

ACT No. 38/2004 Coll.

dated 17 December 2003

on Insurance Intermediaries and on Independent Loss Adjusters and on amendment to the Trade Licensing Act (Act on Insurance Intermediaries and Loss Adjusters)

The Parliament has adopted this act of the Czech Republic:

PART ONE

INSURANCE INTERMEDIARIES AND INDEPENDENT LOSS ADJUSTERS

§ 1

Scope of the Act

In accordance with European Community law¹⁾ this act

- a) regulates the conditions, on which the business of insurance intermediaries and independent loss adjusters shall be carried on,
- b) regulates the conditions, on which the activity of insurance intermediaries shall be taken up on the basis of the right of establishment (to establish themselves) or the freedom to provide services,
- c) establishes the register of insurance intermediaries and independent loss adjusters (hereinafter “register”), and
- d) regulates the exercise of state supervision of the activities of insurance intermediaries and independent loss adjusters.

§ 2

Activities Exempt from the Scope of the Act

This act shall not apply to

- (a) activities of employees of insurance and reinsurance undertakings;
- (b) advisory activity in insurance, which means an occasional provision of information in the framework of another professional activity or mere provision of general information on insurance products, provided the purpose of such activity is not to

¹⁾ Directive 2002/92/EC of the Council and European Parliament of 9 December 2002 on insurance mediation.

assist in concluding of insurance or reinsurance contracts or in providing benefits from insurance or reinsurance contracts or in elaborating expert appraisals of loss events;

(c) the activity of persons providing mediation for concluding of insurance contracts, if the following conditions are met simultaneously:

1. concluding of the insurance contract only requires knowledge of the insurance which is to be provided on the basis of such contract,
2. the insurance contracts are not life assurance contracts or contracts covering liability insurance,
3. insurance mediation activity is merely supplementary to the professional activity of the person carrying on insurance mediation,
4. the insurance taken up is a supplementary service to the goods or service supplied, if this insurance is taken up against defects in, destruction of or loss of such goods or service, or if this insurance is taken up against damage or loss of baggage or against another insurance risk linked to travelling supplied by the provider of this service, even if this insurance is life assurance or liability insurance, where such insurance is supplementary to travel insurance; and
5. the amount of annual premium for one insurance contract does not exceed a sum corresponding to EUR 500 and duration of such contract does not exceed 5 years, including extensions.

§ 3

Definitions

For the purposes of this act the following definitions shall apply:

a) insurance mediation activity shall mean a professional activity consisting in

1. submitting proposals for the conclusion of insurance or reinsurance contracts,
2. carrying out preparatory work to the conclusion of insurance or reinsurance contracts,
3. concluding of insurance or reinsurance contracts on behalf of and on the account of an insurance or reinsurance undertaking for which such activity is carried on, or
4. assisting in administration of insurance and settling claims from insurance or reinsurance contracts;

b) insurance intermediary shall mean a legal or natural person who pursues paid insurance mediation activity;

c) insurance undertaking shall mean a legal person which is authorized pursuant to a special legal regulation²⁾ to carry on insurance activity in the territory of the Czech Republic;

²⁾ Act No. 363/1999 Coll., on insurance and on amendment to some related acts (the Insurance Act), as amended.

d) reinsurance undertaking shall mean a legal person the activity of which is acceptance of insurance risks ceded by an insurance undertaking or another reinsurance undertaking;

e) Member State shall mean a Member State of the European Union or another state constituting the European Economic Area;

f) home Member State shall mean the Member State in which an insurance intermediary as a natural person has his residence and in which he carries on his business activity or in which an insurance intermediary as a legal person has its registered office or, if the Member State does not require offices to be registered, in which its head office is located;

g) host Member State shall mean the Member State in which an insurance intermediary carries on its insurance mediation activity on the basis of the right of establishment or on the basis of the freedom to provide services;

h) competent authority shall mean the authority of the home Member State which is authorized to carry on supervision of the performance of insurance mediation activity and which was advised as the competent authority to the European Commission;

i) identification data shall mean:

1. for a natural person the name or names, surname, and possibly business name and place of business if different from the place of residence, the residence address, date of birth and registration number,

2. for a legal person the business name, registered office, registration number, identification number if allocated, and the name or names, surname, residence address and date of birth of the proxy (§ 11); for a legal person having its registered office in a state other than a Member State (hereinafter “non-member state”), the address of the organizational branch of the undertaking located in the Czech Republic;

j) durable medium shall mean an instrument which enables the consumer to store the information addressed to him in such a way that the information is accessible during a period of time adequate to the purpose of the information and which enables the reproduction of such information in an unchanged form;

k) residence address of a natural person shall mean the address of his domicile or of the place where he resides; if the natural person has residence in more than one place, the address of the residence where he lives with the intention to reside there permanently;

l) carrying on mediation activity on the basis of the right to establish a branch shall mean each and every permanent presence (establishment) of an insurance intermediary from a Member State in the territory of a Member State other than the Member State in which such insurance intermediary has residence or registered office;

m) freedom to provide services shall mean the right of an insurance intermediary with residence or registered office in a Member State to temporarily carry on insurance mediation activity in the territory of other Member State than the Member State in which the insurance intermediary has his residence or registered office, namely in the scope authorized by the competent authority of the country of his residence or registered office, if such activity is not of the nature of a permanent presence in the territory of such other Member State.

§ 4

Insurance Intermediaries

(1) A natural person or a legal person may carry on insurance mediation activity in the territory of the Czech Republic on the conditions laid down in this act as

- a) a tied insurance intermediary (§ 5),
- b) a subordinated insurance intermediary (§ 6),
- c) an insurance agent (§ 7),
- d) an insurance broker (§ 8), or
- e) an insurance intermediary whose home Member State is not the Czech Republic.

(2) The intermediary may carry on the activity of an intermediary only in the position in which he was registered.

§ 5

Tied Insurance Intermediary

(1) A tied insurance intermediary carries on the insurance mediation activity in the name and on the account of one or more insurance undertakings; he does not collect premiums and does not pay out benefits from insurance or reinsurance contracts. If the insurance products of more than one insurance undertaking are offered, such products may not be in mutual competition.

(2) A tied insurance intermediary is bound in his activity by a written contract with an insurance undertaking in whose name and on whose account he acts, and by its instructions. The insurance undertaking whose insurance product is offered by the tied insurance intermediary is responsible for damage caused by the tied insurance intermediary when carrying on the insurance mediation activity.

(3) A person carrying on the insurance mediation activity on the conditions set out in paragraph 1, if insurance is offered as a complementary service to the goods or service supplied by the insurance intermediary in the frame of such activity, shall also be regarded as a tight insurance intermediary.

(4) A tied insurance intermediary shall be obliged to be registered, to meet the conditions of credibility and conditions laid down in this act for the basic qualification level of professional competence.

