

**Act
amending Insurance Mediation Law*)**

19 December 2006

With the assent of the Federal Assembly, the German Federal Parliament has adopted the following Act:

**Article 1
Amendment of the
Trade Regulations Act**

The Trade Regulations Act in the version promulgated on 22 February 1999 in the Federal Law Gazette (I p. 202), last amended by Article 3 of the Act of 17 December 2006 (Federal Law Gazette I p. 3171), is amended as follows:

1. The table of contents is amended as follows:

a) After the entry under § 11, the following entry is inserted:

“§ 11a Register of intermediaries”.

b) After the entry under § 34c, the following entries are inserted:

“§ 34d Insurance intermediaries

§ 34e Insurance advisers.”

c) After the entry under § 155, the following entry is inserted:

“§ 155a Withholding of information for purposes of witness protection”.

d) The entry under § 156 is worded as follows:

“§ 156 Transitional provisions”.

2. After § 11 the following § 11a is inserted:

“§ 11a

Register of intermediaries

(1) Each chamber of industry and commerce (registration authority) shall keep a register of compulsory registrants under § 34d paragraph 7, also in conjunction with § 34e paragraph 2. Local competence is

governed by federal state law. The purpose of the register in particular is to enable the public, above all insurance customers and insurance undertakings, to verify authorization and the scope of activity the registrants are authorized to perform. In keeping the register, the registration authorities shall make use of the same body specified in § 32 paragraph 2 of the Environmental Audit Act (joint body). The registration authority is subject to supervision by the supreme federal state authority.

(2) Information from the register is made available via automatic Internet request or in written form. The registration authorities shall guarantee that simultaneous queries can be made at all registers under paragraph 1 sentence 1.

(3) The competent authority for prohibition under § 35 shall notify the registration authority of prohibition without delay. In the case of authorization being revoked under § 34d paragraph 1 or § 34e paragraph 1 or exemption from authorization under § 34d paragraph 3 or a notification under sentence 1 or § 80 paragraph 4 of the Insurance Supervision Act, the registration authority shall delete the data on the registrant concerned without delay. The surname, forename, registration number and the day of deletion are stored in the register in an index updated daily. Only insurance undertakings shall be given access to this index. The particulars shall be deleted a month after being recorded in this index.

(4) If a compulsory registrant intends to do business in another member state of the European Union or in another signatory state of the Agreement creating the European Economic Area he is obliged to notify the registration authority of this

*) This Act transposes the Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (Official Journal EC No. L 9 p.3)

beforehand.

(5) By statutory order with the assent of the Federal Assembly, the Federal Ministry of Economics and Technology can issue provisions on the details of keeping the register, in particular on:

1. particulars to be recorded in the register, to include only particulars on identification (in particular surname, forename, business address, date of birth and registration number), on authorization and on the scope of the authorized activity of the compulsory registrant,
2. particulars not intended for general accessibility, and the bodies granted access to these particulars.

(6) Cooperation of the competent bodies with the competent authorities of the other member states of the European Union as well as the other signatory states of the Agreement creating the European Economic Area is subject to the following provisions:

1. On request of the competent authority of another member or signatory state, the competent registration authority shall transfer information, including personal data needed for verifying compliance with the requirements for performing the activity of an insurance intermediary or insurance adviser, to the competent authority of the other member or signatory state.
2. Without being requested by the competent authority of another member or signatory state, the registration authority may transfer data, including personal data, where there are grounds to indicate that knowledge of this information is needed to verify compliance with the requirements for performing the activity of an insurance intermediary or insurance adviser.
3. Where required by the member or signatory state concerned under Article 6 paragraph 2 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (Official Journal EC 2003 no. L 9 p. 3), the registration authority shall notify the competent authority of the other member or signatory state, in the case where paragraph 4 applies, of the intention of the compulsory registrant, also notifying

the compulsory registrant at the same time. For supervision purposes, the registration authority may transfer the particulars of the compulsory registrant stored in the register to the competent authority of the other member or signatory state. The competent authority of another member or signatory state must be advised of any changes to the particulars transferred.

4. Where the particulars deleted under paragraph 3 pertain to a trader operating in another member or signatory state, the registration authority shall notify the competent authority of the other member or signatory state of deletion without delay.

