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Turkey

INSURANCE & REINSURANCE

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This country-specific Q&A provides an overview of insurance & reinsurance laws and regulations applicable in Turkey.

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TURKEY

INSURANCE & REINSURANCE



1. How is the writing of insurance contracts regulated in your jurisdiction?

The issues regarding the commencement of activities, organization, management, operation principles, procedures and as well as termination of activities and supervision of insurance companies are regulated in the Insurance Act No. 5684 ("IA", Official Gazette: dated 14/6/2007, Number: 26552). In this Act, the authority to impose restrictions in insurance is given to various administrative bodies. Insurance and Private Pension Regulation and Supervision Agency ("Insurance Regulation and Supervision Agency") was established by Presidential Decree No. 47, which was published and entered into force in 2019. The authority given to the Ministry of Treasury and Finance and its Minister, the General Directorate of Insurance and the Insurance Auditing Board according to IA were transferred to the Insurance Regulation and Supervision Agency. As of today, the authority to prepare and implement the insurance legislation and audit companies and individuals operating in insurance belongs to the Insurance Regulation and Supervision Agency. IA also provides the authorization to make regulations on certain issues to Turkish President. For instance, the President may determine the procedures and principles related to foreign insurance and reinsurance companies' activities in Turkey [Art. 3, Par. 5], the types of insurance will be compulsory [Art. 13, Par. 1], and the types of coverage to be obtained from domestic market or abroad [Art. 15, Par. 3].

The private law regulations regarding the insurance contract are regulated in articles 1401 to 1520 of the sixth book of the Turkish Commercial Code No. 6102 ("TCC", Official Gazette: dated 14/02/2011, Number: 27846). As it is seen in the systematic of TCC, the general provisions to apply to all insurance contracts are placed in first chapter [Art. 1401-1452]. Thereafter, indemnity insurances are regulated with the titles of property and liability insurance [Art. 1453-1486]. Also, private law provisions regarding life insurances are regulated following. This section includes regulations on life, accident, sickness and health insurance,

respectively [Art. 1487-1520].

As required by Art. 11 Par. 1 of the IA, insurance contracts shall be concluded in accordance with the relevant general terms approved and published by the Insurance Regulation and Supervision Agency. The general terms for almost all insurance types have been published. In particular, general terms play an important role in determining which risks are covered, which risks are excluded from the coverage and which risks can be included in the coverage with additional contracts.

Another legislation directly related to insurance contracts is the general terms and conditions regulated under the Turkish Code of Obligations No. 6098 ("TCO", Official Gazette: dated 04/02/2011, Number: 27836). Especially, control of standard terms is regulated between the articles 20 to 25 of TCO may have direct effect on the insurance clauses. There is no explicit regulation avoiding these provisions of the TCO from being applied to commercial affairs. Therefore, whether the insurance contract is consumer insurance or commercial insurance, the validity evaluation of the standard terms under TCO will come up.

The new Consumer Protection Act ("CPA", Official Gazette: dated 27/11/2013, Number: 28835) which entered into force as of 7/5/2013, under its Art. 3 Par. 1(k) defines the consumer as the real person or legal entity acting with purposes other than commercial or occupational ones. Under the same article, the definition of a consumer transaction is expressly extended to include insurance contracts. As per this express definition, many insurance contracts will be deemed as consumer transactions and be subject to the CPL and the TCC.

TCC regulates insurance contract in 120 articles. ¾th of relevant provisions has mandatory character. Likewise, the purpose of incorporating general terms standardized by the Insurance Regulation and Supervision Agency is to protect the interest of the policy holders. Considering that the insurance contracts are subject to standard term control of TCO and the consumer insurances are subject to the CPA, it will be obvious that the Turkish law

related to the insurance contracts are mostly to protect the interest of the policy holder and the insured.

