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# Insurance & Reinsurance

Denmark

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# DENMARK

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## Law and Practice

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## 1. Basis of Insurance and Reinsurance Law

### 1.1 Sources of Insurance and Reinsurance Law

As the Danish legal system is a civil law system, legislation is the most important source of law. The Danish insurance market is extensively regulated. The main statute is the Danish Financial Business Act which provides rules for establishing and carrying out insurance business, but other statutory acts also apply to (re)insurers, namely:

- The Danish Insurance Contracts Act (for insurers only);
- The Danish Insurance Mediation Act;
- The Danish Companies Act;
- The Danish Act on Processing of Personal Data;
- The Danish Securities Trading Act;
- The Danish Capital Market Act;
- The Danish Financial Business Act (for reinsurers); and
- The Danish Anti-Money Laundering Act.

The Danish Insurance Contracts Act provides rules for the relationship between the insurer and the policyholder. Even though the Act does not apply to reinsurance companies, it is applied by analogy together with general contract law. The Danish Insurance Mediation Act implements the EU Directive on Insurance Distribution (Directive 2006/97 on Insurance Distribution recast) and regulates insurance brokers and others distributing insurance commercially.

Legislation is, however, by no means the only source of law in Denmark, and other sources, such as case-law, preparatory legislative works, legal doctrines and administrative practice, may also be of great importance when deciding the state of law.

Precedents from the Danish courts and decisions from the Insurance Complaints Board will thus often be of relevance when determining an (re)insurance dispute.

## 2. Regulation of Insurance and Reinsurance

### 2.1 Regulatory Bodies and Legislative Guidance

The Danish Financial Services Authority (FSA) regulates, monitors and supervises the financial market in Denmark, including (re)insurance companies. Furthermore, the FSA has authority to issue orders and report issues to the police if a company in the financial sector, including (re)insurance companies, does not comply with the Danish Financial Business Act. Violation of the Act may be punished by fines or by up to four months' imprisonment.

### 2.2 The Writing of Insurance and Reinsurance

It requires a licence from the Danish Financial Supervisory Authority (FSA) to do (re)insurance business in Denmark. The licence is issued on the basis of a plan of operations prepared by the (re)insurer, and the FSA establishes the rules for the information to be included in the said plan.

The Danish Financial Business Act contains certain requirements to the (re)insurer's capital and solvency. The requirements are based on the Danish law implementing the EU Solvency II Directive, and thus distinguishes between group 1 (companies classified according to *inter alia* their gross annual premium) and group 2 (all other companies) companies. The requirements for the (re)insurer's capital, solvency and organisation depend on which group the (re)insurer belongs to.

Generally, the minimum capital requirement must not be less than 25% or more than 45% of the (re)insurer's solvency capital requirement.

Group 2 companies must, as a minimum, have a capital base equivalent to the highest value of the individual solvency requirements. Furthermore, the board of directors and executive board must make sure that there are sufficient provisions to cover all insurance obligations under the insurance contracts at all times.

### 2.3 The Taxation of Premium

In Denmark, the insurance premium is not subject to VAT.

The insurer does, however, have to pay tax on non-life insurance in certain circumstances. This is for example the case if the insurance contract has been entered into in Denmark, the risk is in Denmark, regardless of where the contract was entered into, or the parties are domiciled in Denmark, unless the premium is not to be paid in Denmark in full or partly.

Some insurance products are exempt from taxation. This applies to, eg, the third-party motor liability insurance, workers' compensation insurance and reinsurance.

## 3. Overseas Firms Doing Business in this Jurisdiction

### 3.1 Overseas-Based Insurers or Reinsurers

The requirements described under (see 2.2 **The Writing of Insurance and Reinsurance**) also apply to foreign companies.

