
THE INSURANCE AND REINSURANCE LAW REVIEW

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Chapter 30

TURKEY

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I INTRODUCTION

i Nature of the insurance and reinsurance market

As of March 2014, the number of active insurance companies incorporated in Turkey was 61. Turkey has two reinsurance companies; however, as one of those companies does not generate premiums, it only has one active reinsurance company. Reinsurance cover is mostly provided to Turkish insurance companies by foreign reinsurers. As of June 2013, the share of the relatively small insurance sector² in the financial services sector has remained at 4.6 per cent.³

According to recent statistics,⁴ in 2014, growth in the insurance industry lagged behind inflation. The total premium collection increased by 7.3 per cent compared to 2013, amounting to 26 billion liras.⁵ From this aggregate value, 23 million liras were attained from non-life branches, whereas 3.2 million liras were attained from life insurances. While in 2013 the highest increase was in mandatory traffic liability insurance (due to the rise in the premiums of this insurance imposed by the Insurance Undersecretariat of the Treasury), in 2014, traffic liability insurance only increased by 2.6 per cent, leaving health insurance with the highest collection of premiums within the

1 Pelin Baysal is a partner and Bensu Aydın is an associate at Gün & Partners Law Firm.

2 Including private pensions.

3 European Commission Turkey 2014 Progress Report, p. 22, http://www.ab.gov.tr/files/ilerlemeRaporlariTR/2014_ilerleme_raporu_tr.pdf.

4 *Insurance Newspaper*, <http://www.sigortacigazetesi.com.tr/hayat-ve-oto-buyumeyi-frenledi/>.

5 Insurance Union of Turkey, <http://www.tsb.org.tr/resmi-istatistikler.aspx?pageID=909>.

group.⁶ It is also worth noting that the goal of the insurance sector is to generate up to 63 million liras in premiums by 2023.⁷

In recent years, the interest of foreign investors has grown significantly due to the stabilised economy, the efforts for compliance with EU laws and regulations, and the considerable insurance potential in Turkey. The foreign share in the insurance sector at the end of 2013 totaled 61.29 per cent of active insurance companies.⁸

Despite growing awareness of insurance, there is still a significant lack of legal and practical experience, particularly with respect to various types of policies including but not limited to D&O liability, infidelity, commercial crime and various aspects of complex policies such as all risks construction and engineering policies.

ii The legal landscape for insurance and reinsurance disputes

Enforcement thorough the Turkish court system is a rather lengthy process. Subject to a monetary limit insurance disputes are handled by general first instance commercial courts. Lack of sufficient experience and specialisation, coupled with the inadequacy of the legislative provisions of the old Commercial Code (replaced by the new Turkish Commercial Code (TCC) as of 1 July 2012), as well as case law leads, in addition to other hurdles of Turkish litigation, to a considerable level of uncertainty with respect to the outcome of court proceedings. Out-of-court settlements are therefore frequently used. Courts cannot force parties to settlement or ADR but are required to remind them of their options at the end of the preliminary examination.

In 2007 a voluntary insurance arbitration system was introduced. The total number of disputes settled by the Insurance Arbitration Commission reached 3,721 as of 31 December 2014.⁹ Traffic insurance disputes accounted for more than half of the applications, followed by car insurance matters.¹⁰

II REGULATION

i The insurance regulator

The insurance regulatory agency in Turkey is the Insurance Undersecretariat of the Treasury (the Undersecretariat).

An insurance company in Turkey can only operate in the form of a joint-stock company or, in the case of mutual insurance funds, a cooperative company. Before incorporation, insurance companies must obtain approval from the Ministry of Customs and Trade. Insurance companies must apply to the Undersecretariat for licensing in each

6 *Insurance Newspaper*, <http://www.sigortacigazetesi.com.tr/hayat-ve-oto-buyumeyi-frenledi/>.

7 Shaping Our Future: Building Turkey's Insurance and Pension Fund sector to Drive Long-term Economic Growth, Insurance Union of Turkey http://tsb.org.tr/images/Documents/ING_2023_kitap.pdf.

8 Insurance Union of Turkey. 'Statistics of Foreign Insurance and Reinsurance Companies.' 12 Feb. 2014.

9 www.sigortatahkim.org/E-BULTEN-16.html.

