. Application process**

Applications for permissions are made under Part 7 of the Financial Services Act 2019.

In line with all other applications, MGAs would need to comply with the threshold conditions referred to in Part 7. The Financial Services (Insurance Distribution) Regulations 2020 supplement Part 7 with additional requirements.

Full details of our application process and requirements can be found on our website: <https://www.fsc.gi/apply/insurance-reinsurance-intermediary>