Cooperation, in particular the transfer of information, shall be effected via the Federal Ministry of Economics and Technology, making use of the joint body.

(7) The registration authority, the Federal Financial Supervisory Authority and the competent authorities for authorization under § 34d paragraph 1 sentence 1 and § 34e paragraph 1 sentence 1, for prohibition under § 35, for business registration under § 14 or the prosecution of administrative offences under the Administrative Offences Act may transfer information to each other, including personal data, also without solicitation, insofar as this is required for discharging their respective tasks in connection with the activity of insurance intermediaries and insurance advisers.

(8) All persons required to receive or issue information as part of registration procedure applying to insurance intermediaries or insurance advisers or the verification of compliance with the requirements for performing the activity of insurance intermediary and insurance adviser are bound to professional secrecy. § 84 of the Insurance Supervision Act shall apply *mutatis mutandis*.”

3. § 15b is amended as follows:

- a) In paragraph 1 sentence 1, the words “and their summons address” are inserted after the word “forename”.
- b) In paragraph 2, a comma and the words “their summons address” are inserted after the words “their registered office”.

4. In § 29, paragraph 1 no. 1, the entry “or §

34c" is substituted by the entry " , 34c, 34d or 34e".

5. § 34b paragraph 5 is worded as follows:

"(5) On application, particularly proficient auctioneers with the exception of legal persons shall receive general public appointment by the competent authority; this applies mutatis mutandis for employees of auctioneers. The appointment can be made for specific kinds of auction, provided they require auctioneering services. The publicly appointed persons under sentence 1 shall be required to take an oath on the conscientious, autonomous and impartial performance of their tasks."

6. In § 34b paragraph 4 no. 1 and in § 34c paragraph 2 no. 1, the word "money-laundering" is respectively inserted after the words "breach of trust".
7. After § 34c, the following § 34d and § 34e are inserted:

“§ 34d

Insurance intermediary

(1) Any person intending to engage in the professional mediation or conclusion of insurance contracts as an insurance broker or as an insurance agent (insurance intermediary) requires the authorization of the competent chamber of industry and commerce. The contents of the authorization may be limited and subject to conditions, where this is necessary for the protection of the general public or the insurance customer; for the same purpose, conditions may also be added, amended or supplemented. The authorization must indicate whether it is issued to an insurance broker or an insurance agent. Under the authorization issued to an insurance broker, he is entitled to provide legal advice to third parties, who are not consumers, in agreeing to, amending or appraising insurance contracts in exchange for separate remuneration. For the performance of the tasks under sentences 1 and 2, the chamber of industry and commerce is subject to supervision by the supreme federal state authority.

(2) Authorization shall be withheld if

1. there are grounds to indicate that the applicant is not reliable enough to conduct business; as a rule, he shall be

deemed to lack reliability if he has been convicted in the last five years before application of a crime or of theft, embezzlement, extortion, fraud, breach of trust, money-laundering, falsification of a document, receiving stolen goods, profiteering or criminal insolvency,

2. the applicant is in a precarious financial situation; as a rule, this is the case where the assets of the applicant are subject to bankruptcy proceedings or he is registered at the insolvency court or court of execution (§ 26 paragraph 2 of the Insolvency Code, § 915 of the Code of Civil Proceedings),
3. the applicant fails to furnish proof of professional indemnity insurance cover or
4. the applicant fails by means of the successful completion of an examination by the chamber of industry and commerce to provide evidence that he possesses the basic proficiency in insurance, particularly as regards needs and demands, types of product, scope of benefits and relevant legal provisions as well as customer advice, needed for insurance mediation; adequate evidence of this can be furnished by a sufficient number of natural persons employed by the applicant who are entrusted with supervising persons directly engaged in the mediation of insurance and who may represent the applicant.
- (3) On application, the competent authority under paragraph 1 shall exempt a trader who mediates insurance as a supplement to the products or services provided as part of his principal activity from the obligation to obtain authorization under paragraph 1, provided he can provide evidence that
1. he performs his activity as an insurance intermediary on direct behalf of one or several insurance intermediaries who have received authorization under paragraph 1 or of one or several insurance undertakings,
2. he is covered by a professional indemnity insurance as required by paragraph 2 no. 3 and
3. he is reliable and adequately qualified and is not in a precarious financial situation; adequate evidence of this can be provided by a declaration on the part

of the principals designated in number 1 stating that they undertake to comply with the requirements stipulated in § 80 paragraph 2 of the Insurance Supervision Act and ensure the adequate qualification of the applicant to mediate the respective insurance and that they are not presently aware of anything to the contrary.

