

This text is to be regarded as an unofficial translation based on the latest official Consolidated Act no. 932 of 6 September 2019. Only the Danish document has legal validity.

Guarantee Fund for Non-life Insurers Act

An Act on a Guarantee Fund for Non-life Insurers is hereby promulgated, cf. Consolidation Act no. 1050 of 8 September 2017, with the amendments consequential upon section 1 of Act no. 375 of 1 May 2018, section 19 of Act no. 706 of 8 June 2018 and section 15 of Act no. 552 of 7 May 2019.

Part 1

Status and objective of the Guarantee Fund and the scope of the Act

1. The Guarantee Fund for Non-life Insurers (the Fund) is an independent institution.

(2) The Fund will provide coverage in accordance with section 5 where a direct non-life insurer authorised by the Danish Financial Supervisory Authority (Danish FSA) to conduct insurance business, or which conducts insurance business in Denmark through a branch or through cross border insurance business, is declared bankrupt.

(3) The Access to Public Administration Files Act, the Ombudsman Act, the Public Administration Act and the Archives Act do not apply to the Fund.

(4) In the event of cessation of the Fund, the Minister for Industry, Business and Financial Affairs, subject to approval by the Minister for Finance, will decide how to use the assets of the Fund. The decision of how to use the assets of the Fund will be made after consultation with the insurance companies specified in section 1(2).

(5) The Minister for Industry, Business and Financial Affairs may lay down detailed regulations for the administration of the Fund.

2. The Fund will cover the business that the insurance companies specified in section 3(1) conduct in Denmark, for risks in Denmark.

2 a. (Repealed)

Part 2

Duty to pay contributions and determination of contributions

3. The following insurance companies will be members of and pay contributions to the Fund:

1) Direct non-life insurers authorised by the Danish FSA to conduct insurance business.

2) Branches in Denmark of direct non-life insurers domiciled in another Member State of the European Union or in a country with which the European Union has concluded an agreement for the financial area.

3) Direct non-life insurers domiciled in another Member State of the European Union or in a country with which the European Union has concluded an agreement for the financial area and which were registered to conduct insurance business in Denmark through cross border insurance business activities.

(2) The assets of the Fund shall amount to at least DKK 300 million.

(3) Each new member of the Fund will make a lump sum contribution of DKK 100,000 to the Fund.

(4) In addition to the lump sum contribution, cf. subsection (3), the insurance companies are required to pay regular contributions to the Fund. The insurance companies' contribution is the sum of an annual amount determined by the Danish FSA for each consumer insurance policy, cf. subsection (9).

(5) Once a year, the Danish FSA announces the amount for each policy to be used by the insurance companies when calculating contributions to the Fund. The Danish FSA shall publish the announcement no later than six months before the insurance companies have to pay contributions to the Fund.

(6) In connection with the presentation of their financial statements, the insurance companies will submit a statement from a state-authorised public accountant or registered public accountant to the Fund, certifying that the contributions paid are correctly calculated.

(7) Where the annual contribution to the Fund does not exceed DKK 50,000, notwithstanding subsection (6), the insurance company may submit a statement from the company's responsible management to the Fund, certifying that the contributions paid are correctly calculated.

(8) The Fund may raise loans guaranteed by the state.

(9) The Danish Financial Supervisory Authority will lay down more detailed regulations concerning the insurance companies' contribution to the Fund and concerning which types of insurance are covered by the duty to pay contributions.

(10) The Minister for Industry, Business and Financial Affairs may increase the requirement for the size of the Fund's assets under subsection (2).

(11) The Minister for Industry, Business and Financial Affairs may authorise the Fund's temporary non-compliance with the requirement of subsection (2) concerning the size of the Fund's assets.

3 a. The Fund will reimburse the insurance company with which the Fund concludes an agreement on the processing of claims notified under section 5 a, for amounts paid by the insurance company to policyholders, insured and third parties and for expenses for administration and coverage relating to the assessment of claims.

