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**GlobalDenmark Translations, June 2007**

Consolidated Insurance Mediation Act<sup>1</sup>

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Act no. 401 of 25 April 2007

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*Consolidated Act no. 401 of 25 April 2007*

This is an Act to consolidate the Insurance Mediation Act, cf. Consolidated Act no. 817 of 14 July 2006, as amended by section 12 of Act no. 108 of 7 February 2007.

## **Part 1**

### *Scope and definitions of this Act*

**1.-(1)** This Act shall apply to commercial mediation of insurances defined as the activity consisting of, against remuneration, presenting, proposing or carrying out preliminary work in connection with the establishment of insurance contracts or reinsurance contracts; entering into such contracts; or participating in the management and performance of such contracts, particularly in respect of claims.

**(2)** Insurance mediation under section 2, nos. 1 and 2 may be carried out by limited companies, partner companies (limited partnership companies), limited liability companies, limited partnerships, partnerships and sole proprietorships.

**2.** For the purposes of this Act

1) Insurance broker business shall mean:

An activity consisting of providing the customer with advice on the basis of an analysis of as many as possible of the insurance solutions available on the market; and an activity consisting of presenting to the customer insurance solutions from one or several insurance companies without an explicit agreement to this effect having been entered into with said insurance companies.

2) Reinsurance broker activities shall mean:

An activity consisting of providing an insurance company with advice on the basis of an analysis of as many as possible of the insurance solutions available on the market; and an activity consisting of presenting to the insurance company insurance solutions from one or several insurance companies without an explicit agreement to this effect having been entered into with the reinsurance companies.

3) Insurance agent activities shall mean:

An activity consisting of selling the insurance products of an insurance company according to an agreement with one or more insurance companies.

4) Sub-agent activities shall mean:

An activity consisting of selling the insurance products of one or several insurance companies according to an agreement with an insurance agency.

5) Insurance distributor activities shall mean:

An activity consisting of selling the insurance products covered by section 3(2) provided by an insurance company according to an agreement with one or more insurance companies.

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<sup>1</sup> This Act contains provisions implementing Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (Official Journal 2003 L 9, p. 3) (Insurance Mediation Directive).

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**3.-(1)** This Act shall not apply

- 1) to insurance mediation carried out by insurance and reinsurance companies, nor to the employees of such companies,
- 2) where an undertaking occasionally provides insurance advice in connection with other commercial activities, when the main purpose of such advice is not to assist the customer in presenting, proposing, entering into or carrying out the preparatory work in connection with entering into an insurance contract,
- 3) where an undertaking merely sells general information about insurance products or establishes contacts to insurance companies, when the purpose is not to assist the customer in entering into or presenting, proposing or carrying out the preparatory work in connection with entering into an insurance contract, or
- 4) where an undertaking carries out the management of an insurance company's claims, appraisals, claims reported for compensation for damage or injuries, or other similar tasks on behalf of the insurance company.

**(2)** This Act shall not apply to mediation of insurance products meeting all the following conditions:

- 1) The insurance contract only requires knowledge of the insurance cover that is provided.
- 2) The insurance contract is not a life-assurance contract.
- 3) The insurance contract does not cover any liability risks.
- 4) The principal professional activity of the physical or legal person is other than insurance mediation.
- 5) The insurance contract is complementary to the product or service supplied by any provider, where such insurance contract covers
  - a) the risk of breakdown, loss of or damage to goods supplied by said provider, or
  - b) damage to or loss of baggage and other risks linked to travel booked with said provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to said travel.
- 6) The amount of the annual premium of the insurance contract does not exceed EUR 500.
- 7) The total duration of the insurance contract, including any renewals, does not exceed five years.

**(3)** Notwithstanding subsection (2), insurance distributors supplying the insurance products mentioned in subsection (2) shall, however, provide the customer with the information about the insurance product required by sections 34 and 35.

## **Part 2**

*License for and registration of insurance broker undertakings and employed insurance brokers*

**4.-(1)** Undertakings which carry out insurance broker activities shall be licensed by the Danish FSA in this respect.

**(2)** Any person carrying out insurance broker activities as an employee of an undertaking covered by subsection (1) shall be licensed by the Danish FSA to carry out insurance broker activities as an employee of said undertaking.

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**5.-(1)** The Danish FSA shall grant a license for insurance broker activities in corporate form to an undertaking when

- 1) the members of the applicant's board of directors and board of management meet the conditions of section 8,
- 2) the person or persons responsible for the undertaking's insurance mediation meet the conditions of sections 8(2) and 9(1),
- 3) the undertaking holds professional indemnity insurance, cf. section 20, and
- 4) the undertaking employs persons who hold or who are simultaneously applying for an employee's license for insurance broker activities, cf. section 7.

**(2)** An application for a license under subsection (1) shall contain all information necessary for assessment by the Danish FSA of whether the conditions in subsection (1) have been met. Such application shall also contain information stating

- 1) the type of insurance broker activities the undertaking intends to carry out and the corporate form of the undertaking,
- 2) in which Member States within the European Union or countries with which the Community has entered into an agreement for the financial area the undertaking intends to carry out insurance broker activities,
- 3) the names of the undertaking's owners of capital and the share of the undertaking's capital or voting rights held by said owners of capital and
- 4) the undertaking's share of the capital or voting rights of one or more insurance companies and the names of said insurance companies.

**6.-(1)** The Danish FSA shall grant a license for insurance broker activities to a person in a sole proprietorship when

- 1) the applicant meets the conditions of section 8(2),
- 2) the applicant meets the requirements for theoretical education and practical skills regarding insurance broker activities, cf. section 9(2), and
- 3) the sole proprietorship holds professional indemnity insurance, cf. section 20.

