



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Denmark: Insurance & Reinsurance (3rd edition)

This country-specific Q&A provides an overview to insurance and reinsurance laws and regulations that may occur in Denmark.

This Q&A is part of the global guide to Insurance & Reinsurance (3rd edition). For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/insurance-and-reinsurance-3rd-edition>



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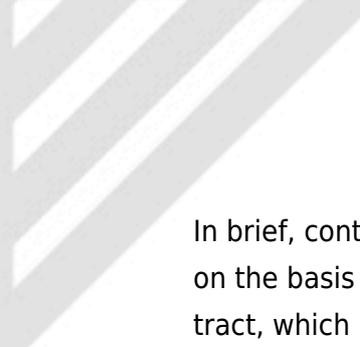
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The Legal 500

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

The main source of law specifically relevant for insurance contracts is the Danish Insurance Contracts Act, which sets out certain rights and obligations of the parties to an insurance contract. The Act applies unless the parties to the contract agree otherwise. However, a number of the provisions in the Act are mandatory and hence cannot validly be derogated from. The Act holds a number of general provisions that apply to all insurance contracts, and a number of special provisions that only apply to certain types of insurances, e.g. life insurance, accident insurance and health insurance.

Apart from the mandatory provisions in the Danish Insurance Contracts Act, insurance contracts are subject to the general principles of Danish contract law, according to which the parties to a great extent enjoy the freedom of contract, allowing the parties to agree on the terms and conditions governing their relationship.



In brief, contracts, including insurance contracts, are formed under Danish contract law on the basis of an offer and an acceptance. The insurance policy constitutes the contract, which holds the terms and conditions that the parties have agreed upon. It is worth noting that the fact that the policyholder does not react to an offer from the insurance company will not in itself substantiate a contractual obligation. However, during the insurance period, insurers may have an interest in changing the policy terms, and in such instances Danish courts have accepted that under certain circumstances, revised policy terms are binding on the policyholder even in the absence of an explicit acceptance.

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

Both life and non-life insurers are regulated in the Danish Insurance Contracts Act.

To some extent, the financial sector, including insurance companies, are also regulated by the Danish Financial Business Act. As a result of the Danish implementation of the EU Solvency II Directive (effective since 1 January 2016), insurance companies are divided into two groups with different compliance requirements; “Group 1” insurance companies and “Group 2” insurance companies. Where “Group 1” must comply with the full requirements resulting from the implementation of the EU Solvency II Directive, “Group 2” must only comply with simplified, national solvency regulation and changed investment rules that are based on the EU Solvency II Directive.

The Danish Insurance Contracts Act does not apply to reinsurers. Rather, reinsurance contracts are generally considered regular commercial contracts and subject to the general principles of Danish contract law and other legislation, depending on the particular issue at hand.

3. Are insurance brokers and other types of market intermediary

subject to regulation?

Insurance brokers, agents and other types of intermediaries are regulated by the new Danish Insurance Mediation Act, which took effect as of 1 October 2018. The new Act is based on the Insurance Distribution Directive (IDD) from January 2016, which regulates the way insurance products are designed and sold both by insurance intermediaries and directly by insurance undertakings.

As the IDD introduces general consumer protection principles for all insurance intermediaries to act honestly, fairly and professionally and in accordance with the best interests of the customer, the new Act increases the protection of consumers by introducing stricter license and registration requirements (see question 4 below).

The increased focus on consumer protection has also resulted in adjustments of the statutory orders of good business practice and qualification requirements. These revised statutory orders also took effect as of 1 October 2018.

In brief, the new Act sets out certain educational requirements, and as a minimum requirement, insurance intermediaries have to show necessary knowledge of the terms and conditions of the policies offered, the applicable law, the insurance market, financial competency, and claims and complaints handling.

The authorised supervisory body is the Danish Financial Supervisory Authority (FSA), which is an authority under the auspices of the Minister for Economics and Business Affairs. The primary task of the Danish FSA is supervision of financial businesses in Denmark, including insurance companies and insurance intermediaries doing business in Denmark. The Danish FSA supervises the insurance intermediaries' compliance with the new rules and has a right to withdraw licenses.

