

Executive Order on indemnity insurance for investment advisors¹⁾

Executive Order no. 1528 of 13 December 2007

The following shall be laid down pursuant to section 343c(5) and section 373(4) of the Financial Business Act, cf. Consolidated Act no. 1413 of 10 December 2007, as amended by Act no. 108 of 7 February 2007:

1. This Executive Order shall apply to investment advisors.

2.-(1) A condition for carrying out activities as an investment advisor shall be that there is a declaration from an insurance company that,

- 1) the undertaking is covered by indemnity insurance,
- 2) the insurance company is directly liable to pay to injured parties damages to which the undertaking becomes liable through negligence of the undertaking or someone for whom the undertaking is liable,
- 3) the indemnity insurance covers the activities of the undertaking in all countries within the European Union and countries with which the Community has entered into an agreement for the financial area, and
- 4) the sum insured of the indemnity insurance is no less than EUR 1 million per claim per insurance year and no less than EUR 1.5 million for all claims per insurance year with an excess of no more than DKK 50,000 per insurance event, cf. however subsection (2).

(2) If indemnity insurance for the individual undertaking has been established as part of a collective scheme covering several collaborating undertakings or as a member of a sector association, the sums insured stated in subsection (1), no. 4 shall apply for each participating undertaking.

3. A further condition shall be that,

- 1) indemnity insurance contains cover for reinstatement of the sum insured in the event that this may be exhausted as a result of one or more claims in an insurance year (policy-covered reinstatement),
- 2) indemnity insurance contains the right for the undertaking, on the cessation of the insurance following close-down of the undertaking, to insure itself against claims raised and reported no more than five years following the close-down of the undertaking, cf. section 4(1), and
- 3) indemnity insurance in relation to third parties covers claims for compensation raised and reported no more than five years following cessation of the indemnity insurance to the extent that indemnity insurance has not been taken out with another insurance company with full retroactive cover.

4.-(1) When an undertaking becomes insolvent or closes down for some other reason, as well as in the event that its license is withdrawn, the undertaking shall take out claims-made insurance

¹⁾This Executive Order contains provisions implementing parts of Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on markets in financial instruments amending Directive 85/611/EEC and Directive 93/6/EC of the European Parliament and the Council and Directive 2000/12/EC of the European Parliament and the Council and repealing Directive 93/22/EEC of the Council (Official Journal 2004, no. L 145 p 1).

which covers liability for damages in connection with claims raised or reported no more than five years after the undertaking has closed down.

(2) The sum insured of the insurance shall be no less than EUR 1 million per claim and no less than EUR 1.5 million for all claims. The sums insured mentioned shall apply for the entire five-year period following cessation of the indemnity insurance.

(3) If the undertaking closes down, e.g. by transferring the portfolio of customers to another undertaking, the insurance company of the undertaking taking over may declare to the Danish FSA that the existing indemnity insurance is to be extended to cover claims from the customers of the transferred insurance advisor which relate to counselling services entitled to compensation provided by the insurance advisors prior to the transfer and which are raised and reported no more than five years after the transfer.

(4) If the declaration of cover as stated in subsection (3) cannot be obtained from the insurance company of the undertaking taken over, the undertaking closing down shall establish independent claims-made insurance of the same scope as stated in subsections (1) and (2).

5.-(1) Even if the insurance mentioned in section 4 is not taken out, or if indemnity insurance ceases for some other reason and without taking out new indemnity insurance with the same scope with a new insurance company, the insurance company shall be liable for claims by third parties raised or reported against the undertaking no more than five years after cessation of the indemnity insurance.

(2) With respect to third parties, indemnity insurance may only be terminated at the request of the insurance company from a specific date, which may not be earlier than one month after the request has been received by the Danish FSA.

6. By submitting an insurance declaration, the insurance company guarantees that indemnity insurance complies with the regulations in sections 2-4 and section 5(1). The declaration by the insurance company shall be submitted on a form prepared by the Danish FSA.

7. For undertakings with a connection as stated in section 5(1), nos. 6 and 7 of the Financial Business Act to companies without a registered office in Denmark, the Danish FSA shall make a specific assessment of whether the content and scope of established insurance cover corresponds to the regulations in sections 2-4 and section 5(1).

8.-(1) In order to comply with the regulations in sections 2-5, an undertaking may instead take out a guarantee with a bank.

(2) By submitting a declaration of guarantee, the bank warrants that the guarantee meets the regulations in sections 2-4 and section 5(1). The declaration by the guarantor shall be submitted on a form prepared by the Danish FSA.

9.-(1) Violation of sections 2-5 shall be subject to a fine.

(2) Companies, etc. (legal persons) may incur criminal liability according to the regulations in chapter 5 of the Criminal Code.

10.-(1) This Executive Order shall enter into force on 22 December 2007, cf. however subsection (2). At the same time Executive Order no. 821 of 2 July 2007 on indemnity insurance for investment advisors shall be repealed.

(2) Section 4(2) shall, however, come into force on 1 November 2007.

The Danish FSA, 13 December 2007

Henrik Bjerre-Nielsen

/ Annette Bjaaland Andersen