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The Legal 500 Country Comparative Guides

Denmark

INSURANCE & REINSURANCE

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This country-specific Q&A provides an overview of insurance & reinsurance laws and regulations applicable in Denmark.

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DENMARK

INSURANCE & REINSURANCE



1. How is the writing of insurance contracts regulated in your jurisdiction?

The most important regulation on insurance contracts is found in the Danish Insurance Contracts Act, which regulates the relationship between the insurance company and the policyholder. The Act applies to insurance contracts entered into with insurance companies, mutual insurance companies or other companies and institutions that conduct insurance business. The Act does not apply to reinsurance etc.

The provisions of the law are not exhaustive and must occasionally be supplemented by general Danish property, contract and/or consumer protection law.

2. Are types of insurers regulated differently (i.e. life companies, reinsurers?)

Yes, depending on the type of insurance, insurers are regulated differently. Regulation regarding insurance companies (including reinsurers) is found in the Danish Financial Business Act, which contains rules on public control of insurance companies.

Furthermore, the Danish Insurance Mediation Act intends to ensure consumers the same protection, regardless of whether they buy insurance directly from the insurance company, from an agent or from a company that mediates insurance.

3. Are insurance brokers and other types of market intermediary subject to regulation?

Yes, insurance brokers etc. are subject to regulation, and such regulation is found in the Danish Insurance Mediation Act, which – as mentioned above – intends to protect consumers regardless of whether the insurance product is bought directly from the insurance company, from an agent or from a company that mediates insurance.

According to the Act, several distributors of insurance

and reinsurance must be licensed and subject to supervision by the Danish Financial Supervisory Authority (FSA).

The Act implements the Insurance Distribution Directive of 2016/97/EU.

4. Is authorisation or a licence required and if so how long does it take on average to obtain such permission? What are the key criteria for authorisation?

According to the Financial Business Act (section 11 and 14), insurance companies, including reinsurance companies, must have permission from the FSA to do such business. Some of the conditions for obtaining such permission are that the members of the applicant's board and management meet special requirements, that owners of qualified shares meet special requirements, that there are no close connections between the applicant and other companies or persons that could complicate supervision and that the applicant is domiciled in Denmark.

According to the Danish Insurance Mediation Act, distributors of insurance and reinsurance must also be licensed and subject to supervision by the FSA. The Act implements the Insurance Distribution Directive of 2016/97/EU.

The FSA's main task is to supervise financial companies.

Overall, the FSA grants permission when the following conditions are met:

1. The company's home country is Denmark.
2. The company's board and management, owner (for an insurance or reinsurance intermediary that is a sole proprietorship) or the person(s) responsible for the company's management (if there is no board and management) meet certain requirements.
3. The company has a liability insurance or other equivalent guarantee against claims.

4. The company has taken measures to protect customers against insolvency of the insurance intermediary or the reinsurance intermediary.
5. There are no close connections between the applicant and other companies or persons that could complicate the process of the FSA.
6. The legislation of a country outside the EU with which the EU has not entered into an agreement in the financial field, concerning a company or a person with whom the applicant has close connections, will not complicate the process of the FSA.

The application process can be up to 90 days.

5. Are there restrictions or controls over who owns or controls insurers (including restrictions on foreign ownership)?

According to the Danish Financial Business Act, any natural or legal person who intend – directly or indirectly – to acquire a qualified share in an insurance company must be approved by the Danish Financial Supervisory Authority (the “FSA”) and are subject to its supervision.

A qualified share is a direct or indirect possession of at least 10 % of the capital or voting rights or a share, which provides an opportunity to exercise a significant influence on the management of the company.

The same applies, if a qualified share increases and the increase means that the qualified share after the acquisition will amount to or exceed a limit of 20, 33 or 50 % of the share capital or voting rights, or if the acquisition will cause the company to become a subsidiary company.

If a company from another country within the EU or EEA wants to acquire a qualified share in a Danish company, the FSA must consult the country’s supervising authority first. The FSA can suspend the application process, if the acquirer is from outside the EU.

The FSA will need a number of documents and information from the applicant to process an application for approval of an acquisition or increase of a qualified share. The necessary information is available on the FSA’s website.

6. Is it possible to insure or reinsure risks in your jurisdiction without a licence or authorisation? (i.e. on a non-admitted basis)?

No, it is not possible to insure or reinsure risks in

Denmark without a licence or authorisation.

7. Is a branch of an overseas insurer, insurance broker and/or other types of market intermediary in your jurisdiction subject to a similar regulatory framework as a locally incorporated entity?

There are specific rules that provide a different legal framework for EU/EEA (re)insurers and third country (re)insurers.

For EU/EEA (re)insurers the so-called single-licence principle applies, meaning that insurance companies who has registered office and licence in another member state may conduct business in Denmark under the freedom to provide services or freedom of establishment. Third country (re)insurers are subject to stricter regulation.