**(2)** An application for a license under subsection (1) shall contain all information necessary for assessment by the Danish FSA of whether the conditions in subsection (1) have been met. Such application shall also contain information stating

- 1) the type of insurance broker activities the undertaking intends to carry out,
- 2) in which Member States within the European Union or countries with which the Community has entered into an agreement for the financial area the undertaking intends to carry out insurance broker activities, and
- 3) the undertaking's share of the capital or voting rights of one or more insurance companies and the names of said insurance companies.

**7.-(1)** The Danish FSA shall grant a license for insurance broker activities to a person as an employee of an insurance broker undertaking when

- 1) the applicant meets the conditions of section 8(2), and
- 2) the applicant meets the requirements for theoretical education and practical skills regarding insurance broker activities, cf. section 9(2).

**(2)** An application for a license under subsection (1) shall contain all information necessary for assessment by the Danish FSA of whether the conditions in subsection (1) have been met.

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Such application shall also contain information stating the type of insurance broker activities the person intends to carry out.

**8.-(1)** Members of the board of directors and the board of management shall have adequate experience in carrying out the duties and responsibilities of a member of the board of directors or the board of management of the undertaking.

**(2)** The group of persons mentioned in sections 5-7 may not carry out the duties as member of the board of directors or member of the board of management respectively in an insurance broker undertaking if

- 1) the person in question is held criminally liable for violation of the Criminal Code or financial legislation, and this violation entails a risk that the duties are not carried out adequately,
- 2) the person in question has filed for suspension of payments, is administered in bankruptcy, has filed for debt restructuring, or negotiations have been initiated with regard to compulsory composition for said person, or
- 3) the person in question has behaved such that there is reason to assume that said person cannot perform the duties and responsibilities of such position adequately.

**(3)** The group of persons covered by subsection (2) shall have a duty to notify the Danish FSA of the conditions mentioned in subsections (1) and (2).

**9.-(1)** The person or persons of the undertaking responsible for insurance mediation shall possess a general knowledge about insurance mediation. The Danish FSA shall lay down more detailed regulations hereon.

**(2)** Persons applying for a license as insurance broker shall have theoretical education and practical skills regarding insurance broker activities. The Danish FSA shall lay down more detailed regulations hereon.

**(3)** With regard to the group of persons mentioned in sections 6 and 7, the Danish FSA shall obtain an assessment of an applicant's foreign qualification from the Danish Centre for Assessment of Foreign Qualifications.

**(4)** The Danish FSA may grant a license to persons irrespective of whether such persons fulfil the conditions in subsections (1) and (2).

**10.-(1)** When the Danish FSA has granted a license under section 4 to carry out insurance broker activities to an insurance broker undertaking or to an employed insurance broker, said insurance broker undertaking, the person or persons responsible for the undertaking's insurance broker activities, or the insurance broker(s) employed by said insurance broker undertaking shall be registered in the Danish FSA's register of insurance intermediaries. The register shall be publicly accessible.

**(2)** When the Danish FSA has granted a license under section 4 for insurance broker activities carried out by limited companies, partner companies (limited partnership companies), limited liability companies, partnerships and limited partnerships in which all partners and general partners, respectively, are limited companies, partner companies (limited partnership companies), limited liability companies or companies with a similar legal form, the Danish Commerce and Companies Agency shall be notified and subsequently make registration.

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**11.-(1)** Insurance broker undertakings that have been granted a license by the Danish FSA shall include the designation "forsikringsmægler" (insurance broker) in their names. Any person that has been licensed by the Danish FSA to be employed as an insurance broker shall be obliged to use the designation "forsikringsmægler" (insurance broker) when carrying out insurance broker activities. Other designations such as "registreret" (registered), "statsautoriseret" (state-authorized) or "godkendt" (approved) may not be added to the name simultaneously. An insurance broker undertaking may, notwithstanding the 1st clause, emphasise its expertise, for example in insurance consultancy, when addressing the general public.

**(2)** Other undertakings and persons may not use names or descriptions for their activities that may create the impression that they are insurance broker undertakings or employed insurance brokers.

**(3)** An insurance broker undertaking or a person covered by section 43 may, however, use the same name in Denmark that said undertaking or person uses in its home country. If there is a risk that this name may be confused with a name which is already in use in Denmark, the Danish FSA or the Danish Commerce and Companies Agency may require an explanatory addition to the name.

**12.-(1)** An insurance broker undertaking may carry out other activities. Such activity shall be carried out in another undertaking than the insurance broker undertaking. Such activity shall be described by a designation that cannot be mistaken for the insurance broker activity.

**(2)** When an insurance broker undertaking enters into an agreement with an insurance company regarding the mediation of said insurance company's products, said insurance broker undertaking shall notify the Danish FSA hereof. Part 6 of this Act regarding the registration and obligations to disclose information of insurance agencies, shall apply to such relationship.

**(3)** When an insurance broker undertaking enters into an agreement with an economic operator regarding the mediation of insurance products, the mediation for which said insurance broker undertaking has entered into an agreement with an insurance company under subsection (2), said insurance broker undertaking shall notify the Danish FSA hereof. The regulations in Part 7 of this Act regarding sub-agents shall apply to such relationship.

### **Part 3**

#### *Obligations to disclose information and other ongoing obligations to report applying to insurance broker undertakings*

**13.** Before a specific insurance contract is entered into, an insurance broker undertaking shall, as a minimum, provide the customer with information stating

- 1) the name and address of the insurance broker undertaking,
- 2) the register in which the insurance broker undertaking and the employed insurance brokers are registered and how such registration can be checked,
- 3) whether the insurance broker undertaking provides consultancy on the basis of an analysis of as many of the insurance solutions available on the market as possible, cf. section 2, no. 1, 1st limb,
- 4) that the insurance broker undertaking has a direct or indirect share of more than 10 per cent of the voting rights or the capital in a specific insurance company, if this is the case,

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- 5) that a specific insurance company or the parent company of a specific insurance company has a direct or indirect share of more than 10 per cent of the voting rights or the capital in the insurance broker undertaking, if this is the case, and
- 6) how customers and other parties involved may file complaints about the insurance broker undertaking, and if there are out-of-court complaints procedures.