(2) Where the Fund has provided cover under section 5 a, the Fund will be subrogated to the claims of the policyholder, insured or third party against Gable Insurance AG and any reinsurance companies.

(3) The Fund will bear all costs of an attorney's statement regarding the possibility of claiming damages from the former management of Gable Insurance AG, the former management of Husejernes Forsikring Assurance Agentur ApS, their business partners in the distribution of insurance contracts and other advisors.

4. Until the assets of the Fund amount to DKK 300 million, a policyholder may not terminate an insurance contract because of a premium increase that is used solely for the payment of contributions to the Fund.

(2) Where the Minister for Industry, Business and Financial Affairs uses his authority to require greater assets in the Fund than DKK 300 million, subsection (1) will apply *mutatis mutandis*.

(3) A policyholder may with immediate effect terminate an insurance contract with an insurance company specified in section 3(1), nos. 2 or 3, where the Danish FSA prohibits the insurance company from conducting business in Denmark, cf. section 14(3). In the event of termination under the first sentence, the insurance company may not collect a fee from the policyholder.

4 a. (Repealed)

Part 3

Scope of coverage and notification of claims

5. The Fund will cover claims for damages arising out of the bankruptcy of a non-life insurer for the following:

- 1) Policyholders with private insurance (consumer insurance) and the insured;
- 2) third parties insured against personal injury or property damage under motor liability insurance;
- 3) third parties insured against personal injury under other liability insurance;
- 4) policyholders and the insured under collective insurance contracts to the extent that, by its nature, an insurance contract corresponds to the individual insurance contracts covered; and
- 5) policyholders with fire insurance regardless of the type of property and the insured.

(2) The Fund will cover claims for damages incurred no later than four weeks after the bankruptcy trustee has given notice of the insurance company's bankruptcy to the claimants, cf. section 124 of the Bankruptcy Act. Where the insurance company is an insurance company specified in section 3(1), nos. 2 or 3, the four-week time limit will be calculated from the date of the Fund's notice to the claimants, under section 8(3) of the insurance company's bankruptcy.

(3) Notwithstanding subsection (2), the Fund will cover claims for damages under change of ownership insurance (in Danish 'ejerskifteforsikring'), structural warranty insurance (in Danish 'byggeskadeforsikring') and property sellers' liability insurance (in Danish 'sælgeransvarsforsikring') for the full term of the insurance contract. Moreover, the Fund will also cover claims for damages under an insurance contract concluded with an insurance company against which the Danish FSA has issued a prohibition under section 14(3), provided the insurance was in force at the time of the Danish FSA's decision.

(4) The Fund will cover policyholders' premiums paid before the issuance of the bankruptcy notice, subject to a deductible of DKK 1,000 per policy.

(5) Policyholders may not make claims against the bankruptcy estate of an insurance company for the deductible of DKK 1,000, cf. subsection (4).

(6) The Fund will not cover premiums on change of ownership insurance, structural warranty insurance and property sellers' liability insurance, cf. subsection (3).

(7) The Fund will not cover claims for damages and premiums from members of the board of management or board of directors of the insurance company concerned.

5 a. The Fund will cover claims that are uncovered as a result of the bankruptcy of the insurance company Gable Insurance AG of policyholders and insured residing in Denmark who have concluded an insurance contract with Gable Insurance AG through Husejernes Forsikring Assurance Agentur ApS or are covered by such insurance. The Fund will also cover uncovered claims relating to repairs and remedying damage by a third party as per agreement with Husejernes Forsikring Assurance Agentur ApS under an insurance contract specified in the first sentence.

