§ 12.02 MGAs and MGUs

[1]—The Function of MGAs and MGUs

A managing general agent ("MGA") is a person or (more often) an entity that manages a portion of the business of an insurance or reinsurance company. The term "managing general underwriter" ("MGU") is often used synonymously with MGA.[1]

The specific functions delegated to an MGA can vary. Still, it is typical for an MGA to be charged with: (1) underwriting a specific kind of business for its principal, and (2) handling claims on that business. In addition, MGAs are often responsible for obtaining reinsurance to cover the business they write.

By definition, the results of the business managed by an MGA belong to the principal. Thus, when an MGA underwrites a contract on behalf of an insurance or reinsurance company, the contract is an obligation of that company. For that reason, the MGA is said to be writing on the company's "paper," and to hold the company's "pen."

Because the business handled by an MGA is really the principal's business, the premiums and losses under that business must be reflected on the company's—not the MGA's—financial statements. As a result, an MGA does not have the same capital requirements as an insurance or reinsurance company. The company, however, has an obvious need to make sure that the MGA is handling its responsibilities properly. The company also needs to receive timely and accurate reports from the MGA.

There are a variety of reasons for a company to do business through an MGA. For example, the MGA may have expertise in a specialized type of business. In that case, doing business through the MGA may allow the company to gain access to the business without hiring its own specialists—although this lack of in-house expertise may make it difficult for the company to monitor the MGA effectively. Similarly, the MGA may have access to a particular customer base. In that case, the MGA may be able to produce business that the company could not obtain on its own.

[2]—Issues Relating to MGAs and MGUs

[a]—Underwriting Problems

Rightly or wrongly, MGAs have a reputation in some circles for writing questionable business. For example, a subcommittee of the

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[1] The term "managing general underwriter" is often used in the life and health context, while "managing general agent" is often used in the property and casualty context.

U.S. House of Representatives investigating a wave of insurance company insolvencies in the 1980's found that "[t]he use of managing general agents . . . is an industry practice that can be exceedingly dangerous."[2] Perhaps for that reason, courts have held that the fact that business is underwritten by an MGA rather than by a cedent is in itself material, and should be disclosed to reinsurers of that business.[3]

One possible explanation for poor underwriting by MGAs is the basis on which they are often compensated. Specifically, MGAs frequently receive commissions based on a percentage of written premium. Thus, the more business an MGA writes, the more commission income it receives. Under this system, MGAs are paid based on the quantity rather than the quality of the business they write. Since the losses will be paid by the principal rather than the MGA the MGA arguably has little incentive to underwrite carefully. As the House subcommittee quoted above put it, "MGA's . . . have strong incentives to operate recklessly or dishonestly because they earn commissions on the volume of business they write . . . ."[4]

Another risk factor arises because MGAs sometimes use their principals simply as fronting companies. This means that the MGA issues insurance or reinsurance contracts in the principal's name, but obtains enough reinsurance to reduce the principal's retention to a nominal amount. Such an arrangement can be attractive to the principal, because fronting gives the principal fee income that is not subject to ordinary underwriting risk. Indeed, some companies have sought out such fronting arrangements, which are sometimes called "program business" to distinguish them from more conventional underwriting strategies. Nevertheless, if neither the principal nor the MGA has a significant stake in the underwriting, the results can be poor. Moreover, if poor business leads reinsurers to repudiate their obligations, the principal is potentially exposed not only to its relatively small retention, but to the entire amount at stake under the paper issued in its name. As the House subcommittee explained, insurance companies:

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[2] U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, "Failed Promises: Insurance Company Insolvencies," 101st Cong., 2d Sess., Comm. Print 101-P at 10.

[3] See § 11.03[2][b] *supra*.

[4] U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, "Failed Promises: Insurance Company Insolvencies," 101st Cong., 2d Sess., Comm. Print 101-P at 30. See also *id*., Comm. Print 101-P at 10 ("There is an inherent conflict for MGA's between writing quality business and earning commissions on the volume of business written.")

