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## Insurance and Reinsurance in Denmark

Denmark, Global | February 4 2019



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### Market spotlight

#### *Trends and prospects*

#### **What are the current trends in and future prospects for the insurance and reinsurance markets in your jurisdiction?**

In recent years there has been an increased focus on IT, digitalisation and cybersecurity, which has made cyber insurance highly relevant.

Insurtech and smart contracts are also becoming more popular and digital contracts will likely dominate the insurance market in future.

Financial business activities are subject to strict rules. Therefore, insurers are focused on the requirements as regards solvency and risk management. After the 9/11 terrorist attacks and the recent financial crisis, the interest in limiting risk through reinsurance has also increased.

The total annual results of the insurance industry increased over the past years. This was primarily a result of rising premium income and falling insurance operating expenses. However, not all insurers have been successful – two of the biggest (Alpha Insurance and Qudos Insurance) went bankrupt in 2018.

Worsening weather conditions in Denmark, including torrential rain and storms, have resulted in substantial damages payouts by insurers in recent years. This has also encouraged insurers to focus more on limiting their risks by reinsurance.

### Regulatory framework

#### *Legislation*

#### **What is the primary legislation governing the (re)insurance industry in your jurisdiction?**

(Re)insurers are subject to strict rules in Denmark. The regulation of (re)insurers is extensive.

The Danish Financial Business Act regulates insurers in general. The insurance market is a regulated market and the requirements for establishing and carrying on insurance business are generally laid out in the Financial Business Act and the Danish Insurance Distribution Act, which is a minimum implementation of the Insurance Distribution Directive. However, many other statutory provisions also apply, including:

- the rules on money laundering;

- the Danish Companies Act;
- the Danish Capital Markets Act; and
- the Danish Act on Processing of Personal Data.

The Danish Financial Business Act also applies to reinsurers. However, special rules for such companies may also apply.

The Danish Insurance Contracts Act regulates insurance contracts and the relationship between the insurer and the policy holder. Other statutory provisions may also be of importance (eg, the Danish Marketing Practices Act and the Danish Insurance Distribution Act). The Insurance Contracts Act does not apply to reinsurance but may be applied together with the general law of contract.

Insurance brokers and others selling insurance commercially are subject to the Danish Insurance Mediation Act.

The rules governing (re)insurance in Denmark are complex and are largely based on EU directives.

### *Regulators*

#### **Which government bodies regulate the (re)insurance industry in your jurisdiction and what is the extent of their powers?**

The Financial Supervisory Authority (FSA) monitors and regulates the financial business sector in Denmark, including (re)insurers.

The FSA's job is to supervise, legislate and provide information. The FSA supervises and monitors (re)insurers. The Danish FSA may prosecute, issue orders and report issues to the police if (re)insurers fail to comply with the rules applying to financial services firms.

#### **Ownership and organisational requirements**

##### *Ownership of (re)insurers*

#### **Are there any restrictions on ownership of or investment in (re)insurers in your jurisdiction, including any limits on foreign ownership/investment?**

(Re)insurance business in Denmark requires a licence from the Financial Supervisory Authority (FSA). The licence is issued based on a plan of operations prepared by the (re)insurer. The FSA establishes the rules for the information which must be included in the plan of operations.

Foreign companies must also be licensed by the FSA to carry on (re)insurance business in Denmark. If the foreign company has already been licensed in another EU member state, the regulatory authorities in the home country can notify the FSA and the foreign company can operate in Denmark two months after notification is given. The relevant rules are laid out in Part 5 of the Financial Business Act.

A solvency certificate must also be submitted to the FSA if a foreign company carries on (re)insurance business in Denmark.

Both natural and legal persons contemplating the acquisition of a qualifying holding in a (re)insurer must apply in advance to the FSA for approval of the transaction. This is also the case for situations where a transaction results in an increase in a qualifying holding or if the insurer becomes a subsidiary because of a transaction.

If the insurance business is to be sold, the transaction must be approved by the Danish competition authorities. The rules surrounding such a transaction are complex and expert advice should be sought for a detailed assessment.

