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client alert

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NEW REGULATORY FRAMEWORK FOR THE TURKISH PRIVATE PENSION SYSTEM IN 2016

Being the effective date of both the new Regulation on the Private Pension System (the "**Regulation**") and of numerous secondary legislations relating to this Regulation, 1 January 2016 is a milestone for the Turkish private pension legislation.

After the announcement of this new Regulation, the Undersecretariat of Treasury (the "**Treasury**") also issued the following secondary legislations to explain the operational rationale behind these new provisions.

CIRCULAR ON THE ADDITIONAL BENEFITS GRANTED TO PARTICIPANTS IN THE PRIVATE PENSION PLANS NO. 2015/56

Circular No. 2015/56 on the Additional Benefits granted to Participants in the Private Pension Plans was issued by the Treasury on 21 December 2015, replacing previous Circular No. 2010/7 issued in May 2010 and that regulated similar matters.

The main matters governed by this new Circular include:

- Implementation principles of the additional benefits granted by pension companies are no longer subject to the approval of the Treasury, and registration of such implementation principles by the pension companies to the existing *e-benefit system* is therefore sufficient. Any new additional benefit may only be made available to the participants after it has been registered, together with the relevant information form.
- Each additional benefit must be separately associated with the relevant pension plan(s) and can be implemented at any time from the date of such association, without the need for any further change in the relevant pension plan.
- If a business partner of the pension company (such as a bank, a credit card company or an insurance company) bears the cost of any discount made under a pension plan, such discount does not need to be registered as an additional benefit.
- Implementation principles of the additional benefits shall be drafted in a comprehensible and readable manner and must be provided to the sponsors and/or participants together with the proposal forms. For the existing participants and sponsors, such documents shall be sent within the 5 business days following the association of the additional benefit with the pension plans.

The above principles entered into effect on 21 December 2015.

CIRCULAR ON THE IMPLEMENTATION OF THE PRIVATE PENSION REGULATION NO. 2015/50

Circular No. 2015/50 on the Implementation of the Private Pension Regulation was issued by the Treasury on 30 November 2015, replacing previous Circular No. 2015/33 issued in August 2015 and that regulated similar matters.

Major updates brought by the new Circular include:

- If a contribution is not paid within three months of its due date, the participant is given the "irregular payment" status. This status enables pension companies to make several deductions beyond the legal thresholds (control limits) applicable to regular pension contracts. Exit from the "irregular payment" status requires payment by the participant of all current and past outstanding contributions.
- Administrative expense fees and entrance fees cannot be deducted from the participants' contributions after completion of the fifth year of their contract.
- In the event a contract is voluntarily transferred by a participant to another pension company, the contractual duration taken into account for the calculation of deductions must start from the first entry of the relevant contract into the pension system. Several concrete calculation examples have been set out under the Circular.
- Reimbursement of deductions to participants must be made within a period of 5 business days (i) from the date the pension company detects that deductions have exceeded the applicable legal threshold, or (ii) in case of reimbursement of the fund's total expenses, from the contractual anniversary date or the date of termination of the contract. Pension companies are liable for any damage caused to participants as result of failure to comply with this reimbursement deadline.

The above principles entered into effect on 30 November 2015. Companies are also required to make necessary changes to their system infrastructure by 1 January 2021 in order to enable proper implementation of reimbursements.

CIRCULAR ON PENSION PLANS NO. 2015/47

Circular No. 2015/47 on Pension Plans was issued by the Treasury on 25 November 2015, abrogating previous Circular No. 2013/3 issued in February 2013 and that regulated similar matters.

Key principles brought by this new Circular include:

- Several principles applicable to pension plans have been clarified with respect, among others, to the following matters:
  - Pension companies must include in their pension plan necessary technical principles clarifying the implementation of the "irregular payment" status, and are allowed to set out in the plans provisions that are favourable to the participants as regards the conditions for their exit from such "irregular payment" status;
  - Distance sale of pension plans is subject to the existence of an express stipulation in this respect in the relevant plan;
- Prior authorisation by the Treasury is no longer required for distance sales of pension plans
- Pension plans may be implemented on the day following completion of their registration before the Pension Monitoring Centre (as opposed to the 7-day waiting period set out under the previous Circular).

Pension plans that entered into force before 1 January 2016 will continue to be effective without need for any modification. However, after 1 January 2016, no new pension contract may be included to these plans. Changes in group pension plans effective on 1 January 2016 must have been submitted to the PMC by 31 December 2015 and be registered in the E-Plan System before 1 April 2016.