4. Is authorisation or a licence required and if so how long does it take on average to obtain such permission?

All insurers which carry out insurance activities, including reinsurance activities, in Denmark, must obtain a license by the Danish FSA as insurance or reinsurance company. Insurers established in other EEA countries may generally obtain their license through their home country regulator, whereas insurers from non-EEA countries may

generally not. Accordingly, non-EEA insurers are generally required to set up an insurance company or establish a branch in Denmark and obtain a license to be able to carry out insurance activities in Denmark.

As a result of the new Danish Insurance Mediation Act, it is no longer enough for insurance intermediaries only to be recorded in a public register, as they now also must obtain a license from the Danish FSA, provided that they come within the new definition of insurance intermediaries. Insurance undertakings may not use insurance mediation services from non-licensed insurance intermediaries.

To obtain a license, both as insurer or insurance intermediary, a detailed application must be filed with the Danish FSA, detailing capital, financial forecasts, etc. How long it takes to obtain a license depends on the specific circumstances, but the foreseeable review process is likely to be 3-4 months.

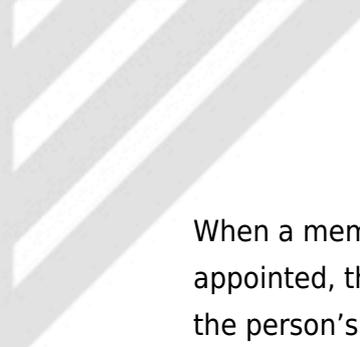
5. Are there restrictions or controls over who owns or controls insurers (including restrictions on foreign ownership)?

It may be a criminal offence to acquire or increase control in an insurance company authorised in Denmark without prior approval of the Danish FSA. According to the Danish Financial Business Act, approval by the Danish FSA is required when:

- acquiring 10% or more of the shares or voting power in an undertaking (or its parent company) or where it is able to exercise significant influence over the undertaking,
- increasing the shareholdings or voting power in an undertaking (or its parent company) above 20%, 30% or 50%, or
- turning the undertaking into a subsidiary or into another company.

The approval may be given if a number of criteria are fulfilled, among these whether the entity in question is regarded as "fit and proper" to own such holdings (we refer to reply to question 13).

There are no legislative restrictions on foreign ownership of insurance companies.



When a member of the board (including the chairman) of an insurance company is appointed, the chairman and/or the member of the board must notify the Danish FSA of the person's experience and knowledge regarding the employment.

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

Non-licensed foreign insurers may lawfully cover risks in Denmark, but the Danish FSA prohibits the foreign insurers to market their products in Denmark, and intermediaries are prevented from facilitating the writing of insurances offered by non-licensed foreign insurers.

Even though foreign insurers do not need to obtain a license from the Danish FSA, they must still notify the Danish FSA of their activities.

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

It is generally a criminal offence to undertake a regulated activity in the Denmark without permission.

If an insurance or reinsurance company fails to comply with the legal requirements, the Danish FSA may issue warnings, impose injunctions and fines, and, in severe cases, the Danish FSA is also empowered to revoke licenses. If the Danish FSA detects illegal activity, it will report the business to the State Prosecutor for Serious Economic and International Crime, which is a special unit with the public prosecutor that investigates and prosecutes cases concerning particular economic crimes.

8. **How rigorous is the supervisory and enforcement environment?**

Following the implementation of the EU Solvency II Directive in 2016, the supervision and enforcement environment of insurance companies in Denmark have become increasingly tougher. Withdrawal of insurance companies' licenses is, however, still very unusual in Denmark, and it has only been seen effectuated in very severe cases.

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

Danish insurers and reinsurers are obliged to perform their own supervision and self-reporting of their solvency, cf. The Danish Financial Institutions Act (implementing the EU Solvency II Directive).

