



**COUNTRY  
COMPARATIVE  
GUIDES 2024**

# **The Legal 500 Country Comparative Guides**

## **Denmark**

# **INSURANCE & REINSURANCE**

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

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## DENMARK

# INSURANCE & REINSURANCE



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

Writing of insurance contracts is primarily regulated by The Danish Insurance Contracts Act which sets out rights and obligations of the insurer and the policyholder. The Danish Insurance Contracts Act applies unless the parties have agreed otherwise. Some provisions are, however, mandatory and cannot validly be derogated from.

Apart from the mandatory provisions in the Danish Insurance Contracts Act, insurance contracts are subject to the general principles of Danish contract law. Accordingly, the parties enjoy the freedom of contract to a great extent.

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

As mentioned above (question 1), The Danish Insurance Contracts Act regulates insurance contracts between the insureds and insurers including life insurers. The Insurance Contracts Act does not, however, apply to reinsurers. As mentioned below (question 12), insurance and reinsurance companies are regulated by the Danish Insurance Business Act containing rules in relation to establishment and insurers capital and solvency. These requirements depend on whether the company can be considered as a 'Group 1' or a 'Group 2' company. The assessment of whether it is a group 1 or group 2 company depend on the insurance company's annual gross premium, total gross insurance provisions, and the extent of the company's engages in reinsurance activities. Group 1 companies are larger insurance companies, and group 2 includes all other insurance companies.

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

Insurance brokers, agents and other types of intermediaries are regulated by the Danish Insurance

Mediation Act, which is based on the Insurance Distribution Directive (IDD). In brief, The Danish Insurance Mediation Act sets out a range of obligations and requirements on how insurance products are designed and sold both by insurance intermediaries and directly by insurance undertakings, i.e. strict license and registration requirements (see question 4 below), good business conduct and qualifications requirements and educational requirements.

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

Both insurance and reinsurance companies who carry out insurance activities in Denmark must obtain a licence from the Danish Financial Supervisory Authority (FSA). The requirements for obtaining a licence as an insurance company are outlined in the Danish Insurance Business Act. According to the Danish Insurance Mediation Act, all insurance intermediaries must also be authorised by the Danish FSA to carry out insurance activities in Denmark. The Insurance Mediation Act sets out the requirements for the intermediaries to obtain a license from the Danish FSA. However, if an insurance company or intermediary established in the EU or the European Economic Area (EEA) already have been authorized in its home country, the company may carry out insurance activities in Denmark without obtaining an authorisation from the Danish FSA.

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

There is no legislative restrictions on foreign ownership of Danish insurance companies. According to the Danish Insurance Business Act, approval by the Danish FSA is, however, required before acquiring 10% or more of the shares in an undertaking or increasing the shareholding or voting power in an undertaking above 20%, 33% or

50% of Danish insurance companies and when turning the undertaking into a subsidiary or into another company. Approval may be given if a number of criteria are fulfilled, mainly whether the entity in question is regarded as "fit and proper" to own such holdings.

Furthermore, senior managers have to meet fit and proper requirements and be approved by the Danish FSA (see question 15).

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

The absolute starting point in Denmark is that a foreign insurer or reinsurer must obtain a license from the Danish FSA in order to carry out insurance activities in Denmark, unless the company has obtained a license in another country within the European Union (EU), the European Economic Area (EEA) or in a country with which the EU has entered into an agreement with on the financial sector, provided that the Danish FSA has received notification of this from the supervisory authorities in the home country. The EU has entered into such bilateral agreement with the US. This agreement allows US reinsurers to reinsure risks in Denmark without obtaining a licence from either the Danish FSA – or any other EU or EEA authorities. However in such event, the specific US reinsurer is required to notify the relevant supervisory authorities in the US, which then inform the Danish FSA, after which reinsurance activities can be commenced in Denmark.

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

In general, overseas insurers, brokers and intermediaries are subject to the same regulatory framework as Danish insurance companies. However, a foreign entity may carry out insurance business in Denmark without obtaining a licence from the Danish FSA if the entity has already been granted a licence to carry out insurance business in another Member State in the EU or in the EEA. This may be done on either an establishment or a freedom-of-service basis. The foreign entity must, however, observe the Danish rules on good insurance practice, consumer protection and the insurance contract rules.