**(2)** Before a specific insurance contract is entered into, the insurance broker undertaking shall, as a minimum, formulate the customer's requirements and needs in writing primarily on the basis of the customer's own information. The insurance broker undertaking shall also state in writing the reason for the consultancy the customer will receive in relation to a specific insurance solution. Such consultancy shall be adapted according to the complexity of the insurance solution presented.

**14.-(1)** Before a specific insurance contract is entered into, the insurance broker undertaking shall enter into a written cooperation agreement with the customer stating which benefits the insurance broker undertaking shall supply. In the cooperation agreement the two parties shall agree on the amount which the customer or owners of an insurance scheme with the customer shall pay the insurance broker undertaking for establishing an insurance scheme or a framework agreement and for any other benefits in the first year of the total duration of the insurance contract.

**(2)** The insurance broker undertaking shall once a year and in writing inform the customer about

- 1) the size of total costs associated with using the insurance broker undertaking in the year in question, and
- 2) the size of all remuneration the insurance broker undertaking has received from a third party in connection with the customer relationship.

**14a.-(1)** When an insurance broker undertaking obtains offers for insurance contracts for the customer at one or more insurance companies, the insurance broker undertaking shall at the same time provide the information to the insurance company which is necessary for the insurance company to determine the price of the insurance. In pension schemes covered by paragraph I of the "*pensionsbeskatningsloven*" (act on taxation of pension schemes) the insurance broker undertaking shall inform the insurance company of the size of the fee agreed between the customer and the insurance broker undertaking. At the same time the insurance broker undertaking shall inform the insurance company about the length of the period in which the customer and the insurance broker undertaking have agreed that the fee shall be included in the insurance premium. This period may not exceed three years. The insurance company shall include this fee in the insurance premium and pay the fee to the insurance broker undertaking.

**(2)** An insurance broker undertaking may not receive commission or other remuneration from the insurance company in connection with the specific customer relationship.

**(3)** However, an insurance company may on behalf of the customer manage mediation of the amounts for the insurance broker undertaking mentioned in section 14(1). Furthermore, the customer and the insurance company may agree on the financing of the customer's payment to the insurance broker undertaking.

**(4)** Notwithstanding subsection (2) an insurance broker undertaking may receive commission from an insurance company which is not domiciled or established by a branch in Denmark.

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However, the insurance broker undertaking shall forward a commission received to the customer.

**14b.** The Danish FSA may lay down regulations on the procedures the insurance broker undertaking shall observe where tenders for a customer's insurance scheme are invited from one or more insurance companies.

**15.** When an insurance broker undertaking solely uses one or several specific insurance companies without having entered an explicit contract with said insurance companies to this effect, the customer shall be notified hereof no later than at the time of entering into a specific insurance contract. Furthermore, the customer shall be informed of the right of access to the names of the insurance companies used by the insurance broker undertaking.

**16.** The information mentioned in sections 13, 14 and 15 shall be disclosed in a clear and precise manner that is understandable for the customer and in Danish unless another language has been agreed upon between the parties. The Danish FSA shall lay down more detailed regulations stipulating how the information mentioned in sections 13, 14 and 15 is to be disclosed to the customer.

**17.-(1)** An insurance broker undertaking shall only represent the customer.

**(2)** An insurance broker undertaking may not directly or indirectly have such connections to an insurance company that are likely to place doubt on the independence of the insurance broker undertaking from insurance company interests if they are not a consequence of the mutual ownership relationship between the undertakings.

**(3)** An employed insurance broker may not be dependent upon the interests of an insurance company through employment or through other forms of association with insurance companies or groups of companies connected herewith.

**18.** An insurance broker undertaking and its employees may not, without authorisation, forward or use confidential information the insurance broker undertaking obtained through the exercise of its business.

**19.-(1)** An insurance broker undertaking shall be operated in accordance with honest business principles and good practice within the field of activity.

**(2)** The Minister for Economic and Business Affairs shall lay down more detailed regulations on honest business principles and good practice.

**20.-(1)** An insurance broker undertaking shall be insured against any financial claims which may arise as a consequence of its duties.

**(2)** An insurance broker undertaking shall, without delay, deposit funds entrusted to it in a special clients' account and shall establish appropriate security for these funds, cf. however subsection (3).

**(3)** The duty under subsection (2) to deposit entrusted funds in a clients' account shall not apply for funds regarding an insurance company which has issued a release certificate to the insurance broker undertaking.

**(4)** Claims for compensation against the insurance broker undertaking may be directed to the insurance company with which the insurance broker undertaking is insured.

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**(5)** The Danish FSA shall lay down regulations for the scope, type and duration of professional indemnity insurance and collateral.

**21.-(1)** The insurance broker undertaking shall notify the Danish FSA of its earnings for the calendar year specifying the breakdown of income from insurance companies or insurance broker undertakings and customers.

**(2)** The insurance broker undertaking shall, when submitting the specification mentioned in subsection (1), submit a declaration from a state-authorized or registered public accountant regarding the audit of the client's account mentioned in section 20(2).

**(3)** The Danish FSA shall lay down more detailed regulations on reporting under subsection (1).

#### **Part 4**

##### *Withdrawal and lapse of licenses*

**22.-(1)** The Danish FSA may withdraw the license of an insurance broker undertaking, if

- 1) the undertaking requests it,
- 2) the undertaking no longer has indemnity insurance,
- 3) the insurance broker undertaking commits gross or repeated violation of the provisions of this Act or of regulations issued pursuant to this Act,
- 4) the insurance broker undertaking no longer fulfils the conditions in section 8,
- 5) the undertaking fails to commence operation as an insurance broker undertaking no later than 12 months after having been licensed by the Danish FSA, or
- 6) the undertaking does not carry out insurance broker activities for a period of more than 6 months.

