

## Insurance and reinsurance in Turkey: overview

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### MARKET TRENDS AND REGULATORY FRAMEWORK

#### 1. What were the main trends in the insurance and reinsurance markets over the last 12 months?

Following the increasing usage of internet and technology in the insurance sector mostly in the US and in Europe, Turkish market players have started pursuing innovative and life-easing designs and creations for insurance clients. As clearly expressed during the recent general assembly meeting of the Turkish Association of the Insurance, Reinsurance and Pension Companies of Turkey (Insurance Association), the coming years' new trends for the Turkish market are expected to be shaped around digitalisation and innovation.

As a result of this technological revolution, usage of digital sales channels has been in the insurance market's agenda for quite some time, especially since customers have started to prefer receiving policy offers through their mobile phones or computers, instead of going for more traditional ways such as bancassurance. Therefore, insurance companies are also seeking new ways to adapt to this new way of life and reach new-generation customers. This has also lead them to establish co-operation with third party retailers such as telecommunication operators, satellite services or digital appliance stores/brands to market their relevant coverage products while the consumers are making other purchases. In terms of innovation, it is expected that the Turkish insurance market will give rise to many more developments in line with new products concerning the "Internet of things" (the ever-increasing connecting of the real and virtual worlds) and InsurTech in the near future, taking into account, in particular, the aim of market players to create awareness on risks and ease the life of customers by giving them access to user-friendly technology.

Some solid examples recently introduced into the Turkish market in this respect are home automation systems, usage-based telematics systems for motor vehicles, health monitoring applications and mobile accident report creating systems.

In relation to the above developments, the Turkish insurance sector is also working towards encouraging financial literacy in order to further increase market penetration. If achieved, awareness and developments in this area are expected to mostly impact the sale of private pension and annuity products in the insurance sector.

#### 2. What is the regulatory framework for insurance/reinsurance activities?

##### Regulatory framework

The Turkish insurance sector is primarily regulated by:

- Commercial Code No. 6102 (for insurance contracts).
- Insurance Law No. 5684 (for corporate, regulatory and operational matters).

- Turkish Obligations Code No. 6098 (for general contract law provisions).
- Private pension activities are regulated by the Private Pension Savings and Investment System Law No. 4632 and its secondary legislation.

Secondary legislation, such as regulations, communiqués, sector announcements and insurance general terms issued by the Turkish Undersecretariat of Treasury (Treasury), also plays a major role.

As the main regulatory body, the Treasury supervises the operations of Turkish insurance/reinsurance market players, as well as the activities of Turkish branches of foreign insurance/reinsurance companies. The authority of the Treasury only focuses on entities with an operation licence in Turkey, and does not include the supervision of foreign entities. However, licence applications in Turkey are subject to the applicant's foreign parent company or group's compliance with certain requirements on financial strength and good standing, the absence of criminal exposure and the holding of a valid licence in its home country.

##### Recent regulatory changes

Since the beginning of 2016, the Turkish insurance market has had to adapt to certain major system changes, especially in private pension and motor third party liability insurance (MTPL). Main regulatory changes can be highlighted as follows:

- **Amendments to the Insurance Law.** Article 11, mainly governing insurance agreements, was slightly amended following the publication of an omnibus bill in early 2017 and a new paragraph regarding equivalent spare parts was included into aforementioned article. According to the provisions of this amendment, principles and procedures regarding the use of certified equivalent spare parts will be further determined under relevant general terms.
- **Amendments to the private pension law.** A new auto-enrolment system has been introduced with effect on 1 January 2017 through an amendment made to the existing Law on the Private Pension Saving and Investment System. For the purposes of implementation of the new auto-enrolment system, several secondary legislations have also been published to clarify principles and procedures. Mainly companies with employees under 45 years of age will be subject to this auto-enrolment system. However, different opt-in dates have been determined for each employee working in the private and public sector. Companies operating in the private sector with more than 100 employees and companies operating in the public sector (for example, general and special budgeted administrations) with more than 250 employees are subject to this system as of 1 June 2017. Other opt-in dates are as follows:
  - 1 January 2018 for companies operating in the private sector, local administration and state economic enterprises and have 50 to 99 employees;
  - 1 July 2018 for companies operating in the private sector and have ten to 49 employees; and

- 1 January 2019 for companies operating in the private sector and have five to nine employees.
- In February 2017, following the implementation of the auto-enrolment system, the General Communiqué No. 5 of the Financial Crimes Investigation Board was also amended to ease and clarify the client identification verification process within the scope of the auto-enrolment system applicable to employers and private pension companies.
- **Regulation on Working Procedures and Principles of Participation Insurance.** This Regulation sets out for the very first time in Turkey the procedures and principles of *takaful* and *retakaful*, which will be managed through *mubadarah*, *wakala* or hybrid management models. All participation insurance/reinsurance companies must establish an advisory committee (or procure such services from an external provider) to ensure the security and reliability of the participation system. This advisory board must report to the board of directors of the company. Provisions of this Regulation will be effective as of 20 December 2017.
- **Regulation on Processing and Protecting the Privacy of Personal Health Data.** This Regulation sets out the main principles on the protection, process, transfer and removal of personal health data and the establishment of the central health data system in line with the provisions of Law on the Protection of Personal Data. This Regulation and the Law on Protection of Personal Data No 6698 state that personal data cannot be processed without the prior explicit consent of its owner except in certain conditions set out by the law. In this respect, the Treasury issued an opinion in April 2017 concerning insurance companies and indicated that some data will be considered a legal requirement falling under the confidentiality liability of insurance companies, as follows:
  - data shared between insurance companies;
  - data shared with the Insurance Information and Monitoring Center; or
  - data obtained from the Insurance Information and Monitoring Center.
- This data sharing will therefore not be deemed as a breach of this Regulation and the Law on the Protection of Personal Data.
- **Regulation on State Contribution to Private Pension System.** The Regulation sets out the main principles on the calculation, acquisition and payment of contributions to the private pension system. The Regulation also defines transactions regarding the state contribution account.
- **Amendment to the Regulation on the Capital Adequacy Calculation and Assessment of the Insurance, Reinsurance and Private Pension Companies.** Following the amendments made to the Regulation on the Implementation Principles of the Motor Third Party Liability (MTPL) Tariffs, such changes have also been reflected in the Capital Adequacy Amendment Regulation, together with a few changes on capital adequacy provisions. This Amending Regulation provides the following provisions:
  - risk calculation on an excessive premium increase has been removed from the risk items taken into account for the capital adequacy calculation;
  - premiums transferred to the High-Risk Insurance Pool must not be taken into account when calculating the underwriting risk; and
  - at the request of the insurance company, the Treasury is entitled to extend certain time limits applicable to protective measures to be taken by the insurance company in the event of a decrease in the equity capital / required equity capital ratio below 100%.
- **Communiqué on the List of Reinsurance Companies Satisfying the Financial and Technical Criteria.** According to Article 8 of the Regulation on the calculation and assessment of capital adequacy of insurance, reinsurance and private pension companies, the Treasury published the list of reinsurance companies satisfying financial and technical criteria on 10 May 2017. This enables risk ceding insurers to benefit from a lower coefficient for the calculation of equity capital under the "second method" foreseen by the aforementioned Regulation.
- **Communiqué on Submission of the Independent Audit Report and Reinsurance Report through Electronic Environment.** This Communiqué has been issued to inform independent audit firms and insurance companies that they must submit their reports to the Treasury in electronic format by the end of 2017.
- **Communiqué on the Reserves Regarding On-Going Risks.** This Communiqué introduces a new calculation method of amounts to be reserved for ongoing risks. This new method will only be applicable for the following branches; Car insurance (that is, *Casco*), Mandatory Motor Third Party Liability Insurance (separately for mandatory traffic insurance and liability insurance sub-branches) and General Liability Insurance.
- **Communiqué on the Insurance E-Application System.** This Communiqué defines the procedures and principles to be used during information requests and complaints made following the Regulation on Information on the scope of Insurance Agreements.
- **Amendment to the Communiqué on the Coefficients for Underwriting Risk which is taken as a basis for the capital adequacy calculation.** This Communiqué amends Article 8 of the Regulation on the Calculation and Assessment of Capital Adequacy regarding the calculation of required equity capital under the "second method". Following the amendment, coefficients of both land vehicles and land vehicles liability have been changed to 0.130.
- **Sector Announcement on the Mandatory Professional Liability Insurance on the Medical Malpractice.** This announcement sets out the rules on the establishment and working principles of the Medical Malpractice Insurance Pool. Policies issued as of 1 July 2017 must be deemed within the scope of this insurance pool.
- **Sector Announcement on the Designation of the Subcontracting Companies as Policyholder within the Scope of Mandatory Personal Accident Insurance for Miners.** This announcement clarifies that licensees, royalty holders or subcontractors will be considered as policyholders with regard to Mandatory Personal Accident Insurance for Miners.
- **Sector Announcement on the Implementation of the Agency Agreements.** The Treasury published two successive sectorial announcements to clarify matters regarding the implementation of agency agreements. These announcements mainly state that agency agreements existing before the publication of the Regulation on Insurance Agencies are not obliged to be completely renewed but must be compliant with the Regulation. During the adaptation of these provisions, parties to agency agreements must act fairly and in good faith. The Treasury also specified that the two-month adaptation period for provisions of the Regulation which are not substantially in favour of agencies has been extended to three months.
- **Sector Announcement on the Termination of the Mandatory Motor Third Party Liability Insurance Agreements (the "Announcement").** The Announcement entered into force as of 12 April 2017 and revoked the Sector Announcement on the Termination of Mandatory Motor Third Party Liability Insurance numbered 2015/13 and subsequent amending sectorial announcements numbered 2016/14, 2016/26, 2016/24,

