



INFORMATION



FOR INSURANCE INTERMEDIARIES FROM OTHER MEMBER STATES:

Insurance intermediaries working in Germany have to observe the implemented Directive 2002/92/EC on Insurance Mediation. The laws implementing the Directive are the "Gesetz zur Neuregelung des Versicherungsvermittlerrechts" and the "Verordnung über die Versicherungsvermittlung und -beratung" (VersVermV).

1. General good provisions

Insurance intermediaries from other EU/EEA-Member States providing services within Germany, have to fulfil the following information requirements with respect to the customers ("general good provisions"):

- Apart from Art. 12 par. 1 IMD, insurance intermediaries working in Germany have to provide their customers with the information according to Art. 12 par. 1 IMD not only prior to the conclusion of the contract but already at the first intermediation activity, i.e. the first business contact.
- Furthermore, insurance intermediaries shall provide the names of the insurance company undertaking irrespective of the customer's request.

2. Legal basis – Insurance Mediation

In the following, you will find an English translation of the German „Gesetz zur Neuregelung des Versicherungsvermittlerrechts" and the German "VersVermV".

Please note! The translated documents are not official translations. Therefore no responsibility is given for their correctness.

3. Further information

Further information may be found on the homepage of the Federal Ministry of Economics and Technology:

<http://www.bmwi.de/BMWi/Navigation/Wirtschaft/branchenfokus,did=188214.html?view=renderPrint>

and on the homepage of CEIOPS: <http://www.ceiops.eu/content/view/521/215/>

**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

Section 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; **this authorization to provide advice also covers employees of companies in cases in which the insurance broker advises the company.** For the performance of the tasks under sentences 1 and 2, the chamber of industry and commerce is subject to supervision by the supreme Länder 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 (Section 26 paragraph 2 of the Insolvency Code, Section 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 Section 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 on 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); **the same applies to intermediaries established and entered into a register in Switzerland.**

(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 Section 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 Section 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 Section 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 ordinance with the assent of the Bundesrat issue provisions for the transposition of Directive 2002/92/EC, **for the transposition of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ EU No. L 255 p. 22, 2007 No. L 271 p. 18)**, 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 scope** and the requisite contents of the professional indemnity insurance specified under paragraph 2 no. 3, in particular the amount of the minimum sums insured, the designation of the competent body under Section 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.
4. **the contents and procedure for the application of Directive 2005/36/EC to applicants from another member state of the European Union or another signatory state of the Agreement on the European Economic Area who wish to be permanently or temporarily active in Germany and who do not fulfil the requirements of paragraph 5.**

The ordinance 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 ordinance under sentence 1 may require that records be kept on meeting the obligations under sentence 1 no. 1 letter b and that regular inspections or 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.
- (11) Paragraphs 1 to 4, 6, 7 and 9 shall not apply for traders, who
- a) as natural person have their residence in another member state of the European Union or in another signatory state of the Agreement on the European Economic Area and in which he carries on business;
 - b) as legal person have their registered office is situated or, if under its national law it has no registered office, their head office in another member state of the European Union or in another signatory state of the Agreement on the European Economic Area.

**Regulations on
Insurance Mediation and Advice
(Insurance Mediation Regulations - VersVermV)**

15 May 2007

Pursuant to § 11a paragraph 5, § 34d paragraph 8 and § 34e paragraph 3 sentences 2 to 4 of the Trade Regulations Act in the version promulgated on 22 February 1999 (Federal Law Gazette I p. 202) inserted by virtue of Article 1 of the Act of 19 December 2006 (Federal Law Gazette I p. 3232) and 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 hereby orders as follows:

Section 1

Proficiency examination

§ 1

Grounds

(1) By means of the proficiency examination under § 34d paragraph 2 no. 4 of the Trade Regulations Act, the examinee must provide evidence of specialist competency in the provision of products and advice required to perform the activities specified in § 34d paragraph 1 of the Trade Regulations Act.

