



Translation

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Act no 41 on Insurance Mediation (2005-06-10)

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Act no 41 on Insurance Mediation

Chapter 1. Scope and definitions

Section 1-1. Scope

This Act applies to the mediation of direct insurance and reinsurance.

The Act does not apply to:

1. activities that are carried out by an insurance undertaking or by an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking.
2. activities that consist of providing information on an incidental basis as part of another professional activity, provided the purpose of this activity is not to assist the customer in concluding or performing an insurance contract.
3. undertakings that only provide general information about insurance products or initiate contact with insurance companies, provided the purpose of this activity is not to assist the customer in concluding or performing an insurance contract.
4. commercial undertakings that manage an insurance undertaking's claims, or loss adjusting and expert appraisal of claims.

Nor does the Act apply with respect to the mediation of insurance contracts if the following conditions are met:

1. the insurance contract requires only knowledge of the insurance cover being provided,
2. the insurance contract is not a life assurance contract,
3. the insurance contract does not include liability insurance,
4. insurance mediation is not the intermediary's principal professional activity,
5. the insurance constitutes a supplement to goods or services supplied by the intermediary, and covers:
 - a) the risk of breakdown, loss of or damage to goods, or
 - b) damage to or loss of baggage and other risks linked to the travel booked with that intermediary, even if the insurance covers life assurance or liability insurance, provided that the cover is ancillary to the main cover for the risks linked to that travel,
6. the amount of the annual premium does not exceed an amount equivalent to EUR 500, and the insurance contract's total term, including any renewals, does not exceed 5 years.

In the case of insurance intermediaries who are registered in another EEA state, Section 8-2, paragraphs one, two, three and four apply.

In case of doubt, Kredittilsynet shall determine whether or not an undertaking is practising insurance mediation.

Section 1-2. Definitions

The following definitions apply in this Act:

1. insurance mediation: commercial activities that consist of presenting, proposing or carrying out other preparatory work in connection with the conclusion of insurance contracts, or of concluding such contracts, or of assisting in the administration and performance of such contracts, particularly in the event of a claim.

2. insurance brokering: insurance mediation activities that consist of providing the customer with advice on the basis of an analysis of as large a number of the insurance solutions available on the market as possible, or activities that consist of presenting insurance solutions from one or more insurance undertakings to the customer, without a distinct contract having been signed with the insurance undertakings concerning this.
3. reinsurance brokering: insurance mediation activities that consist of providing an insurance undertaking with advice in connection with the concluding of reinsurance contracts on the basis of an analysis of as large a number of the insurance solutions available on the market as possible, or activities that consist of presenting insurance solutions from one or more reinsurance undertakings to the insurance undertaking, without a distinct contract having been signed with the reinsurance undertakings concerning this.
4. insurance agent activities: insurance mediation activities that consist of offering insurance products for and on behalf of one or more insurance undertakings.

Chapter 2. Authorisation to practise insurance broking

Section 2-1. Authorisation from Kredittilsynet

Insurance broking cannot be practised without authorisation from Kredittilsynet.

Applications for authorisation shall contain information of significance to the assessment of whether or not authorisation should be granted, including as a minimum:

1. documentation that the undertaking fulfils the requirements in Section 2-2,
2. a description of which categories of insurance/risk the insurance brokerage firm will mediate in Norway.

The activities may start once the conditions for authorisation are met and the insurance brokerage firm has received confirmation from Kredittilsynet.

Kredittilsynet shall register the firm and the person or people in its management structure who are responsible for the insurance brokering activities.

Section 2-2. Conditions for authorisation to operate an insurance brokerage firm

Authorisation to practise insurance brokering activities can be granted to firms that meet the following conditions:

1. The firm must be organised as a private limited company, public limited company, general partnership, limited partnership or sole proprietorship.
2. The firm must not be subject to bankruptcy proceedings or debt negotiations.
3. The firm must fulfil the requirements concerning insurance in Chapter 4.
4. The person or people in the management structure who are responsible for the insurance brokering activities must fulfil the requirements in sections 3-1 and 3-3.