> risk financial disaster if the reinsurers arranged by the MGA's refuse, or are unable, to pay their share of claims. In that situation, the fronting insurance company with its name on the policies is required to pay 100 percent of the claims. That is exactly what happened to Mission, Integrity and Transit, and that was the immediate cause of their insolvencies.[5]

Consequently, fronting has generated considerable controversy.[6]

Beyond bad underwriting, there have also been instances of outright fraud by MGAs. The House subcommittee, for example, described the activities of Carlos Miro, a "subagent" for Transit Casualty Company who had been appointed by one of Transit's MGAs in the 1980's. According to the subcommittee, Mr. Miro not only wrote extremely unprofitable business for Transit, but also siphoned off much of the premium by ceding it to an off-shore reinsurer he controlled.[7] Mr. Miro was later convicted on federal mail fraud charges arising out of a similar scheme involving other companies.[8]

There are also more recent instances in which MGAs have produced unfavorable results for their principals, whether through poor underwriting or otherwise. In the 1990s, several companies—most through MGAs—reinsured workers' compensation and other personal accident business on terms that virtually guaranteed that they would suffer underwriting losses unless they ceded the risk to other reinsurers. This market, and some of the practices of the MGAs and brokers involved, are described in a massive English trial court decision in *Sphere Drake Insurance Ltd. v. Euro International Underwriting Ltd*.[9] The English court called the market "unsustainable," and commented that it was bound to "end, as it has, in disaster, with the massive losses produced year in year out by [workers' compensation] business landing on some of those who participated in this market, resulting in litigation on an extensive scale."[10]

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[5] *Id*., Comm. Print 101-P at 11.

[6] See, e.g., Hall, "Fronting: Business Considerations, Regulatory Concerns, Legislative Reactions and Related Case Law," Mealey's Litigation Reports: Reinsurance, Vol. 12, #14 at 22 (Nov. 15, 2001).

[7] *Id*., Mealey's Litigation Reports: Reinsurance, Vol. 12, #14 at 34-38.

[8] See United States v. Miro, 29 F.3d 194 (5th Cir. 1994) (affirming sentence).

[9] Sphere Drake Insurance Ltd. v. Euro International Underwriting Ltd., [2003] EWHC 1636 (Queens Bench Div., Commercial Court 2003). See also Odyssey Re (London) Ltd. v. Stirling Cooke Brown Holdings Ltd., 85 F. Supp.2d 282 (S.D.N.Y. 2000) (involving an earlier stage of the dispute, in which the court rejected an attempt by the same plaintiff to assert similar claims under RICO and similar US law).

[10] Sphere Drake Insurance Ltd. v. Euro International Underwriting Ltd., [2003] EWHC 1636 (Queens Bench Div., Commercial Court 20003) at Part I, ¶ 7(xiii).

Another instance involved Fortress Re, Inc., an MGA that wrote aviation reinsurance on behalf of several Japanese companies. Fortress Re consistently reported profitable results to its principals, largely on the basis of reinsurance it had obtained to protect them. However, Fortress Re apparently did not disclose that this reinsurance was finite risk reinsurance,[11] and therefore that it did not provide the degree of protection that the principals expected. The scheme collapsed as a result of the huge aviation losses caused by the terrorist attacks of September 11, 2001. An arbitration panel ultimately found that Fortress Re had engaged in fraud, and awarded one of its principals over $1 billion in damages.[12]

[b]—Problems Raised by an MGA's Failure or Termination

When an insurance or reinsurance company hires an MGA, it expects that the MGA will provide certain administrative services with respect to the business it has written for the company. In some cases, the need for these services may continue for many years. Where, for example, the MGA is responsible for handling claims, its responsibilities can continue for as long as the claims do. The MGA's commission is meant to compensate it for providing such services.

One potential risk for the company is that the MGA will not be able to service the business it has written. For example, financial difficulties might prevent the MGA from performing. That is particularly likely to be the case if the MGA is no longer writing new business—and therefore is no longer receiving commission income—but is still handling claims. Under such circumstances, the principal may have no choice but to take over the MGA's responsibilities, despite the fact that it has already paid the MGA for the services it must now provide itself.