However, if a foreign company has already been granted a licence to carry out insurance business in another Member State in the European Union (EU) or in the European Economic

Area (EEA), the company may carry out insurance business in Denmark as well, either on an establishment or a freedom-of-service basis, without obtaining a licence from the FSA. The companies must observe the Danish rules on good insurance practice, consumer protection and the insurance contract rules (eg, the Insurance Contract Act) but may operate in Denmark either immediately after the FSA has received notification from the supervisory authorities of the (re)insurer's home country, or through a branch two months after the notification has been given to the FSA.

For companies outside the EU and EEA, (re)insurance business can only be carried out in Denmark by setting up a branch or a company in Denmark and apply for a licence from the FSA.

### 3.2 Fronting

Fronting is permitted in Denmark and is typically used when an insurer wants to provide insurance to a multinational company in Denmark where the insurer does not normally conduct insurance business itself.

Generally, the fronting company carries a fronting fee, approximately 5% to 10% of the premium, and the cedant takes no risk. However, this always depends on the specific agreement. Such an agreement is individual.

## 4. Transaction Activity

### 4.1 M&A Activities Relating to Insurance Companies

For a number of years, the M&A market in Denmark has been very inactive when it comes to insurance companies. However, in 2018 the largest Danish insurance company, Tryg, acquired the Danish insurance company, Alka, for a total purchase price of DKK8.2 billion (GBP920 million). Whether this acquisition will contribute to an increase in the transaction activity on the insurance market is too early to say, but market rumors are that a couple of other Danish insurance companies are for sale now.

## 5. Distribution

### 5.1 Distribution of Insurance and Reinsurance Products

The Danish Insurance Mediation Act applies to all brokers and other parties who sell insurance commercially. It follows from the act that all insurance intermediaries, including brokers, agents and subagents, have to obtain a licence from the FSA in order to sell insurance commercially.

The FSA issues a licence if certain requirements are fulfilled, including that the registered office of the enterprise is in Denmark, that the enterprise has a liability insurance or a corresponding guarantee against claims for damages, that the enterprise has measures in place ensuring that customers are protected against the enterprise's inability to pay, and that the enterprise has a management fulfilling the requirement ensuring suitability, integrity, responsibility and efficient operation of the intermediaries.

Exempt from the licence requirement are enterprises selling goods or services and selling insurance in connection with the sale thereof, such as travel agents and car dealers. Such enterprises must be registered with the FSA but do not need a licence.

The distributors active in Denmark include insurance brokers, agents and bancassurance.

## 6. Making an Insurance Contract

### 6.1 Obligations of the Insured and Insurer

If an insurance proposal form is used when the contract is negotiated, it is generally assumed that the policyholder has an obligation to answer the questions asked by the insurer. Hence, there is not an actual obligation for the policyholder to disclose all material facts. However, if an answer appears complete without being so, the incompleteness will be viewed as being false information.

Additionally, it follows from the Danish Insurance Contracts Act, that the insurance contract will be rendered null and void if the policy holder fraudulently failed to disclose information that must have been assumed to be material to the insurer.

The insurer is only expected to proactively seek information if they, on the basis of the information submitted to them, has reason to believe that there is a misrepresentation. It is assumed that the insurer has reason to believe that there is a misrepresentation if they knew or ought to have known about it. Consequently, the obligation for the insurer to proactively seek information only exists where the policyholder has disclosed information or has implied information, which should have given the insurance company sufficient reason to investigate a potential misrepresentation. Hence, there is no general obligation for the insurance company to obtain additional information, unless there is a specific suspicion that misrepresentation has taken place.

The rules about disclosure are the same for consumer contacts and commercial contracts.

## 6.2 Failure to Comply With Obligations

It follows from the Danish Insurance Contracts Act that if a policyholder fraudulently has provided false information or has failed to disclose information on circumstances that must be assumed to be material to the insurer, the contract is null and void. If a policyholder negligently has provided false information, and it must be assumed that the insurer would not have entered into the contract on the agreed terms if correct information had been given, the insurer will only be liable to the extent that it must be assumed that the insurer would have entered into the contract had he known the correct information.

Reinsurance is not governed by the Danish Insurance Contracts Act. Instead it follows from Section 30 of the Danish Contracts Act, that fraudulent misrepresentation, including nondisclosure, will render the reinsurance contract void.

