

# Guidance

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## Proposed Guidance: Life Insurance Agent & MGA Licensing Suitability

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## Purpose

This Guidance outlines the Financial Services Regulatory Authority’s (“FSRA’s”)<sup>[1]</sup> interpretation of licensing suitability requirements under the *Insurance Act* (“the Act”), its regulations, and FSRA’s approach to assessing an applicant’s or agent’s, including a Managing General Agency’s (“MGA’s”),<sup>[2]</sup> suitability to hold a life insurance agent licence.

The Guidance is a reference for applicants, prospective applicants, agents, including MGAs, to understand how past and current conduct may affect their suitability to hold a life insurance agent licence.

For insurers and MGAs ([defined below](#)), it serves as a guide for screening applicants and agents, including MGAs, for suitability. It also serves to inform insurers of what FSRA considers to be a reasonable system for the oversight of agent compliance.

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<sup>1</sup> Both the Chief Executive Officer (“CEO”) of FSRA and FSRA may exercise regulatory authority under the *Act*. However, for the purposes of this Guidance, reference will only be made to FSRA as the CEO exercises such authority in his capacity as FSRA’s chief executive (and not in his personal capacity) and may delegate authority to FSRA employees, as permitted by s. 10(2.3) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the “**FSRA Act**”).

<sup>2</sup> In this Guidance, Managing General Agencies (“MGAs”) are licensed agents, whether licensed as a corporate agency or partnership agent, that perform activities for insurers as described herein. MGAs are subject to this Guidance, even if they operate under other labels, such as “National Accounts.”



## Scope

This Guidance applies to:

- insurance agencies
- insurance agents
- MGAs
- insurance companies

This Guidance affects the following stakeholders:

- consumers
- regulated entities

The target audience for this Guidance is:

- insurance agencies
- insurance agents
- MGAs
- insurance companies

In this Guidance,

- “agent” and “life agent” refer to a life insurance agent, and may include agencies and MGAs,
- “insurer” refers to a life insurance company,
  - all as such terms are defined in the *Act*.

## Interpretation & Approach

In this Guidance, the term MGA refers to a corporate or partnership life insurance agency that deals with the public and engages in, or is required by contract to perform, any of the following activities on behalf of or in support of an insurer:

- Recruiting agents or proposed agents to solicit insurance or to submit applications for insurance.
- Screening agents or proposed agents to confirm they are suitable to act as agents of the insurer with respect to insurance.
- Soliciting or submitting applications for insurance on behalf of agents who are associated with or under contract to the MGA, or affiliated with or under contract with the insurer on whose behalf the MGA is soliciting or submitting applications from life agents for insurance.
- Entering into written agreements with agents to sell or solicit L&H insurance offered by the insurer(s).
- Training agents who are affiliated with or under contract to the MGA or the insurer on whose behalf the MGA is providing training, or ensuring such agents are trained, with respect to insurance.
- Supervising or monitoring the activities of agents who sell or solicit an insurer's L&H insurance.
- Reviewing applications for insurance and/or having delegated underwriting authority.
- Administering insurance contracts or customer relationships, either directly or indirectly through sub-agents, on behalf of an insurer.
- Any functions historically performed by insurers when they had their own direct agent team as a dedicated/exclusive sales force.
- Other conduct, obligations, duties or activities which results in or could reasonably be expected to result in the activities listed immediately above.

## Rationale and background

### Licensing suitability under the *Insurance Act*

In Ontario, “a person who, for compensation, commission of any other thing of value, solicits [life] insurance on behalf of an insurer or transmits, for a person other than himself, herself or itself, an application for, or a policy of [life] insurance to or from such insurer, or offers or assumes to act in the negotiation of such [life] insurance or in negotiating its continuance or renewal with such insurer,” is required to be licensed as an insurance agent in Ontario authorized to sell life and accident and sickness insurance (“L&H”).<sup>[3]</sup> Licensed agents, including MGAs, authorized to distribute or facilitate the distribution of L&H insurance, must meet requirements established under the *Act*, its regulations, and FSRA rules, including the requirement that an agent be suitable to hold a licence.<sup>[4]</sup>

Suitability is a fundamental control to agent licensing. Screening applicants and licensees for suitability helps protect consumers. It ensures that agents’ integrity, independence, and competence are considered in addition to educational and technical qualifications.

Suitability is an ongoing requirement under the *Act*. FSRA assesses suitability when a new application for licensing is submitted, when a licence renewal or reinstatement is sought, and at any time FSRA deems appropriate.<sup>[5]</sup>

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<sup>3</sup> *Insurance Act*, RSO 1990, c I 8, s. 392.2(6), s. 392.3(1).

<sup>4</sup> *Insurance Act*, RSO 1990, c I 8, s. 392.4(1); O. Reg. 347/04, s. 4(1)(i).

<sup>5</sup> S. 7(1) of O. Reg. 347/04 provides that an application for the renewal of a licence must be made in the same manner as for a licence in the first instance. S. 8(a)-(d) of O. Reg. 347/04 provides that FSRA may suspend or revoke a licence on any grounds on which an application for a licence may be refused, if after due investigation and hearing, it appears to FSRA that the licensee: (a) has violated any provision of the licence in the licensee’s operations as an agent, (b) has made a material misstatement or omission in the application for the licence; (c) has been guilty of a fraudulent act or practice; or (d) has demonstrated incompetence or untrustworthiness to transact the insurance agency business for which the licence has been granted.

## Interpretation & Approach

In assessing suitability, FSRA reviews the past and current professional, business and financial conduct and other activities of applicants and agents, including MGAs.<sup>[6]</sup> This review helps FSRA assess the risk that a licensed agent will not comply with requirements, commit prohibited acts, or act in ways that lead to unfair outcomes for consumers.