Similarly, the principal may not *want* the MGA to service the business. Where the results of business written by an MGA are poor, the company may wish to terminate the relationship and try to improve results through better claims handling. If it suspects an MGA of misconduct, the company may feel that it *must* terminate the relationship. In either event, the company will be left to handle the business itself, at its own expense.

[c]—Disputes Regarding The Scope of an MGA's Authority

As noted in the previous subsection, poor results may lead a principal to take over claims handling from an MGA. Under such circumstances, the principal may well attempt to improve those results

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[11] For a discussion of finite risk reinsurance, see § 1.03[3] *supra*.

[12] See "North Carolina Judge Confirms $1.9 Billion Award To Sompo," Mealey's Litigation Reports: Reinsurance, Vol. 14, #22 at 2 (March 18, 2004).

through its own claims handling. Although this often means that the principal will seek to assert relatively standard contract defenses, in some cases companies have sought to deny liability under contracts written by the MGA on the ground that the MGA lacked the authority to write the contract in the first place.

It is not easy for a principal to avoid liability on the basis of its MGA's lack of authority. First, the principal must show that the MGA did not have the actual authority to bind it. To do so, the principal must demonstrate that the contract at issue exceeded the limits of the authority delegated to the MGA. For example, the principal might seek to show that the contract: (1) was written after the MGA's authority expired or was terminated;[13] (2) exceeded a premium or similar cap;[14] or (3) was not the kind of business the MGA was authorized to write.

Second, even if the principal can show that the MGA lacked actual authority, it may also need to show that the MGA lacked apparent authority. Under the common law of agency, an agent can bind a principal not only where the principal has actually given the agent the authority to do so, but sometimes also where the principal has allowed the agent to *appear* to have such authority. Apparent authority arises through words or conduct of the principal that "reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him."[15] Thus, if the agent's authority is subject to limitations that have not been communicated to third parties, such third parties may be able to show that the agent had apparent authority to bind the principal to contracts that violated those limitations.[16] Similarly, if the principal terminates the agent's authority, but does not communicate that termination to others, the agent may still have apparent authority to bind the principal.[17] In short, even if a company can prove that

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[13] See, e.g., Continental Casualty Co. v. American National Insurance Co., 417 F.3d 727 (7th Cir. 2005) (allegation that a contract was written after termination of agent's authority).

[14] See, e.g., Sphere Drake Insurance Ltd. v. All American Insurance Co., 256 F.3d 587 (7th Cir. 2001) (allegation that a contract exceeded the agent's "annual limit of risks").

[15] *Restatement (Second) of Agency*, § 27 (1958).

[16] *Id*. at § 49. See, e.g., PXRE Corp. v. Terra Nova Insurance Co., 76 Fed. Appx. 485, 2003 WL 22293204 (3rd Cir. 2003) (although the limits of an insurance policy exceeded the MGA's actual authority, the MGA was found to have apparent authority to issue the policy).

[17] *Restatement (Second) of Agency*, §§ 124A-132, 135, 136.

its agent acted beyond the scope of its actual authority, it may still be bound to cedents and policyholders who did not know that the MGA was exceeding its authority.

This can be illustrated by a case in which an MGA was found to have apparent authority to issue an insurance policy even though it had defrauded its principal and kept the premium for itself.[18] In that case, the MGA was authorized to write weather insurance policies for its principal with limits of up to $500,000 per risk. The MGA, however, wrote policies on its principal's paper with limits that far exceeded that amount. When the principal denied liability, the policyholder—an insurance company that had issued weather derivatives supported by the policies—argued that the principal was bound because the agent had apparent authority to issue the policies. In fact, the principal had confirmed to the policyholder that the agent was authorized to write on its behalf, and had not disclosed the limits of the agent's authority. A jury agreed that, under these circumstances, the MGA had apparent authority; the Third Circuit affirmed judgment for the insured.