## 6.3 Intermediary Involvement

The Danish Insurance Mediation Act regulates all insurance mediation in Denmark and thus applies to all parties responsible for (re)insurance mediation, eg, brokers and other parties with a licence to sell insurance commercially.

The Financial Supervisory Authority is responsible for issuing licences to sell insurance commercially and monitoring insurance brokers.

The persons responsible must have general knowledge of insurance mediation and theoretical training in, and practical knowledge of, insurance mediation activities. Furthermore, the persons responsible must comply with certain disclosure and reporting duties to the Danish Financial Supervisory Authority (see chapters 2 and 3 of the Danish Insurance Mediation Act). Non-compliance can lead to the cancelling of the licence to sell insurance commercially.

## 6.4 Legal Requirements and Distinguishing Features of an Insurance Contract

There are no requirements as to the characteristics of an insurance contract under the Danish Insurance Contracts Act. Insurance contracts are, however, governed by the Danish Contracts Act and general contractual principles such as the freedom of contract (the exception being certain compulsory insurance, eg, the third-party motor liability insurance).

The Danish Contracts Act does not require that a contract must be written in order to be valid. However, it is generally assumed that an insurance company is required to draw up an insurance policy if this is considered customary in the trade.

There are no requirements as to which terms an insurance policy should in general contain, but there may be requirements to the insurance policy depending on the specific insurance product.

For consumer contracts, it follows from the Danish Insurance Contracts Act that certain information, eg, how to cancel the insurance policy, which has to be disclosed in writing together with the terms of insurance at least.

Normally, the policyholder will apply for coverage with an insurance company, and the underwriter will draft the policy based on the answers given by the policyholder to a question form provided by the insurance company. The underwriter will then enter into an insurance contract on behalf of the insurer.

For non-life insurance, it is a requirement that the policyholder has an insurable interest at the time the insurance event occurs. The interest must be legal, ie, an insurance cannot be taken out to avoid criminal liability. Furthermore, it must be possible to calculate the monetary value of the claim on an objective scale, ie, non-economic interests cannot be insured under a nonlife insurance.

It is not a requirement that there is an insurable interest for non-indemnity insurance.

## 6.5 Multiple Insured or Potential Beneficiaries

The requirements and the characteristics of a contract are the same regardless of the number of insureds or potential beneficiaries under the contract (see **6.4 Legal Requirements and Distinguishing Features of an Insurance Contract**).

## 6.6 Consumer Contracts or Reinsurance Contracts

The Danish Insurance Contracts Act contains rules on consumer contracts, ie, protective mandatory rules on cancellation, duty of disclosure, etc. Other consumer protection legislation, such as the Danish Marketing Practices Act, also applies.

A consumer can complain to the Danish Insurance Complaints Board and to the Danish Consumer Complaints Board.

There are no special rules regarding reinsurance contracts as both parties will be insurers and, thus, do not have the same need for protective rules. Instead, they may rely on the provisions laid down in the insurance contract and file complaints regarding business insurance with the Danish trade organisation Insurance & Pension. Insurance & Pension's assessment of complaints, however, are not binding on either party.

## 7. Alternative Risk Transfer

### 7.1 ART Transactions

The use of ART's is not common in Denmark, where insurance companies generally stick to the more classic style of reinsurance (quote, surplus, excess loss contracts). There are no special acts or provisions regarding ART products.

### 7.2 Foreign ART Transactions

No information is available on this subject.

## 8. Interpreting an Insurance Contract

### 8.1 Contractual Interpretation and Use of Extraneous Evidence

As a general rule, insurance contracts are interpreted in the same way as all other contracts. If specific insurance provisions have been drawn up, the interpretation will focus on what must be presumed to have been the intention of the parties at the time of conclusion of the agreement. The provisions of an insurance policy are construed according to a very strict interpretation of the wording of the specific provision and how the provision relates to the other provisions of the policy (both the general and the specific provisions). If the wording leaves doubt as to the content, the interpretation may include the circumstances under which the contract was entered into and the purpose of the insurance contract. Sometimes ambiguities regarding the contents of the specific policy provision will be detrimental to the insurers having written the policy (the so-called ambiguity rule, *contra proferentem* rule).