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2015/41. Following the Announcement, it has been stated that the existing Motor Third Party Liability (MTPL) agreements will be terminated automatically as of the date of the change of operator of the relevant vehicles and that the outstanding premium amount must be calculated and returned on a daily basis. However, it has also been stated that the previous MTPL agreement will remain valid and be applicable to the new operator / policyholder for 15 days starting from the date of the change of operator, without the need for the payment of an additional premium.

- **Decision on Procedures and Principles on the Application of Regulation on Insurance Agencies.** In accordance with Article 13/A of the Regulation on Insurance Agencies, the Insurance Agencies Executive Committee (SAIK) adopted a decision on 21 June 2016 regulate in detail the specific areas mentioned in the Regulation. SAIK has determined terms and conditions applicable to the certificate of conformity applications and information updates, human resources and agencies' organisations, commercial titles, minimum physical requirements, and registration to and removal from the registry.
- **General terms of mandatory motor third party liability (MTPL) insurance.** Premiums of the MTPL policies have been increased following a set of amendments made on the general terms of the MTPL during the course of 2015, including the verdict of the Supreme Court enabling at-fault drivers to claim death indemnity from insurance companies. In this context, the Treasury introduced a new price ceiling system through a Communiqué on the Mandatory Motor Third Party Liability Insurance Premiums, published on 10 April 2017, to limit MTPL premiums. The Communiqué will be applicable between the 12 April 2017 and 31 December 2017. On the implementation of the aforementioned Communiqué, the Treasury published the Regulation amending the Regulation on the Implementation Principles of the MTPL Tariffs and the Regulation amending the Regulation on the Capital Adequacy Calculation and Assessment of the Insurance, Reinsurance and Private Pension Companies to minimise the loss of the insurance companies which are obliged to sell MTPL within the scope of their licence. In addition to the aforementioned news on MTPL, another set of developments took place at the end of 2016 regarding the usage of equivalent spare parts. The amended provision states that in case of damage, damaged parts will be replaced with the original parts if it is not possible to repair or replace the damaged parts with equivalent parts or second hand/used original parts. Accordingly, insurance companies have no obligation to replace damaged parts with original parts unless it is impossible to make a replacement by using equivalent or used spare parts. However, on 4 October 2016, the Council of State granted a motion for stay of execution with respect to this provision on the grounds of consumer protection. No more than six months later, on 28 January 2017, Article 11 of the Insurance Law was amended by the Omnibus Bill No. 6770 to indicate that the rules and procedures regarding the use of equivalent spare parts for the purpose of repair services and indemnity payments will be regulated by Insurance General Terms. On adoption of this new legal provision, the Treasury is expected to issue new general terms or if not, a decision by the Council will confirm the validity of the current general terms. Application of this change is expected to decrease MTPL premiums by up to 5%.

### Regulatory bodies

The main regulatory bodies supervising the insurance/reinsurance sector are:

- Undersecretariat of Treasury's General Directorate of Insurance.
- Undersecretariat of Treasury's Insurance Audit Board.
- Union of Chambers and Commodity Exchanges of Turkey.
- Financial Crimes Investigation Board.
- Ministry of Customs and Trade.

## REGULATION OF INSURANCE AND REINSURANCE CONTRACTS

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### 3. What is a contract of insurance for the purposes of the law and regulation? How does it differ from a contract of reinsurance?

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Under the Commercial Code, an insurance contract is defined as a contract under which the insurer undertakes, in exchange for a premium, to indemnify a loss caused by the occurrence of a danger (risk) that would harm a financially measurable interest of the concerned person, or to pay or perform other acts based on the occurrence of certain events in the course of the life of one or several persons.

Conclusion of an insurance contract requires the existence of an insurable interest and a risk related to it. In this respect:

- The insurance contract is deemed null and void if no insurable interest existed at the time of conclusion.
- Insurance taken out to cover a loss resulting from an act of the policyholder or insured in breach of mandatory rules, moral values, public order or rights of personality is deemed null and void.
- The contract is invalid if it was known at the conclusion of the contract to the insurer or to the policyholder or (provided that it is aware of the insurance) to the insured that the risk had already occurred or the possibility of occurrence of the risk had ceased. If the policyholder or the insured knew that the risk had already occurred or the possibility of occurrence of the risk had ceased, and the insurer was not aware of this situation, the insurer would be entitled to collect all premiums agreed while not being bound by the contract.

Under the Commercial Code, the insurer is entitled to reinsure an insured risk under such terms as it deems appropriate. Therefore, a reinsurance contract is a contract whereby the insurer transfers its risk, totally or partially, to the reinsurer.

The main differences between insurance and reinsurance contracts under Turkish law are as follows:

- Insurance companies may be liable to fulfil their indemnity obligations towards damaged third parties other than their contractual counterparty (the policyholder, insured or beneficiary), whereas reinsurers are not liable to third parties and are only required to compensate the financial risk incurred by its counterparty (the insurance company) as a result of occurrence of an insured risk.
- Reinsurance contracts are not subject to the secondary obligations set out by law (such as information liabilities, obligations to issue a policy, and so on) that are applicable to insurance companies in relation to their contractual relationship with policyholders.
- Insurance contracts are subject to the general terms of insurance (issued by the Treasury) applicable to the risk undertaken, whereas terms of reinsurance contracts are freely set out by the parties. Reinsurance treaties must also be notified to the Treasury for minimum compliance verification.