In several cases concerning MGAs' authority to bind their principals, the first question was whether the issue should be decided by a court or an arbitration panel. In each of these cases, a reinsurer contended that its MGA had exceeded its authority in purporting to bind it to a reinsurance contract, and on that basis disclaimed any obligations under the contract. The cedents, however, argued that the disputes were subject to arbitration pursuant to arbitration clauses in the relevant contracts.

Courts have reached mixed results in such cases. In one, the Seventh Circuit held that the dispute over the agent's authority had to be resolved by a court rather than by an arbitration panel.[19] The court explained that "[t]his dispute seems to us covered by the principle that courts, rather than arbitrators, usually determine whether the parties have agreed to arbitrate."[20] The court could not determine whether the reinsurer had agreed to arbitrate without resolving the agency issue, because the reinsurer could be "required to arbitrate if and only if [its agent] had the authority to bind it to" the reinsurance contracts, and

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[18] PXRE Corp. v. Terra Nova Insurance Co., Ltd., 76 Fed. Appx. 485 (3rd Cir. 2003). See also Bank of America, N.A. v. Terra Nova Insurance Co., 2005 WL 1560577 (S.D.N.Y. 2005) (denying summary judgment in related litigation based on unresolved issues of fact going to apparent authority).

[19] Sphere Drake Insurance Ltd. v. All American Insurance Co., 256 F.3d 587 (7th Cir. 2001).

[20] *Id.*, 256 F.3d at 589.

thus to the arbitration clauses.[21] Further, the court noted that its decision meant that there was really nothing to arbitrate, because if the agent "*did* have authority, then there appears to be no further dispute that needs to be resolved, by judge or arbitrator."[22]

In contrast, in another case the Seventh Circuit held that a dispute turning on an agent's authority to bind a reinsurer was subject to arbitration.[23] There, however, the court found that the matter was arbitrable based on the reinsurer's "Participation Agreement" with its agent (of which the cedent was a third-party beneficiary) rather than on the reinsurance contract in dispute.[24] Thus, the court adhered to the principle that questions of arbitrability are generally for courts, but resolution of the arbitrability issue did not predetermine the outcome of the arbitration.

[d]—Regulatory Responses

State insurance regulators have recognized that MGAs can pose risks for their principals. In response, the National Association of Insurance Commissioners ("NAIC")[25] has promulgated two model acts. The Managing General Agents Model Act regulates companies' use of MGAs to underwrite insurance business. The Reinsurance Intermediaries Model Act, among other things, regulates the use of MGAs[26] to underwrite reinsurance business. Most states have enacted statutes that are similar to the Managing General Agents Model Act[27] and to the Reinsurance Intermediaries Model Act.[28]

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[21] *Id*., 256 F.3d at 592.

[22] *Id*. *Cf*. Reinsurance Company of America v. American Centennial Insurance Company, 621 F. Supp. 516 (N.D. Ill. 1985) (finding that MGA had apparent authority to bind principal to arbitrate, and noting that principal was free to arbitrate dispute over fraudulent inducement).

[23] Continental Casualty Co. v. American National Insurance Co., 417 F.3d 727 (7th Cir. 2005).

[24] *Id*., 417 F.3d at 733-736.

[25] See § 3.02[3] *supra* for a discussion of the NAIC.

[26] Under the model act, a "reinsurance intermediary-manager," or "RM," has authority to bind or manage assumed reinsurance business on behalf of its principal. See NAIC Reinsurance Intermediary Model Act, § 2(G). Thus, an RM is the equivalent of an MGA. In contrast, a "reinsurance intermediary-broker," or "RB," merely "solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without acting as a RM on behalf of the insurer." *Id*. at § 2(F).

[27] State statutes and/or regulations that are either versions of, or similar to, the NAIC Managing General Agents Model Act include:

Alabama: Ala. Code §§ 27-6A-1 - 27-6A-8; Ala. Admin. Code ch. 482-1-106.

Alaska: Alaska Stat. §§ 21.27.590 - 21.27.620.

Arizona: Ariz. Rev. Stat. Ann. §§ 20-284 - 20-301.01.