The “Interpretation” section of this Guidance outlines FSRA’s interpretation of:

- suitability requirements under the *Act*
- circumstances that may lead to suitability concerns
- key factors FSRA considers in assessing the suitability of an applicant or agent, including an MGA

The “Approach” section of this Guidance outlines FSRA’s supervisory process for assessing suitability.

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<sup>6</sup> Further details are provided in the Interpretation section and in [Appendix A](#) of this guidance.

## Interpretation

### **FSRA has broad authority to determine matters that are relevant to whether an agent, including an MGA, is suitable to be licensed under s. 392.4(1) of the Act.**

Under s. 392.4(1) of the *Act*, FSRA issues a licence to applicants who satisfy the requirements for licensing, including whether the applicant is suitable to be licensed. If FSRA believes, on reasonable grounds, that an applicant or agent is not suitable to be licensed, FSRA may refuse, revoke or suspend a licence.<sup>[7]</sup>

392.4(1): “The Chief Executive Officer shall issue a licence to act as an insurance agent in Ontario to an applicant who applies in accordance with section 392.3 and who satisfies the prescribed requirements for the licence **unless the Chief Executive Officer believes, on reasonable grounds, that the applicant is not suitable to be licensed having regard to such circumstances as may be prescribed and such other matters as the Chief Executive Officer considers appropriate.**” [emphasis added]

Ontario Regulation (O. Reg.) 347/04 under the *Act* (the “**Agents Regulation**”) sets out qualifications for licensing and circumstances that FSRA considers when assessing suitability. These include, amongst other things, whether the applicant or licensee:

- Is engaged in any business or occupation that would jeopardize the applicant or agent’s integrity, independence, or competence as an agent.<sup>[8]</sup>
- “Has demonstrated incompetence or untrustworthiness” to transact business as an insurance agent.<sup>[9]</sup>

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<sup>7</sup> FSRA may offer to issue a licence with conditions or impose conditions on an existing licence where suitability concerns can be mitigated.

<sup>8</sup> O. Reg. 347/04, 4(1)(h). FSRA interprets the word “engaged” in subsections 4(1)(c) and 4(1)(h) of the Agents Regulation to include insurance and non-insurance business activities of an agent, including an MGA, and its related or affiliated businesses. Further, the term “business” includes individual discrete business activities and the business function as a whole.

<sup>9</sup> O. Reg. 347/04, s. 8(d).

- is of good character and reputation<sup>[10]</sup>
- has made a material misstatement or omission in the application for a licence<sup>[11]</sup>
- has been guilty of a fraudulent act or practice<sup>[12,13]</sup>

Further, s. 392.4(1) of the *Act* allows FSRA to rely on “such other matters as the Chief Executive Officer considers appropriate”, providing FSRA with broad discretion, informed by FSRA’s objects in the *FSRA Act*, in assessing licensing suitability for life agents. Such broad discretion in assessing licensing suitability is necessary for FSRA to effectively satisfy its statutory objects and to quickly adapt to change and innovation in the insurance sector, while protecting consumers. Suitability is an ongoing requirement that FSRA reviews when a new application for licensing is submitted, when renewal is sought, and at any time FSRA deems appropriate.

## **FSRA’s assessment of suitability is also guided by its statutory mandate**

FSRA’s assessment of suitability is informed by its statutory mandate, including to:

- protect the rights and interests of consumers
- contribute to public confidence in the insurance sector
- promote high standards of business conduct
- deter deceptive or fraudulent conduct, practices and activities
- co-operate and collaborate with other regulators<sup>[14]</sup>

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<sup>10</sup> O. Reg. 347/04, s. 4(1)(a).

<sup>11</sup> O. Reg. 347/04, s. 8(b).

<sup>12</sup> O. Reg. 347/04, s. 8(c).

<sup>13</sup> Additional provisions in the Agents Regulation are considered in FSRA’s assessment of suitability.

<sup>14</sup> FSRA Act, s. 3(1) and s. 3(2).



FSRA prioritizes protecting the public and enhancing public confidence in the sector when determining whether an applicant should be granted a licence and whether an agent's, including an MGA's, licence should be revoked.

## Misconduct impacts life agent and applicant suitability

In assessing an applicant's or agent's/MGA's, suitability, FSRA will consider whether the applicant's or agent's, including an MGA's, conduct or activities, past or present, may make them unsuitable to be licensed.

Conduct or activities that create a risk that an agent, including an MGA, may fail to comply with the law or to treat customers fairly, or act contrary to legal and regulatory obligations, may demonstrate that an applicant or agent, including an MGA, is not suitable for licensing.

The following are examples of conduct and circumstances that may make an applicant or agent, including an MGA, unsuitable. They include, without limitation:

- Criminal charges or convictions or guilty pleas (ongoing, pending, or past).
- Breaches of laws, regulations or rules administered by FSRA or other regulatory or licensing bodies (particularly if there are ongoing, pending or past regulatory enforcement actions, sanctions, investigations or proceedings).<sup>[15, 16]</sup>
- Bankruptcy, consumer proposals or other insolvency matters (ongoing or previously discharged).

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<sup>15</sup> Including fines and other monetary penalties.

<sup>16</sup> Including federal, provincial, municipal or other regulatory bodies.