### 4. Are all contracts of insurance/reinsurance regulated?

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Insurance contracts are mainly regulated under the provisions of the:

- Commercial Code.
- Insurance Law.

- Code of Obligations (accessorily).

Insurance contracts are also regulated by the General Terms of Insurance issued by the Treasury for each insurance type. The Treasury applies a regulation compliance test in this respect, but on the sole basis of policies that are submitted during licence applications. No further approval requirement is imposed on insurance companies in terms of the content of the policy.

Certain secondary pieces of legislation such as the Regulation regarding the Obligation to provide Information in Insurance Contracts also provide for specific requirements on the validity of insurance contracts.

Reinsurance contracts are not specifically regulated under the Turkish Law and are therefore mainly governed by the general provisions of the Code of Obligations applicable to contractual relationships, to the extent the parties decide that the contracts are subject to Turkish law (see Question 35).

## CORPORATE STRUCTURE

### 5. What form of corporate organisation can insurers take?

Private insurance and reinsurance companies must generally be established in the form of joint stock companies or co-operative in order to operate in Turkey. Foreign insurance and reinsurance companies can also operate in Turkey by opening a branch.

## REGULATION OF INSURERS AND REINSURERS

### 6. Are all insurers and reinsurers regulated? Are they all regulated in the same way?

All insurance and reinsurance companies incorporated and operating in Turkey are subject to the Insurance Law and its secondary legislation, and to the same supervision by the Treasury.

In addition, branches of foreign insurance and reinsurance companies are also regulated by the Decree of the Council of Ministers Related to International Activities in the Insurance Sector, which defines some key principles for the incorporation and governance of such branches.

### 7. Can insurers and reinsurers carry on non-insurance business? Are there any restrictions on their business activities?

Insurance companies, reinsurance companies and Turkish branches of foreign insurance and reinsurance companies must not engage in any activity other than insurance transactions and activities that are directly related to insurance operations.

Individual insurance companies can operate in only one of either the life or the non-life insurance groups. Insurance branches included in these groups are determined by the relevant Minister.

In contrast with the provisions applicable to insurance companies, reinsurance companies can be licensed for both life and non-life insurance groups.

Private pension companies can also be granted a licence to operate life and personal accident insurance branches. According to the Communiqué No. 2016/30, pension companies are now entitled to obtain licences in sickness/health insurance branches.

### 8. Are there any statutory limits or other restrictions on, or requirements relating to, the transfer of risk by insurance or reinsurance companies?

Under the Commercial Code, insurance companies are free to reinsure an insured interest under any terms they deem appropriate and there is no express legal restriction applicable in terms of the amount of risk ceded. However, Treasury regulations on the financial strength of insurance companies provide for different calculation methods in terms of capital adequacy of insurance companies depending on the profile of the reinsurance company (for example, whether it is a group company, the existence of a rating, and so on) and the share of risk being transferred.

## Authorisation or licensing

### 9. Does the entity or person have to be authorised or licensed?

#### Insurance/reinsurance providers

Companies intending to operate as insurance or reinsurance companies must obtain the prior approval of the Ministry of Customs and Trade for their incorporation. No prior approval is required for incorporation of branches of foreign insurance or reinsurance companies.

The incorporation procedure is completed by registration of the company in the Trade Registry. The documents required for registration are defined in the relevant legislation.

An application must be made to the Treasury to obtain an operation licence within one year from the incorporation of the company in the relevant trade registry, failing which the company would not be allowed to use the terms "insurance" or "reinsurance" in its commercial title. Insurance companies can only operate in one of either the life or non-life insurance groups, and must obtain relevant licences for each separate branch in which they would like to operate.

The minimum amount of base capital required for insurance companies is TRY5 million, on top of which additional capital is required, depending on any additional separate branches.

These process and capital requirements are also generally applicable to branches.

On obtaining of an operation licence, companies/branches must become a member of the Insurance Association, a professional organisation with the status of a public legal entity. This membership is subject to payment of an entrance fee of TRY110,000 in 2017 and subsequent yearly contributions calculated on the basis of each relevant insurance company's premium production.

#### Insurance/reinsurance intermediaries

Under the Insurance Law, intermediaries consist of agents and brokers.

Insurance agency activities can be carried out by real persons or legal entities subject to:

- Obtaining a certificate from the Treasury confirming their qualifications.
- Application to the Union of Chambers and Commodity Exchanges of Turkey to be recorded in the Register.

Real person agents must declare a minimum personal wealth of TRY50,000. Legal entity agents must have a minimum paid-in capital of TRY50,000, and the minimum capital for branches is TRY300,000 for the headquarters and TRY25,000 for each

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branch. The minimum capital for agents performing distance sales is TRY300,000.

Similarly, brokerage activities can be performed by real persons or legal entities on obtaining a broker licence from the Treasury. This is obtained by submitting an application to the Insurance and Reinsurance Brokers Association.

Legal entity brokers must have a minimum paid-in capital of TRY250,000 and an additional amount of TRY50,000 for each licence. Brokers must have equity capital amounting to not less than the sum of:

- An amount of 10% of their annual operating revenues.
- An amount corresponding to the total due debts of the broker multiplied by a specific co-efficient (which varies depending on the debt maturity date).

Foreign legal entity agent or brokers can be involved in operations in Turkey only by opening a branch, and cannot perform commercial activities through liaison offices.

Real person agents and brokers are also subject to similar financial requirements in terms of declared wealth.

#### **Other providers of insurance/reinsurance-related activities**

The current legislation provides for specific regulations on the activities of experts and actuaries.

Legal entities willing to carry out insurance support services activities must apply to the Insurance Information and Surveillance Centre to register on the support services providers' list. Support services providers must have a sufficient organisational structure, technical equipment, human resources, knowledge and experience, and are subject to constant supervision and surveillance of the Treasury.

Experts must obtain a licence from the Treasury and be registered in the Register kept by the Union of Chambers and Commodity Exchanges of Turkey. Licences are given separately for each branch of activity. Real person experts are subject to professional development and internship requirements. Experts must also obtain professional liability insurance.

Whether foreign experts can perform activities in Turkey depends on their fulfilment of reciprocity conditions with the relevant country.

Actuaries are also subject to professional development and internship requirements. They must be registered in the register kept by the Treasury. It is mandatory for insurance companies to work with at least one actuary.

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### **10. What are the main exemptions or exclusions from authorisation or licensing?**

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#### **Insurance/reinsurance providers**

Under the Insurance Law, the insurable interests (located in Turkey) of persons residing in Turkey must be insured by an insurance company that is eligible to operate in Turkey. Only the following insurances can be concluded outside of Turkey:

- Transportation insurance for goods that are subject to export and import.
- Hull insurance for aircraft, ships or helicopters that are purchased with foreign loans, which is exclusively limited to the loan amount and applicable for the term until the foreign debt is paid up, or limited to the period of financial leasing if brought to Turkey through financial leasing obtained abroad.
- Marine liability insurance (covering the risks arising from the operation of ships).

- Life insurances.
- Personal accident, sickness, health and motor vehicle insurances, limited to the time people are abroad.

In addition to the above, marine (boat) insurances and additional risks such as general average coverage for vessels registered under the Turkish International Ship Registry are also allowed to be provided by the foreign insurance companies according to the Resolution No. 2008/14373 of the Turkish Council of Ministers.

