

# 184 of 25 March 1988. Act on Average Adjusters

Act on Average Adjusters

Act No 215 of 8 June 1966

Cf. Consolidation Act No 184 of 25 March 1988

*Amendments since last consolidation act.*

The Act provides for the implementation of parts of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, Official Journal 2005 no L 255/22.

## Part I

Appointment as an average adjuster and access to carry out average adjuster tasks on a temporary or occasional basis

Section 1. Average adjusters are appointed by the Danish Commerce and Companies Agency (DCCA). DCCA keeps a public register of appointed average adjusters.

(2) Anyone has the right to be appointed as an average adjuster provided that they

- 1) are of legal age and not under guardianship or co-guardianship in accordance with section 5 and section 7 respectively of the Danish Guardianship Act;
- 2) are not subject to an administration order and have not entered into bankruptcy proceedings; and
- 3) have passed the final university examination in law;
- 4) have for at least three years taken part in activities which can be assumed to have given the person concerned knowledge of the transactions associated with the profession of average adjuster; and
- 5) have passed a special qualification examination, cf. section 3.

(3) Appointment can be refused under the circumstances referred to in section 78(2) of the Danish Penal Code. Appointment may also be refused if the person concerned, while in another post or profession, has demonstrated behaviour providing grounds for the assumption that they will not operate a business as an average adjuster responsibly. Finally, appointment may be refused if the person concerned is indebted to the state for a significant sum, which is taken to mean a sum amounting to or exceeding DKK 50,000.

(4) DCCA may make exemptions from the conditions in subsection (2), no 4. In such cases the appointment may be limited and subject to other conditions.

(5) The provisions in subsections (1) to (4) shall apply accordingly to persons who are established in an equivalent profession in another EU country, in an EEA country or in Switzerland and who wish to establish themselves here in Denmark as an average adjuster in accordance with the Act on access to pursue certain professions in Denmark. Subsection (2), no 1 shall apply such that the person shall be of legal age and not subject to limitations under the law on committing oneself to legal contracts or under the law on managing one's own estate in accordance with corresponding rules applicable in the country of establishment. Subsection(2), no 2 shall apply such that the person may not be subject to an administration order or have entered into bankruptcy proceedings under corresponding rules applicable in the country of establishment.

Amendments:

Amended together with part heading and title note 1/10/2007 by 2007-02-13-ÆL.123 (LF 11/06/07). Amended 1/7/2005 by 2004-12-22-ÆL.1463 (LF 66 04-05), 1/7/2000 by

1999-04-21-ÆL.227 (LF 50 98-99), 1/1-1997 by 1996-05-22-ÆL.386 (LF 127 95-96), cf. the entry into force provisions, and 28/12/1991 by 1991-12-27-ÆL.936, cf. the entry into force provisions.

Section 1 a. Persons who are established in an equivalent profession to that of state average adjuster in another EU country, in an EEA country or in Switzerland, may supply average adjustment services here in Denmark on a temporary or occasional basis, cf. sections 1 b and 1 c.

Amendments:

Added 1/10/2007 by 2007-02-13-ÆL.123 (LF 11 06-07).

Section 1 b. Persons who, pursuant to section 1 a, supply average adjustment services here in Denmark shall inform the recipients of these services of their professional title, any registration number in a public register in the country of establishment, any VAT registration number in the country of establishment and any professional liability insurance policy taken out.

(2) The term “professional title” in subsection (1) refers to the person’s professional title in the country of establishment. If such a title does not exist, information on the person’s professional training and the member state in which the training was completed shall be provided instead.

(3) DCCA lays down rules governing the information which shall be provided under subsections (1) and (2).

Amendments:

Added 1/10/2007 by 2007-02-13-ÆL.123 (LF 11 06-07).