2. Are types of insurers regulated differently (i.e. life companies, reinsurers?)

As per the Art. 5, Par. 2 of the IA, insurance companies can only operate in one of the life or non-life insurance groups. Insurance Regulation and Supervision Agency is authorized to regulate the insurance types of these groups. This regulation was made in 2007. As of today, number of companies operating in life insurance groups in Turkey is very few. The main reason of this is Individual Pension Savings and Investment System Law No. 4632 (Official Gazette: dated 07/04/2001, Number: 24366) which entered into effect in 2001. Pursuant to Art. 8 of this Law, pension companies may establish insurance contracts only in life and personal accident insurance types besides the contract of pension contract. A circular issued in 2016 by the Undersecretariat of Treasury has adopted a broad interpretation so that pension companies can get licenses from all types in the life insurance group. Although this interpretation was contrary to the Art. 8 of Individual Pension Savings and Investment System Law, the pension companies have applied for a license in life insurance group including the health insurance type and obtained the relevant licenses.

Establishment, organization and supervision of reinsurance companies are subject to the IA as of today. The only provision of the TCC related to reinsurance contracts is Art. 1403 which contains only a definition of a reinsurance contract. Since the reinsurance contracts are not excluded from the scope of application area of the TCC, the most important interpretation issue that arises as of today is that these contracts are also subject to the mandatory provisions of the TCC. In our opinion, expediency of this result is controversial.

3. Are insurance brokers and other types of market intermediary subject to regulation?

There are two types of intermediaries in Turkish law. The insurer's representative is the insurance agency, the intermediary acting for the insured is the broker. Article 23 of IA provides substantive rules related to the insurance agencies. Likewise, detailed provisions regarding the establishment, organization and operations of insurance agencies are also adopted in the Insurance Agency Regulation (Official Gazette: dated 11/10/2014, Number: 29142). Article 102 and the following provisions of TCC provides general regulations on agencies. The relevant provisions apply where there

is no special provision in the insurance legislation regarding the insurance agency [TCC Art. 102 Par. 3, Insurance Law Art. 23 Par. 18].

Legal provisions regarding the brokerage activities are regulated under Article 21 of IA. The Insurance and Reinsurance Brokers Regulation (Official Gazette: dated 21/06/2008, Number: 26913) is decreative as secondary legislation on this subject area as well. Brokers can get licenses in four different fields under this Regulation. These fields are life, non-life, reinsurance and pension. A broker may obtain licenses in all these four fields.

4. Is authorisation or a licence required and if so how long does it take on average to obtain such permission? What are the key criteria for authorisation?

There is no requirement of a prior consent for establishment of an insurance company. On the other hand, insurance companies, once established, are required obtain a license within a year in order to commence operations. As stated hereabove, an insurance company can operate in either a life or a non-life insurance group. However, there is no legal obstacle to the existence of two different insurance companies within the same holding company and one to operate in the life insurance group and the other to operate in the non-life insurance group. It is noteworthy that these reinsurance companies are not subject to such restriction and may carry out activities in both life and non-life insurances.

The crucial legislation for the license application of the insurance and reinsurance companies is the Regulation on Working Principles and Procedures of Association of the Insurance and Reinsurance Companies (Official Gazette: dated 24/08/2007, Number: 26623). The first license application is regulated in Article 11 of this Regulation and the conditions and required documents regarding the subsequent license application are explained in Article 13. The authorized institution for license applications is the Insurance Regulation and Supervision Agency, since 2019. Evaluation of the license applications is regulated in Article 16 of this Regulation. Whereas, it is stated that if all of the required documents are submitted, the first license will be issued within three months, and the subsequent licenses will be issued within two months. It is seen that the applications are concluded within these periods.

Insurance and reinsurance companies incorporated abroad can operate by opening a branch in Turkey. The conditions sought in the license applications of these companies are specified in the Art. 15 of the said

Regulation.