§ 6

Subordinated Insurance Intermediary

(1) A subordinated insurance intermediary co-operates with an insurance agent or insurance broker under a written contract, he does not collect premium and does not mediate benefits from insurance or reinsurance contracts. In his activity, he is bound by the instructions of the insurance intermediary in whose name and on whose account he acts. A subordinated insurance intermediary is remunerated by the insurance intermediary in whose name and on whose account he acts.

(2) A subordinated insurance intermediary shall be obliged to be registered, to meet the conditions of credibility and the conditions laid down in this act for the basic qualification level of professional competence.

(3) The insurance intermediary in whose name and on whose account the subordinated insurance intermediary acts is responsible for damage caused by the subordinated insurance intermediary when carrying on the insurance mediation activity.

§ 7

Insurance Agent

(1) An insurance agent carries on insurance mediation activity in the name and on the account of one or more insurance undertakings on the basis of a written contract. If the insurance products of more than one insurance undertaking are offered, such products may be in mutual competition.

(2) An insurance agent is bound in his activity by the internal regulations of the insurance undertaking in whose name and on whose account he acts; if so agreed, he is authorized to collect premiums or to mediate benefits from insurance contracts. An insurance agent is remunerated by the insurance undertaking in whose name and on whose account he acts.

(3) An insurance agent who carries on insurance mediation activity in the name and on the account of a single insurance undertaking shall be authorized to collect premiums on the basis of a written contract with the insurance undertaking. For transfers of premiums he shall use a separate bank account established for this purpose and separated from his own business; provisions related to the tied insurance intermediary laid down in this act and in special legal regulations³⁾ shall apply to the activity of such insurance agent correspondingly.

³⁾ E.g. Act No. 368/1992 Coll., on administrative fees, as amended

(4) An insurance agent shall be obliged to be registered, to meet the conditions of credibility and conditions laid down in this act for the medium qualification level of professional competence.

(5) During the whole period in which he carries on the insurance mediation activity, the insurance agent shall be obliged to have liability insurance against damage caused when carrying on this activity covering the whole territory of the European Economic Area, with the limit of indemnity corresponding to at least EUR 1 000 000 for each insured event, in case of more insured events in one year corresponding to at least EUR 1 500 000, unless the insurance undertaking in whose name and on whose account the insurance agent acts has committed itself in writing to take responsibility for damage caused by this activity.

(6) If the insurance agent has been authorized to collect premiums from a policyholder or insurance benefits from the insurance undertaking, he shall be obliged

a) to have financial capacity amounting, on permanent basis, to 4 per cent of the annual volume of the premiums collected by him, however, not less than minimum corresponding to EUR 15 000, or

b) to use for transfers of premiums and insurance benefits solely bank accounts established specially for this purpose and separated from his own business.

§ 8

Insurance Broker

(1) An insurance broker is bound in his activity by the content of a contract concluded with a party interested in insurance or reinsurance (hereinafter “client”).

(2) In accordance with the content of the contract with the client the insurance broker draws up comprehensive analyses of insurance risks, proposals for insurance or reinsurance schemes, provides consultancy and advisory services, administers insurance or reinsurance contracts concluded, monitors the time limits for their revision and collaborates in the settlement of insured events.

(3) An insurance broker shall be obliged to be registered, to meet the conditions of credibility and the conditions laid down in this act for the high qualification level of professional competence.

(4) An insurance broker shall be remunerated by the insurance or reinsurance undertaking unless it has been agreed with the relevant insurance undertaking and policyholder otherwise.

(5) During the whole period in which he carries on the activity of insurance mediation, the insurance broker shall be obliged to have liability insurance against damage caused when carrying on this activity covering the whole territory of the European

Economic Area, with the limit of indemnity corresponding to at least EUR 1 000 000 for each insured event, in case of more insured events in one year corresponding to at least EUR 1 500 000.

(6) If the insurance broker has been authorized to collect premiums from a policyholder or insurance benefits from the insurance undertaking, he shall be obliged

a) to have financial capacity amounting, on permanent basis, to 4 per cent of the annual volume of the premiums collected by him, however, not less than minimum corresponding to EUR 15 000, or

b) to use for transfers of premiums and insurance benefits solely bank accounts established specially for this purpose and separated from his own business.

§ 9

Insurance Intermediary with Home Member State Other than the Czech Republic

(1) An insurance intermediary with a home Member State other than the Czech Republic may carry on insurance mediation activity in the territory of the Czech Republic in the scope in which he is authorized to carry on this activity in his home Member State, after meeting the obligations according to § 14 (3) to (5).

(2) An insurance intermediary pursuant to paragraph 1 may carry on insurance mediation activity in the territory of the Czech Republic on the basis of the right to establish a branch or on the basis of the freedom to provide services.

§ 10

Independent Loss Adjuster

(1) An independent loss adjuster performs, under a contract concluded with an insurance undertaking, in its name and on its account, investigations necessary to ascertain the extent of the duty of the insurance undertaking to settle the commitments from concluded insurance.

(2) The contract between an independent loss adjuster and an insurance undertaking pursuant to paragraph 1 shall always contain

a) determination of insured events to which the contract applies with regard to classes of insurance listed in a special legal regulation;⁴⁾

b) determination of the scope of agreed activities,

⁴⁾ Annex 1 to Act No. 363/1999 Coll., as amended by Act No. 39/2004 Coll.

c) determination of the powers of the contracting parties in the settlement process of insured events, including the possibility of using other persons in the settlement process of insured events and the conditions for such co-operation.

(3) An independent loss adjuster shall be obliged to be registered, to meet the conditions of credibility and the conditions laid down in this act for the basic qualification level of professional competence.

(4) During the whole period of his activity the independent loss adjuster shall be obliged to have liability insurance against damage caused when carrying on his activity corresponding to at least EUR 500 000 for each insured event, in case of more insurance events in one year corresponding to at least EUR 1 000 000.

§ 11

Proxy of a Legal Person

(1) If an insurance intermediary or independent loss adjuster is a legal person with registered office in the territory of the Czech Republic, such legal person shall be obliged to appoint a proxy; this does not apply in the case of the tied insurance intermediary or of the subordinated insurance intermediary. The proxy is a natural person who shall be responsible for compliance with the legal regulations relating to the activity carried on by the insurance intermediary or independent loss adjuster. A proxy shall be obliged to be a member of the business management⁵⁾ of the legal person which appointed him as a proxy. The office of proxy may be carried on for one legal person only.

(2) If a proxy finds out any shortcomings in the activity of the legal person which appointed him to his office, he shall be obliged to propose without delay remedial measures and to notify the Ministry of Finance (hereinafter “the Ministry”) of this fact.

(3) A proxy shall be obliged to meet the conditions of credibility and the conditions of professional competence laid down in this act in accordance with the nature of the activity carried on. The proxy shall be obliged to have his residence in the territory of the Czech Republic.