**(2)** The Danish FSA may withdraw the license of an employed insurance broker, if

- 1) the insurance broker requests it,
- 2) the insurance broker commits gross or repeated violation of the provisions of this Act or of regulations issued pursuant to this Act, or
- 3) the insurance broker no longer fulfils the conditions in section 8(2).

**(3)** A decision to withdraw a license in accordance with subsection (1), no. 3 or subsection (2), no. 2 may be requested to be brought before the courts by the person subject to such decision. Such request for judicial review shall be received by the Danish FSA no later than four weeks after the decision was notified to the relevant person. The Danish FSA shall commence legal proceedings against the relevant party through civil procedure. A request to bring withdrawal of license before the courts shall effect a stay of execution unless the court decides otherwise.

**(4)** Decisions in cases covered by subsection (1), no. 4 and subsection (2), no. 3 shall be made by the courts. Any other decisions regarding withdrawal of licenses shall be made by the Danish FSA.

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**(5)** Withdrawal of a license under subsection (2) may take effect for a period of one to five years, or until further notice. Following this, a license may be granted again if the employed insurance broker meets the conditions of section 8(2).

**23.-(1)** The license of an insurance broker undertaking shall lapse when said insurance broker undertaking is declared bankrupt or ceases activities in any other manner.

**(2)** The license of an employed insurance broker shall lapse if said insurance broker dies.

**24.-(1)** If the Danish FSA has withdrawn the license of an insurance broker undertaking or said license has lapsed, the license of the employed insurance broker shall lapse simultaneously unless said employed insurance broker has obtained immediate employment as an insurance broker or requested the license to be deposited under subsection (2).

**(2)** An insurance broker may request to have his license as employed insurance broker deposited. The license may be granted again if the insurance broker meets the conditions of section 6 or if the employed insurance broker meets the conditions of section 7.

**25.-(1)** When the license to carry out insurance broker activities has been withdrawn or lapses, the insurance broker activities shall cease. Other activities may not commence before the winding up is completed.

**(2)** When the license of an insurance broker undertaking or employed insurance broker is withdrawn or lapses, said insurance broker undertaking or employed insurance broker shall be deleted from the Danish FSA's register of insurance intermediaries. The Danish Commerce and Companies Agency shall be notified of any withdrawals or lapses of licenses of insurance broker undertakings covered by section 10(2).

### **Part 5**

#### *Reinsurance broker activities*

**26.-(1)** The regulations of part 2, sections 18, 20 and 21 as well as part 4 of this Act shall apply correspondingly to the performance of reinsurance broker activities.

**(2)** The Danish FSA may lay down special regulations or variations from subsection (1) having regard to the special conditions relevant for reinsurance broker activities.

### **Part 6**

#### *Registration and obligations to disclose information of insurance agencies and management companies*

**27.-(1)** Undertakings and management companies carrying out insurance agency activities shall be registered, cf. subsections (2) and (3).

**(2)** If the undertaking or the management company has entered into an agreement on mediation of insurance products for a Danish insurance company, for a branch of an insurance company licensed in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area, or for an insurance company which has been licensed by the Danish FSA, the duty to register shall rest with the undertaking

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or the management company, the insurance company or the branch. The insurance company or the branch shall publish the registration in its register of insurance agents.

**(3)** In other cases than mentioned in subsection (2), the duty to register shall rest with the Danish FSA. The Danish FSA shall publish the registration in its register of insurance intermediaries.

**(4)** This duty of registration shall cover

- 1) the insurance agency and the person or persons of the agency responsible for insurance mediation or
- 2) a management company acting on behalf of several insurance agencies and the person or persons of the management company responsible for insurance mediation.

**(5)** The insurance agency or management company may not sell the products of the insurance company until said insurance agency or management company is registered.

**(6)** The Danish FSA shall lay down more detailed regulations regarding the duty of the insurance company or the branch to keep a register pursuant to subsection (2).

**28.-(1)** For the purpose of registration by the Danish FSA under section 27(3), the insurance agency or management company shall submit a declaration stating that

- 1) the insurance agency or the management company is covered by insurance or a guarantee to hedge any financial claim resulting from the insurance mediation.
- 2) there are one or more persons responsible for insurance mediation in the insurance agency or management company that have the necessary knowledge about insurance mediation,
- 3) those who, as employees of the insurance agency, are working directly with insurance mediation have adequate knowledge of the insurance products being sold, and
- 4) the persons covered by nos. 2 and 3 are not in bankruptcy proceedings and that they have produced to the employer a statement of criminal record with no entries of unconditional custodial sentences of four months or more for violation of section 171 of the Criminal Code regarding forgery or sections 276-290 of the Criminal Code regarding property offences.

**(2)** For the purpose of registration of the insurance company or branch under section 27(2), the insurance agency or the management company shall submit the declarations mentioned in subsection (1), nos. 2-4.

**(3)** In cases where the insurance company or the insurance agency has doubts whether an insurance mediation contract will result in a duty of registration, such question shall be brought before the Danish FSA by said insurance company or insurance agency and the Danish FSA shall make a decision in this respect.

**(4)** At the request of the Danish FSA, the insurance agency or management company shall be obliged to account for the procedures applied by said insurance agency or management company for the fulfilment of the requirements of subsections (1) and (2).

**(5)** The Danish FSA shall lay down more detailed regulations for the scope and duration of indemnity insurance, cf. section 20(5).

