

Insurance Companies and Insurance Broker in Turkey

A. ESTABLISHMENT OF INSURANCE COMPANIES IN TURKEY

The principles regarding the establishment and the function of insurance companies are stipulated in the Insurance Law (in force since June, 14th 2007) and in the “Decree regarding the Establishment and Function of Insurance and Reinsurance Companies”, which was decreed based on the Insurance Law. In the following we will comment the mandatory company form for insurance companies and the required minimum capital. Also the requirements for the qualification of shareholders and board members will be explained. Subsequently the particularities concerning the business approval, and the principles of work which have to be observed at the beginning of the activity will be mentioned.

I. Corporate Structure

According to article 3/1 of the Insurance Law, insurance companies planning to operate in Turkey have to be established in form of a joint stock company or a cooperative. Beside this, insurance companies may only develop activity in the areas of the insurance industry and in familiar business.

II. Minimum Capital

According to article 5/2 of the Insurance Law insurance companies have to operate in the life insurance sector or in the general (non-life) insurance sector. Reason for the mention under this headline is that the minimum capital of insurance companies is determined according to this decision. According to article 5/3 of the insurance law and the “Decree concerning the Minimum Capital provided for each Insurance Sector” a minimum capital about 5.000.000 TL is needed for the establishment of an insurance company, which means for the registration and publishing of the insurance company at the trade registry. After the finalization of the establishment procedure and the registration of the insurance company at the trade chamber an application has to be submitted to the treasury for the granting of a trade approval. If the companies' capital is lower than the determined amount, the above mentioned minimum capital has to be raised via increase in share capital up to the amount determined by the Treasury. According to the decree no. 2007/4 the current amount for the life insurance sector is 5.700.000 TL and for the non-life insurance 6.600.000 TL.

III. Shareholder

According to Article 277 of the Turkish Trade Law at least five shareholders are mandatory for the establishment of a joint stock company. This condition is also valid for insurance companies; but there are special requirements provided in Article 3 of the Insurance Law.

According to this provision the founders of an insurance company need to have the following attributes:

- They may not have declared bankruptcy.
- They must have the financial power and reputation a shareholder of an insurance or reinsurance company should have.
- They may not have a higher participation or higher voting rights than 10 % of a financial institution which is in liquidation or of a company falling under article 20 para. 2 and 3 of the Insurance Law, whereat a voting right privilege for the appointment of members of the board or the advisory board – regardless of its quota – may not be existent.
- Apart from negligent criminal offenses no other criminal offenses in the area of the insurance industry may have been punished with a prison sentence or more than one penalty; regardless of the designated sentence no other as disreputable marked criminal offense such as corruption, extortionate robbery, forgery of an document, malicious fraud, fraudulent bankruptcy, defraudation of the revenue, bootlegging or similar case involving business offenses may have been committed.
- If the shareholder is a legal person, than the above enumerated conditions – except the requirement of the financial power – are effective also for his members of the management board and the supervisory board.

As can be seen from the mentioned requirements, the main focus is on reliability and sufficient financial power.

III. Members of the Board

The Turkish Commercial Law stipulates that the board of a joint stock company has to be composed of at least three members. In the specific regulations of the Insurance Law the minimum number is raised up to five (including the managing director). It is mandatory for the board members to own shares. This is not necessary for the managing director, who is ipso jure a member of the board (Article 4 para. 1 of the Insurance Law).

The Insurance Law and the Decree regarding the Establishment and Function of Insurance and Reinsurance Companies enumerate the requirements valid for the management boards. Apart

from the requirement of sufficient financial force, the boards have to fulfill the above mentioned requirements which are valid for the founders. Besides all the board members must have finished four years of studies and must be able to prove three years of job experience in the areas of insurance industry, national economy, business economics, bookkeeping, jurisprudence, finance, mathematics, statistics, insurance mathematics or engineering. The requirements concerning the board members do not assume a degree in the insurance sector. Mandatory is a direct or indirect job experience in the insurance sector – according to law not only formal but also de facto.

A longer job experience is required for the managing director and his representative. The managing director needs to prove at least ten years, the representative at least seven years of job experience in the above mentioned sectors. One of the vicarious managing directors has to be appointed as the person in charge with the insurance technique.

IV. Approvals

No approval in advance is necessary for the establishment of an insurance company. Though within one year after the establishment of the insurance company or Reinsurance Company which means after the registration and publication in the trade register, an application for a trade license has to be submitted for every single line of business in which activity shall be developed. If this application is not made within the defined term, the usage of the designation “insurance or reinsurance company” in the company name (firm) is forbidden.

V. Principles of Work

As insurance companies play a very important role in economic matters and as their field of activity shows some particularities, any other industrial activity in a different sector is forbidden.