(4) If an insurance intermediary with the registered office in a non-member state or an independent loss adjuster is a legal person, the head of the organizational unit located in the territory of the Czech Republic shall exercise the duties of the proxy. A legal person shall be obliged to appoint the office of the head of this organizational unit to a natural person who meets the conditions for exercising the office of proxy.

(5) If a proxy ceases to exercise his office or to meet the conditions laid down for him in this act, the insurance intermediary or independent loss adjuster shall be obliged to appoint a new proxy not later than 15 days from the day on which the proxy ceased to exercise his office or to meet the conditions laid down for him in this act.

⁵⁾ E.g. § 81, 97, 134 and 192 of the Commercial Code.

§ 12

Register

(1) The register administered by the Ministry, shall be established. The register shall be structured according to paragraphs 2 and 4. Persons shall be entered in the register under registration numbers, whose form and content shall be specified in the decree of the Ministry.

(2) The Ministry shall enter into the register a natural or legal person which has met the conditions laid down in this act for carrying on the activity of

a) a tied insurance intermediary,

b) a subordinated insurance intermediary,

c) an insurance agent,

d) an insurance broker, and

e) an independent loss adjuster.

(3) The following data, including changes thereto, shall be entered into the register:

a) for a natural person, the name or names, surname, date of birth, residence address, identification number, possibly also business name and place of business, for a natural person with residence in a non-member state also place of permanent or long-term residence in the Czech Republic,

b) for a legal person the business name including the legal form, possibly name, registered office, identification number, name or names, surnames, data of birth and residence of persons who are members of the statutory body of the legal person, or a person who is statutory body of the applicant, for a proxy his name or names, surname, date of birth and residence address, for an organizational unit of a legal person with the registered office in a non-member state its address in the Czech Republic,

c) object of business activity pursuant to this act; additionally, in the case of a tied insurance intermediary, a subordinated insurance intermediary, insurance agent and independent loss adjuster, the insurance undertaking or insurance intermediary for which he acts,

d) date of entry into the register and date of taking up of activity,

e) territorial scope of activity, in the case of an insurance intermediary with residence or registered office in the territory of the Czech Republic also information as to whether insurance mediation activity is carried on in a host Member State and, if so, whether it is carried on in the way of the right to establish a branch, in this case also its address, or in the way of freedom to provide services,

- f) suspension or interruption of activity,
- g) date of expiry of the entry in the register,
- h) date of declaration and termination of bankruptcy,
- i) date on which a legal person entered into liquidation,
- j) overview of fines imposed, including sanction measures, imposed by the Ministry.

(4) In the case of an insurance intermediary with a home Member State other than the Czech Republic who carries on insurance mediation activity on the basis of the right to establish a branch or on the basis of the freedom to provide services the following shall be entered into the register:

- a) identification data;
- b) data on the nature of the insurance mediation activity pursuant to § 4 (a) to (d); in the case of a tied insurance intermediary, a subordinated insurance intermediary and an insurance agent the insurance undertaking or insurance intermediary for which he acts,
- c) data on whether the insurance mediation activity is carried on in the way of the right to establish a branch or in the way of the freedom to provide services; if the insurance mediation activity is carried on in the way of the right to establish a branch the address of the branch shall also be entered into the register,
- d) data on the suspension and interruption of the activity of insurance intermediary, declaration and termination of bankruptcy, entry into liquidation,
- e) data on termination of activity.

The Ministry shall enter the data pursuant a) to e) into the register on the basis of information transmitted to it by the competent authority of the insurance intermediary's home Member State. Other data may also be entered into the register in the case they were provided by the competent authority of the home Member State of the insurance intermediary.

(5) The register shall be accessible for public. Everyone shall have the right to view the register and to make abstracts, duplicates and copies.

(6) If a party is acting in confidence in an entry in the register, the person the entry applies to can not object that the entry does not correspond to reality.

(7) The Ministry shall publish lists of registered insurance intermediaries and independent loss adjusters in the Financial Gazette and in a manner allowing remote access. The Ministry shall update such lists at least once in 2 weeks.

§ 13

Application of an Insurance Intermediary for the entry into the Register

(1) The Ministry shall decide on the entry of an insurance intermediary with residence or registered office in the territory of the Czech Republic or in the territory of a non-member state on the basis of a written application.

(2) A natural person with residence in the territory of the Czech Republic who intends to carry on insurance mediation activity shall state in the registration application the following:

a) data according to § 12 (3) a),

b) scope of insurance mediation activity according to the classes of insurance and the territory, in which the activity is to be carried on,

c) expected date of taking up of mediation activity,

d) identification number, if allocated.

(3) A natural person with residence in the territory of the Czech Republic who intends to carry on insurance mediation activity shall attach to the application pursuant to paragraph 2 the following:

a) document certifying the completion of professional education or of a professional examination passed or documents otherwise certifying the professional competence of the applicant (§ 18) and each person who is employed by such natural person and who directly participates in insurance mediation activity,

b) documents proving that the applicant possesses financial means corresponding to at least EUR 15 000, if the insurance intermediary shall be authorized to collect premiums from the policyholders or insurance benefits from the insurance undertaking,

c) documents proving the applicant's credibility (§ 19),

d) insurance contract for liability insurance against damage caused when carrying on the activity of insurance intermediary.

(4) A legal person with registered office in the territory of the Czech Republic intending to carry on insurance mediation activity shall state in the application for the entry into the register the following:

a) data according to § 12 (3) (b),

b) scope of insurance mediation activity according to the classes of insurance and the territory, in which the activity is to be carried on,

- c) expected date of taking up of mediation activity,
- d) identification number, if allocated.

(5) A legal person with registered office in the territory of the Czech Republic which intends to carry on insurance mediation activity shall attach to the application pursuant to paragraph 4 the following:

a) document certifying the completion of professional education or of a professional examination passed pursuant to this act or documents otherwise certifying the professional competence (§ 18) of the proxy and any person who directly participates in insurance mediation activity,

b) documents proving that the applicant possesses financial means corresponding to at least EUR 15 000 if the insurance intermediary shall be authorized to collect premiums from the policyholders or insurance benefits from the insurance undertaking,

c) documents proving the applicant's credibility (§ 20),

d) insurance contract for liability insurance against damage caused when carrying on the activity of insurance intermediary or a certificate pursuant to paragraph 6,

e) comprehensive extract from the Commercial Register not older than 3 months, if the legal person was entered into this Register before submitting the application.