10 www.sigortatahkim.org/files/IstatistikS16.pdf.

insurance licence class. Companies failing to apply for an insurance license within one year of their incorporation will lose their right to use 'insurance' in their commercial names, as well as being subject to criminal and administrative penalties.

An insurance company is not allowed to be active in both the life and non-life insurance divisions or in any sector not related to insurance.

The minimum paid share capital of an insurance company is 5 million liras, paid in cash.

A foreign insurance company can only operate in Turkey by opening a branch, by incorporation of a company in Turkey, or by acquisition of shares of a local insurance company. Insurable interests of residents in Turkey must be insured by insurance companies established in Turkey with a limited number of exceptions, such as the import and export of freight, ship chartering and life insurance. Non-compliance with the above conditions shall be subject to criminal sanctions including imprisonment and fines. Due to the above restrictions, fronting arrangements with local insurance companies are frequently made.

Insurance products are aimed to be distributed in accordance with business and ethical rules and commercial customs with a focus on the needs and demands of the customer.

As in other markets, bancassurance is an emerging insurance-distribution channel in Turkey. Banks function as agents bringing together insurers and clients, demanding simple and low-cost products from trusted financial institutions.

There is a considerably high number of compulsory insurance branches in Turkey, particularly in relation to dangerous areas such as gas boilers, transportation, medical injuries, clinical trials, and hazardous materials. The most frequent type of compulsory insurance in Turkey is the cover for motor vehicles.

The Insurance Act provides security funds as a precaution for losses to be indemnified due to the compulsory liability insurances. For instance, injured persons can resort to the fund for physical injuries in case the injury cannot be attributed to anyone or those responsible for the injury are uninsured, or for physical injuries and pecuniary damages in case the insurance company is bankrupt or its licence is cancelled due, for instance, to insolvency.

Various activities including transactions related to the commencement of operations; voluntary windings-up or M&As; acquisition by another company with its assets and liabilities; and the transfer of insurance portfolio are all subject to authorisation by the Ministry.

ii Taxation

Insurance company transactions remain exempt from VAT but are subject to a banking and insurance transaction tax (BSMV) and fire insurance tax. Save for the specific exemptions, the general rate of BSMV is determined as 5 per cent of the insurance companies' transactions and the fire insurance tax, levied at 10 per cent, shall apply to insurance premiums collected on fire insurances purchased for movable and immovable properties within municipal boundaries and adjacent areas.

III INSURANCE AND REINSURANCE LAW

i Sources of law

Turkey operates a continental law system and legislation is the principle and primary source of law. The provisions of the Turkish Code of Obligations (TCO) shall be applicable on the insurance contracts where the Insurance Chapter of the TCC is silent. The principles of freedom of contract apply subject to the mandatory and protective measures of these Codes. Accordingly, the Insurance Act provides that Council of Ministers is entitled to stipulate compulsory insurances considering the public good, the execution of which cannot be rejected by the insurance companies upon the request of the intended insured.

Although court decisions are in principle not binding, local courts tend to heavily rely on the judgments of Court of Appeal in giving their judgments.

Turkish law does not explicitly contemplate reinsurance contracts. Therefore, in addition to the general rules of contract law, insurance law provisions in the TCC would to the extent possible apply to reinsurance relations by analogy. It is, however, not clear to what extent and how provisions of insurance law in each case would apply to reinsurance.

The Insurance Act and subsidiary legislation provide the regulatory framework of the insurance and reinsurance industry.

ii Making the contract

Insurance contracts are defined in the TCC as:

[A] contract under which the insurer undertakes, in exchange for a premium, to indemnify a loss caused by the occurrence of a danger or risk, harming an interest measurable in monetary terms of a person concerned or to effect payment or to fulfill other performances based on the lifetime or upon occurrence of certain events in the course of the lifetime of one or several persons.

The following can be identified as the main elements of an indemnity insurance:

Insurable interest

The Code refers to an ‘interest measurable in monetary terms’. According to established doctrinal views and practice, an insurable interest in indemnity insurances consists of proprietary, intellectual or personal rights and receivables which are measurable in monetary terms and capable of enforcement by legal action.