(2) The proficiency examination comprises in particular the following subject areas and their practical application:

1. customer advice:
 - a) ascertainment of customer needs and demands,
 - b) available options,
 - c) product presentation and information;
2. basic professional knowledge:
 - a) basic legal provisions on insurance mediation and insurance advice,
 - b) legal social insurance framework, in particular statutory pension insurance, private provident insurance through life, pension and occupational disability insurance, essential features of corporate pension schemes (direct insurance and pension funds through deferred compen-

sation), government assistance for and fiscal treatment of private provident insurance and corporate pension schemes financed through deferred compensation,

- c) accident insurance; health insurance; nursing care insurance,
- d) comprehensive household contents insurance; comprehensive building insurance,
- e) third-party liability insurance; motor insurance; legal costs insurance.

3) In relation to the insurance segments cited in paragraph 2 no. 2, the proficiency examination shall comprise in particular target-group needs and demands, types of product, scope of benefits, the insured event as well as the legal basics and current general insurance terms and conditions. The content requirements of the proficiency examination must conform with the specifications in Annex 1.

4) Persons who have been engaged as an insurance intermediary or insurance adviser in an independent or dependent capacity without interruption since 31 August 2000 shall not be required to undergo a proficiency examination if they have enrolled in the register under § 11a paragraph 1 of the Trade Regulations Act or have applied for authorization by 1 January 2009.

§ 2

**Competent body and
examination board**

(1) The proficiency examination shall be held by the chambers of industry and commerce.

(2) The chambers of industry and commerce shall appoint examination boards to conduct the examination and appoint the members of these boards. The members must be well versed in the examination subject areas, be familiar with current practice in insurance mediation or advice by virtue of their own experience and be suitable to take part in the examination system; they may not examine persons they have trained

themselves.

3) Chambers of industry and commerce may reach agreements on the joint conduct of the proficiency examination. Several chambers of industry and commerce may appoint a joint examination board, without prejudice to § 1 paragraph 4a of the Act on the Provisional Regulation of the Rights of the Chambers of Industry and Commerce.

§ 3

Procedure

(1) The examination consists of a written and a practical part.

(2) The written part of the examination comprises the subject areas listed in § 1 paragraph 2 no. 2, which must be examined in due proportion to each other. Posed with questions of practical relevance, the examinee is required to show that he has acquired the basic professional insurance and legal knowledge and can apply this in practice.

(3) The written examination questions shall be selected by a board with a nationwide remit. The board shall be made up eight members and eight deputy members appointed by the chambers of industry and commerce. The appointment shall be made after hearing the opinions of representatives of insurance undertakings, insurance brokers, insurance advisers, insurance agents and field executives. The following members shall be appointed:

1. two members and two deputies from amongst the insurance undertakings or their interest groups,
2. two members and two deputies from amongst the insurance brokers or insurance advisers or their interest groups,
3. two members and two deputies from amongst the insurance agents or their interest groups,
4. one member and one deputy from the field executives or their interest groups and
5. one member and one deputy from amongst the chambers of industry and commerce or their interest groups.

The members of the board and their deputies must be able to take competent decisions when selecting questions. The examination questions shall not be published even after the examination; they are only to be made available

to the examinees during the examination.

(4) In the practical part of the examination, which is conducted as a simulated customer consultation, one examinee at a time shall be examined. Here, the examinee is required to demonstrate his abilities to prepare and offer customized solutions. The examinee may choose between the subject areas provident insurance (life assurance, private pension insurance, accident insurance, occupational disability insurance, health insurance, nursing care insurance) or property insurance (third-party liability insurance, motor insurance, comprehensive household contents insurance, comprehensive building insurance, legal costs insurance). The consultation is conducted on the basis of a specific case involving either an insurance intermediary and customer or an insurance adviser and customer.

(5) On the basis of his performance, the examination board shall allot to the examinee the grade 'pass' or 'fail'. The examinee shall be deemed to have passed the written part of the examination if he has achieved at least 50 per cent of the marks obtainable in each of four of the subject areas cited in § 1 paragraph 2 no. 2 and at least 30 per cent of the marks obtainable in the other area.

(6) The examination shall not be held in public. However, assigned representatives of the Federal Financial Supervisory Authority as well as members of another examination board, persons assigned to assess the quality of the examination or persons to be appointed to an examination board may attend; they may not, however, take part in deliberations on the result of an examination.