A license is required for insurance and reinsurance brokerage as well. Under the Article 12 of Regulation on Insurance and Reinsurance Brokers, these companies can obtain licenses in four different fields. These are life, non-life, reinsurance and pension insurance, respectively. A broker has the opportunity to obtain licenses in all these four fields. As required under Article 21 of the IA, non-governmental and professional organizations can be authorized by Insurance Regulation and Supervision Agency to prepare the license-related transactions for evaluation and approval. Insurance and Reinsurance Brokers Association has been authorized as of today.

Insurance agencies are not required to obtain a license. They only obtain a proxy of agency from the insurance company they represent bound by this document. To commence operations, the agencies are required only to be registered with the Turkish Union of Chambers and Commodity Exchanges.

5. Are there restrictions or controls over who owns or controls insurers (including restrictions on foreign ownership)?

According to Art. 9, Sub. 5 of IA shareholders who directly or indirectly hold ten percent or more of the capital or voting rights and beneficial interest, or an interest which is lower than the said rates but gives the privilege of nominating members to the executive boards of the management in a manner to influence management and supervision, should meet the conditions sought for the founders of insurance and reinsurance companies. Some of the significant conditions, as set out in Article 3 of the IA are: Having the financial power and credibility required by being a founder or partner of an insurance or reinsurance company, not being sentenced to imprisonment or more than one judicial fine for acts contrary to the insurance legislation or regardless of the punishment, they should not have been convicted for infamous crimes such as summary or major offense of embezzlement, corruption, bribery, theft, fraud, forgery, breach of trust, fraudulent bankruptcy, gross misconduct and smuggling offenses, fraudulent acts in public procurements and sales, laundering the proceeds of crime, financing of terror, revealing secrets of the state or tax evasion.

Under Art. 15, Sub. 1 of IA, an insurable interest in Turkey has to be insured by insurance companies operating in Turkey. In the second subparagraph of the Article provides for exceptions such as transportation insurance for goods subject to export and import,

insurances covering liabilities arising from operation of ships, and hull insurance to be provided for aircraft, helicopters and ships which are financed by foreign banks or financial leasing companies. Reinsurance contracts are not subject to this restriction.

There is no legal obstacle against having foreign partners of insurance companies operating in Turkey.

6. Is it possible to insure or reinsure risks in your jurisdiction without a licence or authorisation? (i.e. on a non-admitted basis)?

An insurance company operating in a group must obtain separate licenses in whichever types under this group wish to operate. Concluding an unlicensed insurance contract is subject to administrative and judicial sanctions, as explained in Question 8 below.

Where the policy holder already has an agreement with foreign insurance companies which are not licensed to operate in Turkey, common practice is to have a fronting arrangement through a Turkish insurance company.

7. Is a branch of an overseas insurer, insurance broker and/or other types of market intermediary in your jurisdiction subject to a similar regulatory framework as a locally incorporated entity?

Foreign insurance companies or reinsurance companies are required to open a branch in Turkey in order to operate in Turkey. Under the Regulation on Working Principles and Procedures of Association of the Insurance and Reinsurance Companies, these companies must meet the conditions sought for the Turkish insurance companies, reinsurance companies and brokers.

8. What penalty is available for those who operate in your jurisdiction without appropriate permission?

There are both administrative and judicial penalties imposed on those carry out insurance or reinsurance activities in breach of license requirements. According to Article 34 of IA, workplaces where unlicensed insurance and reinsurance activities carried out shall be shut down by the authorities and all their advertisements and commercials are prevented or collected. Furthermore, real persons involved in these activities, or use references to insurance market participants as regulated by the IA in their corporate titles, documents,

advertisements and commercials, or public statements, or use such words and phrases in a manner to give the impression that they are engaged in insurance activities shall be sentenced to imprisonment from three to five years, and a judicial fine from 600 to 1000 days.

