

client alert

INSURANCE | TURKEY |

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TURKISH INSURANCE SECTOR / RECENT DEVELOPMENTS

The first six months of 2014 have been busy for the Turkish insurance sector, in particular due to recent changes affecting the legislative environment. Everything started with the adoption of the Consumer Protection Law No. 6502 in late 2013, which was followed by the entry into force of several pieces of legislation concerning insurance professionals. This regulatory boom follows on from the new policies put in place by the Turkish Government on consumer protection and awareness of the financial investment markets, which is supported by the new *"Action Plan on the Financial Access, Education and Protection of the Financial Consumer"* recently adopted by the Turkish Prime Ministry.

Since April, the following main legislative texts (which entered into force on their respective date of announcement) have been issued as regards the insurance sector:

- The Regulation on the Insurance Agencies, published in the Official Gazette No. 28980 on 22 April 2014 ("**Agencies Regulation**"),
- The Regulation on the Activities to be Considered within the Scope of Insurance Activities, Insurance Agreements Concluded in Favor of the Consumer and Distance Insurance Agreements, published in the Official Gazette No. 28982 on 25 April 2014 ("**Insurance Activities Regulation**"), and
- The Circular No. 2014/8 of the Undersecretariat of Treasury on the implementation of the Agencies Regulation, published on 22 May 2014 ("**Circular No. 2014/8**").

The above texts are expected to impact the business models of a wide range of market players, such as insurance companies, insurance agencies, banks, financing companies as well as manufacturers and retailers of consumer products which provide extended warranty services.

While the deadline to adapt to the regulatory changes set out under the Agencies Regulation and Circular No. 2014/8 is set to 22 October 2014, the Insurance Activities Regulation does not provide for such an adaptation period.

Even though drafts of the above pieces of legislation had been circulated some time ago for the sake of obtaining the market's comments, lawmakers do not seem to have taken into consideration some of these comments and, accordingly, the final versions which entered into force have not fully satisfied the market's expectations. The main technical novelties can be summarized as follows.

IMPACT ON THE LEASING, FACTORING AND FINANCING COMPANIES

Since 2008, leasing, factoring and financing companies were considered by regulatory authorities as being allowed to provide insurance agency services alongside their financial activities. However, following the entry into force of the new Agencies Regulation, the Undersecretariat of Treasury (insurance market regulator) has reversed its established position by issuing Circular No. 2014/8, pursuant to which leasing, factoring and financing companies are now required to incorporate separate insurance agencies in order to continue their insurance-related activities.

This significant change of interpretation does not seem yet to have given rise to any formal objections from the financial services market nor to specific comments from the Banking Regulation and Supervision Agency. Still, lobbying actions from relevant business associations might be expected in the short term.

EXTENDED WARRANTY SERVICES

With the aim of clarifying the legal framework applicable to a long-established market practice, the Undersecretariat of Treasury specified, in the Insurance Activities Regulation, the scope of extended warranty services that may be provided by the manufacturers, importer and resellers without falling into the scope of insurance activities. Even though this regulation will help to clarify some of the grey areas in the legal compliance of certain business models, it will still require market players to adopt a careful business approach in order to remain within the limits set out by the insurance regulations.

NEW PROVISIONS IMPACTING THE INCORPORATION OF THE INSURANCE AGENCIES

While the main regulatory framework applicable to insurance agencies has not significantly changed, the following amendments brought by the Agencies Regulation should be mentioned:

- Even though the **minimum capital requirement** for the incorporation of insurance agencies remains the same (i.e. TRL 25,000), the Agencies Regulation now specifies that at least 50% of the share capital must consist of cash or cash convertible investment instruments, such as government debt securities;
- The former requirement for mandatory **professional liability insurance** has been relaxed, now leaving the assessment regarding the need for such liability insurance coverage to the discretion of the Undersecretariat of Treasury. The latter is also free to decide on the scope of any appropriate security / insurance in this respect;
- **Education and professional experience** requirements for managers and agents have been slightly amended, so that no specific professional experience shall be required in the event the relevant manager or agent graduates from a 4-year insurance-related higher education institution. Circular No. 2014/8 provides for further details in this respect, e.g. required documentation, calculation rules for the relevant education and professional experience periods, etc.

TECHNICAL PERSONNEL

Similarly to the former legislation, the new Agencies Regulation also requires the involvement of specifically qualified "technical personnel" to process insurance-related operations, which shall be duly licensed by SEGEM (Insurance Education Center) following attendance to technical education and related examination.

This being said, the Agencies Regulation brings an additional requirement in terms of top management, further specifying that managers and operational representatives of insurance agency companies shall also meet the requirements applicable to technical personnel.

Insurance agency companies shall employ at least one technical personnel (and one technical personnel for each branch, if any) and only that technical personnel shall be entitled to conduct marketing, information and sale activities in relation to insurance policies, even for the distance insurance agreements conducted via call centers.

AGENCY AGREEMENTS

The Agencies Regulation also offers a reminder of the mandatory provisions that must be covered by insurance agency agreements: identification of the parties, term, renewal and termination conditions, geographical limits, scope of agency authority, relevant insurance branch, agency registration number, commission models and other benefits (if any) to be paid, payment terms, provisions on the issuance and the transfer of policies, collection of the premiums and account settlement.

DISTANCE INSURANCE AGREEMENTS

As well as the provisions of the new Consumer Protection Law, the Insurance Activities Regulation also specifically regulates the conclusion of distance insurance agreements (without physical presence of the parties, e.g. via a call center, electronic means, etc.).

In this respect, insurance companies and agencies are required to benefit from efficient facilities in order to realize distance transactions and evidence the existence of such facilities to the Undersecretariat of Treasury before starting any such operations.

The Insurance Activities Regulation further specifies that insurance agencies and technical personnel are under the obligation to provide appropriate information (and, to a certain extent, appropriate documentation) to customers before the conclusion of any insurance agreement, even in case of distance insurance agreements.

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

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