(7) There is no limit to the number of times the examination may be repeated, an interval of at least one year must, however, be scheduled between each repeat examination after the second examination attempt.

(8) If the examinee has passed the examination, the chamber of industry and commerce issues a certificate forthwith using the format set out in Annex 2. If the examinee has not passed the examination, he receives a notification indicating the option of re-examination.

(9) The chamber shall regulate the details of examination procedure by statute.

§ 4

Recognition of other equivalent occupational qualifications

(1) The following occupational qualifications or their successor occupations shall be accredited as proof of the requisite proficiency:

1. final qualification
 - a) after a course of study in law,
 - b) after a course of study in business economics, specializing in insurance (degree/diploma or equivalent qualification),
 - c) as an insurance management assistant or insurance and financial services broker,
 - d) as an insurance business administrator,
 - e) as a financial adviser (chamber of industry and commerce);
2. final qualification
 - a) as a financial services adviser (chamber of industry and commerce), provided the candidate has obtained prior qualification as a bank clerk or savings bank clerk and has gained at least one year of professional experience in insurance mediation or advice,
 - b) as a financial services adviser (chamber of industry and commerce), provided the candidate has successfully completed general commercial training and has gained at least one year of professional experience in insurance mediation or advice or
 - c) as a financial business administrator (college of higher education), provided the candidate has completed a certified course of further education at a German institution of higher education and has gained at least one year of professional experience in insurance mediation or advice;
3. final qualification
 - a) as a bank or savings bank clerk, provided the candidate has gained at least two years of professional experience in insurance mediation or advice,
 - b) as an investment fund management assistant provided the candidate has

gained at least two years of professional experience in insurance mediation or advice or

- c) as a financial services adviser (chamber of industry and commerce), provided the candidate has gained at least two years of professional experience in insurance mediation or advice.

(2) The successful completion of a final examination following a course of study at an institution of higher education or college of advanced vocational studies is accredited if the applicant possesses the requisite proficiency. As a rule, this requires an additional three years of professional experience in insurance mediation or advice at least.

Section 2

Register of intermediaries

§ 5

Components and contents of the register

The following particulars on the compulsory registrant shall be recorded in the register specified in § 11a of the Trade Regulations Act:

1. surname and forename and name of company,
 2. date of birth,
 3. information as to whether the compulsory registrant is to be engaged
 - a) as an insurance broker authorized under § 34d paragraph 1 of the Trade Regulations Act,
 - b) as an insurance agent
 - aa) authorized under § 34d paragraph 1 of the Trade Regulations Act,
 - bb) acting as a tied insurance agent under § 34d paragraph 4 of the Trade Regulations Act,
 - cc) exempt from the authorization requirement under § 34d paragraph 3 of the Trade Regulations Act as an insurance agent mediating complementary insurance to goods or services as part of his principal activity
- or
- c) as an insurance adviser authorized

under § 34e paragraph 1 of the Trade Regulations Act,

4. designation and address of the competent registration authority,
5. the states of the European Union and the other signatory states to the Agreement creating the European Economic Area in which he intends to conduct business and, in the case of establishment, the business address there and the legal representatives of such establishment,
6. business address,
7. registration number under § 6 paragraph 3,
8. in the case of an insurance intermediary not requiring authorization under § 34d, paragraph 4 of the Trade Regulations Act, the insurance undertaking or undertakings assuming liability.

If the compulsory registrant is a legal person, the surnames, birth names and forenames of the natural persons responsible in the corporate body in charge of managing mediation business must also be recorded.

§ 6

Entry into the register

(1) The compulsory registrant must provide the registration authority with the information required under § 5 and must notify it without delay of any amendments to this information.

(2) For insurance intermediaries requiring no authorization under § 34d paragraph 4 of the Trade Regulations Act, the information by way of derogation from paragraph 1 is provided solely in compliance with § 80 paragraph 3 of the Insurance Supervision Act.

(3) The registration authority shall issue to the compulsory registrant and, where paragraph 2 applies, also the insurance undertaking or undertakings, a confirmation of registration with the registration number under which the compulsory registrant is recorded in the register.