As per the Art. 1401 Par. 2 of the TCC, an insurance contract made with an unlicensed insurance company is subject to the gambling and betting provisions of the TCO thus unenforceable. In other words, after the risk occurs, the insurance company cannot be sued for the compensation, and if it's already paid, it cannot be reclaimed. In the same Article, it is stated that this provision is not applicable for insurance contracts made with foreign insurance companies.

9. How rigorous is the supervisory and enforcement environment? What are the key areas of its focus?

The regulations regarding insurance activities are developed and enforced by the Insurance Regulation and Supervision Agency in order to ensure that participants of insurance sector operate under the legislations and professional guidelines. All activities of insurance companies are closely overseen by the Insurance Regulation and Supervision Agency.

10. How is the solvency of insurers (and reinsurers where relevant) supervised?

Insurance Supervision Agency also supervises solvency of insurers and its Regulation on Measurement and Evaluation of Capital Adequacy for Insurance, Reinsurance and Private Pension Companies sets out solvency requirements of insurance, reinsurance and pension companies in order to ensure that such companies keep enough equity capital to cover losses which may arise due to their existing liabilities and potential risks. Under this Regulation, capital adequacy statement has to be submitted to the Insurance Supervision Agency twice a year (Article 11).

11. What are the minimum capital requirements?

Insurance companies shall raise their paid-up capitals up to such amount to be required by the Insurance Regulation and Supervision Agency for each insurance type regarding their license. The minimum capital requirement for insurance companies determined in the IA is TRY 5,000,000. However, the Insurance Regulation and Supervision Agency may increase the required

minimum paid capital amount for each applied type license. With the Circular numbered 2020/9 and dated 9/10/2020 published by the Agency, the minimum paid-in capital for insurance companies, cooperatives and reinsurance companies has been increased to TRY 25,000,000. However, insurance companies must also pay the capital determined by the Agency for each of the license they apply for. Accordingly, if an insurance company operating in a non-life group demands to make insurance contracts in every type, its minimum paid-in capital should be TRY 120,000,000 while this limit is 147,000,000 TL for companies operating in the life group and 85,000,000 TL for reinsurance companies.

12. Is there a policyholder protection scheme in your jurisdiction?

Many provisions of TCC and IA are set forth for the benefit and protection of policyholders. Also, one of the key points to be considered, the fundamental principle of "interpretation for the benefit of policy holder" is valid in insurance contracts.

As stated in the answer given to the first question, 3/4 of the 120 articles of TCC regarding insurance law are mandatory. Mandatory provisions are listed in the Articles 1452, 1482 and 1520 of TCC. In case of contradiction to the provisions partaking in these articles' first paragraphs, the insurance contract is deemed invalid. The insurance contract contrary to the TCC articles listed in the second paragraph are invalid, but the insurance contract is valid. The articles listed in the third paragraph, which includes the highest number of mandatory provisions, can only be changed in favor of the policy holder and the insured. In case the provisions stipulated in the Law are changed in favor of the insurance company, the TCC become applicable.

There is no special regulation regarding jumbo risks in the TCC. In other words, the mandatory provisions of the TCC will also apply to jumbo risks. The same result will apply for reinsurance contracts subject to Turkish law, as they are not explicitly exempted from the mandatory provisions of the TCC.

As stated in the answer to the first question, insurance contracts are subject to the relevant general terms approved by the Agency. General terms are mostly drafted for protecting the policy holder. At the closing articles of most general terms, it is stated that the regulations of the general terms cannot be changed against the policy holder and the insured with special conditions. As seen, freedom of contract principle is considerably restricted in insurance contracts.