General rules of contract law, case law, trade usage and other legal interpretations will be taken into consideration when interpreting insurance contracts.

It is common practice that the parties are free to determine which evidence should be considered. If a party submits evidence which was obtained illegally, it will still be admissible in most cases. The court will, however, decide on what evidential weight to attach to such evidence.

The court may preclude evidence which is deemed to be of no significance to the case. Proposed settlement agreements, regardless of whether they were proposed before or during court proceedings, arbitration, negotiations or mediations, however, must not be used as evidence without the proposing party's explicit consent.

### 8.2 Warranties

Warranties are treated as all other contractual terms. For the interpretation of contractual terms, see **8.1 Contractual Interpretation and Use of Extraneous Evidence**.

### 8.3 Conditions Precedent

In general, conditions precedent will be treated as any other contractual term. However, some conditions precedent follow explicitly from the Danish Insurance Contracts Act. Of such statutory conditions can be mentioned the policyholder's duty to notify the insurer without delay if they intend to set up a claim. If the policyholder fails to give notice without delay after the insurance event, the company will not be liable to a greater extent than if such notice had been given (see Section 21 of the Act). Likewise, if the insurance contract has imposed measures to be taken before the insurance event took place, and the policyholder fails to carry out such measures, the insurer will only be liable to the extent it is established that the insurance event was not due to the non-compliance with the measures (see Section 51 of the Act). Such measures must be sufficiently defined in order to be valid.

The policyholder's duties described in the Danish Insurance Contracts Act are, for the most part, protectively mandatory and therefore cannot be derogated from to the benefit of the insurer. A provision in the insurance contract which gives more rigorous effects to the policyholder's duties, or which discharges the insurer from liability to a greater extent than what follows from the Act will in most cases have no legal validity.

## 9. Disputes

### 9.1 Disputes Over Coverage

Disputes between consumers and insurance companies can be brought before the Insurance Complaints Board.

The Insurance Complaints Board is a private complaints board, authorised by the Danish Minister for Business and Growth, which considers complaints regarding legal issues arising from consumer insurance contracts. The advantage of bringing the matter before the Board is that a decision is likely to be made within a few months and that the policyholder only has to pay a nominal amount for the procedure.

Decisions from the Insurance Complaints Board cannot be appealed, but the decision does not prevent the dispute from being heard by the judicial courts, nor is it necessary to obtain a decision before bringing the claim before the judicial courts.

Any disagreement between the policyholder and the insurer may, additionally, be brought before the judicial courts or be

settled by arbitration, the latter being more common in disputes regarding reinsurance. It should be noted that an arbitration agreement between the insurer and a consumer will only be valid if it was entered into after the dispute arose.

It follows from the Danish Limitation Act that claims generally will be time barred three years after the earliest point in time in which the claimant was able to demand the claim complied with. For personal insurance, the limitation period is ten years.

If the policyholder reports a loss to the insurer before the lapse of the limitation period, limitation of a claim resulting from that loss will not occur earlier than one year after the date when the insurer refused the claim in full or partly, cf. section 29(5) of the Danish Insurance Contracts Act. The limitation period will also be suspended if the parties negotiate the matter until one year after the negotiations end. If the insurer accepts the claim, a new three (or ten) year limitation period will begin from that point in time.

## 9.2 Disputes Over Jurisdiction and Choice of Law

When a claim is brought before a Danish court, the court will *ex officio* ensure that the court has jurisdiction and refer the matter to a proper forum if that is not the case. If it is not possible for the court to refer the matter, eg, because the parties have agreed on submitting the matter to arbitration, the court will instead dismiss the case.