## **What regulations, procedures and eligibility criteria govern the transfer of control of/acquisition of a stake in a (re)insurer?**

Title IV of the Financial Business Act regulates the ownership and management of (re)insurers. The Companies Act also applies and contains rules on the registration of and changes in ownership and notifications of significant shareholdings.

The Danish Act on Securities Trading also applies. Very strict requirements apply to the obligations of listed companies to disclose information. There are also rules regarding providing information about any changes to the group of owners.

All persons, both natural and legal, contemplating the acquisition of a qualifying holding in a (re)insurer must apply in advance to the FSA for approval of the transaction. This is also the case in certain situations where a transaction results in an increase in a qualifying holding or if the insurer becomes a subsidiary as a result of a transaction. The FSA has an assessment period of 60 business days. Each year, the insurer must notify the FSA of any new owners that have acquired a qualifying holding in the company. Reference is made to Title IV of the Financial Business Act.

If the insurance business is to be sold, the transaction must be approved by the Danish competition authorities. The rules surrounding such a transaction are complex and expert advice should be sought for a detailed assessment.

### *Organisational requirements*

## **Must (re)insurers adopt a certain legal structure in order to operate? If no mandatory company organisation applies, what are the common structures used?**

A (re)insurer must be a company and must have a board of directors and an executive board. Insurers must be limited companies, mutual companies or multi-employer occupational pension funds (see Section 12 of the Financial Business Act).

Insurers must also have a structure which ensures that it is able to fulfil its compliance obligations.

## **Do any particular corporate governance requirements apply to (re)insurers, including any eligibility criteria for directors and officers?**

(Re)insurers must have a board of directors and an executive board. The members of the executive board and the board of directors have a large number of obligations. For example, members must ensure that the (re)insurer always complies with capital and solvency requirements.

Board members must have sufficient knowledge, professional skills and experience to carry out their duties. The member must also have a good reputation and be independent in order to be able to assess and contest decisions. Other requirements for the board can be found in Part 3 of the Securities Trading Act and Part 8 of the Financial Business Act.

The executive board must also ensure that (re)insurers have sufficient expert knowledge to calculate the provisions for insurance. The rules are laid down in Part 8 of the Financial Business Act.

(Re)insurers must be audited and prepare an annual report. Detailed rules regarding audits and annual reports are laid out in Title VI of the Financial Business Act.

Compliance law also stipulates that a (re)insurer must have a compliance officer, a data controller and a complaints officer. Such officers are subject to requirements under special legislation (eg, the requirement to report certain data processing to the Danish Data Protection Agency).

The Committee on Corporate Governance in Denmark has also given recommendations for the corporate governance of listed companies in a regulated market.

### **Operating requirements**

#### *Authorisation procedure*

#### **Which (re)insurers must obtain authorisation from the regulator before operating on the market and what is the procedure for doing so?**

(Re)insurance business in Denmark requires a licence from the Financial Supervisory Authority (FSA). The licence is issued based on a plan of operations prepared by the (re)insurer. The FSA establishes the rules for the information which must be included in the plan of operations.

Foreign companies must also be licensed by the FSA to carry on (re)insurance business in Denmark. If the foreign company has already been licensed in another EU member state, the regulatory authorities in the home country can notify the FSA and the foreign company is permitted to operate in Denmark two months after notification is given. The relevant rules are laid out in Part 5 of the Financial Business Act.

A solvency certificate must also be submitted to the FSA if a foreign company carries on (re)insurance business in Denmark.

#### *Financial requirements*

#### **What are the minimum capital and solvency requirements for (re)insurers operating in your jurisdiction?**

Specific rules are laid out in the Financial Business Act, with special reference made in Titles I and V.

Capital and solvency requirements are determined individually based on a (re)insurer's volume. Danish law distinguishes between Group 1 and Group 2 insurers. Group 1 insurers are big companies, which are calculated (among other factors) according to their annual gross premium. Group 2 companies include all other companies.

**Group 1 insurers** For Group 1 insurers, the solvency requirement is calculated either based on a standard formula or by using an internal model.

The framework for the calculation of the capital requirement according to the standard formula follows from the Solvency II Directive and the Omnibus II Directive.