(6) In the case of a tied insurance intermediary, the documents pursuant to paragraph 3 (a) and (d) and pursuant to paragraph 5 (a) and (d) shall be replaced by a written declaration of the insurance undertaking for which the tied insurance intermediary shall act, stating that the applicant meets the conditions for professional competence laid down by law and that the insurance undertaking takes full responsibility for the activity carrying on by the insurance intermediary for the benefit of the insurance undertaking. That shall also apply in the case of proving the existence of liability insurance against damage caused when carrying on the activity of insurance agent. In the case of a subordinated insurance intermediary, the documents pursuant to paragraph 3 (a) and (d) and pursuant to paragraph 5 (a) and (d) shall be replaced by a written declaration of the insurance agent or insurance broker, for which a subordinated insurance intermediary shall act, stating that the applicant meets the conditions for professional competence laid down by law and that the insurance agent or insurance broker takes full responsibility for this activity of the subordinated insurance intermediary.

(7) The application for entry into the register of the natural or legal person which has residence or registered office in the territory of a non-member state and intends to carry on insurance mediation activity in the Czech Republic shall be governed by the provisions of paragraphs 2 to 6. A certificate of residence in the territory of the Czech Republic of the applicant shall be attached to the application for the entry into the register; in the case of a legal person, also the certificate of residence in the Czech Republic of the head of the organizational unit of this person.

(8) The insurance intermediary shall be obliged to notify without unnecessary delay the Ministry of any change of the data entered in the register, including declaration and cancellation of bankruptcy or entry into liquidation, as soon as he learns of it.

(9) Application for entry into the register shall be subject to an administrative fee.

§ 14

Taking up of Activity of an Insurance Intermediary in the Territory of a Host Member State

(1) An insurance intermediary with residence or registered office in the territory of the Czech Republic shall be obliged, before taking up his activity in the territory of another Member State, to notify the Ministry of this intention. Within 1 month from the date on which it obtained this notification, the Ministry shall inform the competent authority of the host Member State of this intention of the insurance intermediary, including the identification data of the insurance intermediary. The Ministry shall also inform the insurance intermediary of this advice to the competent authority of the host Member State.

(2) An insurance intermediary with residence or registered office in the territory of the Czech Republic may take up his activity in the territory of another Member State upon the expiry of 1 month from the date when he was informed by the Ministry that the notification obligation pursuant to paragraph 1 has been met, or upon the day when he obtained this information in the case of a host Member State whose competent authority advised the Ministry that it is not interested in receiving information pursuant to paragraph 1.

(3) An insurance intermediary with home Member State other than the Czech Republic intending to take up his activity in the territory of the Czech Republic shall notify the competent authority of his home Member State of this intention.

(4) The Ministry shall inform the insurance intermediary pursuant to paragraph 3 of general conditions for carrying on his activity in the Czech Republic and shall enter the insurance intermediary into the register within 1 month from receipt of the identification data and confirmation of the competent authority of his entry in the register administered in his home Member State.

(5) An insurance intermediary pursuant to paragraph 3 shall be authorized to take up his activity in the territory of the Czech Republic after expiry of 1 month from the day on which he was informed by the competent authority of his home Member State that the notification obligation towards the Ministry has been met.

§ 15

Application of an Independent Loss Adjuster for the Entry into the Register

(1) The Ministry shall decide on entry of an independent loss adjuster on the basis of an application.

(2) A natural person who intends to carry on the activity of independent loss adjuster shall state in his application for the entry into the register the following:

a) data according to § 12 (3) (a),

b) scope of independent loss adjuster's activity according to classes of insurance and the territory in which the activity is to be carried on;

c) expected date of taking up of the activity of independent loss adjuster,

d) identification number, if allocated.

(3) A natural person who intends to carry on the activity of independent loss adjuster shall attach to the application pursuant to paragraph 2 the following:

a) document certifying the completion of professional education or of a professional examination passed or documents otherwise certifying the professional competence of the applicant (§ 18) and any person who is employed by such natural person and directly participates in the insurance mediation activity,

b) documents proving the applicant's credibility (§ 19),

c) insurance contract for liability insurance against damage caused when carrying on the activity of independent loss adjuster.

(4) A legal person which intends to carry on the activity of independent loss adjuster shall state in the application for the entry into the register the following:

a) data according to § 12 (3) (b),

b) scope of independent loss adjuster's activity according to the classes of insurance and the territory, in which the activity is to be carried on,

c) expected date of taking up of the activity of independent loss adjuster,

d) identification number, if allocated.

(5) A legal person which intends to carry on the activity of independent loss adjuster shall attach to the application pursuant to paragraph 4 the following:

a) document certifying the completion of professional education or of a professional examination passed pursuant to this act or documents otherwise certifying the professional competence of the proxy and any person who directly participates in the activity of independent loss adjuster,

b) documents proving the applicant's credibility (§ 20),

c) insurance contract for liability insurance against damage caused when carrying on the activity of independent loss adjuster,

d) comprehensive extract from the Commercial Register not older than 3 months, if the legal person was entered into this Register before submitting the application.

(6) In the case of the application for entry into the register of the natural or legal person with residence or registered office outside the territory of the Czech Republic, intending to carry on the activity of the independent loss adjuster on the territory of the Czech Republic, a document certifying permission for long-term stay or permission for permanent residence⁶⁾ of the applicant for the entry into the register in the territory of the Czech Republic shall be attached; in the case of a legal person this relates to the head of the organizational unit .

(7) An independent loss adjuster shall be obliged to notify without unnecessary delay the Ministry of any change of the data entered in the register, including declaration and termination of bankruptcy or entry into liquidation, as soon as he learns of it.

(8) Application for entry into the register shall be subject to an administrative fee.

§ 16

Entry into the Register

(1) Prior to the entry into the register the Ministry shall ascertain whether the conditions laid down in this act for entry into the register of the applicant have been met. If the submitted application is incomplete, the Ministry shall call on the applicant to amend it and shall set a time limit of at least 15 days for amending the application.

(2) The Ministry shall approve the application if the conditions laid down in this act have been met, within 60 days from the day on which the application or amended application pursuant to paragraph 1 has been delivered to the Ministry. The Ministry shall issue a certificate to the registered person, which shall contain the identification data, the number under which the person was registered, the identification of the register and the address where his entry in the register can be verified. The Ministry shall stipulate the particulars of the certificate of registration in its decree.

(3) If any of the conditions laid down in this act for the entry of an applicant into the register has not been met or if the applicant failed to amend submitted application in the stipulated time limit, the Ministry shall reject the application in administrative proceedings within the time limit pursuant to paragraph 2.

(4) The Ministry shall be obliged to perform any changes to the data in the register within 5 days from the day on which it learnt of the change provided that the change is not a reason for cancellation of the entry in the register.

⁶⁾ Act No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic and on amendment to some acts, as amended.

(5) The entry in the register of an insurance intermediary with residence or registered office in the territory of the Czech Republic shall authorize this person to carry on insurance mediation activity in the territory of all Member States under the conditions laid down in § 14 (1) and (2).