In a situation where the court has assumed jurisdiction over the dispute and the defendant wishes to object to this, the objection must normally be made in the statement of defence at the latest. If the objection is not made in the statement of defence, the court will be deemed to be the proper forum.

The Brussels I Regulation (recast) applies in Denmark. Danish law on jurisdiction is, consequently, in accordance with that of other EU Member States. If the dispute is not subject to the Brussels I Regulation (recast), the Danish Administration of Justice Act provides certain jurisdiction rules.

Denmark is not a party to the Rome Regulation I and II. Consequently, the choice of the applicable law on contractual obligations is still determined in accordance with the Rome Convention on the law applicable to contractual obligations, whilst the choice of the applicable law to non-contractual disputes is determined on the basis of Danish case law.

If the parties have agreed on arbitration, the applicable law will be determined by the relevant set of arbitration rules. The Danish Arbitration Act will apply to arbitration taking place in Denmark insofar as no other procedural rules have been agreed

on. If the parties have chosen institutionalised arbitration, it will often be this institution's procedural rules that apply.

The arbitration tribunal will apply the law chosen by the parties to determine the issue in dispute. If it is not expressly stated, the tribunal will assume that the reference to a chosen law means the substantive law excluding its choice-of-law rules (exclusion of *renvoi*).

## 9.3 Litigation Process

The proceedings are divided into a pre-trial stage and hearing.

Proceedings are commenced by the claimant submitting a writ to the court. The court will then serve the writ on the defendant and give the defendant a deadline (typically two weeks) for submitting a statement of defence. Further pleadings may be exchanged, and this can take several months.

The court will hold a preparatory hearing (often by telephone) at some point during the pretrial stage. At the hearing, different matters are discussed, namely how the proceedings should move forward, which type of evidence the parties wish to rely on, and (if it is possible at this stage) when the hearing should take place.

During the pre-trial stage, the court can make decisions on procedural issues, such as whether to refer the case to another court, or whether to allow certain evidence. Such decisions can generally be appealed through a special interlocutory appeal procedure within four weeks from the time when the decision was made. However, depending on the decision in question, an interlocutory appeal may be subject to the Appeals Permission Board's granting a leave.

When the hearing has been scheduled, the court will decide the date on which the pre-trial stage ends (typically four weeks before the hearing). This is of importance, as it will generally not be possible to add anything new to the case from this point, ie, new claims, allegations and evidence have to be submitted before the end of the pre-trial stage.

Before the hearing, the court will ask the parties to provide skeleton arguments summing up the arguments they wish to rely on and which they have made during the pre-trial stage.

The court will normally deliver the judgment four weeks after the hearing has been held.

It should be noted, that some proceedings can be commenced under a small claims procedure (for claims with a monetary value under DKK50,000) or under a shortened procedure (e.g.

injunctions). These procedures are slightly different from the normal procedure as described above.

## 9.4 The Enforcement of Judgments

Domestic judgments can be enforced by submitting a request with the bailiff's court. The bailiff's court is a division under each of the 24 Danish district courts.

The bailiff's court will assist with the enforcement of an established claim. The bailiff's courts have several options and procedures available to them in this regard, such as the levying of execution or attachment, forced sale, etc.

An enforcement application can only be handed in when the time limit for executing the judgment has expired. The execution deadline will normally be 14 days from the day when the judgment was delivered.

The court fee for an enforcement application varies according to the size of the claim that is sought enforced. Normally, the court fee will be DKK300 plus 0.5% of the amount exceeding DKK3,000. Other fees apply if a small money claim form is used, or if immediate enforcement proceedings are requested.

Denmark has no general legal framework applicable to the enforcement of foreign judgments. Consequently, the enforceability of a foreign judgment depends on the existence of an applicable convention.

Despite being a part of the European Union, Denmark is exempt from legal standards regulating minimum rules in civil cases. Denmark has, however, opted in on several EU regulations and international conventions on a voluntary basis, namely the Brussels I Regulation (recast), the Lugano Convention, and the Hague Convention on Choice of Court Agreements. These acts are implemented in Danish law by the Danish Enforcement Act. In practice, this means that judgments from EU member states, Iceland, Norway, Switzerland and third countries that are contracting states designated in an exclusive choice of court agreement in accordance with the Hague Convention, can be enforced in Denmark without first obtaining a judgment on recognition, unless there is a reciprocal agreement between the countries.

