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GlobalDenmark Translations, January 2009

Executive Order on Insurance Intermediaries' Indemnity Insurance, Guarantees and Treatment of Entrusted Funds

Executive Order no. 1390 of 22 December 2008[1]

The following has been laid down pursuant to section 20(5), section 28(5), section 37(6) and (7), and section 54(2) of the Insurance Mediation Act, cf. Consolidated Act no. 930 of 18 September 2008:

Part 1

Introduction

1. This Executive Order shall apply to:

1) Insurance broker undertakings.
2) Reinsurance broker undertakings.
3) Insurance agencies
4) Sub-agencies
5) Management companies acting on behalf of insurance agencies and sub-agencies covered by nos. 3 and 4.

Part 2

Insurance broker undertakings' and reinsurance broker undertakings' indemnity insurance and guarantees

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

1) the undertaking is covered by indemnity insurance,
2) the insurance company is directly liable to pay to injured parties damages to which the undertaking becomes liable through negligence of the undertaking or someone for whom the undertaking is liable,
3) the indemnity insurance covers the activities of the undertaking in all countries within the European Union and countries with which the Community has entered into an agreement for the financial area, and
4) the sum insured of the indemnity insurance is no less than EUR 1,120,200 per claim and no less than EUR 1,680,300 for all claims per insurance year, cf. however subsections (2) and (3).

(2) For undertakings with ten or more registered insurance brokers, indemnity insurance shall have a total sum insured of no less than EUR 3,008,297.

[1] This Executive Order contains provisions that implement parts of European Parliament and Council Directive 2002/92/EC of 9 December 2002 on insurance mediation (Official Journal 2003 L 9, p. 3).

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

3. A further condition shall be that,

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

4.-(1) When an undertaking becomes insolvent or closes down for some other reason, as well as in the event that its license is withdrawn, the undertaking shall take out claims-made insurance which covers liability for damages in connection with claims raised or reported no later than three years after the undertaking has closed down.

(2) The sum insured of the insurance shall be no less than EUR 1,120,200 per claim and no less than EUR 1,680,300 for all claims. The sums insured mentioned shall apply for the entire three-year period following cessation of the indemnity insurance.

(3) If the undertaking closes down, e.g. by transferring the portfolio of customers to another undertaking, the insurance company of the undertaking taking over may declare to the Danish FSA that the existing indemnity insurance is to be extended to cover claims from the customers of the transferred insurance broker undertaking or reinsurance broker undertaking which relate to benefits entitled to compensation which have been received prior to the transfer and which are raised and reported no later than three years after the transfer.

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

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

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

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

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

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

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

Part 3

Insurance agencies', sub-agencies' as well as management companies' indemnity insurance and guarantees

9.-(1) A condition for an undertaking (hereafter called an insurance agency or a management company) to enter into agreements on the sale of insurance products for an insurance company which has been notified as a supplier of cross-border services pursuant to section 31 of the Financial Services Act shall be that the following are submitted to the Danish FSA,

1) a declaration from an insurance company that the insurance agency or the management company is covered by indemnity insurance, cf. subsection (4) and section 10, or
2) a declaration that the insurance company with which insurance mediation agreements have been entered into has accepted liability for the negligence of the insurance agency or management company in connection with insurance mediation.

(2) An insurance agency, sub-agency, a management company as well as a branch of an insurance agency or sub-agency, which has been notified pursuant to section 43(1) of the Insurance Mediation Act and which enters into agreements with an undertaking (hereafter called sub-agency or management company) on sale of the insurance products agreed between the parties, shall be covered by indemnity insurance, cf. subsection (4) and section 10.

(3) An insurance agency, sub-agency or a management company 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, which enters into agreements with an undertaking (hereafter called sub-agency or management company) on sale of the insurance products agreed between the parties, shall be covered by indemnity insurance, cf. subsection (4) and section 10.

(4) The declaration on indemnity insurance from the insurance company shall state,

1) that the insurance company is directly liable to pay to injured parties damages to which the insurance agency, sub-agency or the management company becomes liable through negligence of the insurance agency, sub-agency, the management company or someone for whom this is liable,
2) that the indemnity insurance covers the activities of the insurance agency, sub-agency or the management company in all countries within the European Union and

countries with which the Community has entered into an agreement for the financial area, and

3) that the sum insured of the indemnity insurance is no less than EUR 1,120,200 per claim and no less than EUR 1,680,300 for all claims per insurance year.