With respect to life insurances, the TCC provides that the policyholder can take out insurance on its own life or on the life of another person (person subject of the risk) against death or survival. In the case of insurance on the life on another person, it is required that the beneficiary has an interest in the survival of that person.

Lack of insurable interest not only at the time of the conclusion of the contract but at any stage will result in invalidity of the contract. Provisions to the contrary will render the insurance contract invalid.

Risk

The definition of the TCC includes 'risk', namely, danger which leads to harm to the insured interest. The TCC also explicitly refers to the obligation of the insurer to 'carry the risk.'

Accordingly, depending on the type of the insurance contract, the risk is transferred to the insurer as soon as the premium paid or the contract is concluded.

The insurer's obligation to indemnify is subject to the occurrence of the identified risk and the occurrence of a loss as a result of the occurrence of such risk. However, if the risk occurs due to intentional acts of the insured, the insurer shall be released from liability and shall not reimburse the premiums paid.¹¹

Insurance sum

Insurance sum is subject to the limit of the insured value and the actual loss in indemnity insurances.

Insurance premium

The TCC provides that 'unless otherwise contracted, liability of the insurer starts at the time of actual payment of the premium or the first installment.'

A new amendment has been introduced by the TCC regarding the insurer being silent at the conclusion of the indemnity contract.

Since insurance and reinsurance contracts are contracts of utmost good faith, one of the statutory duties of the policyholder is the duty of disclosure and not to misrepresent facts known or reasonably expected to be known to him or her before the conclusion of the contract.

The TCC imposes a duty of disclosure on the insured at three different stages, namely: before the conclusion of the contract, during the contract and at the time of occurrence of the risk.

Regarding the duty of disclosure before policy inception, the TCC provides that the policyholder is under a duty to disclose important facts that are, or should be, known to him. The TCC also provides that questions asked orally or in writing by the insurer are presumed important unless proven otherwise.

The TCC, after confining the duty of the policyholder to the questions in a list provided by the insurer, explicitly provides an exception where facts were concealed in bad faith. In case of non-compliance with the duty of disclosure before policy inception, the TCC provides alternative rights for withdrawal of the policy or asking for a change in the premium, both to be used within 15 days of becoming aware of the non-disclosure of important facts. When the request for a change in the premium has not been accepted within 10 days, the insurance will terminate automatically.

When breach of the duty of disclosure has been discovered after the occurrence of the risk, a reduction on the insurance indemnity will be made according to the degree of negligence of the policyholder in its failure to disclose, provided that the negligence has

11 Under Article 1429 of the TCC, the common rule is stipulated as 'Unless otherwise agreed, the insurer shall pay losses arising from the negligence of the insured, the insured, the beneficiary and the persons for whose acts these persons are legally liable.'

the potential to affect the occurrence of the risk or the amount of the indemnity. When the policyholder acted willfully, the insurer has no liability for insurance indemnity provided that there is a connection between the non-disclosure and the occurrence of the risk. When there is no connection, the indemnity shall be paid taking into consideration the proportion of the paid premium and the premium that should have been paid if the circumstances had been disclosed.

The insurer must issue an 'Insurance Policy' recording the mutual rights, obligations, including default provisions and special provisions accompanied by general conditions predetermined by the Undersecretariat and signed by the insurer. Written form is not a condition for validity but a regulatory requirement for the protection of the insured.

iii Interpreting the contract

General principles concerning interpretation of contracts in civil law also apply to insurance contracts, especially the principles of utmost good faith and honesty. When there is ambiguity or contradictions in the wording; interpretation in favour of the insured prevails since the primary duty of providing a proper wording is on the insurer. The principles of protection of the insured and keeping the insurance contract alive are dominant. One of the main points to be considered in the interpretation is the principle of balance between the risk carried by the insurer during the term of the contract, the premium collected, and the interests.

Incorporation of terms

There is no legal discussion with respect to the conditions of incorporation of insurance terms to the reinsurance contracts; however the terms subject to incorporation must be in compliance with statutory provisions. For instance, provisions concerning public order have to be taken into consideration.