Chapter 3. Requirements concerning suitability for the management of insurance brokerage firms and insurance brokers

Section 3-1. Qualification requirements for the management

The general manager and any other person who actually manages the insurance brokering activities shall possess general knowledge about insurance brokering.

Kredittilsynet can stipulate further regulations concerning which requirements concerning general knowledge the general manager and any other person who actually manages the insurance brokering activities must fulfil.

Section 3-2. Qualification requirements for insurance brokers

Insurance brokers shall at all times possess the knowledge and competence necessary in relation to the insurance brokerage firm's activities.

An insurance broker shall be regarded as possessing the necessary knowledge and competence when the person concerned:

1. is an authorised insurance broker pursuant to the provisions concerning the authorisation of insurance brokers of a trade organisation or educational institution approved by Kredittilsynet,
2. possesses satisfactory qualifications and has at least three years' practice from insurance that are relevant to the insurance brokerage firm's activities, or
3. has relevant practice from five consecutive years in an insurance brokerage firm or in an insurance undertaking.

The accumulated practice in relation to paragraph two must not have been concluded more than five years prior to the application for authorisation being submitted.

Kredittilsynet can stipulate further regulations concerning which requirements concerning knowledge and competence insurance brokers must fulfil.

Section 3-3. Requirements concerning records of honourable conduct for the management and insurance brokers

The general manager and any other person who actually manages the insurance brokering activities and insurance brokers shall have records of honourable conduct and not be subject to bankruptcy proceedings, a disqualification period, or debt negotiations.

Authorisation shall in all cases be refused should people covered by paragraph one:

1. have been convicted of a punishable offence and the offence committed provides a basis for assuming that the person concerned would be unable to fulfil his or her position or duties in a proper manner, or
2. in a position or during the carrying out of other duties have demonstrated behaviour that provides a basis for assuming that the person concerned would be unable to fulfil his or her position or duties in a proper manner.

Those people covered by paragraph one shall in their applications for authorisation enclose a summary from the Criminal Record Office and confirmation from the Brønnøysund Register Centre that the person concerned is not subject to bankruptcy proceedings, a disqualification period, or debt negotiations.

Chapter 4. Insurance requirement for brokerage firms

Section 4-1. The insurance brokerage firm's duty to ensure insurance coverage

The insurance brokerage firm shall ensure prior to the start of activities, and for as long as brokering activities are practised, that they possess insurance in accordance with the provisions in this chapter.

The insurance must be taken out with an undertaking that has its head office in, has been granted authorisation to operate an insurance undertaking in, and which is subject to the public supervision of an EEA state.

A valid insurance certificate shall be submitted to Kredittilsynet every year.

Section 4-2. What the insurance shall cover

The insurance brokerage firm's liability with respect to principals' or others who derive their rights from a principal on the basis of professional negligence shall at all times be covered by liability insurance.

Should the insurance brokerage firm handle customers' monies, it shall in addition to the insurance mentioned in paragraph one have insurance that covers the embezzlement of customers' monies committed by employees or others who carry out work or tasks, or hold positions of trust, for the insurance brokerage firm.

Section 4-3. Submission of claims

The insurance undertaking that the insurance brokerage firm has when an injured party submits a claim for compensation is responsible with respect to the injured party.

A claim for compensation is regarded as having been submitted at the earliest of the following points in time:

1. the point in time when the insurance brokerage firm or its insurance undertaking first received notification about the loss with a claim for compensation, or
2. the point in time when the insurance brokerage firm or its insurance undertaking first received written notification from an injured party concerning circumstances that can be expected to lead to a claim for compensation being presented against the insured. This also applies with respect to notification from the insured to the insurance undertaking.