Section 1 c. DCCA may exchange relevant information with other competent authorities in another EU country, in an EEA country or in Switzerland concerning

- 1) persons who are established and registered as an average adjuster here in Denmark, cf. section 1(1), and who are applying for the right to establish themselves as an average adjuster in another EU country, in an EEA country or in Switzerland;
- 2) persons who are established and registered as an average adjuster here in Denmark, cf. section 1(1), and who are supplying average adjustment services on a temporary or occasional basis in another EU country, in an EEA country or in Switzerland;

- 3) persons who are established in an equivalent profession to that of average adjuster in another EU country, in an EEA country or in Switzerland, and who are applying for the right to establish themselves as an average adjuster here in Denmark, cf. section 1(5); and

- 4) persons who are established in an equivalent profession to that of average adjuster in another EU country, in an EEA country or in Switzerland, and are supplying average adjustment services here in Denmark on a temporary or occasional basis, cf. section 1 a.

(2) The term “competent authority” in subsection (1) in this Act refers to the authority which administers the profession of average adjuster in the country concerned.

(3) The information which can be exchanged shall be necessary for DCCA and the other competent authorities in the countries mentioned to be able to carry out their tasks under subsection (1).

(4) DCCA’s exchange of information under subsection (1) shall take place in compliance with the Danish Act on Processing of Personal Data. The information shall be kept confidential.

(5) DCCA lays down rules for the exchange of information with other competent authorities under subsection (1).

Amendments:

Added 1/10/2007 by 2007-02-13-ÆL.123 (LF 11 06-07).

Section 2. DCCA may lay down rules specifying that applications for appointment shall take place in electronic format, and that the appointment, including any lapse and revocation, provided the conditions in section 4 and 5 are met, takes place electronically.

Amendments:

Amended 1/7/2005 by 2004-12-22-ÆL.1463 (LF 66 04-05). Amended 1/6/1996 by 1996-05-22-ÆL.377 (LF 198 95-96), cf. the entry into force provisions.

Section 3. The qualification examination for average adjusters (average adjuster qualification examination) is sat before a commission appointed by DCCA (the Average Adjuster Commission), which consists of a chairman and four other members. The chairman shall satisfy the general conditions for being appointed as a High Court judge, one member shall be an average adjuster, one member shall be an insurance expert and two members shall be shipping experts.

(2) The Commission advises the Danish Commerce and Companies Agency (DCCA) on its administration of the matters covered by the Act.

(3) DCCA lays down the more detailed provisions on the Commission's activities, including the conditions for enrolling for the examination, the qualification requirements, the holding of the examination and the assessment.

Part II

Lapse and revocation of appointment

Section 4. Appointment as an average adjuster lapses if the person concerned ceases to meet the conditions in section 1(2), nos 1 and 2.

Amendments:

Amended 1/7/2005 by 2004-12-22-ÆL.1463 (LF 66 04-05).

Section 5. If an average adjuster is guilty of serious or repeated negligence in the pursuit of their activity and if the conduct shown constitutes grounds for the assumption that the person concerned will not pursue the activity in a reasonable manner in future, DCCA may revoke the appointment in question.

(2) In addition, DCCA may revoke an average adjuster's appointment if the person concerned is indebted to the state for a significant sum, which is taken to mean a sum amounting to or exceeding DKK 100,000.

(3) The appointment may be revoked for a time period of one to five years or until further notice.

(4) The decision under subsections (1) and (2) shall contain information about the right under section 6 to request a hearing before the courts and the deadline for this.

Amendments:

Amended 1/7/2005 by 2004-12-22-ÆL.1463 (LF 66 04-05). Amended 28/12/1991 by 1991-12-27-ÆL.936, cf. the entry into force provisions.

Section 6. A decision taken under subsection (5) may be brought before the courts by the person affected by the decision.

(2) A request under subsection (1) shall be received by DCCA no later than four weeks after the person concerned has been informed of the decision. DCCA takes legal action against the person concerned in the form of a civil procedure.