Types of terms in insurance contracts

Special provisions of insurance contracts have to be drafted in accordance with the standard general terms approved by the Undersecretariat and the mandatory provisions of the TCC. Non-compliance with mandatory provisions may render the contract or the relevant contract provision invalid. There are various legal provisions that cannot be contracted out contrary to the interests of the policyholder, the insured or the beneficiary.

Warranties – conditions precedent

Sanctions attached to certain warranties or conditions precedent to cover do not necessarily give the terms the intended effect and may be caught by semi-mandatory or mandatory provisions of the TCC. Where a condition or warranty relates to the duties already provided for by the TCC, such as the duties of disclosure and notification before and during the contract (regarding any increase in the risk) and upon the occurrence of the insured-against event, then semi-mandatory provisions which cannot be amended contrary to the interests of the policyholder, the insured or the beneficiary with respect to such duties and sanctions are highly likely to be applicable. These provisions prevent the insurer from simply rejecting cover on the basis of non-compliance and subject sanctions to various conditions such as a causal link between the failure in compliance and the

occurrence of the risk or the amount of indemnity. The TCC introduces a specific provision in that regard and provides that where the insurance contract provides for partial or entire avoidance of the contract by the insurer for non-compliance with the duties by the insured (where the sanction of non-compliance with such duty has not already been specifically provided for in the TCC – as explained above), avoidance shall not take effect unless the non-compliance is based on fault. Where non-compliance is based on fault, the right to avoid the policy will cease when it has not been used within one month of learning of the circumstances. Also, the insurer will have no right to avoid the policy unless the non-compliance had any effect on the occurrence of the risk and the extent of the obligations of the insurer.

iv Intermediaries and the role of the broker

Position of brokers

According to the definition of the Insurance Act, a broker is the person who acts independently and impartially to appoint the insurance companies for contracting insurance policies.

Pursuant to the Regulation on Insurance and Reinsurance Brokers (Brokers Regulation), brokers must obtain a brokerage licence from the Undersecretariat.

How brokers operate in practice

There are various obligations and prohibitions set out for brokers in the Brokers Regulation. For instance, brokers must make an extended research at appointing the insurers, can conclude protocols with insurance and reinsurance companies, but are prohibited from engaging in any other business.

Agencies and contracting

Agencies operate on behalf of insurers, on the basis of a contractual relationship between them and the insurance company.

Agencies also need to be incorporated as joint stock or limited liability companies and obtain the approval of the Undersecretariat, and shall be registered on the Agency Registry indicating whether or not the agencies are granted power to conclude contracts and collect premiums. The approval shall be then promulgated by the Turkish Union of Chambers and Commodity Exchanges.

In April 2013 insurance agencies were prohibited from engaging in business other than agency work in the insurance sector.

v Claims

Duty of disclosure

Apart from the disclosure duties regarding the conclusion of the contract (as set forth in Section III.ii, 'Insurance premium', *supra*), the TCC provides for the duty of immediate notification of the increase of the risk during the term of the contract and provides that the insured and the policyholder must refrain from acts that would increase the amount of insurance indemnity by way of increasing the risk or current conditions. When the increase has been learned subsequently, the policyholder must notify the insurer within 10 days of learning at the latest.

The insurer has the right to terminate the policy or request premium difference within one month of becoming aware of the increase in the risk. When the non-disclosure was willful, the insurer will keep the paid premium. When payment of the premium difference has not been accepted within 10 days, the policy will be deemed terminated.

When the increase has been learned of after the occurrence of the risk, the insurance indemnity will be reduced according to the gravity of negligence in the failure to disclose, provided that the non-disclosure is of such gravity that it may affect the amount of the insurance indemnity or the occurrence of the risk. When the policyholder was intentional in its non-disclosure, the insurer has the right to terminate the policy, provided that there is a connection between the increase in the risk and the occurrence of the insured event. In such case, the insurer will not pay any indemnity and not return the paid premium. When there is no connection, however, the insurer must pay the indemnity, taking into consideration the proportion of the paid premium and the premium that should have been paid.

When the risk has occurred before the right of termination has taken effect or within the period for use of the right of termination, insurance indemnity must be paid taking into consideration the ratio between the paid premium and the premium which should have been paid, provided that there is a link between the increase and the occurrence of the risk.