Accordingly, if a foreign judgment is not covered by any of the acts, it is not automatically recognised, nor is it enforceable under Danish law. Consequently, it will be necessary to first obtain a judgment on recognition of the judgment before it can be enforced. A judgment on recognition of a foreign judgment may in theory involve a Danish court hearing the full case, including all the evidence. When a judgment on recognition is given, this judgment will be enforceable.

As a general rule, the procedure for enforcing foreign judgments is the same as for domestic judgments. However, foreign judgments pursuant to the Lugano Convention and the Hague Convention must be declared enforceable before they can be enforced (the *exequatur* procedure). A request for such a declaration is submitted to the bailiff's court, and it is possible to apply for enforcement of the judgment at the same time.

## 9.5 The Enforcement of Arbitration Clauses

If the parties have agreed to arbitration, a Danish court will in general recognise and enforce the arbitration clause by dismissing the case. This also follows from the New York Convention, which provides that a court must refer the parties to arbitration unless the arbitration agreement is invalid.

However, the Danish courts can assume jurisdiction over certain matters relating to the arbitration, eg, to rule on the arbitral tribunal's jurisdiction (only before commencement of the arbitration proceedings); to determine whether the subject matter of the dispute in question can be decided by arbitration; or to order an interim measure of protection or enforcement.

Consequently, a Danish court may also refuse to enforce a judicial judgment, if the matter was subject to a valid arbitration agreement.

## 9.6 The Enforcement of Awards

Arbitration in Denmark is governed by the Danish Arbitration Act, which to a large extent follows the 1985 UNICTRAL model law. In addition, Denmark is a party to the New York Convention.

The Danish courts can enforce an arbitral award, and the procedure for the enforcement follows the same procedure as the enforcement of judgments (see **9.4 The Enforcement of Judgments**).

Arbitral awards delivered in both Denmark and abroad have binding effect and may be enforced in Denmark in accordance with the rules on enforcement of judgments. There is no precondition that the award is made by a signatory state to the New York Convention.

However, an arbitral award may be refused enforcement if one of the grounds for refusal in Section 39 of the Danish Arbitration Act apply. The grounds for refusal correspond to the exceptions in Article 26 of the UNICTRAL Model law. Consequently, an award will not be enforced, if, for example, the dispute did not contemplate or fall within the terms of the matter being submitted to arbitration; the award contains decisions on matters beyond the scope of the submission to arbitration; the award has not yet become binding, or if it has been set aside



or has been suspended by a court in the country in which, or under the law of which, the award was made; the composition of the arbitral tribunal or the procedure was not in accordance with the arbitration agreement or the law of the country of the arbitration seat, etc.

In addition, the court will refuse to enforce an arbitral award *ex officio*, if it finds that the subject matter of the dispute is not capable of settlement by arbitration under Danish law, or if enforcement of the award would be contrary to Danish public policy.

## 9.7 Alternative Dispute Resolution

Arbitration (both *ad hoc* and institutional) is widely used in Denmark. This also applies to insurance disputes, especially within the area of reinsurance disputes.

Generally, parties may agree on submitting a dispute to arbitration both before and after the dispute arises. An arbitration agreement in relation to a consumer contract will, however, only be valid if it was concluded after the dispute arose.

Mediation and negotiations do not, as of yet, play a significant role in the resolution of insurance disputes in Denmark. Whilst the Danish courts can offer court mediation, they cannot compel parties to mediate or negotiate a dispute, and therefore cannot enforce the parties' agreement to do so.