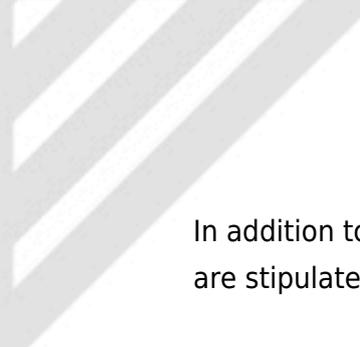
Additionally, the EU Solvency II Directive sets out requirements for the supervision of the solvency of insurance companies. The EU Solvency II Directive requires companies to hold both a minimum capital requirement (see question 10 below) and a solvency capital requirement. In Denmark, the Danish FSA has the task of monitoring and ensuring that insurance companies comply with the EU Solvency II Directive.

The Danish FSA supervises the solvency of the insurers and reinsurers through risk assessments.

10. **What are the minimum capital requirements?**

The minimum capital requirements for Danish insurance companies are based on the EU Solvency II Directive. The minimum requirements are as follows:

- Non-life insurance companies: EUR 2.5 million
- Life insurance companies: EUR 3.7 million
- Re-insurance companies: EUR 3.6 million
- Captive reinsurance companies: EUR 1.2 million



In addition to the minimum capital requirements, more specific capital requirements are stipulated in chapter 10 of the Danish Financial Institutions Act.

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

The Danish Guarantee Fund for Non-life Insurance Companies provides cover for policyholders in case of a non-life insurance company's bankruptcy. In brief, the Guarantee Fund will in case of bankruptcy step in and provide cover and reimburse prepaid premium.

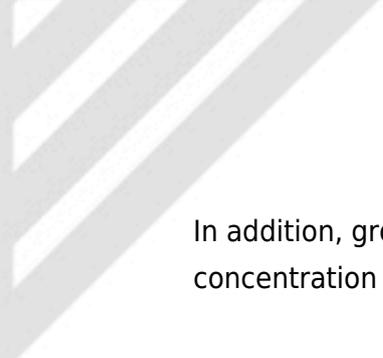
The guarantee scheme generally applies to private insurances (consumer insurances) taken out with insurers that have been granted license from the Danish FSA to carry out insurance business in Denmark, or with foreign insurers which have passported their license through their home country regulator.

In addition to the guarantee scheme, the minimum capital requirements set out in the EU Solvency II Directive (reply to question 10), and the fit and proper requirements of the senior managers (reply to question 13), lead to some protection of the policyholders.

12. How are groups supervised if at all?

Under the EU Solvency II Directive, groups are subject to supplementary supervision in addition to the solo supervision of individual insurance companies. The EU Solvency II Directive sets out the circumstances in which group supervision is triggered. Group supervision is triggered if one insurance entity is headquartered in Denmark or elsewhere in the EU.

In the event of group supervision, the participating insurance companies are required to calculate a group solvency capital requirement. The group's own funds must be transferable and fungible across the group. All related companies and all risks within the group must be included in the group solvency calculation.



In addition, group-wide governance, reporting and intra-group transaction and risk concentration monitoring shall apply.

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

"Fit and proper" requirements apply to the CEO of an insurance company and to the members of the board. In addition, owners of qualified holdings of the company's share capital or votes must be fit and proper to own such holdings (we refer to reply to question 5, too).

The Danish FSA shall be notified of the fulfilment of the fit and proper requirements when a CEO or member of the board are appointed or changed.

14. **Are there restrictions on outsourcing parts of the business?**

There are restrictions on outsourcing parts of business, as the EU Solvency II Directive provides for specific rules (and restrictions) in terms of outsourcing.

In accordance with the EU Solvency II Directive, in cases where an insurer outsources part of its business, the insurer will remain fully responsible for discharging all of its obligations under law, regulation and administrative provisions. Specifically, the outsourcing of an important or critical activity or function must not lead to any material impairment in the quality of the undertaking's system of governance, any increase of the operational risk, any impairment of the ability of the regulator to monitor compliance of the company or undermining of continuous and satisfactory service to policyholders.

The Danish FSA supervises the outsourcing activities and must be notified of any outsourcing activity.

15. **How are sales of insurance supervised or controlled?**

Sales of insurances are supervised by the Danish FSA, as per above. In addition, supervision and control is also performed by different ombudsmen, e.g. the Danish Consumer Ombudsman, which is an entity that focuses on consumer protection.

Marketing and sales activities are subject to various general legal requirements under the Danish Marketing Act. Furthermore, private policyholders have a right to complain to the Danish Insurance Complaints Board and the Danish Consumer Complaints Board.