The minimum capital requirement must not generally be less than 25% or more than 45% of the company's solvency capital requirement. However, very specific rules and exemptions apply.

**Group 2 insurers** For Group 2 insurers, the board of directors and the executive board must ensure that the company has sufficient provisions to cover all insurance obligations to the policy holders and other beneficiaries under the insurance contracts.

Group 2 insurers must always have a basic capital that is at least the equivalent of the highest value of the individual solvency needs.

There are complex rules for calculating the capital and solvency requirements which apply to both Group 1 and Group 2 insurers.

#### **Do any other financial requirements apply?**

Yes, the placement and liquidity of the funds of a (re)insurer are regulated. Reference is made to Part 11 of the Financial Business Act.



(Re)insurers must be audited and prepare an annual report. Detailed rules regarding audits and annual reports are laid out in Title VI of the Financial Business Act.

### *Personnel qualifications*

#### **Are personnel of (re)insurers subject to any professional qualification requirements?**

(Re)insurers must have in place specific roles and complete specific functions, including:

- internal audits;
- a compliance department; and
- a data controller.

There is also a requirement that (re)insurers employ personnel with the right skills and education.

Regulations relating to the Danish Insurance Distribution Act set out the specific requirements on education.

The board of directors and executive board need not be composed of individuals with specific training or certain professional skills (fit and proper). However, a number of other requirements apply. To qualify to be a member of an executive board or a board of directors, an individual must have sufficient knowledge, professional skills and experience to carry out their duties. They must also have a good reputation and be independent in order to be able to assess and contest decisions. Other requirements regarding the management of (re)insurers can be found in:

- Part 12 of the Capital Markets Act;
- Part 8 of the Financial Business Act;
- Part 4 of the Insurance Distribution Act; and
- Part 7 of the Companies Act.

### *Business plan*

#### **What rules and requirements govern the business plans of (re)insurers?**

It is a general requirement that a (re)insurer prepares a plan of operations for the business that the company intends to carry on. The plan of operations must be submitted together with the (re)insurer's application to carry on insurance business. The FSA issues the licence to carry on insurance business.

The FSA determines the requirements which must be fulfilled in the plan of operations. In addition, (re)insurance business is subject to a strict framework, which requires that the insurance company report to the FSA regularly.

The compliance legislation which applies to the (re)insurance sector is extensive. Expert assistance should be obtained if detailed knowledge of the rules is required.

### *Risk management*

#### **What risk management systems and procedures must (re)insurers adopt?**

Section 108 of the Financial Business Act stipulates that the executive board must ensure that (re)insurers have sufficient expert knowledge to calculate the provisions for insurance.

(Re)insurers are subject to strict capital and solvency requirements. The companies' risk management must comply with such rules.

It is a general requirement that (re)insurers have procedures for each business area describing the risk management in the area (among other things).

### *Reporting and disclosure*

#### **What ongoing regulatory reporting and disclosure requirements apply to (re)insurers?**

Strict requirements apply to (re)insurer reporting to authorities (eg, the FSA). The purpose of this reporting is to ensure that the (re)insurer meets capital and solvency requirements.

(Re)insurers must report on almost all business areas. Complaints against an insurer must also be reported.

In specific situations, (re)insurers are obliged to disclose information on their own initiative (eg, if the basis of calculation for the company's capital and solvency requirements changes).

A duty of disclosure for listed companies under the current regulation of the markets and other disclosure of detailed information in other legislation monitoring also apply.

### *Other requirements*

#### **Do any other operating requirements apply in your jurisdiction?**

All issues concerning (re)insurers are regulated in Denmark. The insurance market is a regulated market, which means that (re)insurance business is subject to numerous requirements.

(Re)insurers are subject to a large number of operating requirements. When a company has received a licence to carry on a (re)insurance business, a detailed structural framework applies to the (re)insurer's actions.

(Re)insurers are subject to many other requirements. For example, (re)insurers must always comply with rules on good practice which apply to the actions that an insurer may take.

(Re)insurers must also comply with the Act on Processing of Personal Data. (Re)insurers handle a large amount of sensitive data and the Data Protection Agency supervises compliance with the personal data protection rules.