However, the above exceptions do not allow foreign insurers to actively promote their products in the Turkish market. The conclusion of any such policy would require reverse solicitation by the client or a broker.

Foreign reinsurance companies can reinsure the risks of Turkish insurance companies without holding a licence, to the extent the foreign insurance companies do not actively solicit in Turkey in this respect (the solicitation must come either from the insurance company or through reinsurance brokers).

#### **Insurance/reinsurance intermediaries**

Banks and other entities that have been established by a special law and authorised to carry out insurance agency activities are not subject to the requirements mentioned in Question 9.

Financing, financial leasing and factoring companies authorised to carry out insurance agency activities are not subject either to these requirements, except regarding the mandatory application to the Union of Chambers and Commodity Exchanges of Turkey to be recorded in the Register.

#### **Other providers of insurance/reinsurance-related activities**

There are no specific exemptions applicable for other insurance/reinsurance-related activities.

#### **Restrictions on ownership or control**

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### **11. Are there any restrictions on the ownership or control of insurance-related entities?**

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#### **Insurance/reinsurance providers**

Turkish law does not provide for express restrictions on the ownership or control of insurance-related entities. However, shareholders are subject to certain conditions in terms of financial strength and good standing, criminal exposure, and so on.

These restrictions are also applicable to branches of foreign insurance/reinsurance companies.

Turkish legislation on foreign direct investments provides for a principle of non-discrimination and equal treatment of foreign investors. Accordingly, these restrictions apply similarly to local and foreign shareholders.

#### **Insurance/reinsurance intermediaries**

Agents and brokers are subject to specific qualification requirements (due to their technical employee status), including residence in Turkey, education requirements, and so on.

In addition, and in contrast with insurance and reinsurance companies, intermediaries are subject to the following specific restrictions:

- Shareholders, board members, auditors, authorised representatives and employees of insurance companies, insurance agents and expertise companies cannot:
  - perform brokerage activities;
  - become board members, auditors or shareholders of brokerage companies; or

- be remunerated by brokerage companies for any work.

These requirements also apply to spouses and children under the custody of these persons.

- Board members, auditors and authorised representatives of insurance companies, insurance brokers and expertise companies cannot:
  - become board members, auditors, authorised representatives or shareholders of insurance agents; or
  - be remunerated by insurance agents for any work.

These requirements also apply to spouses and children under the custody of these persons.

#### Other providers of insurance/reinsurance-related activities

Shareholders, board members, auditors, authorised representatives and employees of insurance companies, insurance agents and brokerage companies are also prohibited from:

- Performing insurance expertise activities.
- Becoming board members, auditors or shareholders of brokerage companies.
- Being remunerated by brokerage companies for any work.

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### 12. Must owners or controllers be approved by or notified to the relevant authorities before taking, increasing or reducing their control or ownership of the entity?

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#### Insurance/reinsurance providers

**Treasury approval.** Share transfers resulting in any shareholding right exceeding or falling below 10%, 20%, 33% or 50% of the insurance/reinsurance company's capital are subject to prior approval by the Treasury.

Share transfers granting privileged rights for the nominating of board members in a manner influencing the company's supervision and management are subject to prior approval by the Treasury, regardless of the percentage of capital represented by the transferred shares.

Public offerings of shares amounting to more than 10% of the capital of a company are subject to prior approval by the Treasury (in addition to the regular procedure to be complied with in accordance with the capital market legislation).

Merger transactions, transfer of insurance policy portfolio and winding-up of insurance/reinsurance companies are also subject to the Treasury's prior approval.

**Ministry of Customs and Trade approval.** To the extent that share transfers result in a parallel amendment of the insurance or reinsurance company's articles of association, prior approval by the Ministry of Customs and Trade is also required.

**Competition Authority approval.** Subject to fulfilment of specific turnover thresholds, merger transactions and share transfers may be also subject to prior approval by the Competition Authority.

#### Insurance/reinsurance intermediaries

Since 2015, share transfers occurring within the share capital of brokerage companies are no longer subject to prior approval by the Treasury.

If specific turnover thresholds are met, merger transactions and share transfers within insurance agent or brokerage companies may be subject to prior approval by the Turkish Competition Authority.

Insurance agents must notify to the chamber of commerce to which they are registered any change concerning their shareholding structure within 15 days (no prior Treasury approval is required).

#### Other providers of insurance/reinsurance-related activities

According to the newly issued Regulation, support services providers must have a sufficient organisational structure, technical equipment, educated and experienced human resources and not be under any prohibition to perform their activities by a national or foreign authority. A report on the support services must be submitted on a yearly basis to the Insurance Information and Monitoring Centre, content of which will be determined by the Treasury. The Treasury may also require the support services providers to deliver additional guaranties such as liability insurance.

There is no specific provision on the control or ownership of other providers of insurance/reinsurance-related activities.

#### Ongoing requirements for the authorised or licensed entity

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### 13. What are the key ongoing requirements with which the authorised or licensed entity must comply?

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#### Insurance/reinsurance providers

The main ongoing requirements for insurance and reinsurance companies are as follows:

- **Corporate requirements.** Changes in the governance of companies (appointments/dismissals of board members, managers or auditors) and in their shareholding structure (share transfers/pledges, mergers, issuances of bonds, notes or capital market instruments) are subject to notification to and/or approval by the Treasury.
- **Financial requirements.** Insurance and reinsurance companies must maintain at all times a capital adequacy ratio meeting the requirements of the Treasury (and strengthening of a financial situation may be requested in this respect) as well as appropriate reserves to cover liabilities arising from their insurance contracts.
- **Reporting requirements.** Insurance and reinsurance companies must submit to the Treasury:
  - reinsurance reports on conclusion of any new treaty;
  - quarterly reports on outsourced support services;
  - quarterly and yearly reports on their financial statements;
  - yearly activity reports and independent audit reports.
  - Electronic submission of audit reports and reinsurance reports to the Treasury is expected to be enabled by the end of 2017.
- **Operational requirements.** Insurance and reinsurance companies must maintain at all times internal systems (control, audit and risk management) as well as IT systems that are appropriate for the level of activity performed by the company.

#### Insurance/reinsurance intermediaries

Insurance agents must notify the chamber of commerce to which they are registered of any changes occurring as foreseen under the Regulation (for example the shareholding or management structure, human resources, infrastructure and so on).

Brokers must conduct their operations in an objective and independent manner and in this respect, allocate their customer portfolio to several insurance/reinsurance companies for each relevant domain of activity.

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### Other providers of insurance/reinsurance-related activities

There is no specific provision on ongoing key requirements for other providers of insurance/reinsurance-related activities.

### Penalties for non-compliance with legal and regulatory requirements

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#### 14. What are the possible consequences of an entity failing to comply with applicable legal and regulatory requirements? What recourse do policyholders have if they have done business with a non-approved entity?

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#### Insurance/reinsurance providers

Failure of insurance or reinsurance companies to comply with legal or regulatory requirements may result in administrative or judicial sanctions.

**Administrative sanctions.** Licences can be withdrawn in the following cases:

- The conditions required for the obtaining of the licence are no longer complied with and the breach is not remedied.
- No insurance contract is concluded within one year from the obtaining of the licence or anytime thereafter for a subsequent period of six months.
- The rights and benefits of people related to an insurance contract are endangered as a result of practices that are contrary to insurance legislation.
- A major or recurrent breach of regulatory obligations which cannot be remedied despite a minimum cure period of three months granted by the Treasury.
- Significant deviation from the targets set out in the business plan (submitted to Treasury as part of process of obtaining the licence).