(4) The registration authority shall notify the compulsory registrant and, where § 80 paragraph 4 of the Insurance Supervision Law applies, also the insurance undertaking without delay of data deletion under § 11a paragraph 3 sentence 2 of the Trade Regulations Act.

§ 7

Restriction of access

The particulars specified in § 5 sentence 1 nos. 2 and 8 may not be requested automatically. The registration authority is only permitted to provide information in writing to the authorities cited in § 11a paragraph 7.

Section 3

Professional indemnity insurance requirements under § 34d paragraph 2 no. 3 of the Trade Regulations Act

§ 8

Territorial application

The professional indemnity insurance under § 34d paragraph 2 no. 3 of the Trade Regulations Act must apply for the whole territory of the member states of the European Union and the other signatory states to the Agreement creating the European Economic Area.

§ 9

Scope of insurance

(1) The insurance under § 8 must be taken out at an insurance undertaking permitted to do business on national territory.

(2) The minimum sum insured shall amount to EUR 1 million for each insured event and EUR 1.5 million for all insured events in a year.

(3) The insurance contract must provide cover for the liability risks of financial loss entailed in the business activity under the scope of application of these Regulations. The insurance contract must also extend to include financial losses for which the intermediary subject to compulsory insurance is liable under § 278 or § 831 of the Civil Code in so far as the vicarious agents are not obliged to take out professional liability insurance themselves.

(4) The insurance contract must provide insurance cover for each individual breach of duty that could give rise to liability claims under civil law against the intermediary subject to compulsory insurance; it may be agreed that all breaches of duty in the performance of a single transaction can be treated as one insured event.

(5) Liability for compensation entitlements arising from intentional breach of duty can be excluded from the insurance. Other exclusions

are only permissible in so far as they are customary to the market and are not contrary to the purpose of the professional liability insurance.

§ 10

Duty of notification by the insurance undertaking

(1) The insurance undertaking is obliged to notify the authorization authority under § 34d paragraph 1 and § 34e paragraph 1 of the Trade Regulations Act without delay of the termination or cancellation of the insurance contract, not until expiry of the period specified in § 39 paragraph 3 of the Insurance Contract Act where applicable, and of any alteration to the insurance contract that may affect the prescribed insurance cover with respect to third parties. The competent authority shall inform the insurance undertaking of the date of receipt of the notification under sentence 1.

(2) The competent body under § 158c paragraph 2 of the Insurance Contract Act is the competent authority for issuing authorization under § 34d paragraph 1 and § 34e paragraph 1 of the Trade Regulations Act.

Section 4

Duties to provide information

§ 11

Information provided to the insurance customer

(1) At the first business contact, the trader must provide the following information in a clear and understandable form to the customer in writing:

1. his surname and forename and the name of the company,
2. his business address,
3. whether he has been reported to the competent authority, has been entered in the register under § 34d paragraph 7 of the Trade Regulations Act
 - a) as an insurance broker authorized under § 34d paragraph 1 of the Trade Regulations Act,
 - b) as an insurance agent
 - aa) authorized under § 34d paragraph 1 of the Trade Regulations Act,

bb) acting as a tied insurance agent under § 34d paragraph 4 of the Trade Regulations Act,

cc) exempt from the authorization requirement under § 34d paragraph 3 of the Trade Regulations Act by virtue of mediating insurance complementary to other goods and services provided as part of his principal activity or

c) as an insurance adviser authorized under § 34e paragraph 1 of the Trade Regulations Act

and how this registration can be verified,

4. address, telephone number as well as the Internet address of the joint body as provided in § 11a paragraph 1 of the Trade Regulations Act and the registration number under which he is listed in the register,
5. direct or indirect holdings representing more than 10 per cent of the voting rights or the capital in an insurance undertaking,
6. insurance undertakings or parent undertaking of an insurance undertaking that has a direct or indirect holding representing more than 10 per cent of the voting rights or of the capital in the insurance intermediary obliged to provide information,
7. address of the arbitration board that can be petitioned in disputes between insurance intermediaries or insurance advisers and insurance customers.

(2) The intermediary obliged to provide information must ensure that his personnel also meet their obligations to provide information under paragraph 1.