The Securities Trading Act also contains rules for the operation of regulated markets. Special reference is made to Part 4 of the act.

(Re)insurers are generally required to have procedures in place for each business area, describing the risk management in the area, among other things. The regulation of (re)insurers under Danish law is extensive.

### *Non-compliance*

#### **What are the consequences of non-compliance with the operating requirements applicable to (re)insurers?**

If insurance is effected before a licence to carry on insurance business and registration has been made, the licence has been issued and the registration made, the individuals who have effected the licence or who are responsible are jointly and severally liable for the performance of the contract. However, the insurer may accept the liability no later than four weeks after registration.

If the rules for (re)insurers are not complied with, the FSA has certain powers. For instance, an order may be issued which stipulates that the (re)insurer will be subject to strict supervision. Ultimately, the (re)insurer could risk losing its licence to carry on (re)insurance business in Denmark.

The members of the executive board and the board of directors of a (re)insurer may incur liability if the management of the (re)insurer does not fulfil necessary requirements. Such liability is assessed in accordance with the rules on professional liability.

## **Contracts**

### *General*

#### **What general rules, requirements and procedures govern the conclusion of (re)insurance contracts in your jurisdiction?**

The Insurance Contracts Act regulates insurance contracts and the relationship between an insurer and a policy holder. The Insurance Distribution Act governs the distribution of most insurance products.

Different rules on consumer protection and good practice also apply (eg, the insurer must give correct advice on insurance products). These rules must be complied with, otherwise the professional liability of advisers may be incurred.

The rules on good practice are laid out in the regulations issued under the Insurance Distribution Act. The rules apply to insurers in contractual relationships.

In practice, underwriters draft policy terms and enter into an insurance contract with customers on behalf of the insurer.

In case of reinsurance, the Insurance Contracts Act does not directly apply; however, the act is applied by analogy together with the general law of contract.

### *Mandatory/prohibited provisions*

#### **Are (re)insurance contracts subject to any mandatory/prohibited provisions?**

To a large degree, the Insurance Contracts Act and the Insurance Distribution Act cannot be derogated from to the detriment of the policy holder. For example, the act stipulates that an insurer may not make cover conditional on the payment of an insurance premium. The insurance premium must be paid 21 days after a claim for payment has been made. Only then may the insurer terminate the insurance contract.

Reinsurance depends on the general principles and the rules of construction of the Danish law of contract. As parties have freedom of contract, they can determine the framework for the reinsurance contract and are generally not bound by any mandatory issues.

### *Implied terms*

#### **Can any terms be implied into (re)insurance contracts (eg, a duty of good faith)?**

Denmark has a civil law system that to some extent relies on general rules and principles. Any issues relating to the insurance contracts between an insurer and a policy holder are regulated by the Insurance Contracts Act. However, the general rules and principles of the law of contract regulate the issues relating to the contract included in the Insurance Contracts Act.

In case of reinsurance, the general rules of the law of contract apply. The Insurance Contracts Act is also applied by analogue. A reinsurance contract is made between an insurer and a reinsurer.

When it comes to (re)insurance contracts, the Insurance Contracts Act and the general rules of the law of contract must always be read together with the trade usage, case law and other legal standards.

A general duty of good faith and fair dealing in respect of other contracting parties applies to all contractual relationships. However, the specific content must be assessed based on the contract and the specific details of a situation.

### *Standard/common terms*

## **What standard or common contractual terms are in use?**

The rules on insurance contracts are laid out in the Insurance Contracts Act. Insurance contracts and the terms always follow the framework laid out in the act.

With regards to personal insurance, the products are similar and often have more or less the same scope of cover regardless of the insurer. However, there can be differences and generally personal insurance is becoming more customised. This can be seen with contents insurance where the policy holder receives a basic cover of his or her furniture and household effects and then adds on travel insurance or similar products to the policy.

Traditionally, business insurance has also been standardised. However, it is now common that the cover is customised to the business customer's needs.

Danish law has rules on compulsory insurance, which are laid out in legislation. The rules ensure that compulsory insurance is standardised.

