

# Turkey

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## The new Insurance Law

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The insurance market is one of the fastest-developing sectors in Turkey in recent years. The utilisation of individual and commercial credits increased by 40% in 2006 and by 35% in 2007. This increase created new opportunities for credit insurance companies. The escalation of professionalism in the management of companies has created awareness of the importance of insurance and a wider range of policies, including malpractice insurance, entered the agendas of many companies.

These developments also appealed to foreign capital; while foreign capital shares in the insurance sector was around 5% to 7% in 2004, it increased to 30% in 2007. Nevertheless, generated premium revenues constitute only 1.7% of the gross national product, whereas the average of EU countries is 8.4%. Therefore, further growth is expected in the market.

In addition to market developments, within the scope of the accession process, the need for the harmonisation of laws and the regular European Commission progress reports for Turkey repetitively emphasise that this need also became a driving force for the enactment of new insurance legislation.

Although several amendments were introduced to the lifetime period in the Insurance Inspection Law 1956, it could no longer regulate the rapidly-growing insurance market with its narrow, vague scope. To address market developments and comply with EU regulations, Turkey enacted the Insurance Law (IL) on June 14, 2007.

### Changes introduced by the Insurance Law

The IL is a framework law which sets forth the general principles and leaves detailed regulations for secondary implementing legisla-

tion. The main objective of the IL is to develop the insurance sector, protect the rights of the parties concerned and ensure a secure, stable and effective insurance environment.

The IL closes the previous gaps in the insurance sector and brings in new rules related to, among other things, the incorporation and activities of insurance and reinsurance companies, suspension of activities, liquidation process, a sound auditing system and dispute settlement mechanisms. It covers all market participants such as insurance companies, brokers, agents and actuaries.

However, save for provisions for auditing purposes, institutions that operate under their specific laws, such as social security institutions, the Turkish Export Credit Bank and individual retirement funds, are beyond the scope of the IL.

It is important to note that, under the IL, insurable interests in Turkey must be insured by insurance companies operating in Turkey. There are minor exceptions such as transportation insurance for exported/imported goods and life insurance where a foreign insurance company may be used. Other than the exceptions allowed by the IL, foreign insurance companies must establish a branch in Turkey in order to insure in Turkey.

In line with Turkey's recent policy seeking the removal of bureaucratic barriers to new investments, the IL withholds the preliminary permit for incorporation that was required by the preceding law, reduces the minimum capital requirement from TL10.3 million (\$8.6 million) to TL5 million, allows for different capital requirements depending on various insurance branches, and lays down objective criteria for the rejection of licence applications.

Learning from the mistakes that led to a crisis in the Turkish banking system in 2001, the IL attaches special importance to prudential rules, reserve requirements and the supervision of market players to create a sound and stable insurance system. The IL requires that

founders and managers of insurance and reinsurance companies be prudent and financially sound, and bars persons with a criminal record related to breaches of insurance legislation or infamous crimes. Other than the financial criteria, the auditors of such companies are subject to the same prudential rules. Furthermore, a certain educational background is required for board members, managers and auditors.

As a precaution, following their incorporation, insurance companies must prepare a business plan to forecast their first three years of operation. The IL requires that certain collaterals must be set aside as security for the liabilities of insurance companies. For life insurance, the Turkish Treasury determines the amount of collaterals. For other types of insurance, a minimum guarantee fund must be established, which should not be less than one third of the minimum capital amount.

The IL further requires that a security account be opened before the Turkish Insurance and Reinsurance Companies Union. Certain percentages of mandatory insurance premiums accumulate on this account, which is to be used for specific instances related to mandatory insurance policies. Moreover, for different types of insurances, insurance and reinsurance companies must set aside technical reserves such as reserves for due and overdue receivables of insurance premiums, pending risks, bonuses and discounts from insurance policies and balance reserves for unpaid compensations.

Whereas the abolished Law provided very general provisions regarding supervision, the IL provides a precise manual for monitoring participants in the insurance sector. Insurance and reinsurance companies must be incorporated as joint stock companies with registered shares. The entire share capital must be paid in and share transfers over certain percentages or shares transfers that may lead to a certain degree of control are subject to the permission of the Turkish Treasury.

Insurance and reinsurance companies must keep their accounts and financial tables in accordance with the rules set by the Turkish Treasury and announce such accounts. In addition to audit by internal auditing, financial accounts must also be audited by independent auditors.

All market participants are subject to the supervision of the Insurance Supervision Board. Shareholders, board members, auditors and employees may not, directly or indirectly, use the funds of insurance and reinsurance companies. Other than providing security for insurance operations and their own debt, insurance and reinsurance companies may not provide guarantees for their shareholders, subsidiaries, employees or any other person or entity. In order to maintain their financial status and ensure their compliance with the applicable legislation, the IL also stipulates detailed preventive measures that may ultimately lead to government intervention.