The policyholder also has a duty of disclosure at the occurrence of the risk that relates to the disclosure of the facts affecting the occurrence of the loss.

In the case of liability insurances, the TCC provides that the policyholder has a duty to immediately notify the insurer upon learning of the occurrence of the risk, and in the case of property insurance, the policyholder must notify the insurer without delay. As regards third-party liability policies, the TCC introduces a new duty on the insured to also notify events that may give rise to his or her liability within 10 days of learning. When the notification of occurrence of the risk has not been made or the policyholder was late in his or her notification, a reduction will be made in the indemnity according to the degree of negligence in the failure to disclose, provided that the failure caused an increase in the insurance indemnity.

Good faith and claims

Even though the insured's interest is covered in exchange for the payment of premiums, he or she must still take appropriate precautions and not negligently cause further losses or aim to achieve enrichment upon the occurrence of the risk.

In the event that risk materialises or that materialisation of risk becomes highly probable, the policyholder must, as long as circumstances permit, take measures to prevent the loss or the increase in its likelihood, to mitigate the loss, and to protect the insurer's rights of recourse against third persons.

Set-off and funding

The insurer is entitled to deduct the premium due from the indemnity amount or the fixed sum to be paid with the exception of liability insurances. Set-off may be applicable even in the event where the insured and the beneficiary are different persons.

IV DISPUTE RESOLUTION

i Choice of jurisdiction

The Code on International Civil Procedure with respect to insurance contracts provides that the following jurisdiction rules cannot be avoided by contract: (1) claims against insurers are subject to the jurisdiction of the courts at the insurer's principal place of business or the place of incorporation of the insurer's branch or Turkish-incorporated agent that concluded the contract; and (2), where the claim is against the policyholder, the insured or the beneficiary, the courts that have jurisdiction are the courts of their domicile in Turkey.

The above provisions are unlikely to apply to reinsurance agreements with a foreign element.

The Turkish Civil Procedure Code applicable to the local disputes restricts the freedom of choice of local jurisdiction to agreements between merchants and between public legal entities. Insurance agreements with no foreign element concluded with real persons and legal entities who do not qualify as merchants shall therefore be subject to the jurisdiction rules provided for in the Civil Procedure Act and cannot be contracted out.

Regarding choice of arbitration in insurance and reinsurance contracts, see subsection iv, *infra*.

ii Choice of applicable law

Unlike jurisdiction agreements, there is no specific restriction on the law applicable to insurance contracts. The main limitation to the application of foreign law would generally be Turkish laws of public order. The requirement of the existence of a foreign element is controversial and in a relatively recent decision of the Court of Appeal in an insurance case filed by an insured company, it was concluded that the choice of a foreign law would suffice for the fulfilment of the 'foreign element requirement' even if there is no foreign element with respect to the dispute. The general approach under Turkish law is that mandatory rules are not necessarily matters of public order. Where, however, the insured is not a merchant but a real person, consideration of public order and the law on 'standard contract terms' protecting the weaker party of the contract may prevail for the sake of protection of the insured in such case.

Reinsurance agreements with a foreign element are much less likely to be subject to the above restrictions of applicable law although there would obviously be issues of back-to-back cover where different rules could potentially apply to the local insurance.

iii Litigation

Claims to be pleaded directly towards the insurer

With regard to liability insurances, the TCC provides that third parties are entitled to direct their claims to the third party liability insurer of the person responsible for the loss.

Notification before the pleading

Maturity of the indemnity payment arises upon conclusion of insurer's investigations on the scope of the indemnity and in any case upon 45 days after notification of the

occurrence of the risk. The investigation of the insurer shall in any case be concluded within three months from notification.

Stages of litigation

Insurance disputes are in principle dealt with by the first instance commercial courts.