In case of licence withdrawal, companies must transfer their portfolio in relation to the withdrawn licence within a maximum period of six months.

Foreign insurance or reinsurance companies operating in Turkey in breach of the decrees of the Council of Ministers and those performing insurance/reinsurance operations without obtaining appropriate licences may be subject to the temporary shutting down of work places and the blocking of advertising and marketing materials.

Pecuniary sanctions (varying between TRY1,000 and TRY50,000) can be imposed by the Treasury in cases of breaches of main regulatory requirements, such as:

- Engagement in business activities other than insurance-related business.
- Appointment of persons who do not have the qualifications required by the legislation.
- Failure to set up efficient internal control systems and employ sufficient numbers of internal controllers.
- Failure to obtain prior approvals or make notifications to the Treasury in relation to specific transactions.
- Failure to comply with registration and publication procedures.
- Breaches of general conditions of insurance.
- Failure to comply with bookkeeping obligations and to publish financial statements.
- Not employing an actuary.

**Judicial sanctions.** Certain regulatory breaches can result in judicial sanctions being imposed on the real persons and representatives of legal entities. Sanctions can be of either judicial pecuniary sanctions of between TRY1,200 and TRY100,000 or imprisonment of between one and 12 years (or beyond 12 years for aggravated embezzlement). The main offences are as follows:

- Breaches requiring imprisonment and judicial fines. For example:
  - undertaking risk or giving the impression of being engaged in insurance activities without obtaining the appropriate licence;
  - failure to provide information and documents required by the relevant authorities and auditors, or provision of misleading, incorrect and unreal information and documents;
  - intentional damage to the reputation or assets of establishments or spreading of false news in relation thereto;
  - disclosure of confidential information.
- Breaches requiring judicial fines. For example:
  - conclusion of insurance contracts without a Treasury licence;
  - implementation of tariffs or refraining from concluding contracts in breach of the law;
  - failure to allocate adequate reserves as required by the legislation;
  - concluding agency contracts with persons who do not meet legal requirements.
- Breaches requiring imprisonment. For example, embezzlement of funds or other assets of the insurance/reinsurance companies by their chairman, board members or other employees.

#### Insurance/reinsurance intermediaries

**Agents.** The activities of insurance agents are subject to the ultimate supervision of the Treasury, and administrative and judicial sanctions can be imposed in case of breach of the insurance legislation by agents. The Treasury can give warnings, suspend the activity or cancel the certificate of conformity depending on the gravity of the non-compliance with the relevant legislation.

Insurance agents are also subject to the supervision of the Executive Committee of Insurance Agencies (within the Union of Chambers and Commodity Exchanges), which can apply disciplinary sanctions to agents.

**Brokers.** Similarly, the activities of brokers are also subject to the supervision of the Treasury and a breach of the insurance legislation may be subject to administrative and judicial sanctions. The Treasury can make warnings or cancel licences, depending on the gravity of the non-compliance with the relevant legislation.

#### Other providers of insurance/reinsurance-related activities

**Experts.** The activities of insurance experts are subject to the ultimate supervision of the Treasury and their breach of the insurance legislation may be subject to administrative and judicial sanctions. The Treasury can make warnings, suspend the activity or cancel the certificate of conformity, depending on the gravity of the non-compliance with the relevant legislation.

Insurance experts are also subject to the supervision of the Executive Committee of Insurance Experts (within the Union of Chambers and Commodity Exchanges), which can apply disciplinary sanctions on experts.

**Actuaries.** The activities of actuaries are subject to the supervision of the Treasury, and a breach of the insurance legislation may be subject to administrative and judicial sanctions. The Treasury can

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make warnings, suspend the activity or deregister actuaries from the actuary registry, depending on the gravity of the non-compliance with the relevant legislation.

#### **Right of recourse of customers**

In principle, customers who knowingly enter into a contract with an unlicensed insurance company are not entitled to make any claim under that contractual relationship. However, Turkish law does not specifically regulate the case where a customer entered into a contract with an unlicensed insurance company without knowledge of its unlicensed status. In such a case, good faith customers could be entitled either:

- To claim validity of the contract in case of occurrence of an insured risk and ask for payment of the agreed indemnity or sum.
- To rescind the contract and claim for reimbursement of the unrightfully collected premium.

#### **Restrictions on persons to whom services can be marketed or sold**

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#### **15. Are there any restrictions on the persons to whom insurance/reinsurance services and contracts can be marketed or sold?**

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According to the Civil Code, parties must have contractual capacity (that is, be able to make their own choices and decisions) and be adults in order to be able to conclude an insurance contract.

Insurance on the life of another person requires the beneficiary to have an interest in the survival of that person. In addition, in insurances with death coverage, if the insurance sum exceeds the regular funeral expenses, the written consent of the insured or its legal representative is required. If the insured is more than 15 years old, his consent must also be obtained, in addition to that of his legal representative. A contract made without such consents (prior or subsequently granted) would be deemed invalid.

#### **REINSURANCE MONITORING AND DISCLOSURE REQUIREMENTS**

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#### **16. To what extent can/must a reinsurance company monitor the claims, settlements and underwriting of the cedant company?**

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Although reinsurance companies are not directly liable for any insurance claims, Turkish law does not prohibit the monitoring of claim assessments, settlements or underwriting processes by reinsurance companies. However, any information/document sharing by insurance companies for the purpose of risk assessment is subject to appropriate confidentiality undertakings from the reinsurance company.

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#### **17. What disclosure/notification obligations does the cedant company have to the reinsurance company?**

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Policyholders must disclose to the insurance company all important information that may impact the insurer's decision to insure the relevant risk. As the reinsurance contract is defined as a contract whereby an insurance company re-insures the risks underwritten under insurance policies, it can be argued that the same (legal) obligation is also imposed on insurers while acting as cedant company (although the Turkish courts have not further elaborated on this issue). In any case, parties to the reinsurance agreement are free to define contractually the appropriate scope of

disclosure/notification obligations applicable to the cedant company.

#### **INSURANCE AND REINSURANCE POLICIES** *Content requirements and commonly found clauses*

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#### **18. What are the main general form and content requirements for insurance policies? What are the most commonly found clauses?**

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##### **Form and content requirements**

According to the provisions of the Commercial Code, insurance companies must issue and deliver an insurance policy to the insured. Turkish law only provides a few requirements in terms of the form of the policy, such as that it is made in writing and in an easily readable form.

In contrast with the former commercial code, the Commercial Code (which entered into force in 2012) contains only limited provisions as to the required minimum content of insurance policies, whereby the policy must at least regulate the rights of the insured and the provisions on the default, and contain provisions on the applicable general and special conditions.

According to Communiqué No. 2015/20 on the Credit-Related Insurances, issuance of credit-related insurance policies requires the use of certain template documents containing mandatory minimum content, including policy/participation form for the life and personal accident insurances and a policy for home insurance.

Appendices to the Communiqué No. 2015/30 on the implementation principles of annuity insurance set out specific requirements in terms of minimum policy content. Communiqué No. 2014/4 on the implementation principles of the Regulation on Private Health Insurance requires that the policy explicitly mentions whether or not it grants an automatic renewal right to the insured.

##### **Commonly found clauses**

Arising in part from the minimum content requirements under the former commercial code, in practice, the most commonly found clauses are:

- Policy information.
- Name and address of the policyholder and beneficiary (if any).
- Scope of the insurance.
- Scope of the risk, initiation and termination dates of the risk transferred.
- Premium and insurance amount.
- Date of the issuance.