Paragraph 1 sentence 2 shall apply *mutatis mutandis*.

(4) An insurance intermediary requires no authorization under paragraph 1, sentence 1 if

1. he performs his activity as an insurance intermediary solely on behalf of one, or where insurance products are not in competition, several insurance undertakings permitted to conduct business on national territory and
2. full liability is assumed for his activity as intermediary by the insurance undertaking or undertakings.

(5) An insurance intermediary requires no authorization under paragraph 1 sentence 1 if he is established in another member state of the European Union or in another signatory state of the Agreement creating the European Economic Area and can provide evidence of registration under Article 3 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (Official Journal EC 2003 no. L 9 p. 3).

(6) Traders under paragraphs 1, 3 and 4 may only employ persons in direct mediation if they ensure that such persons possess the requisite qualifications for mediating the respective insurance and have verified their reliability.

(7) Traders under paragraphs 1, 3 and 4 are obliged to enrol in the register under § 11a paragraph 1 immediately after taking up their activity. The registration authority must be notified without delay of any material changes to the particulars recorded in the register. Where § 80 paragraph 3 of the Insurance Supervision Act applies, full liability shall also be assumed under paragraph 4 no. 2 by the insurance undertaking with the notification of the registration authority. This liability shall not apply for mediation after deletion of the particulars on the trader from the register due to a notification under § 80 paragraph 4

of the Insurance Supervision Act.

(8) In agreement with the Federal Ministry of Justice, the Federal Ministry of Finance and the Federal Ministry of Food, Agriculture and Consumer Protection, the Federal Ministry of Economics and Technology may by way of statutory order with the assent of the Federal Assembly issue provisions for the transposition of Directive 2002/92/EC or for the protection of the general public and insurance customers on

1. the scope of obligations of the insurance intermediary in the performance of his business, in particular on
 - a) the obligations to provide information to the insurance customer,
 - b) the obligation to tender sufficient securities or take out suitable insurance for this purpose, where the insurance intermediary receives or makes use of assets of the insurance customer or assets intended for him,
2. the contents and procedure for a proficiency examination under paragraph 2 no. 4, exceptions to the requirement to undergo a proficiency examination and the recognition of other occupational qualifications equivalent to the proficiency examination, the local competence of the chambers of industry and commerce, the appointment of a board to select examination questions,
3. the requisite contents of the professional indemnity insurance specified under paragraph 2 no. 3, in particular the amount of the minimum sum insured, the designation of the competent body under § 158c paragraph 2 of the Insurance Contract Act, the evidence of current professional indemnity insurance cover and duties of the insurance undertaking to provide information to the authorities and the insurance customers.

The statutory order under sentence 1 may also limit the entitlement of the insurance intermediary to receive and make use of assets of the insurance customer or assets intended for him, where this is necessary for the protection of the insurance customer. The statutory order under sentence 1 may require that records be kept on meeting the obligations under sentence 1 no. 1 letter b and that regular or intermittent inspections

for specific reasons be conducted at the expense of the insurance intermediary to verify compliance with the obligations under sentence 1 no. 1 letter b and an inspection report be submitted to the competent authority, where this is necessary for effective supervision; the details of the inspection can be regulated therein, particularly the grounds, date and frequency, the selection, appointment and dismissal of inspectors, their rights, duties and responsibility, the contents of the inspection report, the obligations of the insurance intermediary towards the inspector as well as the procedure in the case of disagreements between the inspector and the insurance intermediary.

(9) Paragraphs 1 to 8 shall not apply

1. for traders, if
 - a) mediating insurance is not their principal activity,
 - b) they only mediate insurance contracts solely requiring knowledge of the insurance cover offered,
 - c) they do not mediate any life insurance or insurance to cover third-party liability risks,
 - d) the insurance is complementary to the supply of a good or service and either covers the risk of a defect, loss or damage of goods or damage or loss of luggage or other risks in connection with a journey booked with the trader, including either third-party liability or accident insurance risks, where the cover is provided in addition to the main insurance cover for risks in connection with this journey,
 - e) the amount of the annual premium does not exceed EUR 500 and
 - f) the total term of the insurance contract, including possible renewals, does not exceed five years;
2. for traders who as a building society or as intermediaries engaged by a building society for building-society depositors mediate insurance as a component of the building-society savings contracts under a collective agreement that is intended solely for securing repayment of amounts owed to a building society from loans granted;

3. for traders who as a complementary service to supplying a good or service in connection with loan and leasing agreements mediate payment protection insurance whose annual premium does not exceed EUR 500.