(5) If indemnity insurance for the individual insurance agency, sub-agency or management company has been established as part of a collective scheme covering several collaborating insurance agencies, sub-agencies or management companies or established as a member of a sector association, the sums insured stated in subsection (1), no. 4 shall apply for each insurance agency, sub-agency or management company.

10. A further condition shall be that,

1) indemnity insurance contains cover for reinstatement of the sum insured in the event that this may be exhausted as a result of one or more claims in an insurance year (policy-covered reinstatement),

2) indemnity insurance contains the right for the insurance agency, sub-agency or the management company, on the cessation of the insurance following termination of the insurance mediation agreement, to insure itself against claims raised and reported no more than three years following the termination of the insurance mediation agreement, cf. section 11(1), and

3) indemnity insurance in relation to third parties covers claims for compensation raised and reported no later than three years following cessation of the indemnity insurance to the extent that indemnity insurance has not been taken out with another insurance company with full retroactive cover.

11.-(1) When an insurance agency, sub-agency or management company becomes insolvent, ceases as well as when an insurance mediation agreement is terminated, the undertaking shall take out claims-made insurance which covers liability for damages in connection with claims raised and reported no later than three years after the undertaking ceases or the insurance mediation agreement terminates.

(2) The sum insured shall be is no less than EUR 1,120,200 per claim and no less than EUR 1,680,300 for all claims. The sums insured mentioned shall apply for the entire three-year period following cessation of the indemnity insurance.

(3) Even if the insurance mentioned in subsection (1) is not taken out, or if indemnity insurance ceases for another reason and without taking out new indemnity insurance with the same scope with a new insurance company, the insurance company shall be liable for claims by third parties raised and reported against the insurance agency, sub-agency or the management company no later than three years after cessation of the indemnity insurance.

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

12. By submitting an insurance declaration, the insurance company guarantees that indemnity insurance complies with the regulations in section 9(1) and (4) and (5), section 10 and section 11(1)-(3). The declaration by the insurance company shall be submitted on a form prepared by the Danish FSA.

13. For insurance agencies, sub-agencies or management companies with a connection as stated in section 5(1), nos. 6 and 7 of the Financial Business Act to companies without a registered office in Denmark, the Danish FSA shall make a specific assessment of whether the

content and scope of established insurance cover corresponds to the regulations in section 9(1) and (4) and (5), section 10 and section 11(1)-(3).

14.-(1) In order to comply with the regulations in sections 9-11, an insurance agency, sub-agency or a management company may instead take out a guarantee with a bank.

(2) By submitting a declaration of guarantee, the bank warrants that the guarantee meets the regulations in section 9(1) and (4) and (5), section 10 and section 11(1)-(3). The declaration by the bank shall be submitted on a form prepared by the Danish FSA.

Part 4

Entrusted funds

15.-(1) If an undertaking covered by section 1 receives entrusted funds as part of its insurance mediation activities, said funds shall be deposited in a separate account in a bank (client account) which is covered by a guarantee, cf. part 5.

(2) An insurance and reinsurance broker undertaking shall, with the application for a license from the Danish FSA, submit proof that a client account has been established, if such funds are to be received.

(3) Other insurance mediation undertakings shall submit proof that a client account has been established, if such funds are received in connection with notification of registration or when such a client account is established.

16-(1) Amounts shall be deposited in a client account, including premiums and insurance payments, which the undertaking receives as part of insurance mediation activities, cf. however subsection (2).

(2) Amounts covered by a release certificate from an insurance company may not be deposited in the client account.

(3) Commission, including commission received in advance, as well as other remuneration received by the undertaking as part of insurance mediation activities shall be withdrawn from the client account without undue delay.

17. A client account shall be established in the name of the insurance mediation undertaking and shall be available to the undertaking.

18.-(1) A client account may only be established in a bank which, through a declaration approved by the Danish FSA, has undertaken to comply with the provisions of subsection (2).

(2) Notwithstanding other possible outstanding accounts with the insurance mediation undertaking or any of its customers, the bank shall not have at its disposal, either by setting off or in any other way, an amount deposited in a client account which is required to cover the insurance mediation undertaking's liability to third parties for entrusted funds.

19.-(1) All entrusted funds shall be deposited in the client account no later than the next business day following receipt, including amounts remitted to the insurance mediation undertaking to pay for disbursements for the client.

(2) An exception to this shall be amounts which, immediately after receipt, are to be applied as payments on behalf of the relevant entrusting person.

20. All insurance mediation undertakings shall keep records of entrusted funds. The insurance mediation undertaking shall instigate rules of procedure which ensure correct recording of entrusted funds.