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- Acting in a manner inconsistent with FSRA Guidance, including any harmonized multi-jurisdictional Guidance that FSRA has adopted through its Guidance. For example: FSRA's [Fair Treatment of Customers in Insurance](#) Guidance, where any requirements or expectations align with the Act, regulations or FSRA Rules.<sup>[17]</sup>
- Acting in a manner inconsistent with harmonized multi-jurisdictional Guidance, for example CISRO Principles of Conduct for Insurance Intermediaries Guidance.<sup>[18]</sup>
- False statements, material omissions (including nondisclosure on an application), or other dishonesty to FSRA or others.
- Failing to diligently perform any duty or activity that an agent, including an MGA, undertakes or agrees to perform on behalf of an insurer or another agent, or in support of an insurer's obligations under the Act, under FSRA or multi-jurisdictional Guidance or under regulations or rules made under the Act, including obligations related to the recruitment, training or supervision of agents, treating customers fairly (including disclosures, suitability and after-sales servicing) and practices related to the underwriting, negotiation, contracting for and administration of insurance contracts.
- Any other behaviour relevant for the purposes of assessing suitability that engages the factors set out in the Agents Regulation.

[Appendix A](#) provides more detail about the type of conduct that may demonstrate that an applicant or agent, including an MGA, is not suitable for licensing.

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<sup>17</sup> The cited FSRA Guidance document adopts the Canadian Council of Insurance Regulators (CCIR) / Canadian Insurance Services Regulatory Organizations (CISRO) [Guidance: Conduct of Insurance Business and Fair Treatment of Customers](#).

<sup>18</sup> CISRO's [Principles of Conduct for Insurance Intermediaries](#).

## Key factors in FSRA's framework for assessing the impact of conduct and activities on suitability

When FSRA becomes aware of conduct and circumstances that are relevant to suitability, FSRA evaluates the impact of the conduct on suitability, according to its interpretation outlined in this Guidance, having regard to the following factors:

- Extent to which the conduct calls into question the integrity, honesty, or law-abiding nature of an applicant or agent, including an MGA.
- Closeness of the conduct to the activities the person would be engaged in as an insurance agent, including an MGA – for example, if a person is to be responsible for training or supervising others, it will be held to a higher standard than it would be if its conduct as a licensee would be subject to the active training and supervision by an insurer or by a licensee with exemplary conduct.
- Whether there has been a consistent and prolonged pattern of reformed or redeeming behaviour by an applicant or agent, including an MGA, since the conduct occurred.
- Inadvertent nature of the conduct.
- Length of time since conduct occurred.
- Prolonged or repetitive nature of the conduct.
- Any unusual and severe pressure the individual was under at the time of the misconduct that would explain the misconduct but is unlikely to reoccur.
- Whether past conduct resulted in a regulatory or criminal proceeding or sanction:
  - the seriousness with which the disciplinary body treated the conduct, as reflected in the severity of the sanction it imposed
  - the fairness of the process followed in the disciplinary proceeding

FSRA may consider additional factors, and all factors are weighed based on available evidence to ensure that the decision is based on reasonable grounds. A combination of circumstances may provide reasonable grounds to support a determination that an applicant is unsuitable – for example, concerns regarding an individual’s disciplinary record with another regulator may be compounded by a failure to provide full disclosure to FSRA at the timing of licensing.

[Appendix B](#) provides further details of FSRA’s considerations in applying the key factors.

Conduct that makes an applicant or agent, including an MGA, unsuitable may result in revocation, suspension, or refusal of a licence, or the imposition of licensing conditions. It may also amount to contraventions of the *Act*, its regulations and/or FSRA rules. For example, conduct relevant to suitability may also constitute an unfair or deceptive act or practice under FSRA’s Unfair or Deceptive Acts or Practices (UDAP) Rule. This could result in an administrative monetary penalty, a provincial offence charge, or another sanction, in addition to a licensing action.<sup>[19]</sup>

## False statements and material omissions

The obligation to complete a licensing application truthfully is a fundamental part of the licensing process. The provision of a material misstatement or omission in the application is a basis for FSRA to determine that an applicant or agent, including an MGA, is not suitable.<sup>[20]</sup>

The questions FSRA asks on insurance agent licensing applications are relevant to suitability, and the answers to those questions play an important role in FSRA’s decision regarding whether to issue a licence. Accordingly, the onus is on applicants to ensure their application fairly and transparently disclose all matters which may be of interest to FSRA in considering a licensing application (in particular, any matters covered by this Guidance) and applicants should take great care in providing information to FSRA and clarify any questions they do not understand.

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<sup>19</sup> FSRA publishes [Enforcement actions](#) as outlined in FSRA’s Guidance: [Transparent Communication of FSRA Enforcement Action](#).

<sup>20</sup> O. Reg. 347/04, s. 8(b).

Where there is false or misleading information or a material omission on a licensing application or other information provided to FSRA, FSRA will, in assessing the impact on suitability, consider factors such as:

- the nature of the information/omission
- whether it was intentional
- the explanation provided
- the circumstances in which the statement was made

FSRA generally has reasonable grounds to believe an applicant is not suitable if the applicant made a material misstatement or omission in the application for the licence or other materials provided to FSRA.<sup>[21]</sup> FSRA may conclude that any misrepresentations or omissions in the licensing application were intentional or were made with reckless disregard for the truth. FSRA considers all of the information requested in its licensing application to be material.

## Suitability – Additional considerations for corporate and partnership agents

Under the *Act*, including the Agents Regulation, suitability requirements apply whether the applicant or agent is an individual, a corporation, or a partnership and where an agent is performing activities which include those within the definition of an MGA under this Guidance, the following additional suitability requirements apply.

- Past conduct and current activities of the corporation or partnership are relevant to suitability.<sup>[22]</sup>
- Corporations and partnerships act through and/or at the direction of individuals. Accordingly, the suitability of these individuals is relevant to the suitability of a licensed

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<sup>21</sup> O. Reg. 347/04, s. 8(b).