(10) The provisions for insurance intermediaries apply also for reinsurance intermediaries.

§ 34e

Insurance adviser

(1) Any person intending to provide professional insurance advice to third parties without remuneration from an insurance undertaking or being otherwise dependent on it (insurance adviser) requires authorization from the competent chamber of industry and commerce. The contents of the authorization may be limited and subject to conditions, where this is required for the protection of the general public or insurance customers; for the same purpose, conditions may also be added, amended or supplemented. The authorization includes entitlement to provide legal advice to third parties in agreeing to, amending or appraising insurance contracts or in making claims arising from an insurance contract in the event of loss or damage and to represent them in extrajudicial dealings with the insurance undertaking. For the performance of the tasks under sentences 1 and 2, the chamber of industry and commerce is subject to supervision by the supreme federal state authority.

(2) § 34d paragraphs 2 and 5 to 8 and the legal provisions enacted in pursuance of § 34d paragraph 8 shall apply *mutatis mutandis*.

(3) Insurance advisers may not accept any commission from insurance undertakings. In agreement with the Federal Ministry of Justice, the Federal Ministry of Economics and Technology may by way of statutory order with the assent of the Federal Assembly issue more detailed provisions regulating the prohibition on accepting a commission for the protection of the general public and insurance customers. The statutory order under sentence 2 may in particular require regular or intermittent inspection for specific reason of compliance with the prohibition on accepting a commission at the expense of the insurance adviser and submission of the inspection

report to the competent authority, where this is necessary for effective supervision; the details of the inspection can be regulated therein, in particular the grounds, date and frequency, the selection, appointment and dismissal of inspectors, their rights, duties and responsibility, the contents of the inspection report, the obligations of the insurance adviser towards the inspector as well as procedure in the case of disagreements between the inspector and the insurance adviser. For supervision of the prohibition on accepting a commission, the statutory order may require the insurance adviser to keep a record of income from his activity.”

8. § 55a paragraph 1 is amended as follows:

a) Number 6 is worded as follows:

“6. mediates or concludes insurance contracts as an insurance intermediary within the meaning of § 34d paragraph 3, 4 or 5 or building-society savings contracts or provides advice to third parties as an insurance adviser within the meaning of § 34e in conjunction with § 34d paragraph 5 on insurance; the same applies for the persons employed in the commercial enterprise;”.

b) In number 7, the entry “or § 34c” is substituted by the entry “ , § 34c, §34d or §34e”.

9. § 57 paragraph 2 is worded as follows:

“(2) In the case of the independent conduct of security business, brokerage, property development and construction supervision business, insurance intermediation and insurance advice business, the grounds for withholding authorization under § 34a, §34c or §34d, also in conjunction with § 34e, shall apply mutatis mutandis.”

10. § 61a paragraph 2 sentence 1 is worded as follows:

“For the conduct of security business, auctioneering business, brokerage, property development and construction supervision business, insurance intermediation and insurance advice business, § 34a paragraph 1 sentence 4 and paragraphs 2 to 5, § 34b paragraphs 5 to 8 and 10, § 34c paragraphs 3 and 5, § 34d paragraphs 6 to 10, § 34e paragraphs 2 to 3 as well as the legal

provisions enacted pursuant to § 34a paragraph 2, § 34b paragraph 8, § 34c paragraph 3, 34d paragraph 8 and § 34e paragraph 3 shall apply mutatis mutandis.”

11. § 70a paragraph 2 is worded as follows:

“(2) In the case of the independent conduct of security business, brokerage, property development and construction supervision business, insurance intermediation and insurance advice business at an event within the meaning of § 64 to § 68, the grounds for withholding authorization under § 34a, § 34c or § 34d, also in conjunction with § 34e, shall apply mutatis mutandis.”