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#### **19. Is facultative or treaty reinsurance more common? What are the most commonly found clauses in reinsurance policies?**

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##### **Facultative/treaty reinsurance**

In practice, reinsurance treaties (mostly proportional treaties) are the most common form of reinsurance agreement used in the Turkish market. However, insurance companies also frequently use facultative reinsurance as a complementary coverage to their insurance treaties for bigger risks or for risks not covered in the treaties.

##### **Commonly found clauses**

Clauses in the treaties may differ according to the type of the reinsurance agreement. The most commonly found clauses are:

- The scope and initiation of the liability.

- Scope of the contract and the geographical territory.
- Changes in the insurance conditions.
- Premium and commission.
- Claim management/settlement.
- Follow the fortune.
- Inspection of records.
- Account settlement system.
- Errors and omission clauses.
- Settlement of disputes.
- Force majeure.
- Termination and run-off.

Depending on the type of the reinsurance relationship put in place, in practice, additional provisions such as exclusivity and profit sharing mechanisms may also be found.

#### Implied terms

#### 20. Are there any terms that are implied by law or regulation (even if not included in the insurance or reinsurance contract)?

Insurance contracts are mainly governed by the applicable general terms of insurance issued by the Treasury, which must be implemented by all insurance companies in a similar way (except where flexibility can be brought with special conditions).

In addition, the Commercial Code provides for various mandatory provisions, which apply even if not expressly stated in the policy, as follows:

- Provisions affecting the validity of the contract. For example:
  - the absence of insurable interest;
  - the insured interest being contrary to law, moral, public order or personal rights; or
  - the damage being caused intentionally by the policyholder, insured or other related persons.
- Provisions affecting only the validity of the relevant clause. For example provisions governing:
  - the bankruptcy of insurance companies;
  - the statute of limitation; or
  - the method for payment of the premium.
- Provisions that may be amended only in favour of the policyholder/insured/beneficiary. For example:
  - the implied approval of the insurer in case of silence at the time of conclusion;
  - the scope and start of the insurer's liability;
  - the termination and rescission of the contract;
  - the premium payment and reimbursement process;
  - pre-contractual information of the policyholder;
  - delivery/content of the policy;
  - payment of the insurance indemnity and default; or
  - the disclosure liability of the policyholder.

No specific mandatory provisions apply to reinsurance contracts.

#### Customer protections

#### 21. How do customer protections in the general law affect insurance contracts? What customer protections are generally included in insurance policies to supplement this?

##### General law

In addition to the general protection granted by the Commercial Code providing that certain mandatory clauses can only be changed in favour of the policyholder/insured/beneficiary (see Question 20), other specific laws and regulations provide complementary security for the customers, for example:

- Foreign language terms must not be used in insurance contracts. A Turkish translation of foreign words must be used in the way determined by the Turkish Language Institute.
- The insurer must provide necessary information to the policyholder verbally and in writing before conclusion of the contract. In addition, any financial institution that acts as an insurance agent for the sale of personal loan-related insurances must comply with liabilities set out under the Regulation on Personal Loan Related Insurances, such as use of template policies and (pre-contractual) information forms and reminder to customers on policy renewal.
- Risks which are not expressly excluded from the policy coverage are deemed to be covered under the policy.
- The insurer must notify the policyholder or the persons benefiting from the insurance contract of any changes and developments that may arise at the time of renewal of the insurance contract and that directly affect their rights, liabilities and obligations.
- No insurance contract related to a consumer or housing finance loan can be concluded without the express request of the consumer, which must be in written form or via a permanent data storage device.
- Consumers can exercise a right of withdrawal within 14 days from the conclusion of the policy without the need for any justification or payment of any penalty.

##### Insurance policies

See Question 20.

##### Standard policies or terms

#### 22. What are the main standard policies or terms produced by trade associations or relevant authorities?

Under the Insurance Law, the main content of insurance contracts must comply with the general terms of insurance issued by the Treasury. However, special conditions may be determined depending on the specificities of the insurance product and/or the risk insured.

General terms can be found on the website of the Insurance Association ([www.tsb.org.tr](http://www.tsb.org.tr)), along with certain special clauses mainly applicable to transport and fire insurance.

#### INSURANCE AND REINSURANCE POLICY CLAIMS

##### Establishing an insurance claim

#### 23. What must be established to trigger a claim under an insurance policy?

The insured must notify the insurer without delay when it becomes aware of the occurrence of the insured risk.

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Within a reasonable period of time after occurrence of the risk, the policyholder must, in accordance with the contract or on the insurer's request, provide the insurer with all information and documents that are necessary for determining the extent of the risk and indemnity, and that may be expected from the policyholder. In addition, the policyholder must allow the insurer to investigate the site of the risk or other relevant sites and take appropriate measures.

All claims arising from insurance contracts must be made before the lapse of the relevant legal period (see Question 25). After that period, the insurer may refuse to pay the insurance indemnity/sum.

For liability insurance and property insurance, the insurer benefits from a right of recourse towards third parties responsible for the occurrence of the insured loss. This right is subject to the existence of a right of recourse of the insured (subrogation) and to prior payment by the insurer of the insurance indemnity, and is limited with such amount.

### Third party insurance claims

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#### 24. What are the circumstances in which third parties can claim under an insurance policy?

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Under the Commercial Code, third parties affected by the occurrence of an insured risk under liability insurance can assert their claims for indemnification directly to the insurance company underwriting that risk, provided that any such indemnification remains within the coverage limitations of the policy.

### Time limits

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#### 25. Is there a time limit outside of which the insured/reinsured is barred from making a claim?

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### Insurance other than liability insurance

All claims arising from insurance contracts are time-barred after two years from the date when payment falls due. In any event, all claims relating to an insurance indemnity or sum are time-barred after a period of six years from the date of occurrence of the insured risk.

### Liability insurance

Indemnification claims of an insured against the insurer are time-barred after ten years from occurrence of the insured risk.

Under the Highway Traffic Law, all claims relating to material damages arising from motor vehicle accidents become time-barred after the expiry of two years from the date when the damaged party became aware of the damage and of the identity of the party liable for indemnification, and, in any event, ten years as from the date of the accident.

If the damage is caused by a criminal act, and if criminal law stipulates a longer prescription period, this period applies to the claims for pecuniary damages.

### Enforcement

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#### 26. Can the original policyholder or other third party enforce the reinsurance contract against a reinsurer?

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Under the provisions of the Commercial Code, conclusion of a reinsurance contract does not release the insurance company from its obligations and liabilities against the policyholder under an insurance policy. Reinsurance companies therefore cannot be subject to any claim directed by policyholders or any other third party in relation to any policy.

### Remedies

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#### 27. What remedies are available for breach of an insurance policy?

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### Insurer

If the policyholder defaults in paying the premium, or the first instalment thereof, the insurer can terminate the contract if payment is not made within three months from the default.

As regards life insurance, the insurer's liability does not start if the policyholder defaults in paying the first instalment of the premium, or dies before its payment.

If any of the subsequent instalments are not paid at the relevant due date, the insurer must notify the policyholder and grant a period of ten days to remedy this breach, failing which the contract is deemed automatically terminated at the expiry of this period. The rights of the insurer arising from the default of the insured are also subject to the provisions of the Turkish Code of Obligations (for example, the optional right to claim payment with default interest and/or the termination of the contract).