Stages of litigation before the commercial courts are as follows:

- a* Written submission by the parties of their claim, defence, rebuttal and rejoinder and evidence.
- b* A preliminary hearing date is set, where issues such as case conditions (e.g., existence of the judiciary power of the court, disputes on capacity to file and pursue a lawsuit and allocation of a security if necessary) and preliminary objections (jurisdiction, division between the civil and commercial courts, existence of an arbitration agreement) are to be resolved. The judge shall carry out the required procedure in order to collect the parties' evidences. At the preliminary hearing, the judge will also encourage the parties to settle or resort to the mediation. In this stage, the parties can amend their evidence and assertions only if the counterparty gives his or her consent.
- c* Turkish courts almost always revert to court-appointed expert examinations even in legal matters. Hearings are being held on the disputed elements of the case, where the court could hear witnesses and obtain expert reports.
- d* Upon assessment of all evidence and facts, the court delivers a short judgment followed by a reasoned judgment. Subject to a monetary limit (1,891 liras¹² for 2014), judgments of the first instance courts can be appealed. The Court of Appeal may either uphold the decision of the first instance court or partially or entirely overturn the judgment. In this instance, the first instance courts usually revise their future judgments. The courts, however, also have the right to insist on their judgments and the parties can request that the same chamber of the Court of Appeal reviews its judgments rendered on appeal.

Evidence

Under Turkish civil law, the adversarial system prevails.

The burden of proof of the existence of the contractual relationship, the occurrence and amount of the loss is on the insured. The insurer must prove the lack of cover and application of exemptions. Every transaction exceeding 2,500 liras must be proven by a deed. Witness evidence would only constitute supportive evidence.

Turkish courts frequently refer disputes to a court-appointed panel of experts, even in legal matters. As a novelty, the parties are granted the opportunity to submit expert views subject to the questions of the judge and the parties (without any common law-style cross-examination procedure)¹³ as supportive evidence without any need to obtain a judge order in this regard. Neither expert reports ordered by the court nor expert views submitted by the parties are binding for the judgment.

12 Article 427 of Civil Procedural Law numbered 1086 and the General Communiqué (numbered 71 and dated 30 December 2013) on the Law numbered 492.

13 Umar, Bilge; HMK Şerhi sayfa 801 vd.

Costs

6.831 per cent of the claimed amount needs to be paid as court fees.¹⁴ One-quarter of this amount has to be paid to the court in advance by the claimant. Court fees and court expenses (the most significant of which are expert fees – around €500–€750 per expert) are recoverable in the event of the case being found in favour of the claimant. The court orders legal fees in favour of the winning party (or to the extent of acceptance by the court of the claimed amount) in accordance with an official tariff. The parties cannot recover actual fees they may have paid to their lawyers. Lawyers' fees ordered by the court belong to the lawyers unless agreed otherwise between the lawyers and their clients.

Claimants who are of foreign citizenship may also be obliged to submit a warranty to the court, the amount of which shall be determined by the court, subject to exemptions provided by bilateral and multilateral agreements (such as The Hague Convention on Civil Procedure).

iv Arbitration

Arbitration clauses

Parties can refer to arbitration for the resolution of insurance disputes by inserting an arbitration clause into the insurance and reinsurance agreement or concluding a separate arbitration agreement between each other. Provisions of Civil Procedure Law will be leading the parties to arbitrate in Turkey in a local dispute whereas the International Arbitration Act¹⁵ will be applicable if there is a foreign element in the dispute, particularly in disputes between local insurers and foreign reinsurers where the place of arbitration is Turkey.

Arbitration Commission

The Insurance Act foresees an institutional arbitration proceeding irrespective of the existence of an arbitration clause. Even if the insurance company is not a member of the arbitration system, the insureds shall benefit from the relevant arbitration procedure regarding the disputes arising from compulsory insurances.

Format of insurance arbitrations

The Arbitration Commission may appoint a tribunal consisting of a minimum of three arbitrators specialised in life or non-life insurances in case of arbitration based on the Insurance Act. However, where the disputed amount is equal to or above 15,000 liras, it is compulsory to form a tribunal. The tribunal decides by majority.

Procedure and evidence

The requirement for application to the Arbitration Commission is a partial or total rejection of the insurance claim.

14 <http://www.gib.gov.tr/index.php?id=1079&uid=pMzD40A9M4IP6oCJ&ctype=teblig>.

15 Drafted in consideration of the UNCITRAL Model Law on International Commercial Arbitration, the Arbitration Law is applicable to those disputes comprising a foreign element.

Applications may not be filed with the Commission regarding disputes that have been referred to a court or to the Arbitration Committee for Consumer Problems.