Companies outside the EU/EEA that want to do (re)insurance business in Denmark must set up a branch or company in Denmark and apply for a licence from the FSA. In other words, third-country insurers cannot start up directly in Denmark.

In respect of US (re)insurers conducting business in the EU, the USA and the EU reached an agreement, which came into force on 4 April 2018. The agreement intends for US insurers and reinsurers to continue writing new business in the European market without having to establish a local branch in every European member state in which they want to do business. Moreover, the agreement streamlines group supervision requirements for insurers and reinsurers operating in both jurisdictions. The provisions of the agreement are not self-implementing but require further legislation. Full implementation is expected in 2022.

8. What penalty is available for those who operate in your jurisdiction without appropriate permission?

Those who operate without appropriate permission can be punished with fines and imprisonment for up to 4 months according to the Danish Financial Business Act section 373.

9. How rigorous is the supervisory and enforcement environment? What are the key areas of its focus?

The FSA’s supervision is a risk-based supervision

meaning that the FSA prioritizes its resources on the companies with the greatest impact on the financial stability and on the companies with the highest risk profile. The FSA ensures that the companies have the necessary capital in relation to the company's business model and that the company has the necessary competencies. The insurance companies must regularly submit reports and accounts to the FSA.

The supervisory and enforcement environment is rigorous both in supervisory activities and in forms of regulations and guidelines from the FSA.

10. How is the solvency of insurers (and reinsurers where relevant) supervised?

Rules regarding the solvency of insurers are found in the Danish Financial Business Act which has implemented the Solvency II Directive. Thus, insurance companies must have a capital stock adequate with their risk profile to ensure that they have sufficient financial resources to withstand financial difficulties. The FSA supervises the insurers in this regard.

11. What are the minimum capital requirements?

The Danish Financial Business Act and the Solvency II Directive divides insurance companies into group 1 and group 2.

The minimum capital for Group 1 companies must be at least (Section 126 d in the Danish Financial Business Act):

- EUR 3.7 million for life insurance companies,
- EUR 2.5 million for non-life insurance companies,
- EUR 3.7 million for insurance connected to motor vehicles, aircraft or vessels or other liability insurances, or credit or guarantee insurance,
- EUR 3.6 million for reinsurance companies, and
- EUR 1.2 million for captive reinsurance companies

The same applies for Group 2 companies with only few alternations (Section 126 in the Danish Financial Business Act.)

12. Is there a policyholder protection scheme in your jurisdiction?

No, there is no general policyholder protection scheme.

13. How are groups supervised if at all?

According to the Danish Financial Business Act and the Solvency II Directive, groups are subject to supplementary supervision in addition to the single supervision of individual insurance companies.

14. Do senior managers have to meet fit and proper requirements and/or be approved?

Yes, members of the board and management must meet fit and proper requirements. The same applies for members of the board and management in insurance and reinsurance intermediaries, the holder of an insurance intermediary or a reinsurance intermediary that is a sole proprietorship.

15. To what extent might senior managers be held personally liable for regulatory breaches in your jurisdiction?

According to Danish law a member of a board or management can be held personally liable for the losses resulting from the member's actions, but the management can also risk joint and several liability.

16. Are there minimum presence requirements in order to undertake insurance activities in your jurisdiction (and obtain and maintain relevant licences and authorisations)?

To obtain a licence from the FSA, the applicant must have a registered office and domicile in Denmark, cf. the Danish Financial Business Act section 14, subsection 1, no. 9. This means that the company must be managed from Denmark. In order to decide if this is case, the location of the company's management as well as the location for the company's general assemblies are held is reviewed among other things.

17. Are there restrictions on outsourcing services relating to the business?

According to the Danish Financial Business Act (section 72b) and the Solvency II Directive, insurance companies can outsource services, but outsourcing of critical or important operational functions or activities shall not be

undertaken in such a way as to lead to any of the following:

1. materially impairing the quality of the system of governance of the undertaking concerned,
2. unduly increasing the operational risk,
3. impairing the ability of the supervisory authorities to monitor the compliance of the undertaking with its obligations, and
4. undermining continuous and satisfactory service to policy holders.

Insurance and reinsurance companies shall, in a timely manner, notify the FSA prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities.

18. Are there restrictions on the types of assets which insurers or reinsurers can invest in or capital requirements which may influence the type of investments held?

There is no regulation on this matter, but an insurance company is expected to invest in a cautious manner. Investments are only allowed in financial instruments and other assets that the insurance company can identify, measure, monitor, manage, control, report and take appropriate account of the risk and solvency assessment of.

19. How are sales of insurance supervised or controlled?

The FSA supervises insurance companies based on risk, meaning they prioritize their resources on the companies of the greatest importance to the financial stability and the companies with the highest risk profile.

Sales of insurance are also subject to the Danish Marketing Practices Act and other general laws on consumer protection, which are supervised by the Danish Consumer Ombudsman.