Regarding insurers outside the EU and EEA, such

undertakings have to establish a branch in Denmark and obtain an licence from the Danish FSA to carry out insurance and reinsurance activities in Denmark. As mentioned above (question 6), the EU and US have entered a bilateral agreement allowing US reinsurers to reinsure risk in Denmark without a license from the Danish FSA or from other authorities in EU/EEA. However, the US reinsurers' home authority must inform the Danish FSA before commencing activities.

#### **8. Are there any restrictions/substance limitations on branches established by overseas insurers?**

In principle, branches established by overseas are subject to the same regulatory framework as Danish insurance companies and may carry insurance activities on equal terms as Danish companies. If the license is issued in another Member State in the EU or in the EEA, the branch can only carry out insurance activities governed by the Danish Insurance Business Act if these activities are covered by the company's license in the home country. Further, the insurance company have to appoint a general agent to manage the branch.

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

It is a criminal offence to undertake insurance activities in Denmark without permission. Accordingly, the Danish FSA may issue warnings or impose injunctions and fines if an insurance company or reinsurance company fails to comply with regulatory requirements. In severe cases, the Danish FSA may also revoke the company's license.

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

The Danish FSA supervises and monitors the insurers and reinsurers compliance with the Danish regulatory framework. The Danish FSA's strategy towards 2025 is based on four pillars: a robust financial sector, a proper financial sector, a supervisory and regulatory framework that reflects the development of society, and a professional and effective financial supervision. Supervisory activities are risk-based, meaning that, based on an assessment of the probability and consequences of the various risks, the Danish FSA allocates resources according to where the risks are assessed to be significant and uses the instruments of financial regulation to limit these risks. In 2022 and

2023, the Danish FSA have had an increased focus on Danish insurers' fraud investigations of insureds in personal injury matters.

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

As mentioned above (question 10), The Danish FSA supervises and monitors the solvency of insurers and reinsurers through risk assessments. According to the Danish Insurance Business Act, which implements the EU Solvency II Directive, Danish insurance companies and reinsurance companies are obliged to perform their own supervision and reporting of their solvency. The Act requires companies to hold a minimum capital requirement (see questions 12) as well as a solvency capital requirement.

### **12. What are the minimum capital requirements?**

The Danish Insurance Business Act outlines certain requirements to the insurance company's capital and solvency. These requirements are based on the EU Solvency II Directive. In general, the minimum capital requirement for group 1 insurance companies is calculated based on the company's risk profile and amounts to 25-45 % of the company's solvency capital. Group 2 insurance companies are exempt from the stricter capital requirements that apply to group 1 insurance companies. This exemption is due to their limited size and scope of activities, which means they are not subject to the Solvency II directive. Further, The Danish Insurance Business Act states a lower monetary limit regarding the minimum capital requirements where the amount varies according to the type of insurance business carried out by the insurance company.

### **13. Is there a policyholder protection scheme in your jurisdiction?**

In case of an insurance company's bankruptcy, The Danish Guarantee Fund for Non-life Insurance Companies provides cover for policyholders in case of a non-life insurance company's bankruptcy. Generally, the guarantee scheme applies to consumer insurances taken out with insurers that have been granted license from the Danish FSA to carry out insurance business in Denmark or with foreign insurers based in an EU or EEA country distributing insurance on an establishment or freedom-of-service basis in Denmark.

### **14. How are groups supervised if at all?**

According to the Danish Insurance Business Act, which implements the EU Solvency II Directive, groups are subject to supplementary Group supervision if at least one of the insurance companies within the group are classified as a 'Group 1 insurance company' by the Acts definition (see question 2). Group supervision is triggered if one insurance entity is headquartered in Denmark or elsewhere in the EU. In brief, the insurance companies within the group are required to calculate a group solvency capital requirement and the group's own funds must be transferable and fungible across the group. All related companies and all risks within the group must be included in the group solvency calculation.

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

Both members of the board of directors and board of management of an insurance company have to meet fit and proper requirements and be approved by the Danish FSA. Essentially, the fit and proper requirements stipulates that a board member shall have sufficient knowledge, professional competences and experience and have a sufficiently good reputation and be able to demonstrate propriety, integrity and independence.