(3) The information under paragraph 1 may be communicated orally if the insurance customer so desires or if and so far as the insurance undertaking provides provisional cover. In these cases, the information must be provided 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.

Section 5

Securing payment by the trader
in favour of the insurance customer;
supervision of the prohibition on
commission acceptance
for insurance advisers

§ 12

Tendering security, insurance

(1) The trader may only accept certain payments intended for the insurance undertaking that the insurance customer makes in connection with the mediation or conclusion of an insurance contract, if he has tendered security or concluded suitable insurance beforehand that safeguards the insurance customer against the trader's inability to remit such payment to the insurance undertaking. This does not apply insofar as the intermediary is authorized to accept payments from the insurance customer.

(2) The security can be tendered by furnishing a surety or other similar securities. Only public law corporations with a registered office on national territory, credit institutions permitted to do business on national territory and insurance undertakings permitted to provide fidelity insurance on national territory may stand surety. The surety must not expire before the date resulting from paragraph 5.

(3) Insurance is deemed suitable within the meaning of paragraph 1, sentence 1 if

1. the insurance undertaking is permitted to provide fidelity insurance on national territory and
2. the general insurance terms and conditions are commensurate with the purpose of these Regulations, in particular also afford the insurance customer direct entitlement to compensation from the insurance contract where the trader becomes insolvent.

(4) Securities and insurance policies can be tendered and concluded concurrently. They can be tendered or concluded separately for each individual mediation transaction or jointly for several. Altogether, the minimum sum assured must amount to at least 4 per cent of the annual premium income received by the trader, not, however, less than EUR 15,000.

(5) The trader must maintain the securities and insurance until he has transferred the assets to the insurance undertaking.

(6) Paragraph 1 sentence 1 and paragraphs

2 to 5 shall apply mutatis mutandis where the trader accepts payments from the insurance undertaking that he is obliged to make to the insurance customer under the insurance contract. The obligation under paragraph 1 sentence 1 does not apply where the trader is authorized by the insurance customer to accept payments from the insurance undertaking under § 42f paragraph 2 of the Insurance Contract Act.

(7) If on payment acceptance the trader's principal place of business is located in another member state of the European Union or in another signatory state of the Agreement creating the European Economic Area, the trader is also deemed to have met his obligation under paragraph 1 if the necessary protection of the insurance customer under Article 4 paragraph 4 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (Official Journal no. L 9 p. 3) is assured by the provisions of the other state.

§ 13

Provision of evidence

Where the trader must tender securities or take out insurance under § 12 paragraph 1 or paragraph 6, he must provide evidence of this to the insurance customer on request.

§ 14

Obligation to keep records

(1) As required by paragraph 2, the trader is obliged to keep records and compile the documents and vouchers specified therein in an orderly fashion. The records must be prepared without delay and in German.

(2) The records and documents of the trader required to keep records must provide the following information insofar as it is relevant in the individual case:

1. surname and forename or name of company as well as the address of the insurance customer,
2. whether and how far the trader required to keep records is authorized to accept payments or other benefits,
3. kind and amount of assets of the insurance customer that the intermediary required to keep records has received for remittance to an insurance undertaking,
4. kind, amount and scope of the security to be

tendered by the trader obliged to keep records and the insurance to be concluded for the assets, name or company name and address of the guarantor and the insurance,

5. use made of the assets of the insurance customer.

In addition, copies of the surety bond and the insurance certificate must be included in the documents.

(3) Furthermore, the insurance adviser must keep records on the kind and amount of income he has received for his activity, the surname and forename or the company name as well as the address of the payer and compile the documents and vouchers in an orderly way.

(4) Where commercial or fiscal law provisions specify accountancy obligations that are similar to the obligations under paragraphs 1 to 3, the trader required to keep records may cite these accountancy records.

§ 15

Inspections

(1) For specific reason, the competent authorization authority under § 34d paragraph 1 and § 34e paragraph 1 of the Trade Regulations Act may direct the trader required to keep records to undergo at his expense an extraordinary inspection by a suitable inspector to verify compliance with the obligations arising from § 12 and § 14. The inspector shall be assigned by the competent authority under sentence 1. The inspection report must include a note specifying any infringements made by the trader required to keep records. The inspector must sign the note specifying place and date.