20. To what extent is it possible to actively market the sale of insurance into your jurisdiction on a cross border basis and are there specific or additional rules pertaining to distance selling or online sales of insurance?

Foreign companies can market sales of insurance in

Denmark, but they must comply with the Danish Marketing Practices Act when doing so. If the company markets or sells goods or service on the internet, the company must also comply with the Danish Electronic Commerce Act, which contains rules regarding what information the companies must provide etc.

Companies must also adhere to other general Danish laws such as the Danish Sale of Goods Act.

21. Are consumer policies subject to restrictions? If so briefly describe the range of protections offered to consumer policyholders

Danish legislation contains several rules to protect consumers, and, among other regulations, the Danish Insurance Contracts Act has, for example, sections regarding the cancellation of policies.

The Danish Consumer Complaints Board and the Danish Insurance Complaints Board are entitled to handle such claims on an independent basis.

As for reinsurance, a similar consideration is not necessary, as the reinsurance industry is not considered to have the same need for "protection". Hence, the reinsurance industry relies on the wording of the insurance contract and case law from the Danish trade organisation Insurance & Pension.

22. Are the courts adept at handling complex commercial claims?

Yes, the Danish courts are generally adept at handling complex commercial claims.

The only specialized court in Denmark is the Danish Maritime and Commercial High Court, which only deals with certain types of cases. The Court is divided into two divisions, the Civil Division and the Bankruptcy Division. The Civil Division deals with cases related to business matters and the Bankruptcy Division deals with all of Greater Copenhagen's cases that involve: bankruptcy, debt restructuring, compulsory dissolution of shares and private limited liability companies and reconstruction.

23. Is alternative dispute resolution well established in your jurisdictions?

Yes, there is a wide choice of alternative dispute resolution methods available. Arbitration is widely used and well established (both ad hoc and institutional arbitration).

Courts have also, since 2008, offered mediation in civil, probate and enforcement cases. The courts will encourage mediation before litigation for both insurance and reinsurance contracts. Mediation is, however, a voluntary process and there is no sanction if a party refuses to mediate. Mediation can also take place without use of the courts.

24. Is there a statutory transfer mechanism available for sales or transfers of books of (re)insurance? If so briefly describe the process.

There is no such mechanism available.

25. What are the primary challenges to new market entrants?

Comprehensive regulation together with a strong competition in the industry can be a challenge to new market entrants. As of now, relatively few large companies dominate the market.

26. To what extent is the market being challenged by digital innovation?

In Denmark, digitization is very well integrated in the public sector, and this means that the insurance industry can provide better solutions for both consumers and the business community. The insurance industry will have even better opportunities, when they get to exchange data with the public sector.

Studies show that e.g. climate change, technology and artificial intelligence will cause challenges for the insurance industry in the future, which is why the industry must consider their strategies regarding digitization.

The industry is therefore already working to create better digital consumer services, just as the industry is trying to influence the legislation. Challenges with cybersecurity are also increasing in step with digitization, and the insurance industry is focused on creating solutions that can deal with this issue as well.

27. How is the digitization of insurance sales and/or claims handling treated in your jurisdiction, for example is the regulator in support (are there concessions to rules being made) or are there

additional requirements that need to be met?

There is no doubt that the digitization on both insurance sales and claims handling are increasing.

Reporting an insurance event is done by filling out and submitting an electronic scheme and questions about the insurance event, the claim etc. is often answered by a chat robot.

As mentioned above this clearly states the necessity for transparent and consumer friendly GDPR guidelines.

28. To what extent is insurers' use of customer data subject to rules or regulation?

Insurers must comply with the General Data Protection Regulation (Regulation (EU) 2016/679) and the enacted Danish Data Protection Act.

On certain areas, the GDPR allows Member States to legislate differently in their own domestic data protection laws and/or apply different interpretation and enforcement practices among the Member States. The Danish Data Protection Act therefore has a few additions/alternations to the GDPR.

The Danish Data Protection Agency is an independent authority that supervises compliance with the rules on protection of personal data. The DPA provides guidance and advice as well as deal with complaints and make inspections.

29. To what extent are there additional restrictions or requirements on sharing customer data overseas/on a cross-border basis?

In brief, the General Data Protection Regulation (the GDPR) first and foremost applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the EU, regardless of whether the processing takes place in the EU or not. The GDPR also applies to the processing of personal data of data subjects who are in the EU by a controller or processor not established in the EU, where the processing activities are related to the offering of goods or services, or the monitoring of their behaviour as far as their behaviour takes place within the EU. Finally, the GDPR applies to the processing of personal data by a controller not established in the EU, but in a place where Member State law applies by virtue of public

international law.

When transferring personal data to a third country or an international organization, a number of special rules apply to the transfer of personal data. The rules can be found in the GDPR chapter V.

30. Over the next five years what type of business do you see taking a market lead?

The business that will take the market lead within next five years is an insurance business, which makes it easy for both consumers and companies to communicate and report an insurance event.

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