(3) The request for legal action under section 5(1) has a suspensive effect, but the court may in its ruling decide that the person concerned may not pursue the profession of average adjuster. Provided the decision is found to be lawful by the court, it may be determined in its ruling that an appeal does not have a suspensive effect.

(4) The request for legal action under section 5(2) does not have a suspensive effect, but the court may in its ruling decide that the person concerned may have access to pursue the profession of average adjuster. If a ruling in which a revocation is found to be unlawful is appealed, the court which has made the decision or the court

to which the case has been brought before may decide that the profession of average adjuster may not be pursued while the appeal case is being heard.

Amendments:

Amended 1/6/1996 by 1996-05-22-ÆL.377 (LF 198 95-96), cf. the entry into force provisions and 28/12/1991 by 1991-12-27-ÆL.936, cf. the entry into force provisions. Section 7. DCCA may at any time after application restore an appointment revoked under section 5. If the revocation is until further notice and DCCA rejects the application to have it restored, the person concerned may request that the decision be brought before the courts provided that five years have passed since the revocation and two years have passed since the recovery of the appointment was last refused by a court judgment. Section 5(4) and section 6(2) shall apply accordingly.

Amendments:

Amended 28/12/1991 by 1991-12-27-ÆL.936, cf. the entry into force provisions. Section 8. If an appointment as an average adjuster has lapsed under section 4, been revoked under section 5 or withdrawn under section 79 of the Danish Penal Code, the seal must be returned to DCCA immediately.

(2) If the reason for the lapse of an appointment ceases to exist, or the withdrawal of an appointment expires or is repealed, the appointment shall after a new request be renewed **and a seal** handed over to the person concerned.

Amendments:

Amended 1/7/2005 by 2004-12-22-ÆL.1463 (LF 66 04-05).

Part III

The rights and obligations of average adjusters

Section 9. Only persons who have been appointed pursuant to section 1(2) or (5) may use the title average adjuster.

Amendments:

Amended 1/10/2007 by 2007-02-13-ÆL.123 (LF 11 06-07).

Section 10. Average adjusters may not refuse to perform transactions which according to law and custom belong to the profession of average adjuster, such as calculation and distribution of the loss in the event of general average and similar, cf. part VII of the Danish Maritime Code X, determination of the limit for operator liability and distribution of the liability amount, cf. part X of the Danish Maritime Code, and the calculation of assurance indemnity in marine insurance.

(2) Average adjusters shall perform the commissions entrusted to them with care and diligence and at the speed allowed by the nature of the commission.

(3) Average adjusters may not charge higher fees than may be considered reasonable as a condition for their work.

Section 11. (Repealed).

Amendments:

Repealed 1/7/2005 by 2004-12-22-ÆL.1463 (LF 66 04-05).

Section 12. The post as average adjuster may not be unified with any state or municipal official post or any other salaried post in a public enterprise, except for a post as a teacher at a university or another higher education institution or as an employee at a scientific institution.

(2) The post as average adjuster is incompatible with the activity of a broker, lawyer or other professional activity or with a post as a board member, director, administrator, liquidator or salaried employee at a commercial enterprise or institution. DCCA may make exemptions from this, provided that the activity or post concerned is not considered to have any influence on the post of the person concerned as an independent average adjuster.

(3) If an average adjuster wishes to pursue an activity or hold a post which is incompatible with the post as average adjuster, the person concerned shall, before they begin the activity or take on the post, lodge their seal with DCCA.

Amendments:

Amended 1/7/2005 by 2004-12-22-ÆL.1463 (LF 66 04-05).

Section 13. DCCA may lay down more detailed rules relating to the activity of average adjusters.

Amendments:

Amended 1/7/2005 by 2004-12-22-ÆL.1463 (LF 66 04-05).