Section 4-4. Extent of liability insurance

The minimum requirements concerning the extent of insurance cover as stipulated in Section 4-2, paragraphs one and two, shall be stipulated in regulations laid down by the Ministry. Different minimum amounts for large and small insurance brokerage firms can be stipulated in these regulations.

Section 4-5. Further requirements concerning insurance

An injured party can claim compensation directly from the insurance undertaking without first having to submit a claim to the insurance brokerage firm.

The insurance undertaking cannot assert objections to the injured party other than those objections the insurance brokerage firm itself has in relation to the injured party.

Termination of the insurance or cessation of the insurance in some other manner cannot come into effect in relation to the injured party before one month after Kredittilsynet has received notification about the cessation. Should new insurance come into effect prior to the

expiry of this period, the cessation of the insurance comes into effect from the moment the new insurance comes into effect.

Liability insurance shall cover claims made against the insured for a period of five years after the discontinuance of the undertaking.

Section 7-5 of the Act of 16th June 1989 no. 69 relating to Insurance Contracts applies unless otherwise results from this Act. Section 7-7, cf. Section 7-6, of the Act relating to Insurance Contracts applies to the extent this is appropriate.

Chapter 5. General requirements concerning insurance brokerage firms

Section 5-1. Client account

Customers' monies shall be immediately deposited in a client account in a bank, separate from the insurance brokerage firm's own monies. The brokerage firm shall inform the bank that the monies in the account belong to customers.

Section 5-2. Regulations concerning good brokering practice, etc

An insurance brokerage firm shall operate the undertaking in accordance with good brokering practice. The insurance brokerage firm must not act in a manner likely to cause doubt concerning its position as an independent intermediary. The insurance brokerage firm shall provide the documentation necessary for an insurance contract to be concluded.

The insurance brokerage firm shall exercise due care when selecting an insurance provider and advise the principal against using insurance providers whose ability to fulfil their obligations pursuant to the insurance may be called into question or is unknown.

The insurance brokerage firm may not, through agreements with an insurance undertaking or in some other manner, act in a manner that could influence the insurance brokerage firm's independence as an intermediary.

Section 5-3. Insurance undertakings with which the insurance brokerage firms can conduct mediation business, etc

Insurance mediation business may only be conducted with insurance undertakings with head offices in an EEA state and Norwegian branches of foreign insurance undertakings that hold a licence pursuant to Section 12-1 of the Act on Insurance Activity. Mediation of statutory non-life insurance may only be conducted with insurance undertakings that fulfil the requirements that apply pursuant to the special regulations for such insurance.

However, mediation of non-life insurance for the business sector may be conducted with non-life insurance undertakings with a head office in a state outside the EEA provided the insurance does not cover:

1. statutory occupational injury insurance
2. statutory liability insurance for motor vehicles
3. statutory liability insurance that covers compensation liability for injury caused by nuclear damage or by medicines.

Non-life insurance for the business sector means:

- 1:
 - a) maritime and transport insurance

- b) aviation insurance
- c) insurance linked to exploration for or, the exploitation, storage or transport through pipes of subterranean natural deposits
- d) credit or security when the policyholder is practising commercial or industrial activities or a liberal profession, and the contract applies for the activities

2:

- a) insurance taken out by an undertaking with employees whose activities constitute the equivalent of at least 10 man-years
- b) insurance taken out by an undertaking with an annual turnover of at least NOK 50 million

Section 5-4. Information from the insurance broker

In connection with the conclusion of an insurance contract and in the event of changes to or the renewal of the contract, an insurance broker shall as a minimum provide the customer with the information stipulated in regulations laid down by the Ministry.

Section 5-5. Conditions concerning information

All information for customers pursuant to Section 5-4 shall be provided:

1. on paper or any other durable medium available and accessible to the customer
2. in a clear and accurate manner, comprehensible to the customer
3. in an official language of the member state in which the obligation exists, cf. Section 2, no. 1, and Section 9 of the Act of 27th November 1992 no. 111 on Choice of Law in Insurance, or in another language agreed by the parties.