For an accelerated and less burdensome dispute resolution, the IL introduced an arbitration process. Unless otherwise agreed in an insurance contract, a disputed amount not exceeding TL40,000 is settled by arbitration. An award amount exceeding TL40,000 may be appealed before courts. Compared to court judgements, arbitration costs are more reasonable.

Other than these significant changes, several other amendments come into force with the IL. Nevertheless, the EU Commission believes that harmonisation with the *acquis communautaire* has only been partially achieved. The adoption of secondary legislation takes place fairly quickly. Such legislation will bring the Turkish legislation even closer to EU legislation. With the IL, Turkey took an important step to reach its objectives, but there is still progress to be made.

## Capital markets

### Recommended firms

#### Tier 1

Düren Akol Avukatlık Bürosu  
Hergüner Bilgen Özeke  
Paksoy  
Pekin & Bayar  
Pekin & Pekin

#### Tier 2

Birsell Law Offices  
Çakmak Avukatlık Bürosu  
ELIG  
M Fadlullah Cerrahoglu  
Verdi & Yazici

#### Tier 3

Bircanoglu  
Çaga & Çaga  
Dogru Law Office  
Özel & Özel  
Reisoglu-Ensari-Budak Law Firm  
Serap Zuvin Law Offices  
Taboglu & Demirhan

## Banking

### Recommended firms

#### Tier 1

Birsell Law Offices  
Düren Akol Avukatlık Bürosu  
ELIG  
Hergüner Bilgen Özeke  
Paksoy  
Pekin & Bayar  
Pekin & Pekin  
Verdi & Yazici

#### Tier 2

Bircanoglu  
Çaga & Çaga  
Çakmak Avukatlık Bürosu  
Hidayetoglu & Co  
M Fadlullah Cerrahoglu  
Özel & Özel  
Poroy and Özülkü  
Reisoglu-Ensari-Budak  
Somay Hukuk Bürosu  
Taboglu & Demirhan  
Tekinalp Lawyers  
Yarsuvat & Yarsuvat

## Mergers and acquisitions

### Recommended firms

#### Tier 1

Düren Akol Avukatlık Bürosu  
Hergüner Bilgen Özeke  
Paksoy  
Pekin & Pekin

#### Tier 2

Birsell Law Offices  
Çaga & Çaga  
Çakmak Avukatlık Bürosu  
Cerrahoglu Law Firm  
Özel & Özel  
Pekin & Bayar  
Somay Hukuk Bürosu

#### Tier 3

Bircanoglu  
ELIG  
Esinlsmen  
Güner Law Offices  
Taboglu & Demirhan

#### Tier 4

Bener Law Office  
Gürcan Law Offices  
Serap Zuvin Law Offices

## Project finance

### Recommended firms

#### Tier 1

Birsell Law Offices  
Çakmak Avukatlık Bürosu  
Düren Akol Avukatlık Bürosu  
Hergüner Bilgen Özeke

#### Tier 2

Bircanoglu  
Güner Law Offices  
Özel & Özel  
Paksoy  
Pekin & Bayar  
Pekin & Pekin  
Serap Zuvin Law Offices

#### Tier 3

Bener Law Office  
Eryürekli & Fidan  
Reisoglu-Ensari-Budak Law Firm  
Taboglu & Demirhan

Turkey's legal market has been shaken up in the past year, with the departure of key figures from leading legal practices and the cancellation of legislation allowing foreign investment in real estate.

In March 2008 the constitutional court in Turkey's which allowed foreigners to purchase real estate. "Companies are panicking right now," says one partner. "The cancellation has

created uncertainty in the future of the real-estate sector.” Replacement legislation is expected as this edition goes to press, but uncertainty remains as to its exact content.

Commentators have also been questioning whether can retain its title as a dominant firm in the market. In 2008, the firm took a knock when former name partner Emre Derman went on semi-retirement and key lawyer Cem Davutoglu departed to set up his own practice. Nevertheless, the firm retains its position at the top of every table: its association with White & Case is a stabilising force during a challenging year.

Another hot topic of conversation is Ismail Esin's departure from ELIG and his subsequent collaboration with Tolga Ismen to form EsinIsmen. The firm has made big strides since its launch, entering the M&A rankings after clients and peers praised its strong transactional and competition law practices.

The M&A sector in Turkey has continued to shine, particularly for private acquisitions, with the highlight being BC Partners' \$3.2 billion deal to acquire a 50.8% stake in Migros Turk - the largest Turkish LBO ever.

The project finance market is also strong. “There is still a truckload of work in the energy and infrastructure sectors,” says one partner. Russian resources company Magnitogorsk Iron and Steel Works' plans to build a \$1.1 billion steel factory on Turkey's Black Sea coast are expected to be a plentiful source of work in the coming months.