Another regulation introduced to protect the policyholder

is the insurer's duty to inform before the conclusion of the insurance contracts. This issue is regulated under Article 1423 of TCC and the Regulation on Information in Insurance Contracts (Official Gazette: dated 14/02/2020, Number: 31039). In Turkish law, the obligation to inform of the insurance company applies in all insurance contracts, including insurance contracts in which jumbo risks and compulsory insurance are subject. However, in the reinsurance contract, the reinsurer has no obligation to inform the insurance company. Article 1423 of TCC is poorly drafted. In the second paragraph of the provision, it is said that, in case the pre-contractual information duty has not been duly fulfilled, the contract shall be deemed as having been concluded under the terms written in the policy, unless the policy holder objects to the conclusion of the contract within fourteen days. This provision is interpreted in the recent Supreme Court decisions as if the policyholder does not claim that he/she has not been informed at the conclusion phase of the contract, no compensation shall be requested due to not being informed at all or as required. The precedent that seems to be settled in this direction is in favor of insurance companies and its appropriateness is controversial.

TCC provides mandatory rules that might be amended only in favor of the policyholder, for instance; the implied approval of the insurer in case of silence at the time of conclusion, scope of the insurance cover, termination of the insurance contract, payment and refund of the premium, pre-contractual information of the policyholder, obligation to deliver the insurance policy, insurer's obligation to pay expenses obligation to pay the indemnity, obligation to pay the premium, duty of disclosure.

Also IA provides certain regulations in order to preserve the financial strength of insurance companies. In case of bankruptcy of the insurance company, Art. 10 par. 4 of IA provides policyholder and insured the right to participate in the bankrupt's assets in the third rank.

According to Art. 17 par. 1 of IA insurance companies shall reserve guarantees according to principles set forth in the said article in order to meet their commitments arising from the insurance contracts concluded in Turkey. Guarantees shall not be included in the bankrupt's assets or insolvency assets and may not be seized or exposed to interim injunction and precautionary seizure unless all the receivables of the insured are paid (Art. 17, par. 6).

13. How are groups supervised if at all?

Life insurance, non-life insurance and reinsurance groups generally are subject to the same regulations, however

the requirements for obtaining a license differ.

14. Do senior managers have to meet fit and proper requirements and/or be approved?

According to Article 4 of the IA, members of the board of directors of insurance companies should meet the required qualifications of founders of an insurance company and reinsurance company apart from financial power requirement; the required qualifications regarding education and work experience are stipulated in the IA. The general manager and deputy general managers of insurance companies shall meet the required qualifications of founders of an insurance company and reinsurance companies apart from ones regarding financial strength.

15. To what extent might senior managers be held personally liable for regulatory breaches in your jurisdiction?

Insurance and reinsurance companies might be organized as either joint-stock company or cooperative (mutual insurance) according to Turkish law. The fundamental principle in Turkish law is that the legal person is liable against third parties only with its assets. This will certainly be the case for insurance and reinsurance companies. A significant provision in terms of the liability of the executives is Article 553 of the TCC. Founders, members of the board of directors, executives and liquidators are liable for their damages to the company, shareholders and creditors if they violate their obligations arising from the law and the articles of association. This provision will be important in terms of the executive's liability towards the company.

16. Are there minimum presence requirements in order to undertake insurance activities in your jurisdiction (and obtain and maintain relevant licences and authorisations)?

Article 3 and 4 of IA determines the required conditions for shareholders or founders, board of directors and general managers of insurance companies. The relevant article does not provide any restriction relating to presence or residence requirements. However, such restriction is sought for insurance intermediaries. Pursuant to Article 4 of Regulation on Insurance and Reinsurance Brokers and also Article 4 of Regulation on Insurance Agents, insurance agents and brokers shall be resident in Turkey.

17. Are there restrictions on outsourcing services relating to the business?

Turkish insurance companies can outsource operational parts of the business subject to the restrictions set out in the Regulation on Insurance Support Services (Official Gazette: dated 28/08/2015, Number: 29459). Insurance and private pension companies are allowed to outsource ancillary services that are not central to their insurance business such as the claims handling, limitation of risks and losses, salvage and rescue services, health consultancy. Services seconded employees from other firms, legal and tax consultancy services and advertisement services are not subject to these restrictions and can be freely outsourced.