(2) As regards change of ownership insurance, the Fund will cover the claims specified in subsection (1) existing when the policyholder acquired or otherwise took possession of the property and which are discovered after possession of the property and otherwise eligible under the terms of the insurance contract. As regards the first eligible claim with the Fund, an excess of DKK 20,000 will be deducted from claims under a change of ownership insurance contract. For subsequent eligible claims with the Fund, the excess specified in the terms of the insurance contract will be deducted. In the calculation of whether the policyholder's total excess payment remains within the cap, if any, on the total excess stated in the insurance contract, the specified excess of DKK 20,000 will be included only at an amount corresponding to the excess specified in the policy.

(3) As regards structural warranty insurance, the Fund will cover the claims specified in subsection (1), incurred before the bankruptcy of Gable Insurance AG on 19 November 2016 or incurred during the term of the insurance contract. It is a condition for coverage under the first sentence that the client that has concluded a structural warranty insurance contract with Gable Insurance AG has gone into liquidation or is administered in bankruptcy or similar procedures before the bankruptcy of Gable Insurance AG on 19 November 2016 or goes into liquidation or is administered in bankruptcy or similar procedures during the term of the insurance contract. In other cases, the Fund will not cover claims under structural warranty insurance contracts concluded with Gable Insurance AG.

(4) As regards insurance contracts other than change of ownership insurance and structural warranty insurance contracts, cf. subsections (2) and (3), the Fund will cover claims specified in subsection (1) incurred no later than four weeks after the Fund has given notice of Gable Insurance AG's bankruptcy to the claimants.

6. Claims for damages under section 5 which are to be covered by the Fund and which have not been notified to the insurance company declared bankrupt must be notified to the Fund without delay and no later than six months after the issuance of the bankruptcy notice. However, claims for damages under section 5(3) must be notified to the Fund no later than six months after the termination of the insurance contract. Claims for damages which have been notified to the company that has been declared bankrupt before the issuance of the bankruptcy notice will be regarded as notified to the Fund.

(2) The Fund may not invoke the time limits specified in subsection (1) to refuse payment to an eligible claimant, cf. section 5, who has not been able to timely invoke his or her right to receive compensation.

6 a. Claims to be covered by the Fund under section 5 a(2) and (4) must be notified to the Fund no later than 31 March 2017. Claims under section 5 a(3) must be notified to the Fund no later than on the date of expiry of the insurance contract. Section 6(2) will not apply to notification of claims under the first and second sentences.

(2) Claims resulting from a complaint about a decision made by Husejernes Forsikring Assurance Agentur ApS and brought before the Danish Insurance Complaints Board before Gable Insurance AG's bankruptcy on 19 November 2016, and where the complainant prevails in full or in part, will be regarded as notified to the Fund in a timely manner. Similarly, complaints about claims that were rejected by Husejernes Forsikring Assurance Agentur ApS within the last four weeks before Gable Insurance AG's bankruptcy on 19 November 2016 and which are brought before the Danish Insurance Complaints Board no later than four weeks after the entry into force of this Act and where the complainant prevails in full or in part will be regarded as notified to the Fund in a timely manner.

(3) Complaints about the Fund's decisions about payments which are brought before the Danish Insurance Complaints Board under section 17 and where the complainant prevails in full or in part will be regarded as notified to the Fund in a timely manner.

Part 4

Payments from the Fund

7. Payments from the Fund shall be made as soon as possible and no later than three months after notification of the claim. Where the Fund has not been able to obtain the information required to assess the claim and determine the amount of the payment, the Fund shall inform the insured, within the time limit specified in the first sentence, of the information to be obtained by the Fund.

(2) At the request of the Fund, the Danish FSA may extend the time limit specified in subsection (1).

Part 5

Publication

8. Immediately after the issuance of the bankruptcy notice, the Danish FSA shall place a notice of the following in the daily press:

- 1) The bankruptcy of the insurance company;
- 2) termination of insurance coverage, cf. however section 5(3);
- 3) new compulsory insurance and comparable insurance; and
- 4) notification of claims for damages to the Fund, cf. section 6(1), and where to make such a notification.