<sup>22</sup> The factors related to individual past conduct as outlined above and in Appendix A apply equally to an entity (e.g., corporation or partnership).

corporate or partnership agent, and the conduct or activities of persons or entities associated with or having an interest in the corporation or partnership may be considered in assessing an applicant or agent's suitability. This may include, but is not limited to, directors, officers, partners or employees of the applicant/agent, or the agent's ownership, where the agent is a company.

- An applicant or agent's business practices and relationships may also be relevant to its suitability. Its recruitment models, referral relationships, training practices, sales strategies and tactics, consumer service and contract negotiation, underwriting and administration practices, and those in other affiliated businesses with influence over the applicant/agent, could indicate suitability concerns (e.g. integrity, independence or competence as an agent), particularly if any potential conflicts of interest are not properly addressed.

## Suitability – Additional considerations for Managing General Agencies (“MGAs”)

FSRA may refuse an application, or suspend or revoke an agent's licence, if the applicant or agent has “demonstrated incompetence or untrustworthiness to transact the insurance agency business for which the licence has been granted.”<sup>[23]</sup> Due to the enhanced risk of consumer harm that results if an MGA fails to properly carry out the activities listed above, for an applicant or agent whose business is that of an MGA to be considered suitable, that agent must demonstrate, with respect to the obligations it undertakes on behalf of an insurer and the duties and activities it will perform, that it has the expertise and resources to operate as an MGA in a trustworthy and competent manner, and that it conducts all such activities in diligent, trustworthy and competent manner.

FSRA expects MGAs to know and understand their regulatory obligations and take reasonable steps to ensure that they and any agents which they recruit, train, supervise or support, either directly or indirectly through sub-agents, (in this Guidance, referred to as an ‘individual agent’) are suitable for licensing.

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<sup>23</sup> O. Reg. 347/04, s. 8(d).

All individual agent suitability considerations described in this Guidance equally apply to MGAs, including those outlined in the corporate and partnership agents' section.

In addition to those factors discussed above in determining the suitability of an MGA to hold a license, FSRA will also consider the following when determining the suitability of an applicant or agent to be an MGA:<sup>[24]</sup>

### **Adequacy of the MGA's control and compliance functions**<sup>[25]</sup>

- Whether the MGA has an adequate compliance function to ensure it meets its regulatory obligations under the *Act*, its regulations, FSRA rules, and FSRA and multi-jurisdictional Guidance, as well as any obligations that they undertake on behalf of insurers or agree to perform on behalf of or in support of insurers.
- Whether the MGA is continually reassessing its compliance function for effectiveness as the MGA's business and operations grow, change, or diversify.
- Whether the MGAs' control and compliance function is reasonably designed to ensure that:
  - Its directors, officers, partners, employees and individual agents comply with the *Act*, its regulations, FSRA rules, and regulatory Guidance where any requirements and expectations thereunder align with the *Act*, regulations or FSRA Rules.
  - The insurance products they and/or their individual agents distribute are sold in compliance with the *Act*, regulations, and FSRA rules and Guidance, given the unique elements of their business.

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<sup>24</sup> All life agent suitability considerations described in this guidance apply to MGAs, including those outlined in the [corporate and partnership agents](#) section.

<sup>25</sup> For the purpose of this Guidance, a control or compliance function includes policies, procedures, practices, controls and resources as described in this section.

- Whether the MGAs' control and compliance functions are designed with regard to the size, complexity, operations, and risk profile associated with the MGA's business.<sup>[26]</sup>
  - The number of employees connected to the MGA does not determine the scope, sophistication, or depth expected of the control and compliance functions. Rather, this is determined by the overall nature of the operations, and risks associated with the MGA's business and operations. For example, an MGA that focuses on recruitment of new individual life agents and candidates for licensing may require additional oversight and safeguards.

## Improper practices impact the suitability of MGAs

In assessing an MGA's suitability, FSRA may also consider whether an MGA's practices, either past or present, indicate that it is unsuitable to be licensed.

Practices that can or do contravene the *Act*, regulations, rules, or applicable FSRA or multi-jurisdictional Guidance, or are likely to lead individual agents associated with the MGA to do so, demonstrate that an MGA is not suitable for licensing.

Examples of such practices include, without limitation:

- Using deceptive promotional material or tactics, or failing to take appropriate action where life agents do so.
- Disseminating deceptive or misleading information to life agents or others.
- Maintaining insufficient controls against unlicensed sales of insurance.
- Facilitating or acquiescing to unethical activity in the licensing, sales or contract administration processes.

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<sup>26</sup> The absence of effective control and compliance functions may form a basis for FSRA to determine, in its discretion and based on reasonable grounds, that an MGA is not suitable to be licensed under the *Act*, including where such absence demonstrates incompetence under s. 8(d) of the Agents Regulation.



- Offering, acquiescing to, or facilitating sales incentives that encourage sales that are not in accordance with regulatory requirements or that create conflicts of interest that are not adequately addressed through disclosure and other practices to mitigate and address such conflict (such as ensuring appropriate independent advice).

## Insurer supervision of MGAs

The insurer obligations outlined in this Guidance are independent of the MGAs' duties described in this section.