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

A senior manager may be held personally liable for actions and omissions in relation to regulatory breaches. In order to claim compensation for damages, the general law of damages in Denmark states that the claimant has to prove that the senior manager has acted negligently, that the claimant has suffered a loss, and that there is a causal connection between the negligence and the loss.

### **17. Are there minimum presence requirements in order to undertake insurance activities in your jurisdiction (and obtain and maintain relevant licenses and authorisations)?**

Both members of the board of directors and board of management of an insurance company have to meet fit and proper requirements and be approved by the Danish FSA. Essentially, the fit and proper requirements stipulates that a board member shall have sufficient

knowledge, professional competences and experience and have a sufficiently good reputation and be able to demonstrate propriety, integrity and independence.

**18. Are there restrictions on outsourcing services, third party risk management and/or operational resilience requirements relating to the business?**

Insurance companies have to comply with a number of requirements when an insurance activity is outsourced to a supplier, and the insurance companies are fully responsible for outsourced activities. According to the Danish Insurance Business Act, the insurance companies have to ensure that outsourcing of critical or important operational functions or activities is not undertaken in a way that could lead to deterioration of the management system, increase of the operational risk, impair the ability of supervisory authorities to monitor the insurance company's compliance of its obligations, and the outsourcing must not prevent the insurance company from offering policyholders a satisfactory service at all times.

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

Generally, insurance companies must invest their assets in the best interests of the insured and beneficiaries according to the prudent person principle (the EU Solvency II Directive) to ensure that the investment strategy of the company reflects what customers have been assured. In brief, the principle provides that insurance companies shall only invest in assets and instruments whose risks they can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of their overall solvency needs.

Specifically, insurance and reinsurance companies carrying out life insurance activities must disclose a so-called 'active ownership policy' describing how the company integrates active ownership into its investment strategy when investing in a regulated market.

In addition, insurance and reinsurance companies are subject to ESG regulation (see questions 33 and 35) which may influence the type of investments held.

**20. Are there requirements or regulatory expectations regarding the management of an insurer's reinsurance risk, including any restrictions on the level / type of reinsurance utilised?**

In general, the management of an insurer must ensure accurate valuation of assets and liabilities. In this context, consideration must be given to reinsurance contracts and risks. According to the EU Solvency II Directive, insurance companies are required to make a plan of operations containing principles of reinsurance activities in order to obtain license from the FSA. Furthermore, insurance companies carrying out life insurance activities must also define thresholds for reinsurance activities and make a statement detailing the expected income and expenditure relating to reinsurance acceptances and reinsurance cessions.

Furthermore, insurance companies concluding finite reinsurance contracts or carrying out finite reinsurance activities must be able to identify, measure, monitor, control, manage and report the risks arising from such contracts.

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

The Danish FSA supervises and monitors sales of insurances as well. As marketing and sales activities are subject to various general legal requirements under the Danish Marketing Act (see question 23 below), supervision and control is also performed by the Danish Consumer Ombudsman.

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

In general, the management of an insurer must ensure accurate valuation of assets and liabilities. In this context, consideration must be given to reinsurance contracts and risks. According to the EU Solvency II Directive, insurance companies are required to make a plan of operations containing principles of reinsurance activities in order to obtain license from the FSA. Furthermore, insurance companies carrying out life insurance activities must also define thresholds for reinsurance activities and make a statement detailing the expected income and expenditure relating to



reinsurance acceptances and reinsurance cessions.

Furthermore, insurance companies concluding finite reinsurance contracts or carrying out finite reinsurance activities must be able to identify, measure, monitor, control, manage and report the risks arising from such contracts.

**23. Are insurers in your jurisdiction subject to additional requirements or duties in respect of consumers? Are consumer policies subject to restrictions, including any pricing restrictions? If so briefly describe the range of protections offered to consumer policyholders**

As mentioned above, insurance companies must observe consumer protection regulation set out in the Insurance Contracts Act. Thus, the Act provides detailed mandatory rules in benefit of the insured consumer, including regulation regarding insurance premium, limitation periods, duty of disclosure and right of cancellation.