Freedom of contract applies to reinsurance and a contract must observe the general rules of the law of contract. The Insurance Contracts Act is also applied by analogue to contractual terms.

### *'Smart' contracts*

## **What is the state of development in your jurisdiction with regard to the use of 'smart' contracts (ie, blockchain based) for (re)insurance purposes? Are any other types of financial technology commonly used in the conclusion of (re)insurance contracts?**

Recently there has been a prevailing focus on digitalisation in Denmark, including an analysis of the advantages and disadvantages of using digitalised contracts. However, this is an area which is still undergoing development. Smart contracts and other types of digitalised contracts are not yet commonplace in Denmark.

### *Breach*

## **What rules and procedures govern breach of contract (for both (re)insurer and insured)?**

The Insurance Contracts Act regulates insurance contracts together with the invalidity rules laid out in the Contracts Act, including determining whether insurance cover can be:

- terminated;
- terminated for breach; or
- invalid in whole or in part.

Insurance cover may be terminated for breach retroactively. This means that the policy holder may be in a situation where he or she no longer has cover for damage that has already occurred.

Individuals also have a right of cancellation under the Insurance Contracts Act. This means that within a short period from the conclusion of the contract – which is typically two weeks – they can cancel the contract.

The general rules of the law of contract apply to reinsurance contracts. This means that the termination of a contract and invalidity must be assessed in compliance with such rules.

## **Consumer protection**

### *Regulation*

## **What consumer protection regulations are in place to safeguard the rights of purchasers of insurance products and services?**

The Insurance Distribution Act and the Insurance Contracts Act contains special rules which apply to private consumers (eg, the right of cancellation).

The Marketing Practices Act provides protection against advertisements and unsolicited business requests.

Private policy holders have a right to complain to the Danish Insurance Complaints Board and the Danish Consumer Complaints Board.

Commercial policy holders are not subject to any special protection rules. They may rely on the general provisions laid out in an insurance contract. Commercial policy holders have a right to complain about issues regarding business insurance to the Danish trade organisation Forsikring & Pension. However, the assessment of the complaint by Forsikring & Pension is not binding on the insurer.

With regards to reinsurance, parties to a contract are both insurers and therefore the same consumer protection rules do not apply.

## **Claims**

### *General*

#### **What general rules, requirements and procedures govern the filing of insurance claims?**

The party claiming to have an insurance claim must file the claim with the insurer before the expiry of the period of limitation.

In some sectors, the rules stipulate that an insurance claim must be filed in writing; however, it is common in Denmark for insurance claims to be filed orally.

It is sufficient in respect of certain types of business insurance that a party entitled to damages has filed its claim for damages with the policy holder in time (the business covered by insurance).

### *Time bar*

#### **What is the time bar for filing claims?**

The rules on the time bar for filing insurance claims are laid out in the Insurance Contracts Act and the Danish Limitation Act. The rules are complicated and the periods of limitation are calculated differently depending on the type of claim. However, the general rule is that an insurance claim must be filed within three years before it becomes time barred. If the claim has been filed on time, a new period of limitation starts to run under Section 29 of the Insurance Contracts Act, which ensures that an insurance claim cannot become time barred while the insurer assesses the claim.

The general rule is that a new period of limitation of one year applies if the company rejects the claim and a new period of limitation of three years applies if the company accepts the claim.

### *Denial of claim*

#### **On what grounds can the (re)insurer deny coverage?**

A policy holder must submit the relevant information to clarify the claim and if the holder fails to do so, the insurer may refuse to take a position on the insurance claim.

An insurer may also reject cover to a policy holder or a third party entitled to damages if the claim for damages or the insurance event has not been proved.

An insurance claim can be rejected if it is clear that the claim is not covered by or is exempt from the insurance cover.

An insurer may also refuse cover if the insurance contract was entered into based on incorrect information given by the policy holder (in bad faith).

### **What rules and procedures govern the insured's challenge of the denial of a claim?**

The Insurance Contracts Act regulates the insurance contract and rules on good insurance practice also apply.

In general, a policy holder is entitled to ask for the reasons that cover was rejected to be in writing. The insurer must have a complaints officer. The policy holder may file a complaint if it disagrees with the insurer's decision. The complaints officer must be independent of the claims handling.