§ 17

Cancellation of the Entry in the Register

(1) By its decision the Ministry shall cancel entry in the register if

a) a registered person so requests,

b) a registered person has lost its credibility,

c) a registered person, whose insurance mediation activity or independent loss adjuster activity has been suspended, failed to bring its activity into harmony with this act within the time limit set by the Ministry,

d) a natural person with residence abroad or a legal person with registered office abroad has lost in the country of residence or registered office the authorization to carry on the activity of insurance intermediary or independent loss adjuster, or

e) a registered person has not carried on the activity of insurance intermediary or independent loss adjuster for at least 24 consecutive calendar months.

(2) The entry in the register expires upon the death of a natural person or the cessation of a legal person.

(3) A registered person shall be obliged to return the certificate of registration to the Ministry without undue delay after the decision by the Ministry to cancel the entry in the register gained legal validity.

(4) The Ministry shall inform the public in an appropriate manner of the cancellation of the entry in the register without undue delay after the decision, by which the entry in the register has been cancelled, gained legal validity. The Ministry shall simultaneously publish the legitimate decision on cancellation of the entry in the register in the Financial Gazette. The Ministry shall be obliged to inform of the cancellation of the entry in the register also the competent authorities of other Member States or competent authorities of the non-member states in which the activity of insurance intermediary or of independent loss adjuster was carried on, in the case of cancellation of the entry in the register of a person with residence or registered office in the Czech Republic whose scope of activities crossed the borders of the Czech Republic.

§ 18

Professional Competence

(1) Insurance intermediaries, independent loss adjusters and proxies shall be obliged to prove their professional competence, which is understood to mean the acquisition of general and professional knowledge essential for performance of their activity.

(2) General knowledge shall be proved by a document certifying completion of the secondary school education. Professional knowledge shall be proved by a document certifying completion of specialised study at a secondary school or university or by passing of a professional examination. For the purposes of professional competence specialised study shall mean secondary school or university study focusing on insurance, financial services and related fields. For the purposes of professional competence professional experience shall mean work in insurance or reinsurance undertaking related to the conclusion of insurance contracts or in the area of insurance mediation activity.

(3) In the case of tied insurance intermediaries, subordinated insurance intermediaries and independent loss adjusters a professional examination may be passed in an undertaking authorized to provide educational programs focusing on the attainment of professional competence and listed in a decree of the Ministry, and in the manner set out by such decree. The insurance undertaking may perform such activity as an activity linked to the insurance activity under conditions set by a special legal regulation⁷⁾ and such decree.

(4) In the case of insurance agents and insurance brokers a professional examination may only be passed before the examination commission, which is composed of at least 3 members appointed by the Minister of Finance. Only a person fully qualified to undertake acts in law, who has the corresponding professional knowledge and practical experience, may be a member of the examination commission. The minister of finance shall appoint the commission chairman from the members of the examination commission. If the Minister of Finance establishes two or more examination commissions, he shall be obliged to define their territorial authorization.

(5) The requirements of professional competence shall not apply to insurance intermediaries with home Member State other than the Czech Republic.

(6) A person with professional competence on the basic qualification level of professional competence who intends to carry on insurance mediation activity shall be obliged to prove his general knowledge, knowledge at the scope of the minimum professional standard laid down for the basic level of professional competence, knowledge of the insurance products which he intermediates and the ability to give a proper explanation of these products to the clients; a person who intends to carry on the activity of independent loss adjuster shall be obliged to prove general knowledge, knowledge of loss adjustment procedures and ability to determine the amount of insurance benefits in accordance with the content of the insurance contract.

(7) A person with professional competence on the medium qualification level of professional competence shall be obliged to prove general knowledge, knowledge at

⁷⁾ § 2 (1) (h) and § 3 (4) of the Act No. 363/1999 Coll., as amended by Act No. 39/2004 Coll.

the scope of the minimum professional standard laid down for the medium level of professional competence, at least two years' professional experience, knowledge of the insurance products which he intermediates, the ability to give a proper explanation of such products to the clients, the ability to analyze competing products of insurance undertakings in whose name he is authorized to act and the ability to offer insurance clients the product best suited to their needs.

(8) A person with professional competence on the high qualification level of professional competence shall be obliged to prove general knowledge, knowledge corresponding to the minimum professional standard laid down for the high level of professional competence, at least four years' professional experience, knowledge of the insurance and reinsurance products offered on the insurance market in the sector in which he is active, the ability to analyze competing products and to offer the clients the insurance or reinsurance product best suited to their needs and to give a proper explanation of this product to the client.

(9) A person who is obliged to prove his professional competence pursuant to this act by completion of specialised study or a professional examination shall be obliged to further continuously complement his professional knowledge. He shall be obliged to complete a further training course after 5 years from the completion of specialised study or from passing the professional examination and then after every subsequent 5 years.

(10) The Ministry shall stipulate in a decree

a) list of the documents which shall prove the completion of specialised study pursuant to paragraph 1;

b) minimum professional standard of knowledge for the basic, medium and high levels of professional competence;

c) method for passing and the scope of the professional examinations of an insurance agent and insurance broker, including the conditions on which such examinations may be passed, and

d) list of schools, training facilities and specialised professional undertakings authorized to provide educational programs focusing on the attainment of professional competence.

§ 19

Credibility of Natural Persons

(1) For the purposes of this act a credible natural person is taken to be a natural person fully qualified to undertake acts in law

a) who, during the last 10 years before the date of submission of the application to which the duty to prove credibility of a natural person is related pursuant to this act, has not been officially convicted of a crime against property, an economic crime or

another deliberate crime⁸⁾ or whose conviction for such crimes has been overturned or who is for another reason treated as if not convicted (condition of unimpeachability);

b) who has not been declared bankrupt;

c) who was not, during the last 5 years before the date of submission of the application to which the duty to prove the credibility of a natural person is related pursuant to this act, a member of the statutory body or other body of a legal person which was declared bankrupt or a bankruptcy petition was rejected for lack of assets;

d) whose licence to carry on the activity of insurance intermediary or independent loss adjuster was not revoked for violation of the conditions laid down by this act.

(2) For the purposes of this act a credible natural person is also taken to be a natural person fully qualified to undertake acts in law for whom the circumstances listed in paragraph 1 (b) or (c) occurred, if

a) the court annulled the bankruptcy in a manner other than

1. by ruling on the annulment of bankruptcy after fulfilment of a distribution ruling or because the insolvent's assets were insufficient to cover the costs of bankruptcy, or
2. by ruling on rejection of the bankruptcy petition for lack of assets,

b) if the person was elected to his office after the legal person had fallen into insolvency, or

c) if the person obtains a ruling in proceedings under a special legal regulation⁹⁾ that he carried out his function to date with due care and attention.

(3) If circumstances resulting in a loss of credibility occur, the natural person shall be obliged to notify the Ministry thereof without undue delay and may not carry on activity. This shall not prejudice the rights of third parties acquired in good faith, provided the activity was carried on before cancellation of the registration.

