



Managing General Agents: Overview of U.S. Regulation

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The materials in this presentation are intended to provide a general overview of the issues contained herein and are not intended nor should they be construed to provide specific legal or regulatory guidance or advice. If you have any questions or issues of a specific nature, you should consult with appropriate legal or regulatory counsel to review the specific circumstances involved.

Overview

- > National Association of insurance Commissioners (NAIC) Managing General Agents Act
- > Definitions
- > Licensure Requirements
- > The MGA Contract
 - Required Provisions
- > Duties of Insurers
- > Examination Authority

National Association of Insurance Commissioners Managing General Agents Act

- > NAIC model act: must be enacted into law in a state
- > Governs the qualifications and procedures for resident and non-resident producers acquiring the status of a managing general agent (MGA)
- > Substantially similar versions have been enacted in 49 states and Washington, D.C.
 - According to NAIC publications, New York is the only state that has not adopted a substantially similar version

Definitions

- > Under the NAIC Managing General Agents Act (Act), managing general agent means:
 - Manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office); and
 - Acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with the following activity related to the business produced adjusts or pays claims in excess of \$10,000 per claim or negotiates reinsurance on behalf of the insurer

Definitions

- > The following are not MGAs for purposes of the Act:
 - An employee of the insurer
 - A U.S. Manager of the U.S. branch of an alien insurer
 - An underwriting manager which, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written
 - The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney

Licensure Requirements

- > No person shall act in the capacity of an MGA with respect to risks located in this state for an insurer licensed in this state unless such person is a licensed producer in this state
- > No person shall act in the capacity of an MGA representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed as a producer in this state (such license may be a nonresident license) pursuant to the provisions of this Act

The MGA Contract

- > The MGA and the insurer must have in place a written contract setting forth the responsibilities of each party
- > If any responsibilities are to be shared or divided between the MGA and insurer, the contract must specify the arrangement
- > Statutes require that certain minimum provisions be contained in the contract

Required Contract Provisions

- > The insurer may terminate the contract for cause upon written notice, and suspend the MGA's underwriting authority if there is a dispute regarding the cause of the termination

Required Contract Provisions

- > The MGA must render accounts to the insurer and remit all funds due on at least a monthly basis
- > The MGA must hold all funds for the insurer's account in a fiduciary capacity at an institution insured by the Federal Deposit Insurance Corporation
 - The account must be used for all payments made on behalf of the insurer
 - The MGA may retain no more than three months estimated claims payments and allocated loss adjustment expenses

Required Contract Provisions

- > The MGA must maintain separate business records
 - The insurer must have the right to access and copy all accounts and records related to the insurer's business
 - The state insurance commissioner has access to and the right to copy all books, bank accounts, and records of the MGA
- > Additional state record-keeping requirements may apply
- > The contract cannot be assigned by the MGA

Required Contract Provisions

- > Required underwriting guidelines:
 - The maximum annual premium volume
 - The basis of the rates to be charged
 - The types of risks which may be written
 - Maximum limits of liability
 - Applicable exclusions
 - Territorial limitations
 - Policy cancellation provisions
 - The maximum policy period
- > The insurer has the right to cancel or non-renew any policy, subject to the state's requirements for policy cancellation or non-renewal

Required Contract Provisions

- > The MGA must maintain a bond for the protection of the insurer at least equal to:
 - \$100,000 ,or
 - 10% of the MGA's total annual written premiums produced nationwide by the MGA for the insurer
- > The bond cannot exceed \$500,000
- > The insurer may require the MGA to maintain an errors and omissions policy

Required Contract Provisions

- > If the contract permits the MGA to settle claims on behalf of the insurer:
 - All claims must be reported to the company in a timely manner
 - A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:
 - Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;
 - Involves a coverage dispute;
 - May exceed the MGA's claims settlement authority;
 - Is open for more than six months; or
 - Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less

Required Contract Provisions

- > Claims settling requirements continued:
 - All claim files will be the joint property of the insurer and MGA
 - However, upon an order of liquidation of the insurer, such files shall become the sole property of the insurer or its estate; the MGA shall have reasonable access to and the right to copy the files on a timely basis
 - Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract
 - The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination

Required Contract Provisions

- > Where electronic claims files are in existence, the contract must address the timely transmission of the data
- > The MGA may use only advertising material pertaining to the business issued by an insurer that has been approved in writing by the insurer in advance of its use

Required Contract Provisions

- > If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business

Required Contract Provisions

- > The MGA shall not:
 - Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the reinsurance agreement meets requirements set forth by the insurer
 - Commit the insurer to participate in insurance or reinsurance syndicates
 - Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which he is appointed

Required Contract Provisions

- > The MGA shall not (continued):
 - Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed 1% of the insurer's policyholder's surplus as of December 31 of the last completed calendar year
 - Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer, without prior approval of the insurer
 - If prior approval is given, a report must be promptly forwarded to the insurer
 - Except as provided in the Act, permit its subproducer to serve on the insurer's board of directors
 - Jointly employ an individual who is employed with the insurer;
or
 - Appoint a sub-MGA