Arkansas: Ark. Code Ann. §§ 23-64-401 - 23-64-408.
California: Cal. Ins. Code §§ 769.80 - 769.87.
Colorado: Colo. Rev. Stat. §§ 10-2-401 - 10-2-408; 3 Colo. Code Regs. 1-2-7.
Connecticut: Conn. Gen. Stat. Ann. §§ 38a-90 - 38a-90h.
Delaware: 18 Del. Code Ann. §§ 1801 - 1809.
District of Columbia: D.C. Code Ann. §§ 31-1501 - 31-1506.
Florida: Fla. Stat. Ann. §§ 626.744 - 626.7455.
Georgia: Ga. Code Ann. §§ 33-47-1 - 33-47-7.
Hawaii: Hawaii Rev. Stat. §§ 431:9C-101 - 431:9C-107; Hawaii Code R. §§ 16-171-312 - 16-171-313.
Idaho: Idaho Code §§ 41-1501 - 41-1507; Idaho Admin. Code ch. 18.01.64.
Illinois: 215 Ill. Comp. Stat. § 5/141a.
Indiana: Ind. Code §§ 27-1-33-1 - 27-1-33-11; 760 Ind. Admin. Code 1-52-1 - 1-52-7.
Iowa: Iowa Code §§ 510.1A - 510.9; Iowa Admin. Code § 191-5.43(510).
Kansas: Kan. Stat. Ann. §§ 40-2,129 - 40-2,137; Kan. Admin. Regs. §§ 40-3-48; 40-1-41.
Kentucky: Ky. Rev. Stat. Ann. §§ 304.3-500 - 304.3-570.
Louisiana: La. Rev. Stat. Ann. §§ 22:1201 - 22:1207.
Maine: 24-A Me. Rev. Stat. Ann§§ 1491 - 1498.
Maryland: Md. Ins. Code Ann. §§ 8-201 - 8-213.
Massachusetts: Mass. Gen. L. Ann., Ch. 175, §§ 177F - 177L.
Michigan: Mich. Comp. L. §§ 500.1401 - 500.1419.
Minnesota: Minn. Stat. Ann. §§ 60H.01 - 60H.09.
Mississippi: Miss. Code Ann. §§ 83-18-101 - 83-18-111.
Missouri: Mo. Rev. Stat. §§ 375.147 - 375.153; Mo. Code Regs. Ann. tit. 20 §§ 200-10.100 - 200-10.600.
Montana: Mont. Code Ann. §§ 33-2-1601 - 33-2-1605.
Nebraska: Neb. Rev. Stat. §§ 44-4901 - 44-4910.; Neb. Admin. Code tit. 210 ch. 59.
Nevada: Nev. Rev. Stat. §§ 683A-090 - 683A-160; Nev. Admin. Code §§ 683A.450 - 683A.560.
New Hampshire: N.H. Rev. Stat. Ann. §§ 402-E:1 - 402-E:7.
New Jersey: N.J. Stat. Ann. §§ 17:22C-1 - 17:22C-10; N.J. Admin. Code §§ 11:17-6.1 - 11:17-6.8.
New Mexico: N.M. Stat. Ann. §§ 59A-12B-1 - 59A-12B-8.
New York: N.Y Comp. Codes R. & Regs. tit. 11, § 33 (Regulation 120).
North Carolina: N.C. Gen. Stat. § 58-34-2.
North Dakota: N.D. Cent. Code §§ 26.1-26.3-01 - 26.1-26.3-07.
Ohio: Ohio Rev. Code Ann. §§ 3905.71 - 3905.79; Ohio Admin. Code § 3901-3-10.
Oklahoma: 36 Okla. Stat. Ann§§ 1471 - 1478.
Oregon: Ore. Rev. Stat. §§ 744.300 - 744.314; Ore. Admin. R. §§ 836-71-117; 836-71-315 - 836-71-320.
Pennsylvania: 40 Pa. Consol. Stat. §§ 322.1 - 322.7.
Rhode Island: R.I. Gen. L. §§ 27-51-1 - 27-51-9.
South Carolina: S.C. Code Ann. §§ 38-44-10 - 38-44-80.
South Dakota: S.D. Codif. L. §§ 58-30-124 - 58-30-139.
Tennessee: Tenn. Code Ann. §§ 56-6-501 - 56-6-510.
Texas: Tex. Ins. Code Ann. §§ 4053.001 - 4053.152; 28 Tex. Admin. Code §§ 19.1201 - 19.1206.
Utah: Utah Code Ann. §§ 31A-23a-601 - 31A-23a-605.
Vermont: 8 Vt. Stat. Ann. §§ 4815 - 4824.
Virginia: Va. Code Ann. §§ 38.2-1358 - 38.2-1364.
Washington: Wash. Rev. Code §§ 48.98.005 - 48.98.901; Wash. Admin. Code R. §§ 284-12-200 - 284-12-280.