§ 20

Credibility of Legal Persons

(1) A legal person shall be deemed to be credible,

a) if all members of the statutory body and supervisory board of the legal person meet the conditions set out in § 19;

b) if its licence to carry on activity of the insurance intermediary or of the independent loss adjuster was not revoked for breach of the conditions laid down by this act;

⁸⁾ § 4, Part Two and Nine of Act No. 140/1961 Coll., criminal code, as amended.

⁹⁾ § 200 (e) of Act No. 99/1963 Coll., civil court rules of procedure, as amended.

c) if it has not been declared bankrupt.

(2) For the purposes of this act a legal person which was declared bankrupt shall be deemed to be a credible legal person if the court annulled the bankruptcy in a manner other than

a) by ruling on the annulment of bankruptcy after fulfilment of a distribution ruling or because the insolvent's assets were insufficient to cover the costs of bankruptcy, or

b) by ruling on rejection of the bankruptcy petition for lack of assets.

(3) A legal person shall lose its credibility under this act immediately when it ceases to satisfy any of its credibility conditions. The legal person shall be obliged to notify the loss of credibility to the Ministry without undue delay and it shall not be allowed to carry on the insurance mediation activity or the activity of the independent loss adjuster. This shall not prejudice the rights of third parties acquired in good faith, provided the activity was carried on before cancellation of the registration.

(4) In the case of a legal person with registered address in the territory of a state other than the Czech Republic, a confirmation of the competent authority of the country of registered address of the legal person shall be deemed a document certifying satisfaction of the credibility conditions.

§ 21

Obligations of Insurance Intermediaries and Independent Loss Adjusters

(1) A person carrying on the insurance mediation activity or the activity of independent loss adjuster shall be obliged to carry on this activity with professional care and attention and to protect consumers' interests; in particular, the person may not state false, unproven, incomplete, inaccurate, unclear or ambiguous information and data or conceal information on the nature and properties of the services provided. When so requested, it shall be obliged to present the client, insurance or reinsurance undertaking with a certificate of registration pursuant to this act. When so requested by a client, the person shall be obliged to inform the client of how he is remunerated. He may not provide the client with unjustified advantages of a financial, material or non-material nature in connection with its activity as insurance intermediary or independent loss adjuster.

(2) A person carrying on insurance mediation activity in the territory of the Czech Republic through a system enabling remote access shall be obliged to ensure that the data of its entry in the register, in particular the number under which it was entered into the register pursuant to this act, scope of the intermediary activity as regards the classes of insurance and the territory in which such activity may be carried on, and the date of commencement of such activity, are accessible to the public.

(3) Insurance intermediary or independent loss adjuster shall be liable for damage caused by its activity. It shall be released from this liability if it can prove that the damage could not be prevented, even by the exertion of all the effort that can be demanded from it.

(4) Insurance intermediary or independent loss adjuster shall be obliged to keep the confidentiality pursuant to a special legal regulation regulating insurance¹⁰⁾ of all circumstances which it learnt in connection with the performance of its activity and may not misuse them for its own benefit or for another's benefit.

(5) Before concluding an insurance contract or, if necessary, when changing an insurance contract, the insurance intermediary shall be obliged to inform the client or the policyholder

a) of the business or commercial name, in the case of a legal person the registered address, in the case of natural persons the name or names, surname, residence address and place of business, if different from the residence address, and possibly the name or names and the surname of the person acting on behalf of the insurance intermediary;

b) of the register in which it is registered and the manner in which its register entry can be verified;

c) of any direct or indirect share exceeding 10%, which the insurance intermediary has in voting rights and in capital of the insurance undertaking with which insurance is to be concluded;

d) whether the insurance undertaking, with which insurance is to be concluded, or a person controlling this insurance undertaking has a direct or indirect share exceeding 10% in the voting rights and capital of the insurance intermediary;

f) of the details of procedures under which the consumer and other affected persons may file a complaint or legal action against the insurance intermediary.

(6) The insurance intermediary shall be obliged to inform the client, taking into account the nature of the insurance contract being intermediated, that

a) it provides insurance mediation in a manner in which it is obliged to provide proper analysis pursuant to paragraph 7;

b) it is contractually bound to carry on mediation of the given insurance solely for one insurance undertaking or more than one insurance undertaking and to inform the client, at the client's request, of the names of these insurance undertakings; or that

c) it does not carry on insurance mediation under (a) and (b) above and, at the client's request, it shall inform the client of the names of the insurance undertakings with which it is authorized to mediate insurance.

¹⁰⁾ § 39 of Act No. 363/1999 Coll., as amended.

(7) If the insurance intermediary bases its recommendations to a client on an analysis of the products offered by insurance undertakings, it shall be obliged to provide its recommendations on the basis of an analysis of a sufficient number of insurance products offered on the market so as to recommend, based on professional criteria, concluding the insurance contract which corresponds to the client's needs and requirements.

(8) Before concluding the insurance contract the insurance intermediary shall be obliged, based in particular on the information provided by the client and in accordance with the nature of the insurance being concluded, to record the client's requirements and needs relating to the insurance being concluded and the reasons on which the insurance intermediary bases its recommendation to choose the given insurance product.

(9) Unless stipulated otherwise below, the insurance intermediary shall be obliged to provide the information pursuant to paragraphs 5 to 8

a) in writing or on a data medium accessible to the client;

b) clearly, precisely and in a manner comprehensible to the client; and

c) in the official language of the Member State in which the insurance is being concluded, or in another agreed language.

(10) The information provided under this act to the client may be imparted verbally or by telephone, if the client so requests or if it is necessary due to the nature of the insurance being concluded. In that case such information, in the form set out in paragraph 9, shall be provided without undue delay after the insurance contract is concluded.

(11) The provisions of paragraphs 5 to 10 shall not apply to mediation of insurance of large risks¹¹⁾ and mediation of reinsurance.

§ 22

State Supervision of the Activity of Insurance Intermediaries and Independent Loss Adjusters

(1) The Ministry shall exercise state supervision of the activity of insurance intermediaries with residence or registered address in the territory of the Czech Republic or a non-member state and of the activity of independent loss adjusters. In exercising this supervision the Ministry shall proceed according to a special legal regulation on insurance²⁾, unless this act states otherwise. State supervision of the activity of insurance intermediaries with home Member State other than the Czech Republic operating in the territory of the Czech Republic shall be exercised by the competent authority of the home Member State of the insurance intermediary in co-ordination with the Ministry.

¹¹⁾ § 38 (a) of Act No. 363/1999 Coll., as amended by Act no. 39/2004 Coll.