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**29.-(1)** When the insurance mediation contract lapses, the insurance company or the branch which has registered the insurance agency or management company pursuant to section 27(2) shall delete the insurance agency or management company from its register of insurance agents.

**(2)** When the insurance mediation contract lapses, the insurance agency or management company shall notify the Danish FSA when the Danish FSA has registered said insurance agency or management company pursuant to section 27(3). The Danish FSA shall hereafter delete the insurance agency or management company from its register of insurance intermediaries.

**30.** The insurance company shall give an annual declaration to the Danish FSA stating that processes and internal controls as well as administrative procedures regarding the treatment of the declarations received under section 28(2) are appropriate.

**31.** The Danish FSA shall lay down more detailed regulations regarding the knowledge to be possessed by the group of persons covered by section 28(1), nos. 2 and 3.

**32.** Insurance agencies and management companies shall be subject to the regulations issued in pursuance of the Financial Business Act to the extent that said regulations govern good practice within the field of insurance.

**33.** No later than at the time a specific insurance contract is entered into, the insurance agency or management company shall, as a minimum, provide the customer with information stating

- 1) the name and address of the insurance agency or management company,
- 2) the register in which the insurance agency or management company is registered and how such registration can be checked,
- 3) that the insurance agency or management company has a direct or indirect share of more than 10 per cent of the voting rights or the capital in a specific insurance company, if this is the case,
- 4) that a specific insurance company or the parent company of a specific insurance company has a direct or indirect share of more than 10 per cent of the voting rights or the capital in the insurance agency or management company, if this is the case, and
- 5) that the insurance agency or management company has entered into a contract with one or more specific insurance companies to carry out mediation of insurance products, and that it is possible for the customer to request information about the names of such insurance companies.

**34.-(1)** No later than at the time a specific insurance contract is entered into, the insurance agency or management company shall provide the customer with information stating the primary contents of the insurance contract. As a minimum, information shall be given on

- 1) relevant rights in relation to the Sale of Goods Act,
- 2) possible other insurance cover,
- 3) the scope of the insurance contract,
- 4) the period covered by the insurance contract,
- 5) the terms for termination of the insurance contract, and
- 6) the provisions for dealing with complaints from the customer regarding the contract, including whether there is a complaints body.

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**(2)** If the insurance agency or management company receives commission or other remuneration as a result of insurance mediation, said agency or company shall inform the customer hereof. Furthermore, the insurance agency or management company shall inform the customer of access to the size of the commission or remuneration upon request, and provide such information upon request.

**35.** The information mentioned in sections 33 and 34 shall be disclosed to the customer in a clear and precise manner that is understandable for the customer and in Danish unless another language has been agreed upon between the parties. The Danish FSA shall lay down more detailed regulations stipulating how the information mentioned in sections 33 and 34 is to be disclosed to the customer.

## **Part 7**

### *Registration and obligations to disclose information of sub-agencies and management companies*

**36.-(1)** After an insurance agency has entered into a contract with a sub-agency or management company to sell, on behalf of said insurance agency, products that said insurance agency has entered into mediation contracts with one or several insurance companies, said sub-agency or management company shall be registered in the Danish FSA's register of insurance intermediaries. The register shall be publicly accessible.

**(2)** The duty of registration shall cover

- 1) the sub-agency and the person or persons of the sub-agency responsible for insurance mediation or
- 2) a management company acting on behalf of several sub-agencies and the person or persons of the management company responsible for insurance mediation.

**37.-(1)** The sub-agency or management company may not sell insurance products with regard to which the insurance agency has entered into a mediation contract with an insurance company before the sub-agency or management company has been registered in the Danish FSA's register of insurance intermediaries. For the purposes of the Danish FSA's registration of the sub-agency or management company under section 36, the insurance agency or management company shall declare to the Danish FSA that said insurance agency or management company has taken out insurance or is covered by a guarantee to hedge any financial claim resulting from said sub-agency or management company's position as intermediary of insurance products on behalf of said insurance agency.

**(2)** The sub-agency or management company shall declare to the insurance agency or management company that

- 1) the person or persons of the sub-agency or management company responsible for insurance mediation shall possess adequate general knowledge about insurance mediation,
- 2) those who, as employees of the sub-agency, are working directly with insurance mediation have adequate knowledge of the insurance products being sold, and
- 3) the group of persons covered by nos. 1 and 2 are not in bankruptcy proceedings and that they have produced to the employer a statement of criminal record with no entries of unconditional custodial sentences of four months or more for violation of section 171

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of the Criminal Code regarding forgery or sections 276-290 of the Criminal Code regarding property offences.

**(3)** In cases where the insurance agency or the sub-agency has doubts whether an insurance mediation contract will result in a duty of registration, such doubts shall be brought before the Danish FSA by said insurance agency or sub-agency and the Danish FSA shall make a decision in this respect.

**(4)** At the request of the Danish FSA, the sub-agency or management company shall be obliged to account for the procedures applied by said sub-agency for the fulfilment of the requirements of subsection (2).

**(5)** The insurance agency or management company shall give an annual declaration to the Danish FSA stating that processes and internal controls as well as administrative procedures regarding the treatment of the declarations received under subsection (2) are appropriate.

**(6)** The Danish FSA shall lay down regulations for the scope and duration of indemnity insurance, cf. section 20(5).

**(7)** The Danish FSA may lay down more detailed regulations stipulating the form of the declarations mentioned in subsections (1) and (2), including the access of the sub-agency or management company to submit said declarations on behalf of the insurance agency or management company.

**38.** When the contract between the insurance agency and the sub-agency or management company lapses, said insurance agency or management company shall notify the Danish FSA hereof. The Danish FSA shall delete the sub-agency or management company from its register of insurance intermediaries.

**39.** The Danish FSA shall lay down more detailed regulations regarding the knowledge and skills to be possessed by the group of persons covered by section 37(2), nos. 1 and 2.