In addition, Danish contract law prohibits the use of unfair contract terms in consumer agreements. A term will be considered unfair if it implies a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

**24. Is there a legal or regulatory resolution regime applicable to insurers in your jurisdiction?**

Winding-up an insurance company is effected through liquidation, bankruptcy, or merger. Where winding-up is conducted in another manner, this must be approved by the Danish FSA. In case, the Danish FSA withdraws the license of an insurance company, the Danish FSA are entitled to make decisions regarding whether the insurance company must transfer its portfolio of insurance contracts to one or more insurance companies carrying out insurance activities in Denmark, or whether the insurance company must terminate its portfolio of insurance contracts in another way.

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

Each year, the Danish courts handle a lot of complex commercial claims. Generally, the courts, especially the High Court and the Supreme Court, are therefore adept at handling complex commercial claims.

The Maritime and Commercial Court and the district courts placed in parts of Denmark with most commercial activities are often skilled within commercial litigation. However, the adeptness may vary depending on the experience of the individual judges in the district courts. In district court cases, one judge normally participates. In complicated commercial matters, a party may, however, request for the participation of three judges at the main hearing.

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

In general, an insurance company will inform the insured on which grounds coverage has been rejected. Also, the insured is entitled to ask for the reasons in writing and file a complaint to the insurance company. If the insured disagree with a decision made by the insurance company, the insured can file a complaint to the Insurance Complaints Board. All though both the insurance company and the consumer are bound by the Insurance Complaints Board's decision, the decision can be challenged before the court where mediation is available. Mediation is, however, rarely suitable for insurance disputes. Any dispute relating to business insurance can be brought before the court or arbitration if agreed upon.

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

According to the Danish Insurance Business Act, Danish insurers may not, without authorisation from the Danish FSA, transfer all or part of its books of insurance to another insurance undertaking, including foreign insurers. The requirement for authorisation only applies to 'stocks' of sales or transfers and, accordingly, not sales or transfers of individual policies. Moreover, authorisation is not required where an insurance undertaking has obtained acceptance for the transfer from individual policyholders to which the transfer relates.

In order to obtain such an authorisation, an application must be made to the Danish FSA, who is then obliged to publish a statement including an explanation of the proposed transfer and an invitation to policyholders whose insurance is intended to be transferred to make written notification to the Danish FSA if they have objections to the transfer. At the same time as it is published, the insurance company must inform the affected policyholders of the transfer and the Danish

FSA's statement.

Hereafter, the Danish FSA shall decide, taking into account the objections raised, whether the books of insurance can be transferred in accordance with the proposal submitted.

As for foreign insurers who have taken out insurance in Denmark, approval from the Danish FSA is required before sales or transfers of such portfolios. The process is, however, less comprehensive for foreign insurers, as the financial association of the foreign insurers' nation retains the authority and decision-making competence. The Danish FSA's approval only concerns portfolios taken out in Denmark and is given if the Danish FSA finds that the transfer is sound to Danish policyholders.

## **28. What are the primary challenges to new market entrants? Are regulators supportive (or not) of new market entrants?**

The primary challenges to new market entrants are setting up (re)insurance mediation services and obtaining license from the Danish FSA to carry insurance activities in Denmark, and other regulatory requirements, i.e. fit and proper requirements, rules regarding good conduct, disclosure obligations and other ongoing reporting obligations. Considering that the Danish insurance market is highly regulated, new market entrants should seek legal advice on the matter.

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

The use of technology, especially AI, is poised to continue transforming the Danish insurance market and the businesses that it serves. Danish insurance companies are continuing to invest in 'insurtech' in order to develop novel technologies that aim not only to improve customer experience, but also to provide a more accurate prediction of risk and fair pricing, thereby creating significant time and cost savings.

Notwithstanding these positive developments, digital innovation also comes with threats and risks. Threats not only exist in the context of direct data and technology related risks, but also indirectly in new claims. Thus, risks in the form of both human and technology failures of AI, malicious use of AI by third parties and issues with data may lead to claims related to property damage, personal injury, reputational damage, medical malpractice and cyber.

A particular challenge of evolving technology and AI

capabilities is the potential for AI failures not fitting into existing insurance lines, such as a cyber insurance covering data leakage but not bodily harm, brand damage or physical property damage all occurring from the same failure or malicious use of AI.