Insurance and private pension companies are required to submit annual reports on the information about the risk management and cost/benefit analysis of their outsourced operations. They are also liable all the damages and losses arising from the outsourced services.

Service must be incorporated in Turkey and registered with the service provider list maintained by the Insurance Information and Monitoring Center. They also need to have appropriate resources and experience, as well as a clean track record in all jurisdictions within the last five years.

We can say that there is such restriction in recognition of insurance intermediaries. Under Regulation on Insurance Agents subagency is prohibited. Therefore, in principle, an agency can not cooperate with other agencies in different cities. According to the Regulation, the agency that wants to carry out intermediation in different places should open a branch.

18. Are there restrictions on the types of assets which insurers or reinsurers can invest in or capital requirements which may influence the type of investments held?

With the Regulation on the Financial Structure of Insurance and Reinsurance and Pension Companies (Official Gazette: dated 23/08/2015, Number: 29454), the matters concerning the financial structures of insurance and reinsurance companies, the measures to be taken to protect the rights and interests of policyholder and insured, and the procedures and principles regarding the transactions to be made for companies with financial structure weaknesses. With this Regulation; the Insurance Regulation and Supervision Agency is authorized to give warning to companies with

negative financial structure to make the corrections in case it is determined that the financial structure is weakened in a way that endangers the rights and interests of policyholders, as a result of the on-site inspection report or as a result of the evaluations made according to the information obtained within surveillance.

Without prejudice to the assets and guarantees that meet the technical provisions, companies' macro asset investment policies; is prepared annually, approved by the board of directors of the companies and kept by the company including the risk profile of the company, determination of strategies for long-term asset-liability distribution in major fields of investment, directing assets to investments; procedures for determining limits within the scope of regions, markets, sectors, intermediaries and exchange rates, determination of assets restricted or unpermitted, rules on mortgage / pledge or lending of assets, rules and limits regarding the use of derivatives and similar products, relevant procedures related to the accountability of transactions related to assets. Likewise, insurance companies have to determine their investment policies to be followed by the company's senior management and retain them at the headquarters of the company, so that the investment policies are supervised by the Insurance Regulation and Supervision Agency.

19. How are sales of insurance supervised or controlled?

The Regulation on Distance Sale Insurance Contracts (Official Gazette: dated 27/11/2014, Number: 29188) contains a regulation on this subject. In the Regulation, it is stated that insurance activities shall only be carried out by insurance companies, pension companies and reinsurance companies, and individuals and institutions engaged in insurance activities under their special laws. If a transaction deemed to be an insurance activity and is carried out by other persons, in the sense of Art. 5 of the IA, it will be deemed as an unlicensed activity, and the sanctions explained in the Question 8 will become available.

With an amendment to the Regulation in 2020, it is regulated that companies whose major field is not insurance intermediary can direct their customers to execute insurance contracts with the goods and services they offer. However, in order to take action in this direction, it must be linked to the goods sold or the service provided, the type of insurance should not be liability, life and motor vehicle insurance, and the premium for the insurance contract should not exceeding the limit of TRY 3.000. The enterprise aiming

to operate in this direction must have an agreement with an insurance company and the insurance cover be provided by the insurance company. In this way, it is necessary to inform the Insurance Regulation and Supervision Agency before marketing the insurance contract. The fee to be paid by the insurer to this enterprise is not named as a commission, but a service fee. This regulation especially attracted the reaction of insurance agents. As far as we know, an administrative lawsuit has been filed against the said provision of the Regulation.

Insurance activities in Turkey are subject to Act on the Protection of Competition numbered 4054 (Official Gazette: dated 13/12/1994, Number: 22140). Agreements, decisions and practices preventing, distorting or restricting competition in markets for goods and services, and the abuse of dominance by the undertaking's dominant in the market fall within the relevant rules of this Act.

20. To what extent is it possible to actively market the sale of insurance into your jurisdiction on a cross border basis and are there specific or additional rules pertaining to distance selling or online sales of insurance?