## 9.8 Penalties for Late Payment of Claims

The insurance policy will often contain a provision regarding when a payment for a claim should be made. If no such provision exists in the contract, the Danish Insurance Contracts Act provides that payment should be made 14 days after it was possible for the insurance company to obtain the information necessary for assessing the insurance event and calculating the policyholder's claim. The point in time from which a payment should have been made is necessary in order to calculate from which point in time the policyholder is entitled to receive interest (see the Danish Interest Act). The beneficiary under a third-party liability insurance is entitled to claim interest in accordance with the Danish Interest Act, ie, 30 days after the insurer was able to obtain the information necessary for assessing the insurance event and calculating the claim.

If the beneficiary suffers a loss because of the insurer's delay in settling the claim, he or she may be entitled to damages in accordance with the general Danish rules on liability in damages. Consequently, he will have to show a loss, a causal link, foreseeability, negligence and that has been no fault on his part.

Punitive damages are not available under Danish law.

## 10. Insurtech

### 10.1 Insurtech Developments

Several new startups have begun to challenge the traditional insurance industry in Denmark. A common feature is that they have a clear focus on the customer's needs while offering flexible solutions and good user experiences.

An example of this is Undo, a startup that reaches its customers through an app and mainly appeals to – and has a focus on – a young target group.

The most recent product that the company has introduced to the market is Undo travel insurance where the customer only pays for the coverage they have chosen and the actual days they travel. Consequently, the insurance automatically terminates when you reach home.

The biggest Danish Insurance company Tryg, who has invested in Undo and owns half of the company, has also developed a wide range of various pay-per-use insurance solutions to sharing services, etc. The latest addition is a co-operation with the Danish company FDM about their new car-pooling app "Ta'Med" ("come along"). According to Tryg, the insurance will cover the passenger if the driver cancels during the day due to illness, the car breaks down or due to overtime.

Another startup worth mentioning is Penni, an API-first platform with focus on building customer journeys for insurance products.

Penni has among others been working together with one of the other large insurance companies, Topdanmark to integrate its service with Denmark's largest retail business, COOP to form the brand COOPforsikringer ("COOP insurance").

### 10.2 Regulatory Response

The Danish trade association for insurance companies and pension funds, Insurance & Pension Denmark (IPD) ("Forsikring og pension") has declared that (in translation), "The extensive regulation that applies to the insurance and pension industry means that the digitalisation of the industry requires a continuous effort to ensure that the legislation is ready for digitalisation. The use of data concerns technology and new digital opportunities, but it must be matched by a contemporary legal framework".

However, there are no specific legislative measures in this area, as yet.

## 11. Emerging Risks and New Products

### 11.1 Emerging Risks

#### Increased Focus on Climate Changes

From a climate point of view, Denmark is practically an island as almost all areas of Denmark are near the coast, and nowhere more than 52 km [32.3 miles] from the sea. As the water cycle is expected to undergo a significant change with rising ground-water and extra pressure from the seas, Denmark is extremely exposed. This has led insurers to focus on the pricing of for example property insurance and on limiting their risks by reinsurance, and this focus is likely to continue in 2020.

Also, Denmark has increasingly been affected by bad weather, such as torrential rain and storms. When you take out insurance in Denmark, insurers charge statutory fees on behalf of the state and various relief funds. Payment of storm tide tax is mandatory, irrespective of whether you live in a house, apartment, etc.

When it comes to climate change-related litigation, countries surrounding Denmark, such as Norway, Sweden, Germany and UK, have all lately been facing lawsuits filed against their governments as well as the oil and energy industry. While no climate lawsuits have been brought in Denmark yet, this is however a focus point, especially when it comes to the question whether climate change disclosures may result in claims under directors and officers liability policies.

#### Increase of Serious Cyber Risk in Denmark

The Danish Ministry of Defence and Centre for Cyber Security assesses that Denmark is facing a serious cyber risk which is potentially harmful to both Danish companies and authorities and the Danish state and, as such, Danish companies are increasingly seeking to adequately protect themselves.

As a result, Codan, a part of the RSA Group, reports that the number of reported hacker attacks has increased with more than 300% since 2010 and the biggest insurance company in Denmark, Tryg, reports selling 10,000 cyber insurance policies (22 per day) to mid-cap companies.