If circumstances of importance to the insurer are not disclosed or are disclosed incorrectly, the insurer can terminate the contract within 15 days, or request payment of an additional premium. If the request for an additional premium is not accepted within ten days, the contract is deemed to be automatically terminated.

The insurer also benefits from the right to terminate the contract within one month from becoming aware of an aggravation of the insured risk or to request an additional premium. If the additional premium is not accepted within ten days, the contract is deemed to be automatically terminated.

If the policyholder's negligence increases the insurer's liability, the insurer can proportionally reduce the indemnity amount, where the policyholder fails to:

- Inform the insurer in due time of the occurrence of a risk.
- Provide requested information.
- Prevent the increase of the damage.

### Insured

Following occurrence of the risk, the obligation to pay the insurance indemnity or the fixed sum falls due when the insured notifies the insurer and the insurer completes without delay its investigation on its payment obligation (within a maximum of 45 days, or 15 days for personal insurances, following notice of the insured) and the insurer would be automatically in default without need for any further notice. The insurer can also be held liable for payment of default interests.

If investigations cannot be completed within three months, the insurer must make an advance payment corresponding to at least 50% of the indemnity or sum agreed between the parties or determined on the basis of a court pre-expertise report. The ultimate amount of the indemnity would then be reduced by the amount of any such advance payment.

In life insurances which have been in force for at least one year, the insurer cannot terminate the contract for non-payment of the premium. The insurance covered will then turn into an insurance "exempt from premium payment".

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## Punitive damage claims

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### 28. Are punitive damages insurable? Can punitive damages be reinsured if they are covered by an underlying policy?

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Turkish law does not recognise punitive damages as such, and the insurance legislation only provides for compensatory damages. Indemnification is limited to the damage amount resulting from the occurrence of the insured risk. Accordingly, punitive damages or similar penalties cannot be subject to insurance.

## Insolvency of insurance and reinsurance providers

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### 29. What is the regulatory framework for dealing with distressed or insolvent insurance or reinsurance companies, or other persons or entities providing insurance or reinsurance related services? What regulatory and/or other protections exist for policyholders if the insurance company is insolvent?

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If the insurer became insolvent or enforcement against the insurer is unsuccessful, the policyholder can request security from the insurer that it will fulfil its undertaking. The policyholder is entitled to terminate the insurance contract if such security is not given within one week from the request.

The insurance contract terminates on the bankruptcy of the insurer. Payments not performed by the insurer before bankruptcy must be paid out first from the mandatory reserves constituted by the insurer and thereafter from the bankruptcy proceeds. The part not covered by the reserves is then registered as receivable to the bankruptcy estate by the right holders under the policy. In the bankruptcy proceedings, creditors of such payments rank in the list of creditor priorities after mortgage/pledge creditors, employee creditors and guardianship and ward creditors. However, physical or material damages covered by certain mandatory insurances that could not be paid by the bankrupted insurance company would be covered from the "Assurance Account" (a supplemental support fund created by the Insurance Association).

### 30. Can excess insurance policies "drop down" to provide coverage if the primary insurer goes into insolvency?

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"Drop down" coverage is not specifically regulated under Turkish law. However, parties can agree on a similar mechanism, provided that the insurance company undertakes to compensate damages incurred as a result of the occurrence of a risk insured under another (previously concluded) policy in case of a failure by the primary insurer to fulfil its indemnification obligations. If so, the second insurance policy must make express reference to the first insurance policy.

### 31. Is a right to set-off mutual debts and credits recognised in an insolvency proceeding involving an insurer or reinsurer?

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Due to the need for establishment of a bankruptcy estate and compliance with priority creditor rankings under Turkish bankruptcy law (see Question 29), set-off of the mutual debts and credits cannot be implemented in the scope of insolvency proceedings involving an insurer or reinsurer (should it act as creditor or bankrupted debtor).

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## TAXATION OF INSURANCE AND REINSURANCE PROVIDERS

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### 32. What is the tax treatment for insurers, reinsurers, and other persons or entities providing insurance and reinsurance-related services?

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#### Bank and insurance transactions tax

In principle, sums received by insurance companies as a result of insurance transactions are subject to the Bank and Insurance Transaction Tax (BITT), the rate of which is currently 5%. The payer of the BITT is the insurance company but in practice it is generally charged to policyholders.

The following insurance-related transactions are exempted from BITT:

- Premiums, commissions and other charges received due to reinsurance and retrocession transactions.
- Sums received due to agricultural insurances taken out for:
  - any agricultural product that has not been yet harvested or collected; and
  - agricultural animals.
- Sums received due to insurances taken out against nuclear risks.
- Sums received on contracts and policies for private pension contracts, life insurances (including life insurance contracts under which personal accident, disability due to disease and critical diseases coverage are provided as additional coverage), health insurances and freight insurances for exported goods.
- Premiums paid for the Mandatory Earthquake Insurance (these premiums are exempted from all taxes, duties and charges).

#### Value added tax

All transactions falling under the scope of the BITT are exempted from Value Added Tax (VAT) and, therefore, transactions of insurance companies are not subject to VAT.

Reinsurance transactions and transactions performed between insurance intermediaries (agents or brokers) and insurance companies are also not subject to VAT.

#### Corporate tax

As corporate taxpayers under Turkish law, the incomes of insurance companies, reinsurers or other entities providing insurance and reinsurance-related services are subject to a corporate tax of 20%.

#### Stamp tax

Insurance contracts, receipts of insurance fees, renewal of insurance contracts, and declarations and additional policies issued as the result of renewals, and all transactions of insurance and private pension companies, are exempted from Stamp Tax.

#### Fire insurance tax

Insurance companies are subject to payment of a Fire Insurance Tax amounting to 10% of the premiums collected for fire insurances concluded for movable and immovable properties within municipal boundaries and adjacent areas.

#### Other duties

Insurance companies are also liable for paying the following specific duties in relation to the premiums collected within a given year:

- An amount corresponding to 5% of the premiums collected from mandatory traffic (liability) insurance must be paid by insurance companies to the Traffic Services Improvement Fund.
- 1% of the total net premiums collected each year by insurance companies for mandatory insurance lines and 0.2% of the total net premiums collected each year by insurance companies for green card insurances must be deposited to the Insurance Association as an annual contribution to the Assurance Account.

## INSURANCE AND REINSURANCE DISPUTE RESOLUTION

### 33. Are there special procedures or venues for dealing with insurance or reinsurance complaints or disputes?

In principle, any dispute arising from an insurance or reinsurance relationship is subject to the competence of commercial courts, as insurance/reinsurance contracts are primarily governed by the provisions of the Commercial Code. However, there exist two specific procedures applicable to insurance-related disputes:

- When the dispute arises from an insurance contract that qualifies as a consumer transaction, the consumer can file a claim against the insurer before the relevant Arbitration Committee for Consumers. The competence of such committees is limited to disputes with value of up to TRY3,610. Their decisions may be appealed before the Consumer Court within 15 days from notification to the parties.
- Another dispute resolution system available for insurance-related conflicts is the Insurance Arbitration Commission. This is applicable only for policies concluded with insurers who are members of this system, except in the case of disputes deriving from mandatory insurances where right holders can benefit from this specific procedure even if the insurer is not a member of the system. As a primary requirement, the consumer must have applied to the insurance company and not be entirely satisfied with the result of such application. The awards made by the arbitrators are final for disputes below TRY5,000. For disputes above this amount, objections can be raised before the Commission within ten days following notification of the decision to the parties. Disputes relating to awards above TRY41,530 may be subject to appeal before the Court of Cassation.
- According to the recent amendments made to the general terms of motor third party liability (MTPL) insurance, rights holders may, at all times, bring a dispute before a mediator (even if they have already applied for a court prosecution), provided that they have first applied to the relevant insurance company for settlement of their claims falling under the limits of the MTPL insurance and that such a claim was not resolved within 15 days.