Section 13 a. Decisions made by DCCA under the Act or regulations issued pursuant to the Act may be brought before the Danish Commerce and Companies Appeals Board no later than four weeks after the person concerned has been informed of the decision. Decisions made by the Average Adjuster Commission may not be brought before a higher administrative authority.

Amendments:

Amended 1/7/2005 by 2004-12-22-ÆL.1463 (LF 66 04-05).

Section 13 b. The deadlines set in or under this Act begin to run from the day after the day on which event that triggers the deadline occurs. This applies to the calculation of daily, weekly, monthly and yearly deadlines.

(2) If the deadline is indicated in weeks, it will expire on the day of the week corresponding to the day on which the event that triggered the deadline occurred, cf. subsection (1).

(3) If the deadline is indicated in months, it will expire on the day of the month corresponding to the day on which the event that triggered the deadline occurred, cf. subsection (1). If the day on which the event that triggered the deadline occurred is the last day of a month, or if the deadline expires on a date which does not exist in a particular month, the deadline always expires on the last day of the month regardless of the length of the month.

(4) If the deadline is indicated in years, it will expire on the anniversary of the day corresponding to the day on which the event that triggered the deadline occurred, cf. subsection (1).

(5) If the deadline expires on a Saturday or Sunday, on a public holiday, Constitution Day, Christmas Eve or New Year's Eve, the deadline is extended to the next working day.

Amendments:

Added 1/6/1996 by 1996-05-22-ÆL.377 (LF 198 95-96), cf. the entry into force provisions.

Part IV

Penalties and entry into force provisions etc.

Section 14. Infringement of the provisions in section 8(1), section 9, section 10(1) and (2) and section 12(3) shall be subject to a fine, unless a higher penalty is prescribed under other legislation.

(2) A fine may be set for infringement of provisions in the regulations issued by DCCA pursuant to the Act.

(3) Sections 144, 150-152 f and 154-157 of the Danish Penal Code shall apply accordingly to average adjusters.

Amendments:

Amended 1/7/2005 by 2004-12-22-ÆL.1463 (LF 66 04-05).

Section 15. This Act shall enter into force on 1 January 1967.

(2) Sections 78-80 of Trade Act No 138 of 28 April 1931 shall be repealed simultaneously.

Section 16. This Act does not apply to the Faeroe Islands or Greenland.

Amendments:

Amended 1/7/2005 by 2004-12-22-ÆL.1463 (LF 66 04-05).

Miscellaneous entry into force provisions

1996-05-22-ÆL.386 (LF 127 95-96) contains the following provisions:

Section 34. This Act enters into force on 1 January 1997.

Section 35. This Act does not apply to the Faeroe Islands or Greenland.

(2) The amendment to section 1(2), no 4 may be applied to Greenland with the deviations justified by Greenland's special circumstances if a Royal decree is issued.

1996-05-22-ÆL.377 (LF 198 95-96) contains the following provisions:

Section 14. This Act enters into force on 1. June 1996.

Section 17. This Act does not apply to the Faeroe Islands or Greenland.

(3) This amending act may be applied to Greenland with the deviations justified by this province's special circumstances if a Royal decree is issued.

1991-12-27-ÆL.936 contains the following provisions:

Section 20. This Act enters into force by means of the Executive Order in the Danish Legal Gazette.

Section 21. This Act does not apply to the Faeroe Islands or Greenland.

(3) The amendments to section 1(3), point 3, section 5, section 6(3) and (4) and section 7 may be applied wholly or partly to Greenland with the amendments that are required due to the special Greenlandic circumstances if a Royal decree is issued.

The following amendments have been incorporated:

Act No 123 of 13 February 2007 (LF 11 06-07);

Act No 1463 of 22 December 2004 (LF 66 04-05);

Act No 227 of 21 April 1999 (LF 50 98-99);

Act No 386 of 22 May 1996 (LF 127 95-96);

Act No 377 of 22 May 1996 (LF 198 95-96); and

Act No 936 of 27 December 1991.