Wisconsin: Wis. Admin. Code §§ Ins. 42.01 - 42.07.
Wyoming: Wyo. Stat. §§ 26-46-101 - 26-46-107; Wyo. Ins. Regs. Ch. 29.

[28] State statutes and/or regulations that either are versions of, or similar to, the NAIC Reinsurance Intermediaries Model Act include:
Alabama: Ala. Code §§ 27-5A-1 - 27-5A-13; Ala. Admin. Code ch. 482-1-107.
Alaska: Alaska Stat. §§ 21.27.670 - 21.27.770.
Arizona: Ariz. Rev. Stat. Ann. §§ 20-486 - 20-486.11.
Arkansas: Ark. Code Ann. §§ 23-62-401 - 23-62-413.
California: Cal. Ins. Code §§ 1781.1 - 1781.13.
Colorado: Colo. Rev. Stat. §§ 10-2-901 - 10-2-912; 3 Colo. Code Regs. 1-2-6.
Connecticut: Conn. Gen. Stat. Ann. §§ 38a-760 - 38a-760i.
Delaware: 18 Del. Code Ann. §§ 1601 - 1613.
District of Columbia: D.C. Code Ann. §§ 31-1801 - 31-1810.
Florida: Fla. Stat. Ann. § 626.7492.
Georgia: Ga. Code Ann. §§ 33-49-1 - 33-49-11.
Hawaii: Hawaii Rev. Stat. §§ 431:9B-101 - 431:9B-111; Hawaii Code R. §§ 16-171-314 - 16-171-315.
Idaho: Idaho Code §§ 41-5101 - 41-5111.
Illinois: 215 Ill. Comp. Stat. 100/1 - 100/60.
Indiana: Ind. Code §§ 27-6-9-1 - 27-6-9-26; 760 Ind. Admin. Code 1-51-1 - 1-51-7.
Iowa: Iowa Code §§ 521C.1 - 521C.12.
Kansas: Kan. Stat. Ann. §§ 40-4501 - 40-4513.
Kentucky: Ky. Rev. Stat. Ann. §§ 304.9-700 - 304.9-759.
Louisiana: La. Rev. Stat. Ann. §§ 1210.20 - 1210.31.
Maine: 24-A Me. Rev. Stat. Ann. §§ 741 - 754.
Maryland: Md. Code Ann. Ins. §§ 8-501 - 8-520.
Massachusetts: Mass. Gen. L. Ann., Ch. 175, §§ 177M - 177W.
Michigan: Mich. Comp. L. §§ 500.1151 - 500.1171.
Minnesota: Minn. Stat. Ann. §§ 60A.70 - 60A.756.
Mississippi: Miss. Code Ann. §§ 83-19-201 - 83-19-221.
Missouri: Mo. Rev. Stat. §§ 375.1110 - 375-1140; Mo. Code Regs. Ann. tit. 20 § 700-7.100.
Montana: Mont. Code Ann. §§ 33-2-1701 - 33-2-1709.
Nebraska: Neb. Rev. Stat. §§ 44-5601 - 44-5613.
Nevada: Nev. Rev. Stat. §§ 681A.260 - 681A.580; Nev. Admin. Code §§ 681A.050 - 681A.110.
New Hampshire: N.H. Rev. Stat. Ann. §§ 402-F:1 - 402-F:11.
New Jersey: N.J. Stat. Ann. §§ 17:22E-1 - 17:22E-21; N.J. Admin. Code §§ 11:17-7.1 -11:17-7.7.
New Mexico: N.M. Stat. Ann. §§ 59A-12D-1 - 59A-12D-12.
New York: N.Y. Ins. L. §§ 2101 - 2130; N.Y. Comp. Codes R. & Regs. tit. 11, §§ 32.0 - 32.4 (Regulation 98).
North Carolina: N.C. Gen. Stat. §§ 58-9-2 - 58-9-26.
North Dakota: N.D. Cent. Code §§ 26.1-31.1-01 - 26.1-31.1-12.
Ohio: Ohio Admin. Code § 3901-3-09.
Oklahoma: 36 Okla. Stat. §§ 5101 - 5113.
Oregon: Ore. Rev. Stat. §§ 744.800 - 744.820.
Pennsylvania: 40 Pa. Consol. Stat. §§ 321.1 - 321.10.
Rhode Island: R.I. Gen. L. §§ 27-52-1 - 27-52-13.
South Carolina: S.C. Code Ann. §§ 38-46-10 - 38-46-120.
South Dakota: S.D. Codif. L. §§ 58-14-24 - 58-14-42.
Tennessee: Tenn. Code Ann. §§ 56-6-801 - 56-6-812.
Texas: Tex. Ins. Code Ann. §§ 4152.001 - 4152.302.