**40.-(1)** The sub-agency or management company shall be subject to the obligations to disclose information to customers mentioned in section 33, nos. 1 and 2 and section 34.

**(2)** Furthermore, the sub-agency or management company shall inform the customer that a contract has been entered into with one or more insurance agencies regarding the mediation of the products of specific insurance companies and that the customer has access to the names of such agencies upon request.

## **Part 8**

### *Insurance distribution activities*

**41.** Section 34 shall apply correspondingly to insurance mediation carried out by insurance distribution undertakings.

## **Part 9**

### *Cross-border activities*

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**42.-(1)** An insurance or reinsurance broker undertaking, an insurance agency or a sub-agency wishing to carry out activities in another country within the European Union, or in a country with which the Community has entered into an agreement for the financial area in accordance with the provisions on free movement of services or the provisions on the freedom of establishment shall notify the Danish FSA in this respect stating

- 1) the country in which it intends to establish a branch and the address of such branch, or
- 2) the country in which cross-border services are to be provided.

**(2)** No later than one month after such notification, the Danish FSA shall forward the information to those competent authorities of the host country wishing to receive such information. The insurance broker undertaking, reinsurance broker undertaking, insurance agency or sub-agency may commence activities one month after the date when the undertaking or agency has been notified by the Danish FSA that the notification mentioned in the 1st clause has been forwarded. The insurance broker undertaking, reinsurance broker undertaking, insurance agency or sub-agency may, however, commence activities immediately if the host country does not wish to be informed.

**43.-(1)** An insurance broker undertaking, reinsurance broker undertaking, insurance agency or sub-agency registered in another country within the European Union, or in a country with which the Community has entered into an agreement for the financial area may commence activities in Denmark through a branch one month after the Danish FSA has been notified by the competent authority in the home country of the intentions of said undertaking or agency.

**(2)** The Danish FSA may lay down more detailed regulations for branch and service activities carried out by insurance intermediaries licensed or registered in a country outside the European Union with which the Community has not entered into an agreement for the financial area. The Danish FSA shall lay down the regulations subject to any variations necessitated by the specific conditions prevailing with regard to said branches, or variations laid down in or under international agreements.

## **Part 10**

### *Supervision, appeals and penalties*

#### *Supervision*

**44.-(1)** The Danish FSA shall supervise compliance with the provisions of this Act and regulations laid down pursuant to this Act.

**(2)** The Danish Financial Business Council shall assist in supervisory matters under subsection (1) with the powers vested in the Council pursuant to section 345(2) of the Financial Business Act.

**(3)** The Danish FSA may order that matters which are contrary to section 19(1) be rectified.

**(4)** The Danish FSA may order an insurance company or a branch to keep its register of insurance agencies and management companies up-to-date on an ongoing basis, cf. section 27(2) and section 29(1).

**45.** The Minister for Economic and Business Affairs shall lay down more detailed regulations on the use of digital communication, including electronic signatures, when exchanging information

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in accordance with this Act between citizens and undertakings on the one hand and the public administration on the other hand, as well as storage of information.

**46.-(1)** The Danish FSA may conduct investigations or surveys which are appropriate to promoting transparency of the insurance-mediation area. The Danish FSA may, independently or in co-operation with other public authorities, publish the results of such investigations or surveys.

**(2)** Undertakings and persons which are covered by an investigation or survey shall be informed of the results.

**(3)** The undertakings and persons mentioned in subsection (2) shall be entitled to include brief remarks on the conclusions of the investigation or survey in connection with publication, if such remarks are received by the Danish FSA no later than one month after the undertaking or person in question has received the results of the investigation or survey.

**47.-(1)** Insurance broker undertakings, reinsurance broker undertakings, employed insurance brokers, insurance agencies and sub-agencies - including management companies and insurance distribution undertakings - shall, on request, provide the Danish FSA with such information as is necessary to carry out the function of the Danish FSA.

**(2)** Furthermore, the Danish FSA may request natural and legal persons to supply all such information as is necessary to enable the Danish FSA to determine whether their activities are covered by the provisions of this Act.

**48.** When calculating time limits under this Act or regulations issued in pursuance of this Act, section 357 of the Financial Business Act shall apply correspondingly.

**49.** Sections 354 and 356 of the Financial Business Act shall apply for the employees of the Danish FSA.

**49a.-(1)** In the cases mentioned in subsection (2), the Danish FSA may make public the name of the undertaking which a decision concerns when the Danish FSA deems it to be of interest to the customers of said undertaking to know the name of said undertaking

**(2)** Publication may be effected in cases pertaining to

- 1) violation of the ban against carrying out insurance broker undertaking without a license, cf. section 4,
- 2) violation of sections 13 and 14, section 14a(1), 5<sup>th</sup> clause, subsection (2) and subsection (4), 2<sup>nd</sup> clause and sections 15, 33, 34 and 40 and of the Executive Order on information issued pursuant to sections 16 and 35,
- 3) violation of the regulations on disclosure of confidential information in section 18,
- 4) orders to rectify matters which are contrary to the regulations on good practice in section 19 and the Executive Order on good insurance broker practice issued pursuant to section 19(2), cf. section 44(3),

**(3)** Publication of the cases mentioned in subsection (2), no. 4 may moreover be made despite the undertaking having changed its conduct if it is deemed that the customers of the undertaking still have an interest in knowledge regarding the case.

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**(4)** Publication of the cases mentioned in subsection (2), nos. 2-4 may not be made if this would lead to significant damage to the undertaking. Said publication may not contain confidential information on customer relationships.

**(5)** The Danish FSA may make public the name of the undertaking which a decision concerns two weeks after said undertaking has received notification regarding said decision. If the undertaking decides to bring the case before the Company Appeals Board within said two weeks, publication may only be effected if the Board does not decide that the appeal is to act as stay of proceedings.