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

Danish insurance companies are required to observe consumer protection regulation. The Insurance Contracts Act provides quite detailed mandatory regulations to benefit the insured. These include, inter alia, regulation regarding insurance premium, limitation periods, duty of disclosure and right of cancellation.

In addition, Danish courts may generally at their own discretion set aside any contractual provisions and terms fully or partly if the court deems them to be manifestly unfair. Thus, Danish contract law prohibits the use of unfair contract terms in consumer agreements. A term will generally be considered unfair if it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer. Certain terms are in particular likely to be considered unfair, e.g. high cancellation charges or penalties.

On 25 May 2018, EU's new General Data Protection Regulation (GDPR) came into force in Denmark. The GDPR brought new and stricter rules, including new requirements for data security and documentation and new penalties. In Denmark, the processing of personal data requires consent and such consent must always be specific, voluntary and informed. A consumer policy may be conditioned by such consent; however, the consumer must be informed that he or she may withdraw the consent.

17. **Are the courts adept at handling complex commercial claims?**

Disputes adjudicated before the Danish courts do to a significant extent include complex commercial claims. Consequently, the courts are generally adept at handling complex commercial claims, which is particularly true for the Maritime and Commercial Court, The High Courts and the Supreme Court.

The Maritime and Commercial Court's competence has been extended successively since its formation in 1862, and today the court hears cases concerning the Danish Trade Marks Act, the Design Act, the Marketing Practices Act, the Competition Act, cases concerning international trade conditions as well as other commercial matters.

The 24 district courts, among these especially the district courts placed in parts of Denmark with most commercial activities, are also adept at handling complex commercial claims. However, the adeptness may vary depending on how much knowledge the individual judges in the district courts has regarding commercial issues. In district court cases one judge normally participates. In more complicated matters, a party may however request for the participation of three judges at the main hearing.

18. **Is alternative dispute resolution well established in your jurisdictions?**

The use of arbitration is well established in Denmark as an alternative to litigation, and due to a frequent use of arbitration clauses in commercial insurance policies, many coverage disputes are referred to arbitration rather than to the courts.

The relevant law governing arbitration is contained in the Arbitration Act.

Mediation and court-based mediation are not used to a significant extent in Denmark, and it is rare that insurance disputes are mediated in Denmark.

19. **What are the primary challenges to new market entrants?**

Generally, the Danish insurance market is well-functioning and there are no real formal challenges to new market entrants. However, there is a quite high level of competition in the Danish insurance market even though it is dominated by relatively few large insurers that collectively hold more than 50 per cent of the market share in most areas. Even though there is a good level of competition on the Danish Market, many new market entrants may have great trouble competing with the largest insurers on the market.

In addition to competition challenges, the Danish insurance market is also a highly regulated market. Especially in the light of the EU Solvency II Directive, the costs of ascertaining compliance with the regulation can pose a challenge to new market entrants. However, insurance business (and business in general) is to an increasingly extent being transferred into the cloud. As a consequence, the distribution of insurances has changed, which has indeed made it easier for new entrants to appear on the insurance market.

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

The Danish market is certainly being challenged by digital innovation. The market is by many in the industry most likely expected to be transformed by digital innovation such as telematics devices, distributed ledgers and connected devices. As a consequence, insurers on the Danish market must be prepared to adapt to new distribution channels (mainly cloud-based). Insurance companies that cannot invest on developing in this direction may lose substantial business opportunities.

21. **Over the next five years what type of business do you see taking**



a market lead?

The next five years are likely to be a period of change. Technological changes, both in the way insurance products are written, sold and administered, and also more generally in the way individuals live their lives, are likely to unfold in the next five years. Due to the technological changes, cyber threats have become a new huge challenge.

Insurers that can offer credible solutions to both mitigate and manage cyber threats and adapt to the changing risk environment are more likely to take a market lead than those in-surers on traditional product lines.

In addition, M&A insurance products, in particular Warranty and Indemnity insurances, have become increasingly popular on the Danish market, both relating to real estate and industry related transactions, and this appears to be a growing trend that will develop further in the years to come.