If the policy holder still disagrees, private policy holders may file a complaint with the Insurance Complaints Board. Both the policy holder and the insurer are bound by the decisions made by the Insurance Complaints Board. However, the board's decision may be brought before the courts.

In case of business insurance, it is possible to file a complaint with the Danish trade organisation Forsikring & Pension. The trade organisation may give its opinion on the complaint, but the insurer is not bound by the opinion.

Any disagreements about business insurance may be brought before the courts or the parties can agree through arbitration.

#### *Third-party actions*

### **On what grounds can a third party file a claim directly with the (re)insurer?**

An injured third party is free to file a claim directly with the insurer if the claim is filed under liability insurance. The insurer is directly liable to an injured third party in special situations (eg, bodily injury caused by a motor vehicle if the insurance has been taken out with the insurer).

Section 95 of the Insurance Contracts Act stipulates that when the insured's liability for damages to the injured party has been established and the damages amount assessed, the injured party must be subrogated to the insured's rights against the insurer, but only to the extent that the party entitled to damages has not already received satisfaction for its claim in whole or in part.

The policy holder is not a party a reinsurance agreement and cannot file a claim with the reinsurer. As a contractual party, the insurer may file a claim with the reinsurer.

#### *Punitive damages*

### **Are punitive damages insurable?**

Yes, to a limited extent it is possible to insure against certain punitive damages. However, the cover depends on the type of violation and the extent of the cover depends on a specific assessment of the individual insurance relationship.

As a general rule, it is not possible to insure against damage caused by a party's own criminal actions. It is possible to take out criminal insurance in Denmark; however, this covers loss that a business should suffer only as a result of an employee's criminal actions.

#### *Subrogation*

### **What regime governs (re)insurers' subrogation rights?**

As a general rule, if an insurer has paid damages to an injured party, the insurer is subrogated to the injured party's claim. However, the Danish Consolidation Act on the Liability to Pay Compensation contains important exemptions in this regard.

The Consolidation Act on the Liability to Pay Compensation limits an insurer's right to recourse in many situations where insurance cover has been taken out. The rules can be found in Part 2 of the act. Corresponding limitations can be found in other acts.

## **Intermediaries**

### *Regulation*

#### **How are the services of insurance intermediaries regulated in your jurisdiction?**

Insurance mediation is regulated by the Insurance Mediation Act. The act does not apply to insurers, but rather to brokers and other parties that have a licence to sell insurance commercially.

The licence to sell insurance commercially is issued by the Financial Supervisory Authority (FSA). Only insurance agents can currently be registered as agents, but new statutory provisions will enter into force on 1 October 2018. According to the new provisions, insurance agent activities will also be required to obtain a licence from the FSA.

The parties responsible for insurance mediation are regulated to have general knowledge of insurance mediation. The responsible persons must have theoretical training in, and practical knowledge of, insurance mediation activities. Detailed requirements can be found in Part 2 of the Insurance Mediation Act.

Insurance brokers must comply with the duty of disclosure and other obligations about regular reporting. The rules can be found in Part 3 of the Insurance Mediation Act.

The FSA monitors insurance brokers. If the insurance broker does not comply with the guidelines laid out in the Insurance Mediation Act, the FSA may cancel the insurance broker's licence to sell insurance commercially.

As the rules which apply to the area under Danish law are complicated, expert assistance should be sought if detailed knowledge of the rules is required.

## **Tax**

### *Tax liability*

#### **What tax liabilities arise in the conduct of (re)insurance business?**

In general, (re)insurers are liable to pay tax in Denmark. The fiscal treatment depends on a number of issues and special rules which apply to:

- the statement of income;
- included provisions;
- depreciation and return; and
- the line of business (eg, general insurance, pensions insurance or life insurance).

A complex set of rules determines whether the recipient of paid damages and compensation is liable to pay tax and, in case of damages for bodily injury, whether the insurer is also under an obligation either to withhold tax from the payment or to declare the payment to the Danish tax authorities. The company charges tax to the state in connection with the policy. The actual insurance premium is not subject to value added tax regardless of whether the policy holder is a person or a business.