The information mentioned in Section 5-4 can be provided orally where the customer requests it, or where immediate cover is necessary. In those cases, the information shall be confirmed to the customer in accordance with paragraph one immediately after the conclusion of the insurance contract.

Section 5-6. Duty to inform Norwegian Natural Perils Pool

The insurance brokerage firm shall upon executing the brokering assignment inform the Norwegian Natural Perils Pool about fire insurance on risks in Norway that are mediated from insurance undertakings that are not members of the Norwegian Natural Perils Fund.

Section 5-7. Duty to inform Kredittilsynet

The insurance brokerage firm shall each year inform Kredittilsynet of the distribution between the various insurance undertakings of the insurance the insurance brokerage firm or branch has mediated during the course of the last financial year in Norway. Kredittilsynet shall lay down further provisions about the notification's content and deadline for when the notification must be submitted to Kredittilsynet.

The insurance brokerage firm is obliged at all times, at the request of Kredittilsynet, to provide the information concerning its activities that Kredittilsynet needs in order to practise its supervision in accordance with the provisions in this Act.

Chapter 6. Reinsurance brokering activities

Section 6-1. Reinsurance brokering activities

The regulations stipulated in chapters 2, 3, 4, 8, 9, 10 and sections 5-1 to 5-3 and Section 5-7 apply equally to the practise of reinsurance brokering activities.

Kredittilsynet can stipulate special regulations or exemptions from paragraph one out of consideration to the special circumstances that apply for reinsurance brokers.

Chapter 7. Insurance agent activities

Section 7-1. Registration

When an insurance undertaking concludes a contract with an insurance agency concerning mediation of the company's products, the insurance undertaking shall register the insurance agency, general manager and any other person who actually manages the insurance agent activities in a publicly accessible register. The insurance agent fully and wholly acts under the responsibility of the insurance undertaking with respect to the mediated products.

Upon registration, the insurance agency is given authority to mediate the insurance undertaking's products.

The insurance agency cannot delegate this authority to a subagent without the requirements stipulated in sections 7-2, 7-3 and 7-6, cf. Section 7-11, being fulfilled by the subagency.

The Ministry can lay down further regulations concerning the keeping of registers.

Section 7-2. Suitability

Before an insurance undertaking can conclude a contract with an insurance agency, the insurance agency shall prove to the insurance undertaking that:

1. the general manager and any other person who actually manages the insurance agent activities possess general knowledge about the activities,
2. the insurance agents fulfil the requirements of Section 7-3,
3. those people covered by nos. 1 and 2 have records of honourable conduct and are not subject to bankruptcy proceedings, a disqualification period, or debt negotiations.

Registration shall in all cases be refused should people covered by nos. 1 and 2:

1. have been convicted of a punishable offence and the offence committed provides a basis for assuming that the person concerned would be unable to fulfil his or her position or duties in a proper manner, or
2. in a position or during the carrying out of other duties have demonstrated behaviour that provides a basis for assuming that the person concerned would not be able to fulfil his or her position or duties in a proper manner.

People who are covered by paragraph one, nos. 1 and 2, shall prior to registration submit to the insurance undertaking a summary from the Criminal Record Office and confirmation from the Brønnøysund Register Centre that the person concerned is not subject to bankruptcy proceedings, or a disqualification period.

The insurance undertaking is obliged at all times, at the request of Kredittilsynet, to provide information that shows how the requirements in paragraph one are being fulfilled. Kredittilsynet can stipulate further regulations concerning general knowledge requirements the management must fulfil.

Section 7-3. Qualification requirements for insurance agents

Insurance agents shall at all times possess the knowledge and competence necessary in relation to the undertaking that is being operated.

An agent shall be regarded as possessing the necessary knowledge and competence when the person concerned:

1. is an authorised insurance consultant pursuant to the provisions concerning the authorisation of insurance consultants of a trade organisation or educational institution approved by Kredittilsynet,
2. possesses satisfactory qualifications and has at least one year's practice from insurance that are relevant to the insurance agency's activities, or
3. has relevant practice from three consecutive years in an insurance agency or in an insurance undertaking.