Insurers and MGAs may choose to work together to avoid duplication of effort to the extent possible but doing so does not reduce or change regulatory obligations. In particular, insurers have an obligation to maintain a system to ensure that agents acting on their behalf are compliant and, regardless of whether oversight functions of an insurer (e.g. agent training, supervision and monitoring) have been delegated by an insurer to an MGA, an insurer retains its responsibility.<sup>[27]</sup>

Insurers and MGAs must each take reasonable steps to ensure their individual agents comply with the *Act*, its regulations, FSRA rules, and FSRA and multi-jurisdictional Guidance. Where an insurer relies on an MGA to perform relevant functions, or an MGA relies on an insurer or sub-MGA to perform relevant functions, the one that relies on the other must take reasonable steps to ensure the other is legally responsible for performance, that the other has the capability (e.g. experience, expertise, processes, controls, documentation) to perform such functions and that the other's relevant activities are generally completed appropriately. While each remains ultimately responsible for their obligations under the *Act*, its regulations, FSRA rules, and regulatory Guidance, reasonable reliance by a regulated entity on the credible functions and activities of another regulated entity which was contractually obligated to perform such function or activity on behalf of the first regulated entity, will be considered as a mitigant when determining the appropriate sanctions against the first regulated entity for any non-compliance.

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<sup>27</sup> See section 12 of O. Reg. 347/04 and FSRA Guidance No. PC0043INT on Life Agent Reporting Requirements and Related Insurer Obligations.

## Insurers – Agent suitability responsibilities

This part of the Guidance provides FSRA’s interpretation of insurers’ responsibilities vis-à-vis applicants and agents, including MGAs. FSRA assesses whether applicants and agents are suitable for licensing in accordance with the *Act*, its regulations, and FSRA rules and Guidance and takes appropriate action where they are not suitable. However, insurers have independent legal obligations to screen and monitor agents, including MGAs, for suitability.<sup>[28]</sup> These obligations include:

- Screening applicants to ensure they are suitable to act as agents.
- When sponsoring a new agent, taking steps to screen the applicant and confirming in a statement they are satisfied that the applicant is suitable.<sup>[29]</sup>
- Having a system in place that is reasonably designed to monitor the suitability and compliance of agents who act on their behalf.<sup>[30]</sup>
- Reporting to FSRA if the insurer has reasonable grounds to believe that an agent who acts on its behalf is not suitable for licensing.<sup>[31]</sup>

As such, insurers are required to screen agents, including MGAs, who act on their behalf and to monitor them on an ongoing basis. Insurers are accountable for these obligations but have flexibility in deciding how they comply with the outcomes-focused requirements outlined in the Interpretation section of this Guidance. To determine whether the insurers are adhering to their obligations, FSRA will assess them against the regulatory outcomes (e.g. the need to properly screen, train and oversee agents, including MGAs, to help ensure the fair treatment of consumers) rather than prescribing a particular path to achieve compliance (e.g. an insurer may directly screen, train and oversee agents or may, provided it has a reasonable system to ensure its reliance is reasonable, rely on MGAs or others to assist with one or more of those obligations).

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<sup>28</sup> O. Reg. 347/04, s. 12(1)-(2). The screening conducted by insurers is separate and distinct from FSRA screening.

<sup>29</sup> O. Reg. 347/04, s. 3(1)(b)

<sup>30</sup> Provisions governing licensing of corporate and partnership life insurance agents are found in the *Act* and O. Reg. 347/04, which include specific criteria and applicable exceptions.

<sup>31</sup> O. Reg. 347/04, s. 12(3).

## Delegation and sub-contracting

As discussed above, insurer obligations under the Act, regulations, rules and Guidance with respect to the use of agents, including MGAs, and the fair treatment of consumers rest with the insurer, regardless of any sub-contracting or delegation or reliance on third parties. An insurer that authorizes an agent to conduct activities on behalf of the insurer is required to have appropriate measures in place to ensure that the agent complies with the Act, its regulations, FSRA rules and Guidance, and the agent's licence. This applies equally to an individual agent, insurance agency or an MGA that engages in activities on behalf of insurers as outlined earlier in this [Interpretation](#) section.

## FSRA Guidance

This Guidance reflects FSRA's view of life agent suitability and related obligations. FSRA considers the circumstances outlined in the Interpretation section of this Guidance (including [Appendices A](#) and [B](#)) to be relevant to whether an individual (or entity) is suitable to be licensed as an agent under s. 392.4(1) of the Act. Insurers should therefore refer to this Guidance in assessing how they screen each agent for suitability under the Act and its regulations and supervise such agents to ensure ongoing suitability.

In determining suitability, FSRA also considers agents', including MGAs', compliance with other applicable FSRA Guidance relevant to suitability. This means the insurer's compliance program should be reasonably designed to ensure its agents, including MGAs, act consistently with such FSRA Guidance, including FSRA Guidance adopting multi-jurisdictional Guidance (such as FSRA's [Fair Treatment of Customers in Insurance](#) Guidance).<sup>[32]</sup>

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<sup>32</sup> The cited FSRA Guidance document adopts the CCIR / CISRO [Guidance: Conduct of Insurance Business and Fair Treatment of Customers](#).

## Life agents may be held to be in a principal - Agent relationship

While assessing the suitability of a person to be licensed under the Act, agents (including MGAs), and insurers should be cognizant that, by operation of law and considering the degree of delegation by the MGA or the insurer, the insurer or the MGA sponsoring or overseeing such person can, in certain circumstances, be held responsible as principals for the conduct of such persons who are acting as their agents within the scope of their express, implied or apparent authority.

A principal-agent relationship is determined based on the totality of circumstances. In addition to assessing a person's suitability to be a licensed agent based upon its suitability to perform the functions of a licensed agent, where a person is an agent in a principal - agent relationship with a principal who is an insurer or MGA regulated under the Act, the suitability of such person to be licensed as an agent under the Act may also be assessed by FSRA based upon the activities and duties such person agrees to perform, or actually performs, within the scope of such principal - agent relationship. It should not simply be assumed that such a principal - agent relationship does not exist by relying on factors such as:

- An agreement expressly stating that there is no agency relationship between the insurer and the MGA or the MGA and the individual agent.
- An individual agent not being given authority to bind an insurer.
- An individual agent acting on behalf of multiple principals simultaneously.

