

IS BREXIT A REGULATORY OPPORTUNITY FOR BELGIAN INSURTECHS AND THE INSURANCE MARKET AS A WHOLE?

In theory, insurance services are harmonised at the EU level. Insurance companies and intermediaries alike may easily ‘passport’ their domestic licences across the entire EEA, thereby servicing the entire European market, either through the freedom to provide services or the freedom of establishment (e.g. through branches).

In practice, however, the insurance market is not (yet?) as harmonised as the banking and investment industries. This is especially true at the distribution level, where various intermediary statuses and licences exist and where practices may vary significantly from one country to another.

For instance, whereas Belgium is often considered as broker-centred, the UK’s insurance market knows alternative distribution channels in which Managing General Agents (‘MGAs’) play a central role in connecting insurers and distributors (such as brokers or agents).

Typically, UK MGAs are backed by one or more insurers and have an underwriting capacity. They can develop their business in niche areas and create specific products. Their business model is not very well-known in Belgium and does not really fit in any of the three Belgian traditional intermediary licences (broker, agent, and sub-agent).

This has been noticed by the Belgian Government.

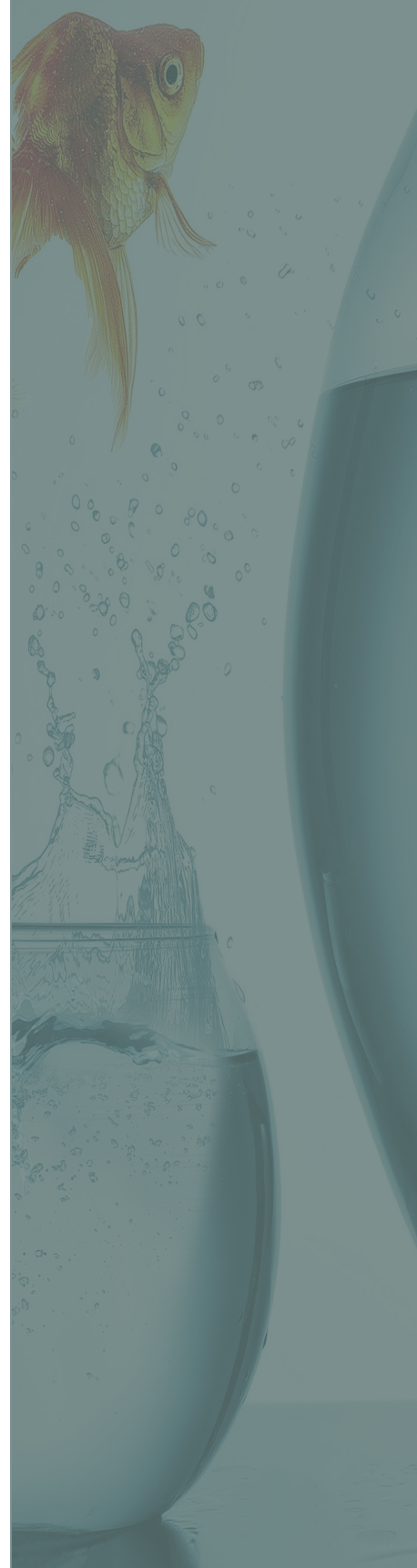
1. Brexit as a trigger for regulatory innovations

Willing to make Belgium an attractive Brexit destination, the Belgian Government has adopted a dedicated Brexit Act¹.

Amongst various Brexit-oriented reforms, the Government has created a brand new insurance intermediary licence, more or less mirroring that of the UK MGA’s. The Belgian MGA (known as the “souscripteur mandaté / gevolmachtigde onderschrijver”) is defined as “the insurance intermediary which, in its capacity of proxy-holder of one or more insurance companies, has the power to accept to cover risks and to conclude and manage insurance contracts in the name and for the account of these insurance companies”.

It is not the first time that the Belgian Government adapts the national legislative and regulatory framework to the needs of Brexiteers. The Insurance Law of

¹ Law of 3 April 2019 on the exit of the United Kingdom from the European Union.



Control¹ goes as far as expressly referring to the Lloyd's of London (and Brussels?) in its definition of the reinsurance activity – one could even question the constitutionality of a legal provision dedicated to a specific private entity.

Clearly, Brexit has led to Belgian regulatory innovations.

Although the new MGA status is first and foremost targeted to existing UK intermediaries willing to anticipate the consequences of a too-hard Brexit, it might also offer opportunities for other insurance actors.

Amongst other changes, the digitalisation of the insurance sector has seen the rise of many insurtechs attempting to disrupt existing distribution channels. The need for these insurtechs to fit in one of the traditional broker or agent licences has sometimes raised regulatory challenges.

The creation of a brand new intermediary status offers new opportunities for these disruptors.

By the same token, it may also represent an opportunity for insurance companies looking for the development of new distribution channels and it will certainly offer comfort to UK insurance companies replicating their business model in Belgium.

2. The Belgian MGA regulatory status in a nutshell

The Belgian Government has done little more than creating the new MGA status and defining its core activities.

With regards to the rules of conduct, the Brexit Act essentially provides that MGAs are subject to the same requirements as insurance brokers.

On top of that, there are three specific requirements applicable to MGA's activities:

- i. MGAs must have an appropriate organisation in light of the nature, size and complexity of their activities and associated risks;
- ii. Their website must list all the insurance companies which granted them an underwriting power as well as the insurance branches covered by this power; and
- iii. They must indicate the name of the underlying insurance companies on every insurance policy concluded on their behalf.

In addition to these legal requirements, the supervisor (FSMA) has also made clear that Belgian MGAs could not cumulate their activities with “traditional” insurance intermediation services. Although the FSMA's position is not perfectly clear, it seems that the supervisor is of the opinion that direct contacts with policyholders will be reserved to broker and (sub-)agents. However, the FSMA has made clear² that sister companies from a same group could apply for different insurance intermediary licences (e.g. company A1 being an MGA and company A2 being an insurance broker).

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¹ Law of 13 March 2016 relating to the status and control of insurance and reinsurance companies.

² See FSMA's newsletter of April 2019