PwC's cybercrime survey 2019 shows that 51% of the companies involved in the survey have suffered a security incident this year. One of the most media covered attacks this year is the cyber incident that affected the Danish hearing health care company, Demant, in early September 2019. Demant announced that their assessment indicated that the attack had a total negative financial impact on EBIT in 2019 of DKK550 to DKK650 million (GBP62 to GBP73 million), which included the deduction of an expected insurance coverage of approximately DKK100 million (GBP11 million).

Concurrently with the rise and publicity of cyberattacks, the focus on the risk of a cyberattack potentially leading to claims from shareholders against the board and senior executives and therefore potentially triggering the D&O insurance if the company has no cyber insurance has increased as well.

### 11.2 New Products or Alternative Solutions

As the frequency of cyberattacks increases and as new threats emerge daily, new products within this area are under constant development. This has also led to an increased focus on asset trading.

## 12. Recent and Forthcoming Legal Developments

### 12.1 Developments Impacting on Insurers or Insurance Products

Recently, there have been no crucial legal developments with an impact on the interpretation of insurance or reinsurance contracts

## 13. Other Developments

### 13.1 Additional Market Developments

There have been no significant legislative or regulatory developments within the industry in 2019. However, as the new Insurance Mediation Act came into force on 1 October 2018, there are still no examples of how the penalties for breach of the Act (which were adjusted in line with other financial legislation) will be determined and administered.

When it comes to compulsory insurance, it has for around 100 years been compulsory to have liability insurance on a motor vehicle in Denmark.

From January 2019, daily fines of DKK250 per day were introduced if the car owner had not taken out liability insurance for his or her motor vehicle.

The daily fines are levied by DFIM (Danish Association for International Motor Vehicle Insurance) and are introduced to ensure that, as the owner of an uninsured vehicle, you are more likely to pay for the damage caused by your vehicle.

When the law regulating these daily fees was enforced, around 50,000 vehicles in Denmark was without compulsory liability insurance.

# DENMARK LAW AND PRACTICE

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*Contributed by: Henrik Nedergaard Thomsen, Sigrid Majlund Kjærulff and Amelie Brofeldt, Poul Schmith*

**Poul Schmith** is a full-service Danish law firm comprising 65 partners, 400 lawyers and a total staff of 700. Since 1936, the law firm has been the preferred legal adviser to the Danish government, hence the title “Kammeradvokaten”, which is a title established in 1684 by His Majesty King Christian V of Denmark. In recent years, the law firm has increased its focus on the private sector in Denmark and the international market.

With specialists covering practically all legal areas, the firm has an extensive experience in both the corporate and public sectors. With more than 250 lawyers handling more than 3,500 pending litigation, mediation and national and international arbitration disputes, and completing more than 1,500 cases on a yearly basis, the firm has by far one of the largest dispute resolution practices in Denmark.

## Authors



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involving the defence of liability, policy-based disputes and coverage issues, including within the maritime sector. Sigrid has also in-depth knowledge of public insurance schemes, particularly workers’ compensation and patients’ insurance. Sigrid’s dispute resolution practice includes leading cases before the High Courts of Western and Eastern Denmark and numerous cases before the Danish City Courts.



**Sigrid Majlund Kjærulff** acts for Danish and international clients in the insurance industry, for the public sector and the Danish Government. Having worked in the insurance industry as a claims manager, Sigrid is focused on matters



**Amelie Brofeldt** read for a Master of Laws at the University of Copenhagen in 2017 and a Magister Juris at the University of Oxford in 2018. Since graduating, Amelie has worked as an assistant attorney in the litigation department. Having taken postgraduate degrees in both civil and common law jurisdictions, she often works on cross-jurisdictional disputes. In addition to this, Amelie assists Danish clients in tort and insurance disputes and has, since she passed her bar exam, been representing clients in the city courts. Amelie will fully qualify as a lawyer in September 2021.

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