**50.-(1)** Only the undertakings and persons covered by sections 4 and 26; sections 27(4) and 28(3); sections 36(2) and 37(3); and section 41 against which a decision has been made by the Danish FSA under this Act or regulations laid down in pursuance of this Act shall be considered a party in relation to the Danish FSA, cf. however subsections (2) and (3).

**(2)** The following persons and undertakings shall likewise be considered a party in the case as regards the parts of the case which concern said persons or undertakings:

- 1) a person who carries out insurance broker activities without a license, cf. section 4,
- 2) an undertaking or person applying for a license to carry out insurance or reinsurance broker activities, cf. sections 5-7 and 26,
- 3) a member of the board of directors or board of management of an undertaking or the person or persons of the undertaking responsible for insurance mediation when the Danish FSA refuses to license an undertaking for insurance or reinsurance broker activities or withdraws such license, cf. sections 5(1) and 22(1) no. 4,
- 4) any person who violates the prohibition laid down in this Act on employing in the name or characterisation of an undertaking the words that are covered by the exclusive right of insurance or reinsurance broker undertakings to names, cf. sections 11 and 26, and
- 5) any person natural or legal of whom the Danish FSA requires information to assess whether said person falls within the scope of the provisions of this Act, cf. section 47(2).

**(3)** Finally, if the Danish FSA takes up a case regarding good insurance broker practice, cf. section 19(1), the Danish FSA may, in special circumstances, also award authorities as party to other natural or legal persons than those mentioned in subsections (1) and (2). The powers of a party can only be given for such part of the case as is of direct and material importance to the party concerned. The authorities as party shall be given having regard to the protection of confidential information about the undertakings subject to supervision.

**51.** (Repealed)

**52.** Insurance and reinsurance broker undertakings subject to supervision under this Act shall pay a fee to the Danish FSA in accordance with part 22 of the Financial Business Act.

#### *Appeals*

**53.** Decisions made by the Danish FSA under this Act or regulations issued pursuant to this Act may be brought before the Company Appeals Board by the person against whom said decision is directed no later than 4 weeks after notification of such a decision was submitted.

#### *Penalties*

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**54.-(1)** Unless more severe penalty is incurred under other legislation, violation of the provisions of the following sections shall be punishable by fine: section 4; section 11(1) and (2); sections 13, 14, 14a(1), 5<sup>th</sup> clause, subsections (2) and (4), 2<sup>nd</sup> clause, sections 15, 17, 18; section 20(1)-(3); section 27(2) and (5), section 28 (1), (2) and (4), section 29(2), 1<sup>st</sup> clause, sections 33, 34, 36, 37 (1), (2), (4) and (5), sections 40 and 41. The following shall be punishable by fine:

- 1) an insurance broker undertaking which fails to comply with a mandatory injunction issued in pursuance of section 44(3),
- 2) an insurance company or a branch which fails to comply with a mandatory injunction issued in pursuance of section 44(4),

**(2)** In regulations issued pursuant to this Act, fines may be stipulated for any violation of the provisions of said regulations.

**(3)** Companies etc. (legal persons) may be subject to criminal liability in pursuance of the regulations in Chapter 5 of the Criminal Code.

## **Part 11**

### *Entry into force and transitional provisions, etc.*

**55.-(1)** This Act shall enter into force on 1 January 2005, cf. however subsection (2). At the same time, the Insurance Mediation Act, cf. Consolidated Act no. 983 of 5 December 2003, shall be repealed.

**(2)** Notwithstanding subsection (1), 2<sup>nd</sup> clause, any license granted by the Danish FSA to an insurance broker undertaking or an employed insurance broker in pursuance of section 3(1) or section 3(1), cf. section 4(7), of the Insurance Mediation Act, cf. Consolidated Act no. 983 of 5 December 2003, shall remain in force.

**(3)** Notwithstanding subsection (1), 2<sup>nd</sup> clause, any license granted by the Danish FSA to an insurance broker undertaking or an employed insurance broker in pursuance of section 34(2) of the Insurance Mediation Act, cf. Consolidated Act no. 983 of 5 December 2003 shall remain in force until 1 April 2005.

**(4)** Administrative regulations issued in pursuance of the Act mentioned in subsection (1), 2<sup>nd</sup> clause, shall be maintained until they are repealed or replaced by regulations issued in pursuance of this Act.

**56.-(1)** Any undertaking or person that, on 1 January 2005, carries out reinsurance broker activities and has submitted an application for a license to the Danish FSA no later than 1 July 2005, may continue such activities until the Danish FSA has made a decision irrespective of whether

- 1) the person or persons responsible for the undertaking's insurance mediation do not meet the conditions of sections 9(1), or
- 2) the insurance broker does not fulfil the conditions in section 9(2).

**(2)** An insurance agency, sub-agency or management company that, on 1 January 2005, carries out insurance mediation; the person or persons responsible for the undertaking's

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insurance mediation; and those who, as employees of the insurance agency or sub-agency, work directly with insurance mediation may continue such activities irrespective of whether the conditions of sections 28(1) and 37(2) are met, cf. subsections (3) and (4).

**(3)** Insurance companies shall, no later than 1 July 2005, register the insurance agencies which they have entered into agreement on selling insurance products in their register of insurance intermediaries.

**(4)** The insurance agency or management company shall, no later than 1 April 2005, notify the Danish FSA of the names, CVR numbers and addresses of the sub-agencies or management companies with which it has entered into contracts to sell the insurance companies' products in respect of which said insurance agency or management company has entered into a mediation contract. Furthermore, the insurance agency or management company shall report the name of the person or persons of the sub-agency or management company responsible for insurance mediation. The Danish FSA shall, before 1 July 2005, register the relevant sub-agencies and management companies in its register of insurance intermediaries.