For the purpose of assessing suitability FSRA may consider that, in certain situations where the insurer or MGA have actual or constructive knowledge of their agents' practices that give rise to consumer harm, such agents may be regarded as being in a principal - agent relationship with the insurer(s) or MGA(s) on whose behalf they conduct business, or whose products they sell. Third parties such as FSRA and consumers may be entitled to rely on the law of agency (for example, under the doctrine of apparent authority) when an insurer and licensed agent deliver products and services collaboratively.

## An Insurer or MGA may be held responsible for the actions of an agent by virtue of FSRA’s UDAP Rule

Where there is a significant connection between the creation or enhancement of risk and the conduct authorized by the insurer or MGA, FSRA may, based on the specific factual circumstances, consider the insurer or the MGA, as is applicable, responsible for consumer harm which has been incurred or is likely to occur. This is consistent with FSRA’s Unfair or Deceptive Acts or Practices Rule (“UDAP Rule”), which provides that an insurer or MGA can be held responsible for conduct by an agent, including inaction or omission, that could be reasonably expected to result in outcomes, events or circumstances set out in the UDAP Rule.<sup>[33]</sup>

An insurer that authorizes one or more agents, including an MGA, to act on behalf of the insurer, is required to establish and maintain a system that is reasonably designed to ensure that each agent (including an MGA), complies with the Act, regulations, FSRA rules and the agent’s license<sup>[34]</sup> and that system must screen each agent for suitability to carry on business as an agent.<sup>[35]</sup> Where an insurer has reasonable grounds to believe that an agent, including an MGA, who acts on its behalf, is not suitable to carry on business as an agent, the insurer must report that to FSRA.<sup>[36]</sup> FSRA interprets these requirements collectively to mean that where an insurer reasonably knows or should know that an agent, including an MGA, is not suitable to carry on business as an agent and fails to take action, the insurer will be responsible for the non-compliance of the agent, particularly if that non-compliance results in, or is likely to cause, consumer harm.<sup>[37]</sup>

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<sup>33</sup> *Unfair or Deceptive Acts or Practices Rule*, s. 2(1).

<sup>34</sup> O. Reg. 347/04, s. 12(1).

<sup>35</sup> O. Reg. 347/04, s. 12(2).

<sup>36</sup> O. Reg. 347/04, s. 12(3).

<sup>37</sup> This is because that where the non-compliance with the Act, regulations, FSRA rules and the agent’s license is reasonably foreseeable to the insurer, it is FSRA’s view that the insurer, as the principal on whose behalf the agent is acting, should be responsible for the risk to consumers based on the requirements of O. Reg. 347/04.

# Approach

## Principles

FSRA’s approach to assessing licensing suitability is:

- **Consumer-centric:** FSRA’s approach to regulating individuals and entities focuses on the impact on consumers.
- **Risk-based:** FSRA directs its resources to the regulated individuals and entities that pose the highest risk of harm. FSRA’s risk assessment considers the size, complexity, and nature of the regulated entity, and where non-compliance or the inability to achieve the desired outcomes will result in the most harm to consumers or pose the greatest threat to FSRA’s ability to execute against its statutory objects.

## Processes and practices

For new applicants, and agents applying to renew their licence (collectively referred to in this section of the Guidance as “applicants”), FSRA’s approach to assessing licensing suitability includes, but is not limited to, the steps outlined in Table 1 below.

**Table 1: Process steps**

Process step	Description
1 <b>Sponsoring insurer screening and certification</b>	An initial application for an agent’s, including an MGA’s, licence must be accompanied by a statement by the sponsoring insurer certifying that it has taken steps to screen the applicant including the degree of delegation, and is satisfied that the applicant is suitable to carry on business as an agent. <sup>[38]</sup>

<sup>38</sup> O. Reg. 347/04, s. 3(1)(b). This requirement does not apply to an application by a corporation or partnership for a life insurance licence.

Process step	Description
<p><b>2 Application and eligibility assessment</b></p>	<p>The initial licensing or renewal application gathers information to enable FSRA to assess whether the applicant meets licensing eligibility criteria. FSRA may request additional information or may seek clarity regarding the information that is provided, where applicable.<sup>[39]</sup></p>
<p><b>3 Suitability assessment</b></p>	<p>For applicants who otherwise meet eligibility requirements, FSRA assesses suitability. Considerations include:</p> <ul style="list-style-type: none"> <li>• Relevant circumstances, including those described in the Interpretation section above.</li> <li>• Available data, including information supplied by applicants.</li> <li>• The agent’s compliance record while licensed (for renewal applications or other suitability reviews of licensed agents).</li> <li>• The nature and degree of delegation to the insurance agency or MGA.</li> <li>• In-depth assessments, as required, which typically involve engagement with the applicant, the insurer, and other relevant parties.</li> </ul>
<p><b>4 Disclosure and attestation</b></p>	<p>When an applicant discloses information that affects suitability, such information should fully and accurately detail the surrounding circumstances, including when the conduct occurred, what led to the conduct, and the corrective steps undertaken. When FSRA identifies undisclosed misconduct, FSRA may ask the same questions about the circumstances and require an explanation of the nondisclosure. These steps delay the application process.</p>

<sup>39</sup> *Insurance Act*, RSO 1990, c I 8, s. 392.3(1).

Process step	Description
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Nondisclosure, in and of itself, may negatively impact suitability and may result in a licence refusal, revocation and/or other sanction, including an administrative monetary penalty, even if the undisclosed information does not justify such sanction.

