

KREDITILSYNET

The Financial Supervisory Authority of Norway

Translation as of April 2007

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Act on Choice of Law in Insurance

(Cf. EEA Agreement, Annex IX, Item 2 (Council Directive 90/618, Art. 2), Item 7 (Council Directive 88/357, Art. 7 and 8), Item 7a (Council Directive 92/49, Art. 27, cf, EEA Committee's Decision No. 7/94) and 12 (Council Directive 90/619, Art. 4)

Section 1 *Scope of the Act*

This Act applies to choice of law in direct insurance contracts.

Section 2 *Definitions*

For the purposes of this Act:

- 1. "The country in which the obligation is situated" means the country in which the policyholder has his habitual residence or, where the policyholder is a legal person, the country in which the activity to which the contract relates is situated.
- 2. "The country in which the risk is situated" means
 - a) The country in which the property is situated when the insurance contract relates either to real property or to real property with chattels to the extent that the chattels are covered by the same insurance policy,
 - b) the country of registration when the insurance contract relates to means of transport of any kind,
 - c) the country in which the policyholder took out the insurance when it is a question of insurance contracts of four months' duration or less which cover risks in connection with travel and holidays, irrespective of class of insurance,
 - d) the country in which the policyholder has his habitual residence or, where the policyholder is a legal person, the country in which the activity to which the contract relates is situated, in all cases not expressly mentioned in a) to c).

Section 3 *Reference to a country's law does not include the rules on choice of law*

Where this Act provides that the applicable law shall be the law of the country in question, it means the legal rules of that country apart from the rules on choice of law.

Section 4 *States with more than one legal system*

Where a State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered as a country for the purpose of deciding which country's law shall be the applicable law.

Section 5 *International prescriptive rules*

Even where the applicable law is the law of a foreign State, Norwegian courts shall apply rules of Norwegian law where such rules are mandatory, irrespective of which country's law is otherwise applicable to the contract.

Section 6 *Compulsory insurance*

In the case of compulsory insurances, all mandatory rules of the country imposing the obligation to take out insurance shall be applied.

Section 7 *The Act is not exhaustive*

Unwritten choice-of-law rules on contractual obligations are applicable provided they do not contravene provisions of this Act.

Section 8 *Choice of law in life insurance*

An insurance contract shall be governed by the law of the country in which the obligation is situated.

Where the policyholder is a natural person having his habitual residence in a country of which he is not a citizen, the parties may also choose the law of the country of which the policyholder is a citizen.

Where the policyholder is a legal person and the obligation is situated in Norway, the parties may, where the policyholder has his habitual residence in or is a citizen of another country, also choose the law of that country.

Where the obligation is situated in a country other than Norway, and that country's law permits freedom to contract over and above what follows from the first and second paragraphs, the parties may choose such law to the extent this is permitted by the law of the said country.

Section 9 *Choice of law in insurance other than life insurance*

Where a policyholder has his habitual residence or central administration in the country in which the risk is situated, the law applicable to the insurance contract shall be the law of that country.

Where a policyholder does not have his habitual residence or central administration in the country in which the risk is situated, the parties to the insurance contract may choose to apply either the law of the country in which the risk is situated or the law of the country in which the policyholder has his habitual residence or central administration.

Where a policyholder pursues a commercial or industrial activity or a liberal profession, and where the contract covers two or more risks relating to these activities and situated in different countries, the freedom of choice of the law applicable to the contract shall extend to the laws of those countries and of the country in which the policyholder has his habitual residence or central administration.

Where the risks covered by the contract are limited to events occurring in a country other than the country in which the risk is situated, the parties may always choose the law of the former country.

The fact that the parties have chosen a law shall not, where all the other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of the mandatory rules of the law of that country.

Section 9a *Extended right to agree choice of law in insurance other than life insurance*

Parties to contracts relating to the following classes of insurance may always choose the law of any country whatsoever:

- rolling stock,
- aircraft,
- seagoing vessels and vessels on lakes, rivers and canals,
- goods in transit,
- liability insurance for aircraft,
- liability insurance for seagoing vessels and vessels on lakes, rivers and canals.

Where a policyholder pursues a commercial or industrial activity or a liberal profession, the parties may also choose the law of any country whatsoever in the following classes of insurance:

- credit,
- suretyship

provided the contract relates to the activity in question.

Where the policyholder is an undertaking encompassed by the Act on Insurance Activity section 1-3 second paragraph a), the parties may also choose the law of any country whatsoever in the following classes of insurance:

- land vehicles,
- fire damage and damage from natural catastrophe
- other damage to property and chattels
- liability insurance for motor vehicles
- ordinary liability insurance
- various financial losses

In cases where Norwegian law is applicable pursuant to section 9 first paragraph, or could be applicable pursuant to the parties' choice of law under section 9 second or third paragraph, the following applies:

- 1. For insurance encompassed by the Act on Insurance Activity section 1-3 second paragraph c), the parties may choose the law of any country whatsoever.
- 2. For personal insurance where the insured has his habitual residence in or is a citizen of a country other than Norway, the parties may, in addition to the freedom of choice following from section 9 second and third paragraph, choose the law of such country.

In cases where the law of a country other than Norway could be applicable pursuant to section 9 first paragraph, or could be applicable pursuant to the parties' choice under section 9 second or third paragraph, the parties may also choose the law of a third country to the extent this is permitted by the law of the first-mentioned country.

Section 9 fifth paragraph also applies to this section.

Section 10 *The general choice-of-law rule for insurance other than life insurance*

Where the parties to a contract for insurance other than life insurance have not made a valid choice of law, and choice of law does not follow from the provisions of this Act, the contract shall be governed by the law of the country with which, based on the criteria set forth in section 9, it is most closely connected. Unless an overall assessment indicates otherwise, the contract shall be presumed to be most closely connected with the country in which the risk is situated.

Where a severable part of a contract has a closer connection with a country other than those which can be considered pursuant to section 9, that part of the contract may, where special reasons so indicate, be governed by the law of the country concerned.

Section 11 *Commencement*

This Act comes into force as and when the King decides.