12. § 71b paragraph 2 sentence 1 is worded as follows:

“For the conduct of security business, auctioneering business, brokerage, property development and construction supervision business, insurance intermediation and insurance advice business, § 34a paragraph 1 sentence 4 and paragraphs 2 to 5, § 34b paragraphs 5 to 8 and 10, § 34c paragraphs 3 and 5, § 34d paragraphs 6 to 10, § 34e paragraphs 2 to 3 as well as the legal provisions enacted pursuant to § 34a paragraph 2, § 34b paragraph 8, § 34c paragraph 3, 34d paragraph 8 and § 34e paragraph 3 shall apply mutatis mutandis.”

13. § 144 is amended as follows:

a) In paragraph 1 no. 1, letters h and i at the end the word “or” is respectively substituted by a comma and the following letters j and k are added:

“j) mediates under § 34d paragraph 1 sentence 1, also in conjunction with § 34d paragraph 10, the conclusion of contracts of the type described therein or

k) provides advice on insurance under § 34e paragraph 1 sentence 1 or”.

b) Paragraph 2 is amended as follows:

aa) In number 1, after the entry “§ 34b paragraph 8” a comma and the entry “§ 34d paragraph 8 sentence 1 no. 1 or 3, sentence 2 or 3, § 34e paragraph 3 sentence 3 or 4” is inserted.

bb) In number 3, after the entry “§ 34b paragraph 3” a comma and the entry “§ 34d paragraph 1 sentence

2, also in conjunction with paragraph 3 sentence 2, § 34e paragraph 1 sentence 2” are inserted.

- cc) In number 5, the word “or” is substituted by a comma.
- dd) In number 6, at the end the full stop is substituted by a comma.
- ee) The following numbers 7 and 8 are added:

“7. in contravention of § 34d paragraph 7 sentence 1, also in conjunction with § 34e paragraph 2, fails to register or register on time or

8. in contravention of § 34e paragraph 3 sentence 1, also in conjunction with a statutory order enacted pursuant to sentence 2, accepts a commission.”

- c) In paragraph 4, the entry “in cases of where paragraph 1 no. 1 letters a to h, no. 2 and paragraph 2 nos. 5 and 6 apply” is substituted by the entry “in the cases where paragraph 1 no. 1 letters a to h, j to k, no. 2 and paragraph 2 nos. 5 to 8 apply”.

14. § 145 is amended as follows:

- a) In paragraph 2 no. 8 the entry “§ 34a paragraph 2 or § 34b paragraph 8” is substituted by the entry “§ 34a paragraph 2, § 34b paragraph 8, § 34d paragraph 8 sentence 1 no. 1 or 3, sentence 2 or 3 or § 34e paragraph 3 sentence 3 or 4”.
- b) In paragraph 3 no. 6, the words “the intention to sell the goods” is substituted by the words, “the venue of the event”.

15. In § 146 paragraph 2 no. 11, the entry “§ 34a paragraph 2 or § 34b paragraph 8” is substituted by the entry “§ 34a paragraph 2, § 34b paragraph 8, § 34d paragraph 8 sentence 1 no. 1 or 3, sentence 2 or 3 or § 34e paragraph 3 sentence 3 or 4”.

16. § 156 is worded as follows:

“§ 156

Transitional provisions

(1) Traders who have mediated insurance before 1 January 2007 within the meaning of § 34d paragraph 1 require no authorization

until 1 January 2009. By way of derogation from § 34d paragraph 7 in this case registration must also be made by the date at which the obligation to obtain authorization applies. If the requirements of § 34d paragraph 4 apply, sentence 1 shall apply mutatis mutandis for the obligation to register under § 34d paragraph 7.

(2) Insurance intermediaries within the meaning of paragraph 1 sentence 1 are obliged to hold professional indemnity insurance under § 34d paragraph 2 no. 3 and maintain cover for the duration of their activity, unless the requirements under § 34d paragraph 4 apply. The competent authority must disallow insurance mediation, if evidence cannot be provided of the requisite professional indemnity insurance under § 34d paragraph 2 no. 3.

