

# client alert

INSURANCE | TURKEY |

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## NEW ERA FOR THE TURKISH PRIVATE PENSION SYSTEM: AUTO-ENROLMENT

The Law Amending the Private Pension Savings and Investment System Law No. 4632 was published in the Official Gazette on 25 August 2016 (the "**Amended Pension Law**"). Setting out the basis for auto-enrolment into the private pension system, these amendments are bringing major change to the market rules and are expected to significantly contribute to the increase in domestic savings and, accordingly, to financial stability.

On a long-term basis, gross domestic savings in Turkey are forecast to reach 20% within ten years, up from the current 15-16%, but far below the world average (26%) and the EU average (22%).

Since these new amendments set out only general provisions for auto-enrolment into the pension system, a number of points will have to be clarified further through the adoption of secondary legislation, as further described below.

### CONTRIBUTOR PROFILE

According to the Amended Pension Law, individuals will be automatically enrolled into the private pension system from 1 January 2017, where such individuals:

- hold Turkish citizenship or have alienage permissions according to Article 28 of Law No. 5901 on Turkish Citizenship;
- are under the age of 45 (including individuals being under the age of 45 at 1 January 2017); and
- qualify as employees (under Article 4/1-a of the Social Security and General Health Insurance Law No. 5510) or as contracted personnel for public authorities (under Article 4/1-c of the same law).

### CONTRIBUTION PROCEDURE AND AMOUNT

Pension Contracts entered into under the auto-enrolment system must be concluded by the employers in the form of group contracts where employers will be solely liable for the transfer of their employees' contribution amounts to the pension companies. In contrast with the expectations of the private pension market, the Amended Pension Law does not add liabilities on the employers to contribute to the pension plans of their employees, their obligation remaining limited to the mere transfer of the funds contributed by the said employees.

It is worth mentioning that the amount of employee contributions transferred by the employers shall be considered as employee rights and, accordingly, as privileged receivables under the Execution and Bankruptcy Law.

The minimum contribution amount is set as 3% of the revenues taken as basis to calculate social security premiums, subject to the minimum and maximum limits of such basis, as set out under the social security legislation. Based on the currently applicable limits, the minimum monthly contribution amount for the auto-enrolment system will range between approximately TRY 49 and 320 for private sector employees. In the very first draft of the amendments, this minimum amount had been set as a percentage corresponding to TRY 150, however it was then decreased to 3% upon request of the Insurance Association of Turkey in order to reduce the risk of opting out from the private pension system.

The council of ministers may increase this above percentage twice at most, decrease it down to 1%, or set a fixed limit.

It should also be highlighted here that pension contracts concluded under the auto-enrolment system shall only be subject to fund operating expenses fees and accordingly be exempt from entry and administrative expenses fees.

## **OPT-OUT OPTIONS**

Despite the auto-enrolment principle set under the Amended Pension Law, employees are free to withdraw from their pension plan within two months following the date of notification of conclusion of the pension plan. In this case, repayment of the amounts contributed by such employees must be made within 10 days following their request.

Even in the event of termination of the employment relationship, employees may continue to contribute to the pension plans concluded by their former employer, provided that they submit a request in this regard to the relevant pension company before the end of the month following the termination of their employment relationship.

## **STATE CONTRIBUTIONS**

Provided that the employee has not opted out from the auto-enrolment system and stayed within the private pension system for a minimum duration of 10 years and reached the age of 56, such employee shall be entitled to benefit from an additional State contribution in the amount of TRY 1,000.

Where an employee chooses to enrol for an annuity insurance of at least 10 years upon meeting the above retirement criteria, he or she shall benefit from another additional State contribution equal to 5% of the total accumulated savings amount.

## **CONTRIBUTION MONITORING AND COLLECTION PROCEDURE**

The Amended Pension Law provides that pension companies are liable for the collection and monitoring of the contribution amounts made by employees. However, the Undersecretariat of Treasury is also entitled to appoint an authorised entity for this specific contribution and collection procedure.

Where such an authorised entity is appointed, personal data transfer between this entity, banks and the Pension Monitoring Centre shall not require the express consent of the employees and be deemed to comply with the provisions of the Data Protection Legislation.

## ADMINISTRATIVE FINES

Where employers breach their liabilities under the private pension legislation, the Ministry of Labour and Social Security is entitled to apply fines of up to TRY 100 for each case of breach.

## FURTHER CLARIFICATIONS AND SECONDARY LEGISLATION

As the provisions of the Amended Pension Law only provide for a general framework regarding the auto-enrolment system, the Treasury is expected to adopt additional pieces of secondary legislation before the end of the year in order to clarify certain details, including the auto-enrolment procedure (possible pilot start of this system with specific categories of workplaces), pension plan contents, requirements for the contracts to be concluded between employers and pension companies etc.

*In compliance with Turkish bar regulations, opinions relating to Turkish law matters included in this client alert have been issued by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.*

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