The accumulated practice in relation to paragraph two must not have been concluded more than five years prior to the application for authorisation being submitted.

Kredittilsynet can stipulate further regulations concerning knowledge and competence the insurance agent must possess, including with respect to the mediation of insurance products that require little competence.

Section 7-4. Registration refusal

Registration shall be refused if the requirements in sections 7-2 and 7-3 are not fulfilled.

Section 7-5. Insurance

The agency must take out insurance pursuant to the regulations in Chapter 4, unless the insurance undertaking has in its contract with the agent undertaken to cover this liability for compensation.

An injured party can claim compensation directly from the insurance undertaking without first having to submit a claim to the insurance agency.

Section 7-6. Client account

An insurance agency that collects premiums or monies from customers shall have a client account. Customers' monies shall be immediately deposited in a client account in a bank, separate from the insurance agency's own monies. The insurance agency shall inform the bank that the monies in the account belong to customers.

Section 7-7. Insurance undertakings on behalf of which insurance agents may mediate insurance, etc. Information to customers.

The provisions in sections 5-3 to 5-5 apply equally to insurance agencies.

Section 7-8. Duty to inform Kredittilsynet

The insurance agency is obliged at all times to provide Kredittilsynet, at its request, with an account of the routines the insurance agency utilises for the fulfilment of the requirements stipulated in this chapter.

Section 7-9. Ancillary agent activities

Kredittilsynet can stipulate special regulations or exemptions from the regulations in this chapter out of consideration to the special circumstances that apply for agents that carry out insurance mediation in addition to their principal professional activity.

Section 7-10. Insurance agencies that represent insurance undertakings with head offices in other countries

Insurance agencies that have concluded mediation contracts with one or more foreign insurance undertakings shall be registered pursuant to the regulations in this chapter. However, this does not apply if the agency has concluded a contract with an insurance undertaking which has its head office in an EEA state and is registered in the insurance undertaking's home country pursuant to the regulations concerning registration stipulated there. In the case of agencies that are registered with Kredittilsynet, the provisions in this chapter apply equally.

Chapter 8. The establishment of branches and cross-border services

Section 8-1. Norwegian insurance intermediaries' activities abroad

Those who wish to practise insurance mediation in another state, including through foreign subsidiaries, shall notify Kredittilsynet about this. Kredittilsynet shall stipulate further regulations concerning the content of such notification.

The notification concerning the practise of insurance mediation activities in another EEA state shall, as a minimum, contain information concerning:

1. in which state one wants to establish a branch and the branch's address, or
2. in which state one wants to commence cross-border services.

Kredittilsynet shall, no later than one month after receipt of the notification mentioned in the previous paragraph, inform the supervisory authority in the host state about the insurance intermediary's intentions when the authority concerned wants such information. The insurance intermediary shall at the same time be informed that such information has been sent. The insurance intermediary can commence its activities one month after the date the insurance intermediary concerned received such notification from Kredittilsynet. The insurance intermediary can commence its activities immediately if the host state does not wish to be informed of the insurance intermediary's intentions.

The insurance intermediary is obliged to notify Kredittilsynet of changes to any of the information they are required to notify.

Kredittilsynet can prohibit the mediation of insurance from insurance undertakings with a head office in a state outside the EEA involving terms and conditions or premiums that Kredittilsynet finds unsatisfactory or unreasonable. The same applies with respect to the mediation of insurance from insurance undertakings with a head office in another EEA state should Kredittilsynet find the terms and conditions and premiums unreasonable.