(3) By way of derogation from paragraph 1, persons with authorization to deal with legal matters of third parties in insurance advice (Article 1 § 1 paragraph 1 no. 2 of the Legal Advice Act) must apply for authorization under § 34e paragraph 1 concurrent with registration under § 34d paragraph 7. If authorization is applied for by submitting the previous authorization document, no examination of proficiency, reliability and financial circumstances under § 34d paragraph 2 nos. 1, 2 and 4 shall be made. Authorization under the Legal Advice Act expires with the binding decision on the application for authorization under § 34e paragraph 1. Up to this time, it shall be deemed as authorization under § 34e paragraph 1.”

Article 2

Amendment of the Insurance Contract Act

The Insurance Contract Act in the revised version published in the Federal Law Gazette Part III, classification number 7632-1, last amended by Article 9 of the Act of 2 December 2006 (Federal Law Gazette I p. 2742), is amended as follows:

1. In Division 1, Title 4 is amended as follows:

a) The heading is worded as follows:

“Title 4

Insurance intermediaries,
insurance advisers”.

b) Before § 43 the following Subtitle 1 is

inserted:

“Subtitle 1

Obligations to provide information and advice

§ 42a

Definition of terms

(1) For the purposes of this Act, insurance intermediaries are insurance agents and insurance brokers.

(2) For the purposes of this Act, an insurance agent is a person who is entrusted by an insurer or an insurance agent with the professional mediation or conclusion of insurance contracts.

(3) For the purposes of this Act, an insurance broker is a person who undertakes the professional mediation or conclusion of insurance contracts for the client without being assigned to do so by an insurer or by an insurance agent. A person is deemed to be an insurance broker if he conveys to the insurance customer the impression that he renders his services as an insurance broker under sentence 1.

(4) For the purposes of this Act, an insurance adviser is a person who provides professional advice to third parties in agreeing to, amending or appraising insurance contracts or in making claims in the event of loss or damage or represents them in extrajudicial dealings with the insurer, without receiving remuneration from an insurer or being otherwise dependent on him.

§ 42b

Basis for advice provided by the insurance intermediary

(1) The insurance broker is obliged to base his advice on an adequate number of insurance contracts and of insurers available on the market, so that he can make a recommendation on which insurance contract is suitable to meet the needs of the insurance customer in keeping with professional criteria. This does not apply insofar as in individual cases before submission of the contract declaration by the insurance customer he makes express reference to a restricted range of insurers and contracts.

(2) The insurance broker who makes reference to a restricted range under paragraph 1 sentence 2, and the insurance agent must inform the insurance customer of the market and information basis on which they render their service and the names of the insurers on which they base their advice. In addition, the insurance agent must provide information on the insurers on whose behalf he performs his activity and whether he is engaged solely on their behalf.

(3) The insurance customer may waive the notifications and particulars under paragraph 2 in a separate written statement.

§ 42c

Advisory and documentation obligations of the insurance intermediary

(1) Depending on the difficulty of assessing the insurance offered or on the insurance customer as an individual and his situation, the insurance intermediary must enquire about his wishes and needs and advise him and give reasons for recommendations on each specific insurance, also ensuring that the advisory costs stand in reasonable relation to the premium to be paid by the insurance customer. He must document this, taking into account the complexity of the insurance contract offered under § 42d.

(2) The insurance customer may waive advice or documentation under paragraph 1 by way of a separate written statement, where he is explicitly notified by the insurance intermediary that such waiver may impair the insurance customer's ability to claim compensation from the insurance intermediary under § 42e.

§ 42d

Date and form of information

(1) The information under § 42b paragraph 2 must be communicated to the insurance customer before submission of his contract declaration, the information under § 42c paragraph 1 before conclusion of the contract, both in clear and understandable written form.

(2) The information under paragraph 1 may be communicated orally if so requested by the insurance customer or if and as far as the insurer provides provisional cover. In these cases, the information must be

provided to the insurance customer without delay in writing after conclusion of the contract, not later than with the insurance certificate; this does not apply for contracts on provisional cover in compulsory insurance.

§ 42e

Liability for compensation

The insurance intermediary is liable to provide compensation for any damage or loss incurred to the insurance customer due to breach of duty under § 42b or § 42c. This does not apply if the insurance intermediary cannot be held responsible for the breach of duty.

§ 42f

Payment security in favour of the insurance customer

(1) The insurance agent shall be entitled to accept payments made to him by the insurance customer in connection with the mediation or conclusion of an insurance contract. The insurance customer must only accept any restriction on this authority as applicable to him if he was aware of such restriction when making payment or was unaware of this due to gross negligence.

