

# client alert

INSURANCE | TURKEY |

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## SECONDARY LEGISLATION ON PENSION AUTO-ENROLMENT SYSTEM

As the date of the entry into force of new pension auto-enrolment system approaches, three amending regulations and two sector announcements were published by the Undersecretariat of Treasury ("**Treasury**") last week:

- Regulation amending the Regulation on the Private Pension System;
- Regulation amending the Regulation on the State Contribution in Private Pension System;
- Regulation amending the Regulation on the Establishment and Operation Principles of the Pension Investment Funds;
- Sector Announcement No. 2016/30 on the Implementation Principles of the Private Pension Auto-Enrolment System ("**Sector Announcement No. 2016/30**");
- Sector Announcement No. 2016/31 on the Authorized Companies within the Scope of the Auto-Enrolment System;
- Regulation on the Principles on the Entrance to the Auto-Enrolment System.

According to the above secondary legislation focusing on the auto-enrolment system, clarifications have been made as to the requirements regarding the pension agreements, state contribution amounts and allowance times, nature of the pension investment funds and the requirements for the operations concerning the pension investment funds.

You may find below a brief explanation of the notable changes brought about by these new pieces of legislation.

### REQUIREMENTS REGARDING THE IMPLEMENTATION OF THE PENSION AGREEMENTS

The above secondary legislation introduces a number of new requirements on the execution of pension agreements:

- Usage of certain contributor rights under the pension agreements (i.e. most contractual rights except the right to terminate the agreement) may be delegated to sponsors or employers for group pension agreements and agreements to be concluded within the scope of the auto-enrolment system. Usage of such rights are subject to the provisions of the Turkish Code of Obligations and the Turkish Civil Code for minors at the age of discretion (i.e. validity of certain instructions shall be subject to confirmation by their guardians);

- In principle, termination of pension agreements must be made in the same way as their conclusion (e.g. termination must be made via a call centre if the agreement was concluded via call centre operators). However, sponsors or employers may opt for a specific method (within the scope of the legislation) to terminate the pension agreements;
- All losses and default interests arising from the late implementation of termination requests concerning pension agreements must be borne by the pension companies;
- Contributors must be informed that all their pension accounts will be consolidated at the time of the entitlement to pension. However, pension agreements within the scope of the auto-enrolment will not be subject to such consolidation;
- Employees are entitled to receive payment of all of their rights under pension agreements concluded within the scope of the auto-enrolment system, where:
  - Their employment agreement is terminated on a ground other than the justified cause; or
  - The employee becomes disabled; or
  - The employer bankrupts.

## MINIMUM CONTENT REQUIREMENTS OF THE PENSION AGREEMENTS

The secondary legislation provides that the following minimum content must appear in pension agreements.

- Obligations and rights of the parties;
- Salary payment date and reconciliation procedure;
- Procedure for the update of employee personal data, notifications and payments to be made to the relevant parties must be indicated in the pension agreements.

The newly published legislation also specifies that collection and processing of personal data do not require the express consent of the employer if execution of the pension agreements occurs within the scope of the auto-enrolment system, and this exemption does not constitute a breach of the Personal Data Protection Law provisions.

## PENSION INVESTMENT FUNDS

- Pension companies must make available two different fund types for auto-enrolment: introduction funds and standard funds. Each must provide at least one fund providing interest income and another fund which does not contain any interest-related investment instrument.
- Pension companies are liable for the management of the introduction funds (subject to the choice of the employer) without any drop in value during the two-month opt-out period;

- At the end of the opt-out period, if the contributors/employees have not made a choice as regards the funds, their contributions must be invested in the same introduction funds for another ten months;
- If requested by the contributors/employees, contributions must be invested in the above-mentioned introduction funds as long as such contributors/employees remain in the system;
- During the auto-enrolment system opt-out period, pension investment funds containing investment instruments without interest may wholly consist of participation accounts. In such cases, a maximum of 35% of the fund portfolio must be invested in the same bank;
- During the auto-enrolment system opt-out period, pension investment funds containing investment instruments with interest may wholly consist of participation and deposit accounts. In such cases, a maximum 10% of the fund portfolio must be invested in the same bank;
- As from 1 July 2017, a maximum of 30% of the auto-enrolment system funds must be managed by the same portfolio management company;
- For pension investment funds other than those dedicated to the auto-enrolment system, the above 30% restriction applies from 1 January 2017;
- Ratios and limits applicable to the investment instruments to be included to the funds are detailed in the Sector Announcement No. 2016/30 and Regulation amending the Regulation on the Establishment and Operation Principles of the Pension Investment Funds.

## PRIVATE PENSION AUTO-ENROLMENT SYSTEM OPT-IN DATES FOR THE PRIVATE AND PUBLIC SECTORS

The opt-in dates for the auto-enrolment system were made public in the Regulation on the Principles on the Entrance into the Auto-Enrolment System (the "**Entrance Regulation**"), which provides the following mandatory opt-in dates for private sector companies:

- **1 January 2017** for companies having **1,000 or more** employees;
- **1 April 2017** for companies having **250-999** employees;
- **1 July 2017** for companies having **100-249** employees;
- **1 January 2018** for companies having **50-99** employees;
- **1 July 2018** for companies having **10-49** employees;
- **1 January 2019** for companies having **5-9** employees;

As regards public sector companies and institutions, opt-in dates have been defined as follows:

- Public administration institutions indicated in the annexes of the Public Finance Management and Control Law and social security institutions will be subject to the auto-enrolment system from **1 April 2017**; and

- Local administration institutions and state economic enterprises will be subject to the auto-enrolment system from **1 January 2018**.

Regulations regarding the auto-enrolment system will become effective on **1 January 2017** to be in line with the entry into force of the new auto-enrolment system.

*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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