(2) In the notice sent to the claimants under section 124(1) of the Bankruptcy Act, the bankruptcy trustee must inform policyholders and injured parties of the following:

- 1) The Fund will reimburse the premium, cf. however section 5(6);
- 2) the Fund will pay compensation for claims for damages reported before the issuance of the bankruptcy notice, cf. section 6(1), third sentence;
- 3) notification of claims for damages must be made in accordance with section 6(1), first and second sentences; and
- 4) the address of the Fund to which claims for damages must be notified.

(3) The Fund will give notice to the claimants, specifying the information stated in subsection (2), where the notice relates to an insurance company specified in section 3(1), nos. 2 or 3.

Part 6

Subrogation

9. To the extent that the Fund has provided coverage, the Fund will be subrogated to the claims of the policyholder or the insured against the insurance company in bankruptcy.

(2) Amounts included in the estate from reinsurance coverage will be used in advance to cover claims from the Fund where the Fund has paid compensation triggering payment from reinsurance companies. However, this claim will be subordinate to the claims specified in sections 93 and 94 of the Bankruptcy Act to the extent that these claims cannot be covered by other funds of the estate.

Part 7

Management and administration of the Fund

10. The Fund will be managed by a board of directors consisting of five board members appointed by the Minister for Industry, Business and Financial Affairs. The board members and their alternates are appointed for three-year terms.

(2) The members of the board of directors must represent legal, insurance technical and accounting knowledge.

(3) Persons serving on the board of management of or otherwise having an affiliation with a non-life insurer that could give rise to a conflict of interest between this non-life insurer and the Fund may not be appointed chairman or vice-chairman.

(4) Decisions will be made by a simple majority of votes.

11. The articles of association of the Fund and the rules of procedure of the board of directors must be approved by the Danish FSA.

(2) The articles of association must include provisions on the presentation of accounts and auditing.

11 a. The assets of the Fund shall be invested responsibly and in the best possible manner and be managed by Danmarks Nationalbank as per agreement with the Fund.

12. The board of directors will engage the necessary assistance and, within three months after the end of a calendar year, will present the accounts for the past year to the Danish FSA with a report on the Fund's activities.

(2) The board of directors will ensure that the Fund can obtain the necessary information from the bankruptcy estate of an insurance company in order for the Fund to meet its legal obligations. Any member of the Fund is obliged to assist the Fund in obtaining such information if the member in question goes bankrupt.

13. The costs of administration of the Fund will be borne by the Fund.

(2) The Fund will pay a fee to the Danish FSA. This fee will be determined in accordance with Part 22 of the Financial Business Act.

14. The Fund must notify the Danish FSA if an insurance company fails to meet its obligations as a member of the Fund.

(2) The Danish FSA may withdraw an insurance company's authorisation to conduct business if the insurance company fails to comply with the regulations of this Act, regulations issued under this Act or provisions in the Fund's articles of association.

(3) The Danish FSA may prohibit an insurance company specified in section 3(1), nos. 2 or 3, to conduct business in Denmark, under section 243 of the Financial Business Act, where the insurance company fails to comply with the regulations of this Act, regulations issued under this Act or provisions in the Fund's articles of association. Upon receipt of a decision under the first sentence, the insurance company must immediately provide written information about the implications of the decision for the policyholder and the insured to each policyholder in Denmark that has concluded an insurance contract with the relevant insurance company. The information under the second sentence must be easy to understand and be written in Danish.

(4) Where the Danish FSA prohibits an insurance company from conducting business in Denmark under subsection (3), the Fund will not reimburse contributions paid by the insurance company to the Fund.

14 a. (Repealed)

Part 8

Supervision

15. The Danish FSA will supervise the Fund. The Danish FSA and the Fund may require from the insurance companies covered by the Fund any information deemed necessary to ensure compliance with the regulations of this Act, regulations issued under this Act or provisions in the Fund's articles of association.