## **Insolvency**

### *Regulation*

#### **What regime governs the insolvency of (re)insurers?**

(Re)insurers in Denmark are subject to strict capital and solvency requirements. The Financial Supervisory Authority ensures that insurers comply with such requirements. As a result, (re)insurers rarely go bankrupt in Denmark.

The rules on the bankruptcy of (re)insurers can be found in Part 15 of the Financial Business Act and in the Bankruptcy Act.

No special body handles the bankruptcy of (re)insurers. Danish law stipulates that estates in bankruptcy are to be administered by the bankruptcy court where the (re)insurer has its registered address. According to Part 15 of the Financial Business Act, an administrator may be appointed when (re)insurers go bankrupt.

According to Section 26 of the Insurance Contracts Act, the policy holder may terminate the insurance contract for breach if the insurer goes bankrupt.

### *Effect on insureds*

#### **How does a (re)insurer's insolvency affect insureds and the (re)insurer's obligations to insureds?**

The Danish Compensation Fund for General Insurers was set up by Danish insurers. Private consumers that have taken out insurance with a bankrupt insurer are covered by the Compensation Fund for General Insurers. Private consumers or commercial customers that have a case against a bankrupt insurer are covered by the Compensation Fund for General Insurers to a certain extent. However, the Compensation Fund for General Insurers provides cover only if the bankrupt insurer was a member of the Compensation Fund for General Insurers before bankruptcy.

## **Dispute resolution**

### *Litigation*

#### **Are there any compulsory or preferred venues for insurance litigation in your jurisdiction?**

Insurance disputes are generally settled before the courts if the parties cannot reach an agreement.

In case of any disagreement between the insurer and a consumer regarding an insurance policy, the matter can be brought before the Insurance Complaints Board. The advantage of bringing the matter before the board is that it is possible to get a decision in a few months if the policy holder pays a nominal amount.

The matter may also be brought directly before the courts. In case of reinsurance, the parties usually agree to solve any disputes by arbitration.

Under the Insurance Distribution Act the Consumer Ombudsman may initiate proceedings regarding (for example) good practice. The Consumer Ombudsman may also act as a representative in class actions.

#### **How are insurance disputes with a cross-border element handled in your jurisdiction?**

As a large part of business insurance is taken out outside of Denmark, it is common for insurance matters to be handled across national borders.

Insurance disputes are handled and considered according to the current insurance terms together with the rules of damages and the limitations applying in the country where the damage covered by insurance in question occurred.



It is common for specialists in Denmark to handle damages covered by insurance that has occurred in Denmark on behalf of foreign insurers.

It is also common for international contracts to be concluded in respect of reinsurance. There are also specialists experienced in this regard that can represent the parties involved.

### **What issues are commonly the subject of insurance litigation?**

Insurance litigation is varied and as a result it is not possible to single out any specific issues that are commonly subject to insurance litigation. The number of cases varies greatly.

It is common for disputes to arise regarding:

- whether the policy provides cover;
- the amount of the insurance claim; and
- whether a third party is entitled to damages under liability insurance taken out with the insurer.

### **What is the typical timeframe for insurance litigation?**

It is difficult to provide a typical timeframe for insurance litigation. Insurance litigation includes everything from small cases to large and complicated damages claims covered by business insurance. A hearing of a case by a Danish court of first instance could take anything from a few months to several years.

If the case involves a claim of a maximum of Dkr50,000, the action can be brought before the courts according to the cheapest and fastest small claims procedure.

The parties have a right to have a case tried by two courts.

### *Arbitration*

### **What regime governs the arbitrability of insurance disputes?**

Under Danish law, insurance law disputes are settled by the courts. However, the parties are entitled to agree that an insurance dispute is to be settled by arbitration.

The framework applying to arbitration follows from the parties' contract and the Danish Arbitration Act.

It is possible to arrange for arbitration proceedings to be *ad hoc*. It is also possible for the parties to use institutional arbitration (eg, in a specific sector). Denmark does not have a specific board of arbitration that deals with insurance disputes.

An arbitration award has the same binding effect and legal force as a judgment passed by the courts.

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