Section 8-2. Foreign insurance intermediaries' activities in Norway

Insurance brokers who are registered in another EEA state may commence activities in Norway through a branch or as cross-border services one month after Kredittilsynet has received notification of the planned activities from the supervisory authority in the undertaking's home country. The provisions in this Act's sections 5-2, 5-3, 5-4, 5-5, 5-6 and 5-7, paragraph two, apply to such insurance brokerage firms. The Ministry may lay down further regulations concerning the application of the aforementioned provisions with respect to foreign undertakings and can stipulate exemptions from the provisions if an insurance broker is subject to equivalent provisions pursuant to its home country's legislation.

Insurance agencies registered in another EEA state can commence their activities in Norway once they have notified the competent authority in their home country.

Foreign insurance intermediaries with a head office outside the EEA can, pursuant to special authorisation from Kredittilsynet, establish branches in Norway. The provisions of this Act apply as far as is appropriate. Kredittilsynet can stipulate supplementary regulations regarding the establishment of branches in Norway by insurance intermediaries who are granted authorisation or registered in a state outside the EEA.

Kredittilsynet can, after having submitted the matter to the competent authority in the state in which the insurance intermediary is registered, order the insurance intermediary to cease activities in Norway if the insurance intermediary has committed serious or continual contraventions of its duties pursuant to this Act, or other acts and regulations that apply in Norway.

Kredittilsynet can require the notification and enclosures to be translated into Norwegian by an authorised translator.

The provisions concerning the duty to inform contained in the Financial Supervision Act apply to foreign undertakings that practise activities in Norway pursuant to the provisions of this Act.

Chapter 9. Complaints, supervision, withdrawal of authorisation, sanctions, etc

Section 9-1. Complaints

Should a dispute arise between a principal and an insurance intermediary, each of the parties can demand that this be dealt with by a competent body as stipulated in regulations laid down by the Ministry. As long as the dispute is being considered by the body, neither of the parties can bring the dispute before the courts. A case that the body has finished considering the practical aspects of can be brought directly before the courts.

Section 9-2. Supervision

Kredittilsynet shall carry out the supervision of insurance mediation in accordance with the regulations in this Act and the Financial Supervision Act.

Section 9-3. Withdrawal of authorisation and deletion of registration

Kredittilsynet may withdraw authorisation as an insurance brokerage firm if the requirements in or pursuant to the Act are no longer fulfilled.

Kredittilsynet can order an insurance undertaking to delete the registration of an insurance agency if the requirements in or pursuant to the Act are no longer fulfilled.

Section 9-4. Administrative loss of rights

Kredittilsynet can withdraw an insurance brokerage firm's authorisation if an insurance broker or the insurance brokerage firm seriously or repeatedly has contravened his or its duties pursuant to the law or regulations.

Kredittilsynet can order an insurance undertaking to delete the registration of an agency if an insurance agent or the insurance agency seriously or repeatedly has contravened his or its duties pursuant to the law or regulations.

Decisions taken pursuant to this provision can apply for a time-limited period.

Section 9-5. Criminal liability

Wilful or negligent contravention of this Act's sections 2-1, 4-1, 5-1, 5-3, 5-4, 5-6, 5-7 paragraph two, 7-1, 7-5, 7-6, 8-1 paragraph one, and 8-2 paragraph three, with appurtenant regulations shall be punishable by fines or imprisonment of up to one year. Contraventions of Section 7-7, cf. section 5-3 and 5-4, shall be punishable in the same manner.

Serious or repeated breaches of good brokering practice, cf. Section 5-2, shall be punishable in the same manner.

Aiding and abetting shall be punishable in the same manner.

Chapter 10. Entry into force and transitional provisions

Section 10-1. Entry into force

This Act enters into force on the date decided by the King ¹. The King can put the individual provisions into force on different dates.

1 From 1st January 2006 by the Royal Decree of 9th December 2005 no. 1414.

Section 10-2. Transitional provisions

Insurance brokerage firms that mediated insurance prior to 1st September 2000 and were registered in Kredittilsynet's register shall be automatically registered in Kredittilsynet's new register.

The Ministry can lay down other transitional provisions.

Section 10-3. Amendments to other acts

From the same date the following amendments are made to other acts - - -

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