The questions on the licensing application are intended to facilitate FSRA’s ability to obtain full disclosure and to help applicants avoid omissions, partial disclosures, and/or false statements. Applicants:

- Review, confirm, and attest to the accuracy and completeness of the responses provided.
- Are informed that false statements are chargeable offences.
- Will be asked to acknowledge that any false or misleading responses could result in the application being refused and/or be the object of prosecution.
- Will be asked to provide full and complete information to FSRA, regardless of whether the information has previously been provided to an agent’s sponsoring or contracted insurer.

**5 Actions resulting from suitability assessments**

If, as a result of the suitability assessment at the initial or renewal licence application stage, FSRA believes on reasonable grounds that the applicant is not suitable to hold a licence, FSRA may take action to refuse or impose conditions on the licence.

FSRA may, in its discretion, advise the applicant of the decision and offer the opportunity to voluntarily withdraw the application.

In some cases, FSRA may also seek to impose monetary penalties or take other enforcement action. This can be instead of or in addition to licensing action.



Process step	Description
	If FSRA issues a notice of proposal to refuse or impose conditions on a licence, the applicant can request a hearing by the Financial Services Tribunal. FSRA will advise the applicant of the process for requesting a hearing. <sup>[40]</sup>
<b>6 Suitability assessment during licensing term</b>	A licensee's suitability may be reassessed if FSRA becomes aware of potential misconduct (including false or misleading statements/information or material omission in a licensing application or other materials to FSRA). If FSRA believes on reasonable grounds that the individual is no longer suitable to hold the licence, FSRA may take enforcement action to revoke, suspend, or impose conditions on the agent's licence. Where applicable, FSRA may also seek to impose monetary penalties or take other enforcement action.

## Effective date and future review

This Guidance became effective on [TBC] and will be reviewed no later than [TBC].

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<sup>40</sup> *Insurance Act*, RSO 1990, c I 8, s. 407.1(2).

## About this Guidance

This document is consistent with [FSRA's Guidance Framework](#).

Interpretation Guidance sets out FSRA's view of requirements under its legislated mandate (i.e., legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action.

Approach Guidance describes FSRA's internal principles, processes and practices for supervisory action and application of CEO discretion.

## References

- FSRA Guidance: [Fair Treatment of Customers in Insurance](#) Guidance.
- Canadian Council of Insurance Regulators (CCIR) / Canadian Insurance Services Regulatory Organizations (CISRO) Guidance: [Conduct of Insurance Business and Fair Treatment of Customers](#)
- Canadian Insurance Services Regulatory Organizations (CISRO) Guidance: [Principles of Conduct for Insurance Intermediaries](#).
- FSRA Guidance: [Transparent Communication of FSRA Enforcement Action](#).
- FSRA's website: [Enforcement actions](#).  
A list of cease-and-desist orders, enforcement actions and warning notices.

## Appendix A

### **Suitability concerns – The following are examples of conduct or circumstances that may impact suitability.**

FSRA will review such concerns to determine the impact on suitability following the assessment factors identified in the [Interpretation section](#) and in [Appendix B](#).

- Criminal charges and/or convictions (inside or outside of Canada):
  - criminal charges or convictions or guilty pleas
  - ongoing proceedings under the *Criminal Code* of Canada or the *Provincial Offences Act* or in any jurisdiction
- History of misconduct at FSRA or other regulatory or licensing bodies:<sup>[41]</sup>
  - enforcement action or regulatory sanctions
  - fines or other monetary penalties
  - ongoing investigations or proceedings
  - material omissions or false information provided to a regulator
  - other conduct relevant to suitability

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<sup>41</sup> FSRA considers any enforcement action taken against the applicant, including administrative monetary penalties (AMPs) and/or licensing suspensions. Participation in unlicensed activity is also considered.

- Bankruptcy or insolvency matters, including consumer proposals:
  - ongoing
  - discharged or fully performed
- Failure to adhere to FSRA Guidance, including:
  - insurance sector Guidance
  - cross-sectoral Guidance
  - harmonized multi-jurisdictional Guidance adopted by FSRA
- False Continuing Education certificates provided to FSRA or another regulator.
- Making a material omission or providing a false or misleading statement or information to FSRA.

## Appendix B

### Key factors in FSRA’s framework for assessing the impact of conduct and activities on suitability

FSRA evaluates conduct against key factors to determine if an applicant or agent is suitable to be licensed. The factors and associated considerations for the assessment of the grant or renewal of an individual agent license are noted below.<sup>[42]</sup> In addition to these factors and considerations, where an agent will act as an MGA or perform other duties or activities on behalf of an insurer, additional factors and considerations will apply when determining suitability for the performance of such other duties or activities. Further, when the license is for a corporate or partnership agency, the below factors and considerations may be applied when considering the officers, directors and partners of such agency.

Assessment factor	Considerations
Extent to which the conduct calls into question the integrity, honesty, or law-abiding nature of an applicant or agent, including an MGA.	<ul style="list-style-type: none"> <li>• This factor is critical in assessing suitability. It indicates whether the individual has shown incompetence or untrustworthiness to conduct insurance agent activities.</li> <li>• Conduct resulting in criminal proceedings or regulatory sanctions, or involving dishonesty or false statements, is relevant in assessing the integrity, honesty or law-abiding nature of applicants and agents.<sup>[43]</sup></li> </ul>

<sup>42</sup> FSRA may consider additional factors, and all factors are weighed based on available evidence to ensure that the decision is based on reasonable grounds. A combination of circumstances may provide reasonable grounds to support a determination that an applicant is unsuitable – for example, concerns regarding an individual’s disciplinary record at another regulator may be compounded by a failure to provide full disclosure to FSRA.

<sup>43</sup> See [Appendix A](#) for additional detail regarding the type of conduct that may demonstrate that an applicant or agent is not suitable for licensing.