(2) An authorization of the insurance intermediary by the insurance customer to accept payments from the insurer payable to the insurance customer due to an insurance contract requires a separate written declaration to this effect by the insurance customer.

§ 42g

Large risks

§ 42b to § 42e shall not apply for the mediation of insurance contracts on large risks within the meaning of Article 10, paragraph 1 sentence 2 of the Introductory Law to the Insurance Contract Law.

§ 42h

Other exceptions

§ 42b to § 42f and § 42k shall not apply for insurance intermediaries within the meaning of § 34d paragraph 9 no. 1 of the Trade Regulations Act.

§ 42i

Agreements in derogation of provisions

No derogation from § 42b to § 42h is permitted to the detriment of the insurance customer.

§ 42j

Insurance adviser

The provisions in § 42b paragraph 1 sentence 1, § 42c paragraph 1 sentence 1, § 42c paragraph 1, § 42d and § 42e, § 42f paragraph 2 and § 42g, § 42i and § 42k applying to insurance brokers shall apply mutatis mutandis to insurance advisers. This does not prejudice further obligations of the insurance adviser arising from the contractual relationship.

§ 42k

Arbitration board

(1) In agreement with the Federal Ministry of Finance, the Federal Ministry of Economics and Technology and the Federal Ministry of Food, Agriculture and Consumer Protection, the Federal Ministry of Justice may accredit privately organized institutions as arbitration boards for the extrajudicial settlement of disputes between insurance intermediaries and insurance customers in connection with the mediation of insurance contracts. This accreditation is to be published in the Federal Gazette or in the electronic Federal Gazette. The parties may petition this arbitration board, without prejudice to the right to petition the courts.

(2) Privately organized institutions may be accredited to act as arbitration boards, provided their answers or decisions are independent and not subject to directives and they possess the organizational and professional capacity to perform the tasks.

(3) The accredited arbitration boards must answer every complaint about an insurance intermediary.

(4) The accredited arbitration boards may demand remuneration from the insurance intermediary. In evident cases of unwarranted complaints, the insurance customer may also be required to provide remuneration. The amount of remuneration must stand in reasonable relation to the

costs incurred to the accredited arbitration board.

(5) Where no privately organized institutions have been accredited as arbitration boards, the Federal Ministry of Justice in agreement with the Federal Ministry of Finance, the Federal Ministry of Economics and Technology and the Federal Ministry of Food, Agriculture and Consumer Protection may by way of statutory order without the assent of the Federal Assembly charge a federal authority or agency with the tasks of an arbitration board. Fees and expenses shall be charged for conducting the arbitration proceedings. The statutory order under sentence 1 may also include regulations on the proceedings and matters liable to charges as well as the amount of fees and expenses."

2. After § 42k, the following heading is inserted:

"Subtitle 2

Actual authority of
the insurance agent."

3. In § 43, the word "insurance agent (*Versicherungsagent*)" is substituted by the word "insurance agent (*Versicherungsvertreter*)"* and the semicolon at the end of number 3 substituted by a full stop and number 4 is repealed.

4. In § 44 the word "agent (*Agenten*)" is substituted by the words, "insurance agent (*Versicherungsvertreter*)".

5. In § 45 to § 48 the words "insurance agent (*Versicherungsagent*)", "agent (*Agent*)" and "insurance agents (*Versicherungsagenten*)" are substituted respectively by the words "insurance agent (*Versicherungsvertreter*)".

Article 3

Amendment of the Insurance Supervision Act

The Insurance Supervision Act in the version published in the Federal Law Gazette on 17 December 1992 (1993 I p. 2), last amended by Article 3 of the Act on 17 November 2006 (Federal Law Gazette I p. 2606), is amended as follows:

1. The table of contents is amended as follows:

* Translators's note: In German usage "Agent" subsumes "Vertreter". This connotation is absent in Anglo-Saxon usage.

a) After the entry under § 79a, the following entry is inserted:

"3. Cooperation with insurance intermediaries".

b) The entry under § 80 is worded as follows:

"§ 80 Requirements of persons engaged in the sale of insurance".

c) After the entry under § 80, the following entries are inserted:

"§ 80a Complaints about insurance intermediaries

§ 80b Transitional provision".

2. After § 79a, the following subsection 3 is inserted:

"3.