The two model acts address the use of MGAs in four main ways. First, both model acts require licensing of MGAs.[29] In general, licensing is required where either the principal or (under the Reinsurance Intermediary Model Act) the agent is located in the state. A licensing requirement gives state insurance departments the ability to prevent persons from doing business as MGAs if they do not meet reasonable standards.

Second, the model acts prescribe certain provisions that must be included in the agreement between an MGA and its principal.[30] Required provisions address such subjects as the principal's right to terminate the contract, the MGA's duty to provide detailed accounting to the principal, the MGA's duty to hold funds in a fiduciary capacity, and the MGA's duty to adhere to underwriting guidelines and to record-keeping requirements.

Third, the model acts prohibit certain acts by MGAs.[31] For example, MGAs subject to the statutes may not cede certain reinsurance on behalf of their principals, may not pay claims that exceed certain amounts without the principal's approval, and may not appoint sub-MGAs.

Finally, the model acts require companies that use MGAs to comply with certain requirements.[32] Among other things, companies must: (1) obtain the MGA's financial statements each year; and (2) obtain an annual actuarial opinion attesting to the accuracy of any loss reserves established by the MGA.

These requirements are essentially procedural. The extent to which they have eliminated problems caused by MGAs is unclear.

Utah: Utah Code Ann. §§ 31A-23a-801 - 31A-23a-809.

Vermont: 8 Vt. Stat. Ann. §§ 4815 - 4824.

Virginia: Va. Code Ann. §§ 38.2-1347 - 38.2-1357.

Washington: Wash. Rev. Code §§ 48.94.005 - 48.94.901; Wash. Admin. Code 284-13-700 - 284-13-740.

West Virginia: W.Va. Code §§ 33-38-1 - 33-38-14.

Wisconsin: Wis. Admin. Code §§ Ins. 47.01 - 47.10.

Wyoming: Wyo. Stat. §§ 26.47-101 - 26-47-113.

[29] See Managing General Agents Model Act at § 3; Reinsurance Intermediary Model Act at § 3(B)-(F).

[30] See Managing General Agents Model Act at § 4; Reinsurance Intermediaries Model Act at § 7.

[31] Section 8 of the Reinsurance Intermediary Model Act prohibits certain actions directly. Section 4(M) of the Managing General Agents Model Act requires the agreement between an MGA and its principal to prohibit certain acts by the MGA.

[32] See Managing General Agents Model Act at § 5; Reinsurance Intermediaries Model Act at § 9.