(2) For specific reason, the competent authorization authority under § 34e paragraph 1 of the Trade Regulations Act may also direct an insurance adviser to undergo an inspection of compliance with the obligation arising from § 34e paragraph 3 of the Trade Regulations Act. § 15 paragraph 1 shall apply mutatis mutandis.

(3) Suitable inspectors are

1. auditors, chartered accountants, auditing and accountancy firms,
2. auditing associations whose purpose by law and per articles of association includes the regular and extraordinary inspection of their members, provided that
 - a) their legal representatives include at

least one auditor,

- b) they meet the requirements of § 63b paragraph 5 of the Cooperative and Industrial and Provident Societies Act or
- c) they avail themselves of an independent auditor or chartered accountant or an auditing or accountancy firm for inspection purposes.

(4) Other persons who have been publicly appointed or authorized and who by virtue of their prior education and experience are able to carry out a proper inspection in the respective commercial enterprise and their associations can also be assigned as inspectors under paragraph 1 sentence 2.

§ 16

Rights and duties of parties to the inspection

(1) The trader required to keep records must allow the inspector to inspect the accounts, records and documents. He must provide the inspector with all the information and evidence required to carry out the inspection with due diligence.

(2) The inspector is obliged to conduct a conscientious and impartial inspection and to observe confidentiality. He may not make unauthorized use of business and trade secrets which he has learned in the course of his activity. An inspector who by intention or negligence breaches his duties shall be obliged to compensate the damage incurred to the trader required to keep records. Several persons are liable as joint debtors.

§ 17

Reinsurance mediation and large risks

§ 11 to § 16 do not apply for reinsurance mediation. § 11 does not apply for the mediation of insurance contracts on large risks within the meaning of Article 10, paragraph 1 sentence 2 of the Introductory Act to the Insurance Contract Act and for current insurance policies.

Section 6

§ 18

Criminal and administrative offences

(1) A person is guilty of committing an administrative offence within the meaning of § 144 paragraph 2 no. 1 of the Trade Regulations Act if by intention or negligence he

1. in contravention of § 11 paragraph 1 does not provide information, or provides incorrect, incomplete or belated information,
2. in contravention of § 12, paragraph 1 sentence 1, also in conjunction with paragraph 6 sentence 1, accepts a payment,
3. in contravention of § 12 paragraph 5, also in conjunction with paragraph 6 sentence 1, does not maintain the surety or the insurance,
4. in contravention of § 13 provides no evidence or provides incorrect, incomplete or belated evidence or
5. in contravention of § 14 paragraph 1 or paragraph 3 does not make a record, or makes an incorrect, incomplete or belated record or does not make a record in the prescribed way or does not compile the documents or vouchers specified therein in the prescribed way.

(2) A person is guilty of committing an administrative offence within the meaning of § 145 paragraph 2 no. 8 of the Trade Regulations Act, if by intention or negligence he commits an act specified in paragraph 1 in the performance of travel business.

(3) A person is guilty of committing an administrative offence within the meaning of §

146 paragraph 2 no. 11 of the Trade Regulations Act if by intention or negligence he commits an act specified in paragraph 1 in the performance of trade fair, exhibition or market business.

(4) A person who commits an act specified in paragraph 1 that endangers the life or health of another person or property of material value belonging to a third party is liable to punishment under § 148 no. 2 of the Trade Regulations Act.

Section 7

Final provisions

§ 18a

Local competence of chambers of industry and commerce

With permission from their supreme federal state authority, chambers of industry and commerce may by agreements transfer their local competence for registration procedure under § 11a of the Trade Regulations Act and the proficiency examination under § 34d paragraph 2 no. 4 of the Trade Regulations Act in part or in full to one chamber of industry and commerce.

§ 19

Transitional provision

The qualification as actuary obtained from the Vocational Training Association of the German Insurance Industry before 1 January 2009 is deemed equivalent to the successful completion of the proficiency examination.

§ 20

Entry into force

These regulations shall enter force on 22 May 2007.