(2) Insurance agents and insurance brokers shall be obliged, by 31 March of each calendar year, to submit to the Ministry an annual statement of activity, which shall contain a list of insurance undertakings or insurance intermediaries for which they operated in the past calendar year, the volume of business transactions concluded for the past calendar year and the volume of insurance premiums, and possibly insurance benefits, if the insurance agent or insurance broker was authorized for transfer thereof in the past calendar year. If the insurance agent or insurance broker is a legal person, the accuracy and completeness of the annual statement shall be confirmed by the proxy's signature. The details and form of the annual statement shall be specified by the Ministry by decree. At the request of the Ministry, insurance intermediaries and independent loss adjusters shall be obliged to submit to the Ministry documents kept in connection with the activity carried on.

(3) The Ministry shall be obliged to exchange with the competent authorities information on insurance intermediaries on which remedial measures or sanctions have been imposed if there is a risk of the register entry cancellation. On request, the Ministry shall exchange with the competent authorities information necessary for the exercise of its activity, related to the activity of insurance intermediaries and independent loss adjusters.

(4) When so requested, the Ministry shall be obliged to provide any person with information on the competent authorities of other Member States. To this purpose it shall gather and regularly update such information.

§ 23

Remedial Measures

(1) If, in exercising the state supervision, the Ministry learns that the activity of an insurance intermediary or an independent loss adjuster does not comply with the conditions laid down by this act, with the exception of the loss of credibility or the termination of liability insurance of the insurance intermediary or independent loss adjuster or insufficient financial capacity of the insurance agent or insurance broker, it shall issue a ruling instructing such person to take measures to bring its activity in compliance with the act within a specified time limit.

(2) The Ministry shall suspend the activity of an insurance intermediary or independent loss adjuster

a) if the activity of the insurance intermediary or independent loss adjuster was not brought in compliance with this act within the time limit specified by the Ministry,

b) if the liability insurance of the insurance intermediary or independent loss adjuster liability was terminated,

c) if the insurance agent or insurance broker does not meet the condition of financial capacity, or

d) if the proxy does not meet conditions or does not fulfil obligations laid down by this act.

(3) The activity of an insurance intermediary or independent loss adjuster may be suspended for a maximum of 6 months.

(4) A registered person shall be obliged to return to the Ministry its certificate of registration as soon as the ruling of the Ministry on suspension of the activity of an insurance intermediary or independent loss adjuster takes effect.

(5) An insurance intermediary or independent loss adjuster may not intermediate the conclusion of new insurance or reinsurance contracts, intermediate the extension or broadening of intermediated insurance or reinsurance contracts and receive premiums or insurance benefits during the period in which its activity has been suspended.

(6) If the proxy fails to fulfil the obligations laid down by this act, the Ministry shall instruct the legal person which appointed the proxy to change the proxy. Such legal person shall be obliged to appoint another proxy within 1 month from the day on which the ruling of the Ministry mentioned in the first sentence takes effect. The natural person who carried out the office of proxy and in respect of whom the Ministry ordered the change may not carry out the office of proxy or the activity of insurance intermediary or independent loss adjuster during the period of 10 years after the date when the decision of the Ministry on the change of proxy takes effect.

§ 24

Interruption of Activity

(1) The activity of an insurance intermediary or independent loss adjuster may be interrupted, however, not for longer than 1 year.

(2) A registered person shall be obliged to notify the Ministry of its decision to interrupt the activity of insurance intermediary or independent loss adjuster before such interruption and shall be obliged to return to the Ministry its registration certificate.

(3) An insurance intermediary or independent loss adjuster which has interrupted its activity may not intermediate the conclusion of new insurance or reinsurance contracts, intermediate the extension or broadening of intermediated insurance or reinsurance contracts and transfer premiums or insurance benefits throughout the period of interruption.

(4) An insurance intermediary or independent loss adjuster shall be obliged to complete those business transactions where negotiations about such transactions were commenced before the day on which it decided to interrupt its activity.

Misdemeanours and Miscellaneous Administrative Offences

§ 25

(1) A misdemeanour shall be deemed to have been committed by an person who

- a) deliberately gives false information in the application for an entry into the register or for a change to the information kept in the register;
- b) gives false information in its annual statement of activity or gives false information to the Ministry during the exercise of state supervision by the Ministry; or
- c) contravenes the confidentiality obligation (§ 21 (4)).

(2) A fine of up to CZK 1 000 000 may be imposed for a misdemeanour pursuant to paragraph 1.

(3) Misdemeanours pursuant to paragraph 1 shall be dealt with by the Ministry.

(4) The conditions of responsibility for misdemeanours shall be judged and misdemeanour proceedings conducted pursuant to a special legal regulation.¹²⁾

§ 26

(1) A fine of up to CZK 1 000 000 may be imposed on a legal person which

- a) deliberately gives false information in the application for the entry into the register or for a change to the information kept in the register;
- b) gives false information in its annual statement of activity or gives false information to the Ministry during the exercise of state supervision by the Ministry; or
- c) contravenes the confidentiality obligation (§ 21 (4)),

for such administrative offence.

(2) A fine of up to CZK 10 000 000 may be imposed on an insurance intermediary or independent loss adjuster which

- a) carries on insurance mediation activity or the activity of an independent loss adjuster in contravention of the data entered in the register;
- b) severely jeopardizes the fulfilment of its contractual commitments by breaching an obligation laid down by law;
- c) fails to fulfil an obligation imposed on it by the Ministry under this act within the specified time limit;

¹²⁾ Act No. 200/1990 Coll., on offences, as amended.

d) demands from a person which is to participate in insurance mediation activity the payment of a start-up fee as a condition of the payout of future remunerations for such activity; or

e) derives the remuneration of a person, who is to participate in insurance mediation activity, from the acquisition of other persons for such activity, which persons he thus acquired;

for such administrative offence.

(3) Administrative offences pursuant to paragraphs 1 and 2 shall be dealt with by the Ministry. Fines imposed under this act shall constitute an income of the state budget; fines shall be collected and enforced by the appropriate local finance office pursuant to a special legal regulation.¹³⁾

(4) When determining the amount of a fine, the degree of gravity and scale of the consequences which the violation of legal obligation caused, or might have caused, the circumstances under which it occurred, the period of time over which the breach of legal obligation occurred and the degree to which the interests of consumers and the good repute of the insurance industry were damaged shall be taken into particular account.

(5) Administrative offence proceedings may be initiated up to 1 year from the date on which the Ministry learnt of the circumstances mentioned in paragraphs 1 and 2, however, not later than 3 years from the date on which such circumstances occurred.

(6) A disciplinary fine of up to CZK 10 000 000 may be imposed on an insurance intermediary or independent loss adjuster which prevents or seriously impedes the exercise of state supervision under this act; administrative proceedings on a disciplinary fine may be initiated up to 30 days from the date on which such circumstance occurred. The provisions of paragraphs 3 and 4 shall apply adequately.

§ 27

Common Provisions

(1) From 31 December of the calendar year the values expressed in this act in the euro currency unit shall be converted into Czech crowns according to the foreign exchange rate declared by the Czech National Bank as of the last day of the previous calendar month of October.