As stated above in the answer to the Question 5, contracts concerning an insurable interest in Turkey should be concluded with a company operating in Turkey. Though establishing the contracts set out in the list of exceptions in Art. 15 Par. 2 of IA abroad is possible, foreign insurance companies unless they operate through branches in Turkey, cannot make agreements with the Turkish insurance agencies for the sale and marketing of insurance and market their products in Turkey.

The provisions and principles regarding the establishment of a distance insurance contract are determined in the Regulation on Distance Insurance Contracts. Insurance sales are possible with electronic transaction devices such as kiosks, web pages, mobile applications that allow the establishment of all or part of insurance transactions. It is mandatory that the title of the insurance company that provides coverage in mobile applications and web page applications be clearly included at the very beginning of the process. A circular was issued by the Undersecretariat of the time in 2014 regarding the technical infrastructure required to establish an insurance contract electronically or via the call center. It is imperative to comply with the conditions in this circular. Likewise, if a distance sale is made through an insurance company or an agency, the

Insurance Regulation and Supervision Agency must be notified that the conditions are met. Under the Insurance Agents Regulation, the minimum paid-in capital of the agency that intends to intermediate in distance sales must be 300,000 TL. Likewise, these agencies must submit their financial statements approved by the financial advisor to TOBB until the end of April of each year, certifying that they have at least 4% of the premium amount they intermediate, as an asset or equity.

21. Are consumer policies subject to restrictions? If so briefly describe the range of protections offered to consumer policyholders

As explained in the first question, CPA applies for the insurance contracts where cover is not related to a commercial activity. The insurance contract executed in this way is a consumer transaction and is subject to CPA. According to CPA, insurance contracts are subject to review with regards to unfair terms. Likewise, an important regulation regarding the execution of a loan-linked insurance contract is included in the CPA. An insurance contract associated with a consumer loan cannot be executed without the explicit and written consent of the consumer. If the consumer wishes to execute an insurance contract related to the loan subject, the consumer's freedom to choose the insurance company cannot be restricted. Considering that banks can also act as insurance agencies as per the Turkish legislation, it is an important regulation to protect the consumer.

As stated in the answer given to first question above, the majority of the provisions of the TCC regarding the insurance contract are mandatory. Therefore, it is not valid to amend the regulations stated in the Law with a special condition against the insurant.

Insurance contract, general terms and special conditions are deemed as standard terms within the meaning of Article 20 of TCO. Therefore, it will also be subject to incorporating standard terms and legal consequences of non-incorporation and test of reasonableness of standard terms.

22. Are the courts adept at handling complex commercial claims?

It is not positively confirmed that Turkish courts adept at handling complex disputes. The courts generally appoint experts and rely on their opinions. This makes the litigation process slower as one expert opinion rarely

seems to be satisfactory. Another negative impact of litigation process is being inherently slower than other dispute resolution methods.

23. Is alternative dispute resolution well established in your jurisdictions?

Disputes arising from insurance claims might be resolved through mediation or arbitration.

According to the new legislation Article 5/A of TCC which came into effect as of 1 January 2019 mandatory mediation is a prior condition for commercial disputes before bringing the dispute to the Turkish courts. As per this provision, the parties must firstly apply for mediation; otherwise, the case will be dismissed on procedural grounds without further examination of its merits. Since the insurance disputes are resolved by the commercial courts, mediation as a pre-condition applies for disputes arising from the insurance contracts.

Also as an alternative dispute resolution there Article 30 of IA provides special arbitration procedure for the insurance related disputes. Institutional arbitration in insurance disputes with the Insurance Arbitration Commission has a well-established system based on membership of the insurance companies. If the insurer is a member, then the dispute can be brought before the arbitrators under specific rules. Institutional arbitration may only be filed against the insurer. In other words, the insurer may not be a claimant. The award is appealable where the amount in dispute exceeds TRY 40.000,00. Mandatory mediation is not a prior condition for the disputes settled by Insurance Arbitration Commission.