The Federal Assembly has given its assent.

Berlin, 15 May 2007

Federal Minister of Economics and Technology

by proxy

Otremba

Annex 1

(under § 1 paragraph 3 sentence 2)

Required contents of the proficiency examination

- 1. Customer advice**
 - 1.1 Service expectations of the customer**
 - 1.2 Preparation for visit/Customer contact**
 - 1.3 Customer consultation**
 - 1.3.1 Customer situation; systematics of customer consultation/needs and demands
 - 1.3.2 Customized solutions
 - 1.3.3 Interview technique
 - 1.4 Customer care**
- 2. Basic legal provisions**
 - 2.1 Contract law**
 - 2.1.1 Contractual capability
 - 2.1.2 Completion of general contracts
 - 2.1.3 Basis of insurance contracts
 - 2.1.4 Beginning and end of insurance contract
 - 2.2 Special legal provisions for insurance contracts**
 - 2.2.1 Insurance certificate
 - 2.2.2 Payment of contribution
 - 2.2.3 Obligations of the insurance customer
 - 2.2.4 Obligation to provide precontractual information
 - 2.2.5 Increased risk
 - 2.2.6 Obligations in the event of damage or loss
 - 2.2.7 Changes of ownership in indemnity insurance
 - 2.3 Law on mediation and advice**
 - 2.3.1 General legal position
 - 2.3.2 Basic preconditions for the activity
 - 2.3.3 Special legal position
 - 2.3.4 Trade/professional federations/associations
 - 2.3.5 Employee representations
 - 2.4 Competition law**
 - 2.4.1 General principles of competition
 - 2.4.2 Inadmissible advertising
 - 2.5 Consumer protection**
 - 2.5.1 Basis of consumer protection
 - 2.5.2 Arbitration boards

- 2.5.3 Protection of data privacy
- 2.6 Insurance supervision: competencies**
- 2.7 European single market: freedom to provide services and freedom of establishment**
- 3. Provident insurance**
- 3.1 Statutory pension insurance**
- 3.1.1 Introduction
- 3.1.2 Compulsory insurance
- 3.1.3 Pension entitlement periods
- 3.1.4 Pensions/Annuities
- 3.1.5 Calculation of pensions
- 3.1.6 Coverage gap
- 3.1.7 Fiscal treatment of statutory pension insurance as a component of basic provident insurance (first tier)
- 3.2 Private provident insurance through life, pension and occupational disability insurance**
- 3.2.1 Basics: type of product; scope of benefit; contribution; application acceptance; insured event; special features
- 3.2.2 Government assistance to and fiscal treatment of private provident insurance through life and pension insurance (3-tier model): basic provident insurance; supplementary capital-sum provident insurance (§ 10a, § 79ff. of the Income Tax Act); capital investment products; other insurance products
- 3.3 Essential features of corporate pension schemes (direct insurance and pension fund through deferred compensation)**
- 3.3.1 Basics: definition; persons entitled; legal right to deferred compensation; equal treatment; non-forfeiture; early retirement; early retirement benefit; insolvency of employer
- 3.3.2 Essential features of implementation options: direct insurance and pension fund
- 3.3.3 Fiscal treatment (second tier): tax benefits for contributions and fiscal treatment of benefits in the implementation options direct insurance and pension fund
- 3.3.4 Treatment of contributions and benefits under social insurance legislation
- 3.4 Accident insurance**
- 3.4.1 Introduction: needs and demands; target groups; statutory accident insurance
- 3.4.2 Scope of benefits in private accident insurance: definition of accident and scope of application; types of benefit; non-entitlement; special features
- 3.4.3 Sum insured: sums insured to meet needs; adjustment; special features for higher grades of invalidity
- 3.4.4 Tariff structure and application

3.4.5 Application acceptance: insurable persons; structure and contents of applications

3.4.6 Insured event

3.4.7 Fiscal treatment of contributions and benefits

3.5 Health insurance/Nursing care insurance

3.5.1 Health insurance: needs and demands; target groups; statutory health insurance; scope of benefits of private health insurance; ascertainment of needs and demands; premium assessment; beginning and end of insurance cover; application acceptance; insured event; fiscal treatment