Cooperation with
insurance intermediaries

§ 80

Requirements of persons engaged
in the sale of insurance

(1) Insurance undertakings are obliged to cooperate only with professional insurance intermediaries, who

1. are authorized under § 34d paragraph 1 of the Trade Regulations Act, are exempted from the obligation to obtain authorization under § 34d paragraph 3 of the Trade Regulations Act or are not subject to the authorization requirement according to § 34d paragraph 4 or 9 of the Trade Regulations Act and

2. are entitled to accept assets from the insurance customer or accept certain assets on his behalf or, where required under a statutory order pursuant to § 34d paragraph 8 no. 1 letter b of the Trade Regulations Act, to provide evidence of tendering security.

(2) Insurance undertakings may only cooperate with professional insurance intermediaries, who

1. are not subject to the authorization requirement as provided in § 34d paragraph 4 of the Trade Regulations Act or

2. are exempted from the obligation to obtain authorization under § 34d paragraph 3 of the Trade Regulations Act and perform the activity of insurance intermediary on behalf of one or several insurance undertakings

if the intermediaries are reliable and have well-

ordered finances (§ 34d paragraph 2 nos. 1 and 2 of the Trade Regulations Act and the insurance undertakings ensure that the intermediaries are adequately qualified to mediate the respective insurance.

(3) Where occasioned by an insurance intermediary under § 34d paragraph 4 of the Trade Regulations Act, the insurance undertaking or undertakings on whose sole behalf he is engaged must give notification to the registration authority of the particulars to be recorded in the register under § 11a paragraph 1 of the Trade Regulations Act. The insurance undertaking or undertakings must ensure that the requirements in § 34d paragraph 4 of the Trade Regulations Act have been met.

(4) Insurance undertakings are obliged to notify the registration authority under § 11a paragraph 1 of the Trade Regulations Act without delay of the termination of cooperation with an insurance intermediary not subject to the authorization requirement under § 34d paragraph 4 of the Trade Regulations Act and arrange for his deletion from the register.

§ 80a

Complaints about insurance intermediaries

Insurance undertakings must answer complaints about insurance intermediaries who mediate their insurance products. In the case of repeated complaints that can be of material relevance for assessing reliability, they must inform the competent authorization authority under § 34d paragraph 1 of the Trade Regulations Act.

§ 80b

Transitional provision

Up until 1 January 2009, insurance

undertakings may also cooperate with insurance intermediaries as provided in § 156, paragraph 1 sentence 1 of the Trade Regulations Act if the insurance intermediary can provide evidence of professional indemnity insurance cover as required under § 34d paragraph 2 no. 3 of the Trade Regulations Act or, in the case where § 34d paragraph 4 of the Trade Regulations Act applies, the insurance undertaking or undertakings on whose sole behalf he is engaged has/have assumed full liability. The insurance undertaking must verify this."

3. In § 84 paragraph 4 sentence 1 no. 2, the words "insurance intermediaries" are inserted after the words "insurance undertaking".

4. In § 144 paragraph 1a, the following numbers 3a and 3b are inserted after number 3:

"3a cooperates by intention or negligence with an insurance intermediary in contravention of § 80 paragraph 1 or 2,

3b. does not make notification or makes an incorrect or belated notification by intention or negligence in contravention of § 80 paragraph 4,".

Article 4

Entry into force

After § 34d paragraph 8 and § 34e paragraph 3 sentences 2 to 4 of the Trade Regulations Act have been inserted by virtue of it, Article 1 no. 7 shall enter into force on the day subsequent to promulgation. After § 42k paragraph 1 sentences 1 and 2 as well as paragraphs 2 to 5 of the Insurance Contract Law have been inserted by virtue of it, Article 2 no. 1 letter b shall enter into force on the day subsequent to promulgation. The remainder of this Act shall enter into force on 22 May 2007.

Federal Law Gazette 2006 Part I No. 63, published in Bonn on 22 December 2006

The above Act is hereby executed. It shall be promulgated
in the Federal Law Gazette.

Berlin, 19 December 2006

Federal President
Horst Köhler

Federal Chancellor
Dr Angela Merkel

Federal Minister of Economics and Technology
Michael Glos

Federal Minister of Justice
Brigitte Zypries

Federal Minister of Finance
Peer Steinbrück