21.-(1) The Danish FSA may at any time and without stating a reason require an insurance mediation undertaking, within a short time limit stipulated by the Danish FSA, to submit a declaration from a state-authorised public accountant or a registered public accountant on audit of the client account, cf. section 3 of the Executive Order on annual reports by insurance broking undertakings and reinsurance broking undertakings to the Danish FSA (*bekendtgørelse om forsikringsmæglervirksomheders og genforsikringsmæglervirksomheders årlige indberetninger til Finanstilsynet*).

(2) If client-account bookkeeping by the insurance mediation undertaking, cf. section 20, has been inadequate, or if the insurance mediation undertaking has in some other way failed to comply with the regulations on treatment of entrusted funds, the Danish FSA may require the insurance mediation undertaking, for a time period stipulated by the Danish FSA or until further notice, to submit a client-account declaration, cf. subsection (1), every quarter or at some other interval stipulated by the Danish FSA.

Part 5

Guarantee for entrusted funds

22-(1) A condition for an insurance mediation undertaking covered by section 1 to be able to receive entrusted funds, cf. part 4, shall be that there is a declaration from an insurance company or a bank (hereafter called the guarantor) that,

1) the guarantor, as co-debtor, guarantees for demands for payment of entrusted funds, cf. part 4, which may be directed towards the insurance mediation undertaking in connection with the activities of the undertaking as an insurance mediator,
2) the contents of the guarantee give the insured parties a direct claim against the guarantor,
3) the guarantee is to cover claims regarding funds entrusted from and including the date the guarantee enters into force and until it lapses (the period of guarantee), cf. section 24, and
4) the guarantee may not be made subject to other limitations than those permitted by this Executive Order.

(2) If the guarantee for the individual insurance mediation undertaking has been established as part of a collective scheme covering several undertakings, the guarantor may be an independent fund or association, provided that the guarantee by the fund or association is covered so that a specific assessment by the Danish FSA finds that at all times there is equivalent collateral to subsection (1).

23.-(1) The amount of the guarantee may be limited so that total claims for each year of the guarantee period are only covered by a specific amount. This amount shall not, however, be less that EUR 300,829 per insurance mediation undertaking.

(2) The limit on the amount in subsection (1), second clause shall not be reduced, even if the guarantee is provided for a period of less than one year.

24.-(1) The period of the guarantee may be limited so that it only covers claims raised against the guarantor no later than three years after the end of the event which caused the claim.

(2) The time limit in subsection (1) shall be suspended in the event of legal proceedings by the insured parties against the insurance mediation undertaking.

25.-(1) The declaration of guarantee under section 22 shall be prepared by the guarantor. The declaration of guarantee shall be issued on a form prepared by the Danish FSA.

(2) By submitting the declaration of guarantee the guarantor warrants that the guarantee complies with the regulations in sections 22-24.

(3) The guarantee may only be terminated at the request of the guarantor with effect from a specific date which may not be before one month after the request is received by the Danish FSA. The guarantor may, however, require that the guarantee be cancelled seven days after receipt of the request by the Danish FSA, if the request is due to fraud by the mediation undertaking.

Part 6

Penalties

26.-(1) Any person violating sections 2-5, section 9(1) and (4) and (5), sections 10-11(1)-(3), section 15, section 16, sections 18-23(1), second clause, and section 25 shall be liable to a fine.

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

Part 7

Entry into force, transitional and revision provisions

27.-(1) This Executive Order shall enter into force on 15 January 2009.

(2) At the same time, Executive Order no. 7 of 10 January 2008 on insurance intermediaries' indemnity insurance, guarantees and treatment of entrusted funds shall be repealed, cf. however subsection (3).

(3) Claims-made insurance policies covering a five-year period following cessation of the indemnity insurance and taken out before 15 January 2009, shall be maintained with the agreed period following the cessation of the indemnity insurance.

28.-(1) The sums insured for indemnity insurance and guarantee sums stated in section 2(1), no. 4, section 2(2), section 4(2), section 9(4), no. 3, section 11(2) and section 23(1) shall be increased automatically every five years, for the first time on 15 January 2013 and thereafter every five years after the previous revision.

(2) Revision of the relevant amounts shall be by the percentage change in the European index of consumer prices for the period from 15 January 2008 to the 15 January 2013 or from the date of the previous revision to the new revision and rounded up to the nearest euro.

(3) Every five years the Danish FSA shall publish the percentage by which the European index of consumer prices has changed during the period.

Danish Financial Supervisory Authority, 22 December 2008

Peter Sylvest Larsen

/Vibeke Olesen