Assessment factor	Considerations
<p>Closeness of the conduct to the activities the individual would be engaged in as an insurance agent, including an MGA.</p>	<ul style="list-style-type: none"> <li>• Prior misconduct involving financial transactions, fraud, forgery, dishonesty, or the provision of false information is relevant to insurance agent activities, and will have a significant impact on suitability for licensing.</li> <li>• Crimes of a violent or aggressive nature may indicate unsuitability for licensing, particularly where they are repeated and indicate violence, anger, or a disregard for others.<sup>[44]</sup></li> <li>• Even where criminal or regulatory misconduct does not relate closely to the regulated activities, an applicant with a history of not following the law will likely be found not suitable to hold a licence.<sup>[45]</sup></li> </ul>
<p>A consistent and prolonged pattern of reformed or redeeming behaviour by an applicant or agent, including an MGA since the conduct occurred.</p>	<ul style="list-style-type: none"> <li>• A significant factor in assessing whether an applicant is suitable, despite past misconduct, is whether the applicant has demonstrated remorse and understanding regarding their past misconduct.<sup>[46]</sup></li> <li>• A lack of remorse and/or minimizing of the misconduct does not show a pattern of reformed or redeeming behaviour.<sup>[47]</sup></li> </ul>

<sup>44</sup> *Alves v Ontario (Superintendent Financial Services)*, 2008 ONFST 10.

<sup>45</sup> *Bajwa v Ontario (Superintendent Financial Services)*, 2019 ONFST 6, at para 33.

<sup>46</sup> *Vettese v Ontario (Superintendent Financial Services)*, 2016 ONFST 20, at para 47(i).

<sup>47</sup> *Joshi v Ontario (Superintendent Financial Services)*, 2015 ONFST 16, at para 22(i); *MSF Group Inc v Ontario (Superintendent Financial Services)*, 2016 ONFST 16, at para 54.

Assessment factor	Considerations
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Inadvertent nature of the conduct.

- In most cases, individuals will be considered responsible for their misconduct. Wilful disregard or recklessness do not excuse misconduct and may indicate incompetence.
- However, evidence to demonstrate that the prior misconduct was not intentional will be considered, and may support a determination of suitability for licensing with appropriate supervision and measures to protect the public.<sup>[48]</sup>
- Where there is a history of insolvency, FSRA will consider whether the circumstances lessen the impact on suitability.

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<sup>48</sup> *Malhotra v Ontario (CEO of FSRA)*, 2020 ONFST 2, at para 35.



Assessment factor	Considerations
Length of time since conduct occurred.	<ul style="list-style-type: none"><li>• Length of time since the conduct occurred is considered alongside other factors, such as seriousness of the conduct and the existence of redeeming behaviour.</li><li>• Any misconduct will be weighed and considered. Where time has passed, conduct in the intervening period will be relevant. (See “reformed or redeeming behaviour”, above.)</li><li>• An applicant or licensee who has had a FSRA or Financial Services Commission of Ontario (FSCO) licence refused or revoked will only be considered for licensing if they are able to demonstrate that they are now suitable with reference to the original concerns. Any sanctions imposed, or terms established in a prior settlement with FSRA must also be satisfied.</li></ul>



Prolonged or repetitive nature of the conduct.

- Considerations include:
  - Whether the conduct took place over a significant period of time.
  - Whether the conduct was isolated or repeated – for example, multiple instances of misconduct impacting a single victim, or conduct that impacted multiple victims.<sup>[49]</sup>
- Multiple or repeated regulatory or criminal offences or charges may indicate unsuitability for licensing.
- If the conduct was severe, harmful or otherwise impactful, even a single occurrence may lead to an applicant being found unsuitable.

Any unusual and severe pressure the individual was under at the time of the misconduct that would explain the misconduct but is unlikely to reoccur.

- Evidence is required to establish that there was unusual and severe pressure that led to the conduct and that the circumstances that led to the pressure are unlikely to reoccur.
- Where the conduct occurs over a prolonged period, it is less likely that the applicant has been under severe pressure for the entire time.<sup>[50]</sup>

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<sup>49</sup> *Metro Financial Planning and Dinesh Khanna v Ontario (Superintendent Financial Services)*, 2017 ONFST 4 para 283(b); *Khanna v Ontario (CEO of FSRA)*, 2022 ONFST 10, para 35(b).

<sup>50</sup> *Prince v Ontario (CEO of FSRA)*, 2022 ONFST 6, para 89(d) and 128.

The following factors are applicable where past conduct resulted in a regulatory or criminal proceeding or sanction.

The seriousness with which the disciplinary body treated the conduct, as reflected in the severity of the sanction it imposed.

- FSRA considers the severity of the sanction or penalty imposed to reflect the seriousness of the misconduct.
  - Penalties such as licence suspension or revocation, or a significant monetary penalty, demonstrate the seriousness of the misconduct.
  - A prison sentence, even if served in the community, reflects serious misconduct.<sup>[51]</sup>

The fairness of the process followed in the disciplinary proceeding.

- A failure to understand or agree with charges or legal process does not indicate that the process was unfair.<sup>[52]</sup>
- A claim that a regulatory process was unfair must be supported by evidence. FSRA will also consider whether the applicant or licensee pursued their procedural rights in the other process.
- FSRA generally will not question the fairness of a prior disciplinary proceeding if the proceeding is concluded and outside the appeal period during which the applicant or licensee could have raised concerns.

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<sup>51</sup> *Martin v Ontario (Superintendent Financial Services)*, 2016 ONFST 2, para 32.

<sup>52</sup> *CDN Financial and Mortgages Inc. v. Ontario (Superintendent Financial Services)*, 2014 ONFST 10, para 26.