CIRCULAR ON PROCEDURES AND PRINCIPLES FOR THE INFORMATION, DOCUMENTS AND FORMS NO. 2015/46

Circular No. 2015/46 on Procedures and Principles for the Information, Documents and Forms was issued by the Treasury on 20 November 2015 (the **"Circular"**), replacing previous Circular No. 2013/2 issued in January 2013 and that regulated similar matters.

Updated templates showing the minimum content of the standard forms relating to the pension contracts (such as proposal form, information form, withdrawal information form, withdrawal request form) are provided in annex of the Circular.

The following new general principles applicable to standard forms and other related documents regarding the conclusion and operation of pension contracts have been enacted:

- An **opt-out clause** allowing participants to rescind their contract within 60 days as from the date of the contract proposal must be inserted to the pension contract proposal form.
- The entry information form must be written with a **minimum font size of 12**, in compliance with the Law No. 6502 on Consumer Protection.
- **Irregular payment** terms must be defined in the entry information form.
- Pension companies must dedicate a secure Internet page to the participants **within 5 days of the entry into force of their contract**, through which participants can access their information with their allocated username and password.
- Accordingly, a clause stating that **participants can access their personal information** from the company, from its website or from Takasbank, must be included in the entry information form.

The above principles entered into effect on 20 November 2015.

SECTOR ANNOUNCEMENT ON THE RETURN OF UNEARNED STATE CONTRIBUTION AMOUNTS TO THE UNDERSECRETARIAT OF TREASURY NO. 2015/42

As a matter of principle, the unearned portion of paid State contributions shall be registered as revenue to the State's general budget and must be paid back by the pension companies to the Treasury's bank account. However, due to various problems occurring during the matching, tracking and control of such payments arising from the lack of a uniform notification system, the Treasury has issued Sector Announcement No. 2015/42 (the "**Announcement**") to clarify the process.

Pursuant to the provisions of this Sector Announcement, pension companies must first notify to the Treasury (in writing) and to the Pension Monitoring Center (in writing or with e-signature) the bank account(s) through which the pension companies will transfer the returned State contributions.

At the time of payment, the transfer order description must contain the following standard information: (i) Company code for Enhanced Monitoring Activity Data Transmission, (ii) Company name, (iii) State Contribution return (*DK iadesi*).

Pension companies were required to submit their notification about the relevant bank account(s) by 1 December 2015. Any amendment to such bank account(s) must be submitted to the Treasury and the Pension Monitoring Center at least 3 business days before the validity date of the relevant amendment.

SECTOR ANNOUNCEMENT ON TIME ADDITION PROCEDURES IN THE SCOPE OF PROVISIONAL ARTICLE 2 OF CODE NO. 6327 (NO. 2015/43)

This Sector Announcement was issued on 26 November 2015 to clarify the calculation method for the time of entitlement to State contribution.

In this respect, the Treasury specifies that depending on the number of years the participants were in the pension system as at 1 January 2016, they may be granted with additional system years for the calculation of their eligibility to State Contributions.

To secure accurate and comprehensive calculations, the information to be taken into account for the calculation of such eligibility to additional system years will be shared with pension companies by the Pension Monitoring Center.

PRESS RELEASE OF THE TREASURY ON GOVERNMENT ANNUITY BONDS INDEXED TO THE CONSUMER PRICES

The Treasury made a press announcement on 30 December 2015 to inform the market of its intention to issue government bonds in which persons insured under an insurance annuity product will be entitled to invest. According to the press release and the investor's manual:

- This government bond will aim to provide the annuity insurance customers with a protection against inflation thanks to the constant increase rate matching the inflation rates.
- The Government Annuity Bonds, indexed on Consumer Prices, will be issued (with a 30-year term) by direct sale method and be traded on the Debt Securities Market of the Istanbul Stock Exchange (Borsa Istanbul).
- Indicative prices of the bonds will be published daily in the Official Gazette.
- Taxation of the bonds will be subject to provisional Article 67 of the Income Tax Law, for which the Revenue Administration of the Ministry of Finance has already issued a draft circular.

The details on the calculation methods of the interest and pricing may be found in the investor's manual, also issued by the Treasury. (https://www.hazine.gov.tr/tr-TR/Yatirimcilar-Icin-Bilgiler/Yatirimcilar-Icin-Bilgiler-)

In compliance with Turkish bar regulations, opinions relating to Turkish law matters which are 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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