(2) An insurance contract for insurance against liability for damages caused by the activity of an insurance intermediary or independent loss adjuster shall be concluded in such a way that

a) the retention, if agreed, shall not exceed 1% of the agreed limit of indemnity;

¹³⁾ Act No. 337/1992 Coll., on administration of taxes and fees, as amended.

b) the insurance shall apply also to the liability of persons acting on behalf of the insurance intermediary or independent loss adjuster;

c) the damage caused by neglect, error or omission shall not be excluded from the insurance cover;

d) the insurance shall cover also indemnification for property losses and loss of documents of a policyholder, insured and damaged party or other entitled person.

(3) Proceedings in matters regulated by this act shall take place pursuant to the administrative procedure rules, unless stipulated otherwise by this act. If the Ministry is to decide in a matter which is too complicated to allow a decision to be made within the time limit specified by this act, the Ministry shall decide within a time limit extended by 30 days; in especially complicated cases the Ministry may extend the time limit by up to 60 days. The Ministry shall be obliged to notify participants in the proceedings of the extension of the time limit and of the reasons thereof at the latest by the end of the time limit stipulated by this act for issuing a decision in the matter.

(4) Documents and other written materials submitted to the Ministry in a foreign language shall be furnished with an officially verified translation into Czech.

(5) Unimpeachability shall be proved by means of an extract from the Criminal Register no more than 3 months old; a foreign natural person shall prove his unimpeachability also by equivalent documents issued by the state of which the natural person is a citizen and by the states in which he has resided without interruption for more than 3 months during the preceding 3 years.

(6) If the state of which a foreign natural person is a citizen or a state in which he has resided without interruption for more than 3 months during the preceding 3 years does not issue documents adequate to the extract from the Criminal Register, a document issued by the appropriate court or administrative office of the state of which the natural person is a citizen or of the state in which he has resided without interruption for more than 3 months during the preceding 3 years shall be deemed to be an equivalent document on unimpeachability.

(7) If a state does not issue documents pursuant to paragraph 5, a sworn statement or affidavit no more than 3 months old made by the natural person before an appropriate court or administrative office or before a state notary of the state of which the natural person is a citizen or a state in which he has resided without interruption for more than 3 months during the preceding 3 years shall be deemed to be an equivalent document. The authenticity of a sworn statement or affidavit shall be confirmed by a court, administrative office or notary.

(8) The provisions of paragraphs 6 and 7 for proving the satisfaction of other credibility conditions pursuant to § 19 and 20 shall apply adequately.

Special Provisions

(1) Premium paid by a policyholder to an insurance undertaking through an insurance intermediary shall be deemed to be paid to the insurance undertaking; premium returned to the policyholder by the insurance undertaking shall be deemed paid at the moment when the policyholder actually obtains it. Insurance benefit paid by an insurance undertaking through an authorized insurance intermediary or independent loss adjuster shall be deemed remitted at the moment when the beneficiary actually obtains it.

(2) The financial means of an insurance undertaking, reinsurance undertaking or policyholders and insured persons in the account of an insurance intermediary or independent loss adjuster under § 7 (6) (b) and § 8 (6) (b) shall not be included in bankruptcy assets pursuant to a special legal regulation.¹⁴⁾

(3) The balances of financial means in separate bank accounts of an insurance intermediary under § 7 (6) (b) and § 8 (6) (b) shall be included in financial capacity pursuant to § 7 (6) (a) and § 8 (6) (a).

§ 29

Interim Provisions

(1) A person which, before this act entered into force, carried on the activity of insurance or reinsurance broker under the hitherto applicable legal regulations and which intends to carry on insurance mediation as an insurance intermediary qualified for the high qualification level of professional competence shall be obliged, within 6 months from the effective date of this act, to prove to the Ministry that it has concluded an insurance contract pursuant to § 8 (5) and that it meets the conditions pursuant to § 8 (6), provided it has been authorized to receive premiums from a policyholder or insurance benefits from an insurance undertaking, and, in the case of a legal person, the name or names, surname, date of birth and address of the proxy. The Ministry shall, within 60 days from receipt of the data as pursuant to the first sentence, issue such person with a certificate of registration of an insurance intermediary qualified for the high qualification level of professional competence. Should the insurance or reinsurance broker fail to do so within the time limit, the Ministry shall cancel the entry of the insurance or reinsurance broker in the register kept under the hitherto applicable legal regulations. It shall notify the person whose entry in the register was cancelled and shall publish such decision in the manner pursuant to § 17 (4) within 5 days of the effective date of the decision on cancellation of the entry in the register.

(2) A person who, before the effective date of this act, carried on the activity of insurance intermediary under the hitherto applicable legal regulations and intends to carry on insurance mediation activity shall be obliged, within 6 months of the effective

¹⁴⁾ § 18 of Act No. 328/1991 Coll., on bankruptcy and compensation, as amended.

date of this act, to submit the application for the entry into the register pursuant to § 13.

(3) A person who, before the effective date of this act, carried on claims handling of insured events under a contract with an insurance undertaking shall be obliged, within 6 months of the effective date of this act, to apply for the entry into the register as an independent loss adjuster pursuant to § 15.

(4) An insurance intermediary and independent loss adjuster mentioned in paragraphs 1 to 3 above, which cannot produce a document certifying completion of specialised study, shall pass a professional examination within 2 years of the effective date of this act and shall prove to the Ministry that it has passed the examination within the aforementioned time limit. If it fails to do so within the aforementioned limit, the Ministry shall cancel the entry in the register. This applies also for the submission of the document certifying the completion of a secondary school in the case of insurance and reinsurance brokers. In the case of other insurance intermediaries and independent loss adjusters, the submission of the document certifying the completion of a secondary school shall not be requested.

(5) An insurance intermediary with home Member State other than the Czech Republic, which intends to carry on insurance mediation activity before the treaty on the accession of the Czech Republic to the European Union comes into force shall be deemed to be an insurance intermediary with residence or registered address in a non-member state.

PART TWO

Amendment of the Trades Licensing Act

§ 30

In § 3 (3) (a) of Act No. 455/1991 Coll., on trading (the trades licensing act), as amended by Act No. 286/1995 Coll., Act No. 15/1998 Coll., Act No. 363/1999 Coll., and Act No. 362/2000 Coll., the words “insurance agents, insurance and reinsurance brokers” shall be replaced by the words “insurance intermediaries and independent loss adjusters” and at the end of the text of footnote No. 12) the following words shall be added: “Act No. 38/2004 Coll., on insurance intermediaries and on independent loss adjusters and on amendment to the trades licensing act (act on insurance intermediaries and independent loss adjusters).”.

PART THREE

EFFECT

§ 31

This act shall enter into force on 1 January 2005.

Zaoralek (signature)

Klaus (signature)

Spidla (signature)