The application to the Commission shall be first examined by rapporteurs. Applications which cannot be settled by rapporteurs are referred to the insurance arbitrators. Arbitrators have to issue their awards within four months, at the latest, of the date they have been commissioned.

In addition to the procedure of arbitration adopted by the Civil Procedural Code, the arbitrator may consider the case on submitted documents only. Unless otherwise agreed, the tribunal or the sole arbitrator can decide on the provisional injunctions or evidence determination.

Costs

Attorneys' fees ordered in favour of the party whose request is partially or wholly accepted are one-fifth of the attorneys' fees referred to in the Minimum Attorney Fees Tariff.

The application fee is determined by the Undersecretariat and varies from 50 liras to 300 liras, depending on the amount of the dispute.¹⁶

The fees of arbitrators are paid by the Commission. Arbitrators shall decide on the additional costs as regulated under the Civil Procedural Code.

Awards of the Arbitration Commission in Year 2014

Most of the awards rendered by the Arbitration Commission concerned car insurance policies, compulsory traffic insurance, property insurance and life insurance policies. Compared with court judgments, the awards contain more comprehensive examinations and reasoning.

v Alternative dispute resolution

Complaints of the insured

Insureds can apply to the Insurance General Directorate, incorporated under the Treasury regarding their complaints arising from interpretation of the regulations or conduct of an insurance company.

vi Mediation

Mediation has not been a frequently used method of dispute resolution. Mediation has been recognised in Turkish Law for the first time by the Mediation Act, which entered into force in June 2013. The courts are also obliged to invite but not to force the parties to settle the dispute by means of mediation or settlement.

In the event of a settlement at the end of mediation, the parties may request an annotation regarding the execution of the agreement from the court at the place of jurisdiction. Such annotation gives the agreement, reached as a result of mediation, the power of a court judgment.

16 http://www.sigortatahkim.org/index.php?option=com_content&view=article&id=67&Itemid=92.

V YEAR IN REVIEW

The entry into force of the new TCC in July 2012, including a new book on insurance contracts, was a significant development for the sector. Although it has some controversial aspects, the new law can be said to have been generally welcome. The insurance provisions of the old TCC were clearly inadequate to the needs of the industry and to respond to various questions. The new law is significantly wider in scope and introduced clearer terminology and a systematic approach. The TCC introduced a specific section applicable to third-party liability insurances for the first time in Turkish insurance law.

The TCC also introduced some new and some raised standards regarding corporate governance for both insurance companies and its agencies, which are to a significant extent also applicable to insurance companies. Since the introduction of the TCC, various accounting and financial reporting standards and interpretations of the standards, aligned with the corresponding international financial reporting standards have been adopted.

A regulation on private health insurance, which entered into force on 23 April 2014, has been introduced providing substantial protections for insureds. One of the highlights of the regulation is the right provided to the insured to guaranteed renewal with the same terms despite the occurrence of new diseases.

Surety bonds (insurances), which are contemplated as an alternative to the letters of guarantee issued by banks, were introduced in February 2014. By means of this new type of insurance, the insurers guarantee to compensate the creditor in case the policyholder debtor becomes insolvent and is therefore unable to perform its contractual duties.

A regulation on extended warranties is under way aiming to remove legal uncertainty with respect to the legal nature of such contracts and the likelihood of their qualification as insurance cover.

VI OUTLOOK AND CONCLUSIONS

The Turkish government has an objective to be the 10th biggest economy in the world by 2023, aiming to generate US\$2 trillion-worth of gross national product. In line with this objective, the insurance sector is, among others, in the sights of the government. Turkey, which is the president of the G20 summit in 2015, also focused on insurance in its B20 meeting on 15 December 2014. With respect to the foregoing, the outcome of these positive initiatives is yet to be seen.

An increase in multinational groups acquiring a certain share in the insurance sector is expected. Further growth and in particular a rise in demand for third party liability insurances in general and in particular with respect to D&O, environment liability and cyber risk insurances are also expected.

The Treasury has also focused on insurance regulations that will motivate the sector players in the insurance market. Alignment efforts with the EU in the insurance regulation need to and are expected to continue.

Appendix 1

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