### 34. Are arbitration clauses in insurance and reinsurance agreements enforceable?

For a commercial arbitration clause to be enforceable under Turkish law:

- It must be made in writing.
- The subject of dispute must be eligible for arbitration.
- The intention of the parties to submit their dispute to arbitration must be clearly identifiable.

Arbitration clauses in insurance contracts concluded with consumers are not enforceable, except for specific non-commercial arbitration procedures (see Question 33).

Reinsurance contracts are eligible for arbitration clauses due to the commercial nature of both parties to the contract.

Domestic arbitration awards are directly enforceable, subject to obtaining a certificate confirming enforceability of the award (that is, that the award is final and binding) from the relevant first instance civil court. Only a nullity action can be taken against arbitration awards, which will not prevent the execution of the award unless appropriate guarantees are delivered.

An arbitral award issued outside the Republic of Turkey and within the territory of a state that is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards would be subject to a recognition procedure before Turkish courts in accordance with the terms of this New York Convention.

### 35. Are choice of forum, venue and applicable law clauses in an insurance or reinsurance contract recognised and enforced?

The material jurisdiction of the state courts (forum) is a matter of public order under Turkish law. Accordingly, parties cannot contractually provide otherwise.

Choice of venue is subject to the following principles:

- **General principle.** Courts in the residential area of the defendant when the case is filed are competent. Alternatively, courts in the area of performance of the contract may also be competent.
- **Disputes arising from loss insurances.** If the insurance is related to an immovable object or to a movable object that must remain at a fixed place, the court in the area where the immovable/movable object is located may also be competent. If the movable object is not fixed in a specific area, the court in the area where the risk materialised may also be competent.
- **Disputes deriving from liability insurances (under the Highway Traffic Law).** Courts in the area where the headquarters or branch of the insurer or agent that concluded the insurance contract are located may also be competent.
- **Disputes deriving from personal insurances.** Courts in the residential area of the policyholder, the insured or the beneficiary are exclusively competent (mandatory rule).

Contractual agreement on a venue for insurance/reinsurance contracts will be exclusive unless otherwise agreed to and can only be valid to the extent that both parties are commercial undertakings.

Parties to an insurance or reinsurance contract may agree on a foreign law to govern their contractual relationship if their relationship has a "foreign element" (for example, at least one of the parties is a non-Turkish national or the contract will be performed outside of Turkey). However, if the counterparty is a consumer, the minimum protection granted by the mandatory provisions law of the consumer's place of residence would apply. In such a case, the Turkish courts of the place where the headquarters or the branch of the insurer or its agent that concluded the insurance contract are located are competent. However if the insured, beneficiary or policyholder is the defendant, courts in their residential area or regular residence are exclusively competent.

## REFORM

### 36. What proposals are there for reform of the law, regulation or rules relating to the provision of insurance or reinsurance services?

The main regulatory changes expected to affect the insurance/reinsurance sector in the short and medium term relate to the following key matters:

- Secondary legislation in relation to the recently adopted Law on Protection of the Personal Data, setting out details of the requirements for companies collecting and keeping personal data and further provisions on the duties and principles of the Data Protection Board are still expected to be established.
- The long-awaited "participation insurance" model (*takaful*), which is an interest-free system and compliant with Islamic laws, is expected to be introduced in the course of 2017. This new model is expected to be different from the conventional insurance model and involve management of insurance funds by way of investing in interest-free instruments while the funds do not belong to the insurance company but belong to the participants.
- Amendments to the private pension legislation are expected shortly to allow persons under the age of 18 to enter into a private pension contract with companies.
- The Treasury recently issued an opinion regarding possible amendments to the Value Added Tax Law and relevant secondary legislation following the demand of the Ministry of

Finance. The Treasury pointed out deficiencies in practice, mainly regarding the uncertainty of whether or not insurance and reinsurance companies will be subject to VAT.

- Draft Communiqué on the Underwriting Risk on the Calculation of the Capital Adequacy, mainly:
  - specifies ratios to be taken as a basis during the calculation of the underwriting risk as referred to in article 8 titled "capital adequacy as per the second method" of the related regulation;
  - sets out different ratios for agencies which are registered before Board/Registry and for the ones which are not registered and;
  - explains the facts which are taken as a basis on the specification of ratios.
- The Treasury has issued a draft amendment text regarding Article 7/21 of the Regulation on Technical Provisions of Insurance, Reinsurance and Pension Companies, and Assets on Which Such Provisions are to be Invested, which has been shared with the Insurance Association. This draft provides that "losses which are not subject to indemnity payment and not requested either by the loss payee must be removed from the outstanding claims upon expiry of the statute of limitation and be registered as income". Comments of the Insurance Association are still being reviewed by the Treasury.
- The Regulation on Insurance Support Services and Article 4/3 determining the scope of the activities is currently under the review of the Treasury for further clarification on the activities which cannot be performed by the support service suppliers.

## MAIN INSURANCE/REINSURANCE TRADE ORGANISATIONS

### Association of the Insurance, Reinsurance and Pension Companies in Turkey (Türkiye Sigorta, Reasürans ve Emeklilik Şirketleri Birliği)

**Main activities.** Non-governmental professional organisation in charge of facilitating communication between sector companies and regulatory bodies, distributing to its members the secondary legislation published by the Treasury, establishing other necessary institutions (such as TSEV, an educational organisation for insurers) and publishing opinions on insurance-related legislation.

W [www.tsb.org.tr](http://www.tsb.org.tr)

### The Union of Chambers and Exchange Commodity in Turkey (Türkiye Odalar ve Borsalar Birliği)

**Main activities.** Monitoring of applications, licensing and registration of insurance agents in Turkey.

W [www.tobb.org.tr](http://www.tobb.org.tr)

### Turkish Insurance Institute (Türkiye Sigorta Enstitüsü Vakfı)

**Main activities.** Focuses on research and education in the insurance sector, provides regular seminars for educational purposes and consultancy services on demand.

W [www.tsev.org.tr](http://www.tsev.org.tr)

## ONLINE RESOURCES

W [www.hazine.gov.tr](http://www.hazine.gov.tr)

**Description.** Website of the Undersecretariat of Treasury, the official insurance regulatory authority in Turkey. Texts of the insurance legislation are only in Turkish.

W [www.tsb.org.tr](http://www.tsb.org.tr)

**Description.** Website of the Association of the Insurance, Reinsurance and Pension Companies in Turkey where (limited) English translations of the legislation can be found. English versions are non-binding and for information purposes only.

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## Practical Law Contributor profiles

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**Areas of practice.** Corporate/M&A; insurance; energy and infrastructure projects.

#### Recent transactions

- Regularly advising a wide range of insurance market players, including insurers, reinsurers, financial institutions as well as brokerage, assistance and car leasing companies on various insurance-related transactions.
- Highly experienced on company incorporation and licence obtaining processes, mergers, acquisitions and restructuring of insurance/reinsurance companies, structuring of distribution schemes and drafting of related agreements (such as bancassurance, agency and brokerage agreements), drafting and negotiation of reinsurance and retrocession agreements, assistance on regulatory and compliance matters as well as on insurance litigation cases.

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