(2) Section 354 of the Financial Business Act will apply correspondingly to the supervision by the Danish FSA under this Act. Only the Fund will be considered a party in relation to the Danish FSA.

Part 8 a

Communication

15 a. The Minister for Industry, Business and Financial Affairs may lay down rules which require written communications to and from the Danish FSA on matters covered by this Act or regulations issued pursuant to this Act to be digital.

(2) The Minister for Industry, Business and Financial Affairs may establish rules for digital communication, including the use of certain IT systems, particular digital formats and digital signature or the like.

15 b. A digital message will be considered to have reached the recipient when it is available to the recipient of the message.

15 c. Where this Act or regulations issued pursuant to this Act require a document issued by parties other than the Danish FSA to be signed, this requirement may be met by the use of a technique which clearly identifies the person who has issued the document, cf. however subsection (2). Such documents will be treated as documents with a personal signature.

(2) The Minister for Industry, Business and Financial Affairs may establish rules on dispensing with signature requirements. In connection with this, it may be decided that the personal signature requirement cannot be departed from for particular types of documents.

Part 9

Disclosure of information

16. Members of the Fund's board of directors, auditors, managers and other employees may not without due cause divulge or use confidential information obtained during the performance of their duties.

Part 10

Right of appeal

17. Decisions on payments made by the Fund may be brought before the Danish Insurance Complaints Board no later than three months after the decision was issued to the relevant person.

17 a. (Repealed)

Part 11

Penalties

18. Unless a more severe penalty is incurred under other legislation, a fine will be imposed on any person who

1) supplies incorrect or misleading information or fails to disclose information in connection with notification, calculation or payment of claims for damages;

2) fails to provide the Danish FSA or the Fund with the information required under section 15 or otherwise supplies misleading information for use in the supervision of the Fund; or

3) without due cause discloses or uses confidential information in contravention of section 16.

(2) An insurance company will be penalised in the same way if it fails to meet its obligations as a member of the Fund.

(3) Companies etc. (legal persons) may incur criminal liability in accordance with the regulations in Part 5 of the Criminal Code.

Part 12

Entry into force, etc.

19. The Minister for Industry, Business and Financial Affairs will determine the date of entry into force of this Act.

20. (Repealed)

21. This Act will not extend to Greenland, but may be brought into force by Royal Decree for this part of the realm subject to any variations in its operation necessitated by the specific conditions prevailing in Greenland.

Act no. 664 of 8 June 2017 (Possibility for direct non-life insurers in the EU/EEA to join the Guarantee Fund for Non-life Insurers, and new information obligations for insurance agents, etc., in the marketing and sale of non-life insurance contracts to consumers)¹⁾ contains the following entry into force provision:

3.

This Act will enter into force on 1 July 2017.

Act no. 375 of 1 May 2018 (Determination of requirements for membership of the Guarantee Fund for Non-life Insurers (the Fund) for direct non-life insurers in the EU/EEA which conduct insurance business in Denmark via branches or cross border insurance business, and changes to the Fund's scope of coverage, etc.)²⁾ contains the following entry into force and transitional provisions:

3.

- (1) This Act will enter into force on 1 January 2019, cf. however subsections (2) and (3).
- (2) Section 1, nos. 1 and 4, will enter into force on the day following promulgation of this Act in the Danish Law Gazette.
- (3) (Omitted)

4.

Direct non-life insurers authorised by the Danish FSA to conduct insurance business and which through a branch or cross border insurance business conduct insurance business in other Member States of the European Union or in countries with which the European Union has entered into an agreement for the financial area must, no later than on 31 August 2018, have notified all of their relevant policyholders and insured outside Denmark in Member States of the European Union and countries with which the European Union has entered into an agreement for the financial area that, from 1 January 2019, they will no longer be covered by the Fund in the event of the insurance company's bankruptcy. The first sentence does not apply to the insurance company's foreign branches and cross border insurance businesses, which under section 3(8) of the Guarantee Fund for Non-life Insurers Act, cf. consolidation act no. 1050 of 8 September 2017, are exempt from the duty to pay contributions to the Fund.

