

# client alert

INSURANCE | TURKEY |

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## NEW REGULATIONS FOR THE TURKISH INSURANCE SECTOR

Since the end of August, the Turkish Undersecretariat of Treasury ("Treasury") has published several new pieces of legislation further regulating the insurance sector. This time, specific focus is being placed on financial requirements, support services and distance sales, as detailed below.

### FINANCIAL STRUCTURE REGULATION

Through an addendum to the Regulation on the Financial Structure of Insurance, Reinsurance and Pension Companies, the scope of the assets that insurance, reinsurance and pension companies may invest in, has been slightly extended (with effect starting from 23 August 2015) by attributing additional powers to the Treasury in this respect:

- The Treasury has the right to expand the existing list of assets that can be accepted as securities to include other assets that it deems relevant;
- The Treasury has the right to make upward or downward changes (by up to 50%) concerning the percentage of assets that can be used as securities.

The addendum also provides for certain changes (applicable from 1 January 2016) when assessing the reinsurance strategies of insurance companies as regards the calculation of their financial strength. In particular:

- the regulation no longer provides for strict percentages limiting the risk transfer ratio applicable to insurance companies; and
- the rating of reinsurance companies is also no longer taken as a criterion when determining which reinsurance companies are eligible to accept risks from Turkish insurers (focus is now being placed on the financial and technical capacities of such reinsurers).

### TECHNICAL RESERVES REGULATION

- In line with the above changes made to the Regulation on financial structure, the Treasury also amended the Regulation on Technical Reserves and Assets Investable for the Technical Reserves of the Insurance, Reinsurance and Pension Companies. Key changes (effective from 23 August 2015) consist in the following: The Treasury is now entitled to specify fixed reserve amounts for outstanding claims in certain insurance branches and/or coverage;
- Only the principle of a bonus or discount attributed to beneficiaries or the insured can be mentioned in the policy (as opposed to the need to mention specific amounts under the former legislation);

- Lease certificates and debt instruments issued by development banks have been added to the list of assets covering the technical reserves. Conversely, pension contribution amounts have been explicitly excluded from this list;
- The changes made to the legislation now allow mathematic reserves to be deposited in current accounts opened at participation banks;
- The Treasury may now make upward or downward changes (by up to 50%) on the ratio of assets that can be used to cover technical reserves.

## CAPITAL ADEQUACY REGULATION

The Treasury has issued a revised Regulation on the Assessment and Evaluation of the Capital Adequacy of Insurance, Reinsurance and Pension Companies, abrogating the former regulation dating back to 2008. The key highlights of this new regulation are as follows:

- The regulation provides for a more detailed definition of the equity capital which, in addition to standard items such as paid-in capital, reserves and profit, now also includes:
  - Supplementary capital, i.e. stabilisation reserves and quasi-capital (subject to certain ratio limits); and
  - Other capital items consisting in 50% of the subscribed share capital, to an extent not exceeding 30% of the equity capital and subject to the payment of at least 25% of the nominal capital.

The calculation of the equity capital also requires that current losses, past years' losses and the companies' own shares be deducted.

- Methods for calculating the required equity capital have been slightly revised, especially when assessing the reinsurance risk of the second calculation method. In this respect, the ratings of reinsurance companies are no longer taken into consideration, in line with the changes made to the Regulation on Financial Structure, mentioned above.
- Certain new administrative measures have been specified in order to maintain the required equity capital. These measures will be applied gradually to the required equity capital according to the equity capital ratio:
  - **Self-assessment stage:** If the ratio is between 100% and 115% (according to the capital adequacy figures of December), a report on the self-assessment will be sent to the Treasury together with information on expectations for the future;
  - **Precaution-taking stage:** If the ratio is between 70% and 99.9%, insurance companies will issue a report setting out their situation and will ensure compliance with the capital adequacy requirements within one year;
  - **Immediate precaution-taking stage:** If the ratio is between 33% and 69.9%, insurance companies will issue a descriptive plan to cover the equity capital deficit. A company in this situation must also increase the equity capital ratio to at least 70% within six months, and to 100% within one year;
  - If the ratio falls below 33%, provisions on **strengthening the financial structure** under the Insurance Law will be applied.

The provisions of this regulation entered into force on 23 August 2015, except for the provision regarding the assessment of the reinsurance risk, which will enter into force on 1 January 2016.

## SUPPORT SERVICES REGULATION

In addition to the above financial regulations, the Treasury also issued the long-awaited regulation on support services in the insurance sector, which will enter into force on 28 November 2015.

Expressly stating that insurance companies must not delegate core business activities to third parties as support services, the regulation governs and limits support services in line with the sectoral announcements previously issued by the Treasury in previous years.

### Performance of Support Services

Companies performing support services activities must comply with the following main requirements:

- Support services companies must register with the Insurance Information and Monitoring Centre (subject in any case to the supervision of the Treasury);
- For the performance of domestic services, support services companies must be duly incorporated in Turkey;
- Managers, auditors or authorised signatories of insurance companies may not act as a member of the board of directors or auditors, may not be assigned with signing authority, may not become a shareholder or accept any work in consideration for remuneration from any support services companies with which they have a business relationship (except for group companies);
- Support services companies cannot provide intermediation services to insurance companies to which they already provide support services.

### Agreements on Support Services

An agreement to be concluded between a provider of support services and an insurance company must contain the following main terms:

- Principles on service standards, technical capacity and human resources;
- Undertakings from the service provider to act in compliance with the instructions given by the insurer, the provisions of the agreement and applicable legal requirements;
- Undertakings from the service provider to keep in strict confidence any customer data and other data obtained while performing support services.

All agreements concluded between insurance companies and support service providers must comply with the provisions of this regulation by 28 August 2016.

### Procurement of Support Services

Before procuring support services, insurance companies must prepare a risk assessment and management report meeting the requirements of the Treasury, and submit it to the Insurance Information and Monitoring Centre.

Each year, insurance companies must prepare an annual assessment on the above report and submit it to the Insurance Information and Monitoring Centre by the end of March. This assessment must also be sent to the board of directors of the insurance company.

## LIABILITY OF INSURANCE COMPANIES IN DISTANCE SALES PERFORMED BY AGENTS

The Treasury also recently issued a sectorial announcement regarding the liability of insurance companies in relation to distance sales performed by its agents.

With this new announcement (no. 2015/33), the Treasury is requesting insurance companies to provide necessary information on the compliance of their agents' operations with the provisions of Articles 1 and/or 2 of the Communiqué of the Treasury on the Necessary Technical Infrastructure for the Conclusion of Insurance Contracts Electronically or through Call Centres.

This reporting must be made separately for each agent, and aims to centralise the liability of agents within the insurance company they work with. In the event that an agent acts as an intermediary for more than one insurance company, each of these insurance companies must make a separate report to the Treasury on the compliance of such agent's operations.

*In compliance with Turkish bar regulations, opinions relating to Turkish law matters that 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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