**56a.-(1)** An undertaking or a person who can document to the Danish FSA that said undertaking or person has practiced insurance consultancy before 1 January 2005, may continue this activity if the undertaking or person files an application for a license with the Danish FSA under section 4 no later than 1 October 2006. This shall apply notwithstanding that

- 1) the person or persons responsible for the undertaking's insurance mediation do not meet the conditions of section 9(1), or
- 2) the insurance consultants employed in the undertaking do not fulfil the conditions in section 9(2).

**(2)** The right to practice insurance consultancy under subsection (1) shall lapse on 1 January 2011 unless the undertaking or person in question before this date submits proof that said undertaking or person meets the requirements for theoretical education under section 9(1) or (2).

**57.** This Act shall not apply to Greenland and the Faeroe Islands, but may be brought into force by Royal Decree for Greenland subject to any variations necessitated by the specific conditions prevailing in Greenland.

Act no. 1383 of 20 December 2004 contains the following provisions regarding entry into force:

#### **Section 17**

**(1)** This Act shall enter into force on 1 January 2005, cf. however subsections (2)-(4).

**(2)-(4)** (Omitted)

#### **Section 18**

**(1)** This Act shall not apply to Greenland and the Faeroe Islands, cf. however subsections (2) and (3).

**(2)-(3)** (Omitted).

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Act no. 604 of 24 June 2005 contains the following provisions regarding entry into force:

#### **Section 5**

**(1)** This Act shall enter into force on the day following the publication of this Act in the Danish Law Gazette, cf. however subsection (2).

**(2)-(3)** (Omitted).

#### **Section 6**

**(1)** (Omitted)

**(2)** Section 4 shall not apply to the Faroe Islands and Greenland, but may be brought into force by Royal Decree for Greenland subject to any variations necessitated by the specific conditions prevailing in Greenland.

Act no. 524 of 7 June 2006 contains the following provisions regarding entry into force and transitional provisions:

#### **Section 2**

**(1)** This Act shall enter into force on 1 July 2006, cf. however subsections (2) and (3).

**(2)** The duty of information under section 14(2) as worded in section 1, no. 3 shall enter into force on 1 July 2007.

**(3)** The transitional provision for insurance consultants under section 56 as worded in section 1, no. 10 shall enter into force on the day following the publication of this Act in the Danish Law Gazette and shall take effect from 1 January 2005.

#### **Section 3**

**(1)** If an insurance broker undertaking receives commission or other remuneration in connection with the specific customer relationship pursuant to an agreement entered into before 1 July 2006 with an insurance company, section 14a(2) as worded in section 1, no. 4 shall apply from 1 July 2011.

**(2)** Notwithstanding subsection (1) an insurance broker undertaking may not receive commission or other remuneration from an insurance company in connection with mediation of new occupational pension schemes

- 1) after 1 July 2007, provided that the total annual premium constitutes DKK 4 mill. or more, and
- 2) after 1 July 2009, provided that the total annual premium constitutes DKK 2 mill. or more.

**(3)** If a contract covered by subsection (1) is changed, section 14a(2) as worded in section 1, no. 4 of this Act shall apply to the changed contract.

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**(4)** The insurance companies shall no later than 1 August 2006 notify the Danish FSA of whether they have entered into contracts with insurance broker undertakings on payment of commission or other remuneration covered by subsection (1). If an insurance company has entered into such contracts, said insurance company shall report the number hereof once a year and state with which insurance broker undertakings it has entered into contract. The report shall be carried out as at 1 July, for the first time as at 1 July 2006. The report shall be received by the Danish FSA no later than 1 August. The report shall be made public on the Danish FSA's website.

**(5)** The insurance broker undertaking shall inform the customer in writing about contracts which are covered by subsection (1) and which are relevant for the specific customer relationship. This shall apply for establishment of new cooperation agreements and for changes in existing cooperation agreements.

**(6)** Unless more severe penalty is incurred under other legislation, violation of subsections (2), (4) and (5) shall be punishable by fine. Companies etc. (legal persons) may be subject to criminal liability in pursuance of the regulations in Chapter 5 of the Criminal Code.

#### **Section 4**

This Act shall not apply to the Faroe Islands and Greenland, but may be brought into force by Royal Decree for Greenland subject to any variations necessitated by the specific conditions prevailing in Greenland.

Act no. 108 of 7 February 2007 contains the following provisions regarding entry into force and transitional provision:

#### **Section 21**

**(1)** (Omitted)

**(2)** (Omitted)

**(3)** Section 1, no. 88, section 3, nos. 1, 3, 11, 24, 27, 30, 40-43, 58, 61, 62, 68, 69, 76, 81, 83, 85 and 86, section 6, nos. 1-9, section 7, section 8, nos. 3, 8 and 9, section 9, nos. 6 and 7, section 10, no. 6 and sections 11-15 shall enter into force on 15 February 2007.

**(4)** (Omitted)

**(5)** (Omitted)

**(6)** Section 1, no. 88, section 3, no. 62, section 11, no. 1, section 12, no. 12 and section 13, no. 2 shall take effect from 1 January 2006.

**(7)** (Omitted)

#### **Section 22 (Omitted)**

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### **Section 23**

**(1)** This Act shall not apply to the Faroe Islands and Greenland, cf. however subsections (2) and (3).

**(2)** (Omitted)

**(3)** Sections 7, 10-12 and 16 may be brought fully or partially into force for Greenland by Royal Decree subject to any variations in their operation necessitated by the specific conditions prevailing in Greenland.

**(4)** (Omitted)

*The Ministry for Economic and Business Affairs, 25 April 2007*

Bendt Bendtsen

/Henrik Bjerre-Nielsen

[Links to EC directives, cf. note 1](#)

[Directive 2002/92/EC](#) Celex no. 32002L0092