## **30. How is the digitization of insurance sales and/or claims handling treated in your jurisdiction, for example is the regulator in support (are there concessions to rules being made) or are there additional requirements that need to be met?**

In general, Danish regulators and the Danish FSA are in support of the digitization of insurance sales and/or claims handling, but has up until now refrained from regulating such digitization. However, on 13 March 2024, The European Union adopted the Artificial Intelligence Act which is poised to affect insurers use of technology and AI.

Thus, the Artificial Intelligence Act sets out a risk-based approach to AI systems and divide AI systems into risk groups, where the requirements increase in line with the risk. Depending on risk classification, a ban on the AI system or requirements for market surveillance, documentation, impact assessments, information, etc. may apply and systems with unacceptable risks will be prohibited from putting into service or used by insurers in the European Union.

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

The primary challenges to new market entrants are setting up (re)insurance mediation services and obtaining license from the Danish FSA to carry insurance activities in Denmark, and other regulatory requirements, i.e. fit and proper requirements, rules regarding good conduct, disclosure obligations and other ongoing reporting obligations. Considering that the Danish insurance market is highly regulated, new market entrants should seek legal advice on the matter.

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

The General Data Protection Regulation (GDPR) imposes

restrictions on the transfer of personal data outside the European Union, to third-party countries or international organisations, to ensure that the level of protection of individuals afforded by the GDPR is not undermined. For example, the specific rules of GDPR must be observed if an insurance company wishes to use a company outside the EU or the European Economic Area (EEA) to operate IT systems or handle customer service.

**33. To what extent are insurers subject to ESG regulation or oversight? Are there regulations/requirements, including in connection with managing climate change and climate change related financial risks specific to insurers? If so, briefly describe the range of measures imposed.**

Danish insurers are subject to a range of ESG related regulations and requirements, which are being fundamentally changed in the EU these years, including the Corporate Sustainability Reporting Directive (CSRD), which is the central focus of sustainability reporting in Denmark.

From 2024 onwards, insurers must include a far greater range of ESG data than previously. In addition to tracking their performance related to climate change, circular economy, and pollution, insurers must be transparent about how they address loss of biodiversity and reductions in resource and water consumption. Also, social considerations such as the treatment of employees within the company's own organization, and throughout the entire value chain, will become an area subject to reporting under the CSRD. Information regarding policies on business conduct, including prevention of corruption and bribery, management of supplier relationships, lobbying activities, and payment practices, are also required under the CSRD.

Additionally, Danish insurers must account for their social responsibility work in connection with their annual report. In brief, the report must include information on environmental issues and sustainability, gender diversity, social issues, data ethics and issues relating to respect for human rights, anti-corruption and anti-bribery.

Non-compliance or misrepresentation of ESG credentials

will expose insurers to a variety of risks, including financial loss, reputational damage and civil liability.

**34. Is there a legal or regulatory framework in respect of diversity and inclusion to which (re)insurers in your jurisdiction are subject?**

There are several laws in Denmark which regulate equal treatment and equal rights of women and men, and discrimination, which companies in Denmark are subject to. According to the Danish Insurance Business Act, larger companies are also subject to rules regarding target figures and policies for the under-represented gender. Additionally, the insurance company's board must establish a diversity policy to ensure sound operation, promoting diverse qualifications and competencies among its members.

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

As described above (question 29), the use of technology will continue to transform the Danish insurance market. Insurers who are able to provide accurate risk analysis and fair pricing through digitalisation will most likely take a market lead. Thus, proper implementation of technology and artificial intelligence (AI) will assist insurers in setting accurate premiums reflecting the impact of an increasingly high-risk environment and economic and political uncertainty. It should also serve to enhance the insurance company's reputation in the market, and provide customers with a fair, transparent and responsive product experience.

Further, ESG-related factors are poised to impact every aspect of an insurer's business; from their own investments and levels of claims, to the treatment of their customers and employees and selection of (legal) suppliers. Effective, technology-driven stress testing of products and procedures against ESG standards will be essential. Accordingly, insurers who address ESG requirements, such as climate change and biodiversity, will increasingly impact their competitive position and reputation in the Danish insurance market. As such, embracing sustainability goals as part of the insurance company's own corporate governance is vital in taking the market lead.



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