In order to fulfill their insurance obligations completely and within the time limit insurance companies have to make accruals after the beginning of their activity. In this connection article 17 of the insurance law stipulates the accrual for each line of business under the headline „guarantee“. There exists also a control system regarding the determination of the general terms and conditions provided for the protection of the insurance holder. According to this, the essential content of the insurance contracts has to comply with the general terms and conditions approved by the treasury and applied by the insurance companies. In general the insurance companies can adjust the insurance rates freely as long as the guarantee amounts and rates for mandatory insurances determined by the treasury are adhered to. The insurance activity of insurance companies in Turkey

is strictly controlled by the insurance control authority. The control responsibility covers the inspection of account books, entries and documents of all types. Promotion and advertisement have to be made by using brochures, explicating writs and other comparable documents, whereat the regarding regulations of the Consumer Protection Law have to be observed. Especially the limits and the extent of the rights and duties of the insurance holder have to be defined clearly. Irritating and anticompetitive publications or declarations of the insurance company will be communicated to the competition board.

B. INSURANCE BROKER IN TURKEY

I. Form of Establishment

According to article 6 of the Decree regarding Insurance and Reinsurance Brokers, as long as legal persons or individuals, who established as a commercial enterprise, comply with the regulations mentioned on the legislation and registered to trade registry, they can apply to Treasury or assigned authorities for approvals needed.

II. Minimum Capital

The minimum capital provided for insurance brokers amounts for legal persons 100.000,- TL; additional 25.000,TL have to be paid in for each line of business where activity is intended. Shares must be issued as registered share certificate.

III. Shareholder and Owner of an Insurance Brokerage

The requirements which have to be fulfilled by the founder of an insurance brokerage are stipulated by law through distinction between individuals and legal persons. According to this, insurance brokers who want to perform as individuals need to have the following characteristics:

- They need to be resident in Turkey.
- They may not have declared bankruptcy.
- They may not be sentenced with a prison sentence or more than one penalty by reason of offense against the insurance laws; regardless this offense they may not have committed any as disreputable identified criminal offenses such as corruption, extortionate robbery, forgery of an document, malicious fraud, fraudulent bankruptcy, defraud of the revenue, bootlegging or similar cases involving business offenses.
- They must have finished four years of studies (no sector description).

- They must prove at least ten years of job experience in the insurance industry.
- Minimum assets have to be fulfilled.
- They have to be sufficient in respect to physical, technical and administrative basis and human resources as appropriate for Treasury.

Legal persons as founders of an insurance brokerage need to fulfill the following preconditions:

- Domicile of the corporation must be in Turkey
- Must be established as joint stock company or limited company
- Legal persons may not have declared bankruptcy.
- They have to be sufficient in respect to physical, technical and administrative basis and human resources as appropriate for Treasury.
- They must

IV. Board Members of an Insurance Broker as Legal Person

The Decree concerning the Insurance and Reinsurance Brokers differentiates between board members with and without representative power. Executive director of legal persons who will be practicing as a broker, need to have 5 years of job experience on the fields, they will be practicing at. Executive directors of legal persons who will be broker needs to have all the qualifications except complying with the minimum capital regulation and sufficiency in respect to physical, technical and administrative basis and human resources as appropriate for Treasury.

V. Approvals

The establishment of a commercial enterprise or a joint stock or limited liability company for the purpose of acting as insurance broker requires the approval of the treasury (approval for establishment). Also within one year after the termination of the foundation and registration procedure a trade license has to be gathered from the treasury. For every business line in which activity is intended a separate license has to be issued. Therefore the application for the trade license has to contain the information, if the intended operation shall be in the life insurance and/or the general insurance and/or the reinsurance industry.

VI. Principles of Work

According to article 2 of the Insurance Law insurance brokers have to perform their work independently. This means that the insurance brokers may not be connected to an insurance company; rather, they have to stand on the side of the insurance holder in their position as mediator

and have to protect his interests during the preparation and implementation of the insurance contract. According to the decree the mediation activity of the insurance broker does only give a claim on commission. The same regulation stipulates that the broker has to inform the represented insurance holder about the commission amount in written form before the closing of the insurance contract.

The insurance broker has to gather offers from three different insurance companies and has to announce the reference prices to the insurance holder.

Brokers have to act in accordance with the instructions given by represented clients, to protect the rights and interests of these clients, to comply with the requirements of insurance and carry out their duties in good faith and honesty, they are obligated to assist the parties to provide accurate information, and compensation payments. The firm of insurance brokers has to contain the description “insurance or reinsurance broker” on their title. Any other industrial activity remaining on their title is forbidden.