5.

(1) Direct non-life insurers domiciled in another Member State of the European Union or in a country with which the European Union has concluded an agreement for the financial area which become members of the Guarantee Fund for Non-life Insurers (the Fund) at the entry into force of this Act, cf. section 3 of the Guarantee Fund for Non-life Insurers Act, as worded in section 1, no. 5 of this Act, must pay a lump sum contribution to the Fund no later than on 1 March 2019 in accordance with subsection (2).

(2) The lump sum contribution will be fixed at DKK 50 per policy for the following insurance types for which the insurance company has concluded an insurance contract in Denmark through a branch or cross border insurance business and which are in force on the date of entry into force of this Act:

- 1) Motor insurance (in Danish 'motorforsikringer').
- 2) Household contents insurance (in Danish 'familieforsikringer').
- 3) Property insurance (in Danish 'husejerforsikringer').
- 4) Health insurance (in Danish 'sundhedsforsikringer').
- 5) Change of ownership insurance (in Danish 'ejerskifteforsikringer').
- 6) Property sellers' liability insurance (in Danish 'sælgeransvarsforsikringer').
- 7) Structural warranty insurance (in Danish 'byggeskadeforsikringer').

(3) An amount of DKK 50 will be payable per policy, regardless of whether several of the insurance types specified in subsection (2) are included, or whether several persons or units are covered by the same policy.

(4) Notwithstanding subsection (2), the lump sum contribution cannot be lower than DKK 100,000.

(5) When determining the lump sum contribution, cf. subsection (2), an insurance company may effect set-off against any contributions it has previously paid to the Fund, possibly through other insurance companies.

(6) In connection with the payment of the lump sum contribution to the Fund, the insurance company must submit a statement from a state-authorized public accountant or registered public accountant to the Fund, certifying that the lump sum contribution is correctly calculated. Notwithstanding the first sentence, an insurance company that has to pay only a lump sum contribution of DKK 100,000, cf. subsection (4), may submit a statement from its responsible management certifying that the lump sum payment is correctly calculated.

(7) A policyholder may not terminate an insurance contract because of a premium increase that is used solely for the payment of the lump sum contribution to the Fund.

Act no. 706 of 8 June 2018 (Strengthened anti-money laundering efforts, etc., in the financial sector, introduction of new forms of alternative investment funds, change to the threshold for prospectus requirements, etc.)³⁾ contains the following entry into force provision:

24.

(1) This Act will enter into force on 1 July 2018, cf. however subsections (2) and (3).

(2)-(6) (Omitted)

Act no. 552 of 7 May 2019 (Implementation of the political agreement on further initiatives to strengthen efforts to combat money laundering and terrorist financing and implementation of the recommendations of the working group for the overhaul of financial regulation)⁴⁾ contains the following entry into force provision:

18.

(1) This Act will enter into force on 1 July 2019.

(2)-(5) (Omitted)

Ministry of Industry, Business and Financial Affairs, 6 September 2019

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Official notes

¹⁾ This amendment concerns section 1(3), section 2(2), section 2 a, section 3(1) and (8), section 3 a (3), section 4(3), section 4 a, section 5(2), section 8(3), section 14(2) and (5) and sections 14 a and 17 a.

²⁾ This amendment concerns section 1, section 2, section 3, section 4(3), first sentence, section 5(1), (2), (3), (4), (5) and (6), section 6(1) and (2), section 8(1), no. 2, section 8(2), nos. 1, 2 and 3, section 8(3), section 12(2), section 14(3), first sentence, and section 14(4).

³⁾ This amendment concerns section 15 b.

⁴⁾ This amendment concerns section 11 a.