24. Is there a statutory transfer mechanism available for sales or transfers of books of (re)insurance? If so briefly describe the process.

Turkish law allows a (re)insurer to transfer a portfolio of insurance contracts to another without having to obtain policyholders' consent. Primary liability for the policy may therefore removed from the balance sheets of the company transferring its books provided it will remain the contracting party to, and addressee of any claims of the policyholder(s).

Pursuant to Art. 10, par. 1 of IA voluntary liquidation of an insurance company, its merger with one or several insurance companies, its acquisition by another insurance company is subject to an authorization to be granted from Insurance Regulation and Supervision Agency. The same principle is also applicable to the

transfer of insurance portfolio.

25. What are the primary challenges to new market entrants?

Despite Turkey's growth potential in recent years, there are certain unique challenges especially in insurance market, such as strict regulations and sudden changes in legislation. Insurance Regulation and Supervision Agency plays an active role supervision of insurance companies, and the new entrants have to carefully consider its requirements.

26. To what extent is the market being challenged by digital innovation?

Many insurance companies are developing their digital innovation capabilities while facing challenges and trying to understand this new era is reshaping the insurance sector. Active use of digital platform as an important sales channel resulting positively growth.

Digital developments open new doors to insurers at every stage of sales, thus insurers are now under pressure to go digital, unless they might be behind the deepened competition in a new platform.

27. How is the digitization of insurance sales and/or claims handling treated in your jurisdiction, for example is the regulator in support (are there concessions to rules being made) or are there additional requirements that need to be met?

As per the Article 1526/2 of TCC, it is possible to draft, sign the insurance contract via electronic signature, and send the insurance contract through the digital platform. An insurance company or its agency shall meet the conditions related to technical infrastructure stated in The Circular on Technical Infrastructure Required to Conduct Insurance Contracts on Electronic Environment numbered 2014/10. You can kindly find our detailed explanation regarding this matter in answer to the Question 20.

28. To what extent is insurers' use of customer data subject to rules or regulation?

Usage of the insureds' personal data is subject to the Personal Data Protection Law numbered 6698 (Official

Gazette: dated 07/04/2016, Number: 29677). The Personal Data Protection Law's objective is to protect, in particular, the right to privacy and other fundamental rights and freedoms of individuals in the processing of personal data, and to regulate the procedures and principles for individuals and legal entities processing the personal data. Insurers' transactions might be subject to the sanctions in the Personal Data Protection Law.

29. To what extent are there additional restrictions or requirements on sharing customer data overseas/on a cross-border basis?

According to Article 9 of Personal Data Protection Law, personal data shall not be transferred abroad without explicit consent of the data subject. Second paragraph of this article set forth exceptions to the explicit consent rule for cross-border data transfers. Under this regulation, personal data may be transferred on cross-border without explicit consent of the data subject provided in certain conditions stipulated in Article 5 and 6 of this Law and also in existence circumstances provided that sufficient protection is provided in the foreign country where the data is to be transferred, the

controllers in Turkey and in the related foreign country guarantee an adequate protection in writing and the Personal Data Protection Board (which consists of members elected by Turkish National Assembly, Turkish President and Council of Ministers) authorized such transfer, where adequate protection is not provided. However, Personal Data Protection Board has not determined and announced the countries where adequate level of protection is provided.

30. Over the next five years what type of business do you see taking a market lead?

The accessible technology and increased computing capabilities over the last years have been beyond expectations. The insurance sector is no exception to such innovations with the alternative ways of marketing, providing the products and services, transformation of areas such as underwriting, risk assessment, customer service, claims management. We also have a new term called "insurtech" being used to describe new technologies expected to bring innovation to the insurance sector. Therefore, we expect the new entrants transforming the business models through innovation and technology will attract a large number of policyholders and also insurers.

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