3.5.2 Nursing care insurance: insurance systems; social nursing care insurance and private compulsory nursing care insurance; private supplementary nursing care insurance

4. Property insurance

4.1 Third-party liability insurance

4.1.1 Introduction: principles of liability

4.1.2 Scope of benefits: liability/cover; tasks; insured risk; target groups; persons insured; non-entitlement

4.1.3 Sum insured

4.1.4 Tariff structure and application

4.1.5 Application acceptance

4.1.6 Insured event

4.1.7 Special features: provident insurance; damage or loss abroad; damage to leased property; contribution adjustment; fiscal treatment of contributions

4.2 Motor insurance

4.2.1 Principles of liability

4.2.2 Scope of benefits of third-party liability insurance: tasks; liability/cover; direct claim; sums insured in third-party liability insurance; persons insured; main cases of non-entitlement

4.2.3 Scope of benefits of motor insurance: benefit to the customer; insured risks and damage; insured property; compensation payment; main cases of non-entitlement

4.2.4 Scope of benefits of passenger accident insurance: risks and damage insured; insurance options; persons insured; main cases of non-entitlement

4.2.5 Scope of benefits of motor insurance card: risks insured; persons insured; main cases of non-entitlement

4.2.6 Premium assessment: tariffing features; tariff structure and application; special features in third-party liability insurance

4.2.7 Application acceptance: structure and contents of applications

4.2.8 Beginning of insurance cover

4.2.9 Obligations

4.2.10 Insured event: obligations of the insurance customer; claim

settlement; premium readjustment

4.2.11 Special features: transfer of no-claims bonuses; change of vehicle; storage insurance; provisional numberplate; scope of application; international insurance card

4.3 Comprehensive household contents insurance

4.3.1 Introduction; needs and demands

4.3.2 Scope of benefits: objects insured; compensation limits; risks insured; clauses; damage insured; costs insured; insurance location; outside insurance

4.3.3 Value/Sum insured

4.3.4 Premium assessment: risk features; tariff structure and application

4.3.5 Application acceptance: structure and contents of applications; acceptance guidelines

4.3.6 Insured event

4.3.7 Special features: safety regulations; increased risk

4.3.8 House glass insurance under the General Terms and Conditions for Glass Insurance

4.4 Comprehensive building insurance

4.4.1 Introduction: needs and demands, target groups

4.4.2 Scope of benefits: objects insured; risks and damages insured; clauses; costs insured; rental loss insurance

4.4.3 Types of insurance

4.4.4 Compensation provided for objects

4.4.5 Premium assessment: risk features; tariff structure and application

4.4.6 Application acceptance: structure and contents of applications; acceptance guidelines

4.4.7 Insured event

4.4.8 Fire-Building damage insurance

4.4.9 Special features: increased risk; safety regulations; change of ownership

4.5 Legal costs insurance

4.5.1 Introduction: needs and demands, target groups

4.5.2 Benefits/Persons insured: scope of benefits; types of benefit; persons insured; territorial scope of application; non-entitlement

4.5.3 Application acceptance: structure and contents of applications; acceptance guidelines

4.5.4 Insured event

Annex 2

(under § 3 paragraph 8)

Certificate
of successful completion of the proficiency examination for
Approved Actuary (chamber of industry and commerce)
under § 34d paragraph 2 no. 4/§ 34e paragraph 2 of the Trade Regulations Act

Mr/Ms.
(Surname and forename)

born on. in.

resident in.

has on.

at the Chamber of Industry and Commerce.

successfully completed the proficiency examination for practising the occupation of insurance intermediary or insurance adviser under § 34d paragraph 2 no. 4 or § 34e paragraph 2 of the Trade Regulations Act.

The examination comprised in particular the specific professional duties and competencies in the following subject areas:

1. Customer advice (ascertainment of needs and demands, options, product presentation and information),
2. Basic professional insurance competency,
3. Legal social insurance framework and essential features of government-assisted and corporate pension insurance,
4. Legal basis for insurance mediation and insurance advice.

(Stamp/Seal)

(Place and date)

(Signature)