Duties of Insurers

- > The insurer must maintain on file audited annual financial statements of the MGA for the previous two years, showing that the MGA has a positive net worth
 - If the MGA has been in existence less than two years, the most recent financial reports should be maintained on file
 - Consolidated financial reports must separately show the relevant amounts for each entity covered

Duties of Insurers

- > If the MGA establishes loss reserves, the insurer must annually obtain the opinion of an actuary, who must attest to the adequacy of the established loss reserves
 - Other reserve certification requirements continue to apply
- > The insurer must periodically (at least semi-annually) conduct on-site reviews of the underwriting and claims processing operations of the MGA

Duties of Insurers

- > Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the MGA
- > The insurer must provide notice to the insurance commissioner within 30 days of entering into or terminating a contract with the MGA
 - For contracts entered into, the notice must include a statement of the duties the MGA will be expected to perform, the lines of insurance for which the MGA will be appointed, and other information requested by the commissioner

Duties of Insurers

- > The insurer must review its records each quarter to determine if any of its producers have surpassed the thresholds and other criteria to be deemed an MGA
 - If the insurer identifies a producer who meets the criteria, the insurer must promptly notify the producer and the commissioner
 - The insurer and the producer/MGA then have 30 days to comply with the licensing requirements

Duties of Insurers

- > Insurers may not appoint to their board of directors any officer, director, employee, subproducer or controlling shareholder of one of its MGAs
 - Exceptions for relationships governed by the Insurance Holding Company Systems Regulatory Act or Business Transacted with Producer Controlled Property/Casualty Insurer Act
- > The insurer must keep on file the surety bond that the MGA maintains for the benefit of the insurer for the commissioner to review

Examination Authority

- > The acts of the MGA are considered to be the acts of the insurer on whose behalf it is acting
- > An MGA may be examined as if it were the insurer

Questions





Recent Developments in U.S. Insurance Regulation

Overview

- > Terrorism Risk Insurance Act (TRIA)
 - Terrorism Risk Insurance Program Reauthorization Act of 2015
- > National Association of Registered Agents and Brokers Reform Act of 2015 (NARAB II)
- > International Influences
 - Solvency II Equivalency
 - Credit for Reinsurance

TRIA Reauthorization

- > November 2002, TRIA was passed by Congress to provide a government reinsurance backstop so commercial insurers would offer terrorism coverage
 - The act was extended and amended in 2005, 2007, and 2015
- > Terrorism Risk Insurance Program Reauthorization Act of 2015
 - Raised the amount of total losses which need to occur in a terrorist attack before the TRIA program kicks in —from \$100 million to \$200 million over five years, beginning in 2016
 - Increased mandatory recoupment from 133% to 144%
 - Starting on January 1, 2016, the mandatory recoupment will increase \$2 billion each year over five years, raising the mandatory recoupment from \$27.5 billion to \$37.5 billion

National Association of Registered Agents and Brokers Reform Act of 2015 (NARAB II)

- > NARAB II passed as Title II of the Terrorism Risk Insurance Program Reauthorization Act of 2015
- > Overview
 - Streamline and improve the licensing process for approved nonresident insurance producers, eliminating duplicative licensing requirements for businesses operating in multiple states
 - Improve the licensing process for nonresident insurance producers and strengthen oversight by state insurance regulators
 - Create the National Association of Registered Agents and Brokers (NARAB)

National Association of Registered Agents and Brokers (NARAB)

- > Producers licensed in their home state may apply for membership in NARAB
- > By becoming a member, producers will be treated as nonresident insurance producers in other states upon paying the other state's licensing fee
 - Members remain subject to other states' requirements for nonresident producers
- > Board of Directors
 - 13 members
 - Establishes fees and bylaws, enters agreements, hires staff, and secures funding

Solvency II – Equivalency

- > The Solvency II Directive aims to establish a revised set of EU-wide capital requirements and risk management standards to increase protection for policyholders
- > Solvency II requires that “third countries” (non-EU countries) have substantially similar insurance regulatory frameworks in place in order to obtain equivalency status
 - If the third country where an insurance group is based is not deemed equivalent, the group’s entities will become subject to regulation by EU supervisory authorities
- > In June, 2015, the European Commission granted provisional equivalency status to Australia, Bermuda, Brazil, Canada, Mexico, and the United States
- > The NAIC, through the EU-US Dialogue Project, has been working with the EU to foster mutual understanding between these jurisdictions’ regulators

Credit for Reinsurance

- > The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) prohibits a state from denying credit for reinsurance if the domiciliary state of the ceding insurer recognizes such credit and is an NAIC-accredited state
- > NAIC Credit for Reinsurance Model Law and Regulation
 - Qualified Jurisdictions
- > The NRRA allows the Federal Insurance Office (FIO) to enter into covered agreements with foreign jurisdictions on behalf of the United States
 - Covered agreements may recognize certain prudential measures of the foreign jurisdiction's insurance regulator, and may preempt state credit for reinsurance laws
 - FIO has declared that it will consider entering into covered agreements to impose uniformity of credit for reinsurance requirements throughout the U.S.

Questions



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