### **Bener Law Office**

Bener Law Office has grown significantly in the last few years, and is praised by clients and rivals for its work in the project finance and M&A sectors. The firm was this year boosted by the arrival of Onur Kordel, a former partner of Salans, in August 2007.

Kordel now heads the firm's M&A department, which advised US insurance conglomerate AIG on its bid for insurance subsidiaries of Turkey's Garanti Bank. The firm also advised Atakas on a \$1.4 billion joint venture with a Russian steel company.

#### **Leading lawyers**

Erim Bener

### **Çakmak Avukatlık Bürosu**

Çakmak Avukatlık Bürosu is based in Ankara, the political capital of Turkey. The firm receives many government mandates and is noted for having a particular strength in local regulatory law. It is the anchor firm of White & Case and Düren Akol Avukatlık Bürosu - both of which are based in the commercial capital Istanbul.

Name partner Mesut Çakmak is noted for his expertise in banking transactions. In one highlight deal, Çakmak provided bank regulatory advice to Bank Julius Baer including on the formation of a liaison office. UniCredit also sought the firm's counsel to advise on structural arrangement in the formation of the company. “Mr Çakmak is a sound lawyer for banking issues,” says one client.

Mehtap Yıldırım Öztürk is also recognised for his contribution to the firm's banking practice. In one deal Öztürk advised Visa International on banking law aspects and the status of new finance products under Turkish law.

M&A is another area of interest for the firm. In the past year Çakmak Avukatlık Bürosu has been active advising Banco di Roma on its merger with Yapı Kredi Bank.

The firm is also taking advantage of increased investment in Turkey from the Gulf region. In one standout deal, the firm acted for the National Commercial Bank of Saudi Arabia in its purchase of a 60% stake in Türkiye Finans Katılım Bankası.

#### **Leading lawyers**

Mesut Çakmak

Mehtap Yıldırım Öztürk

### **Düren Akol Avukatlık Bürosu**

“We got to know about Düren Akol through working with White & Case,” says a client. “We took them on as local counsel and were really happy with their service so we decided to continue using them. They have an excellent reputation in Turkey.”

Despite the departure of key practitioners Emre Derman and Cem Davutoglu, the firm maintains a loyal following. Its association with international law firm White & Case has allowed it to remain relatively steady practice. In fact the firm is as strong as ever, securing a list of impressive deals for the most desirable clients operating in the Turkish legal market.

Privatisation is on the increase and this year Turkish firms have witnessed a flurry of activity in this sector. In one high-profile capital markets transaction, Düren Akol Avukatlık Bürosu represented Deutsche Bank in the public offering of Turk Telecom in a deal worth \$2.1 billion. Turk Telecom, which was partly privatised in 2005, is listing a further 15% stake.

Aydin Duren took a key role in the firm's equity capital markets transactions this year. In one deal, Duren advised real-estate investment company Sinpas Gayrimenkul Yatirim Ortakligi on its \$390 million IPO on the Istanbul Stock Exchange.

Bank lending is another area providing numerous mandates for the firm. In one high-

light deal, Isil Okten acted for VA Tech Finance as arranger of three export credit facility agreements with the Treasury for the financing of the Ilisu Dam and other hydroelectric power projects in a deal worth €1.3 billion.

Meltem Akol, who is highly regarded for her experience in real-estate and M&A transactions, featured in Turkey's most prominent acquisitions over the past year. In one stand-out deal, Akol advised Kohlberg Kravis Roberts on its \$1.3 billion purchase of Turkish freight company UN Ro-Ro - Turkey's largest sponsor-backed deal to date.

On the project finance side, Gama Energy sought the firm's expertise in Cakirlar hydroelectric plant's €16 million project financing loan agreement.

#### **Leading lawyers**

Meltem Akol

Aydin Düren

### **ELIG**

ELIG has enjoyed a strong year in capital markets and banking transactions. The firm, which is formally known as Esin Lokmanhekim İçtem Gürkaynak, changed its name this year following the departure of Ismail Esin, who left to establish his own practice EsinIsmen.

In a highlight debt capital markets transaction, the firm advised travel company Icem's car rental division on a \$750 million master *murabaha* (deferred sale) agreement with Standard Bank.

The firm's banking practice is also receiving a string of noteworthy transactions. In one deal, Serkan İçtem advised Credit Suisse on a \$65 million facility agreement with Dünya Göz Hastanesi. İçtem was also kept busy in the past year advising shipping and transport company Arkas on a \$45 million loan agreement with International Finance Corporation.

#### **Leading lawyers**

Serkan İçtem

Tunç Lokmanhekim

### **Hergüner Bilgen Özeke**

Hergüner Bilgen Özeke retains its position in the top tier of every ranking after recording another record year, featuring in some of the most sought-after transactions.

On capital markets side, Hakki Gedik assisted Türkiye Finans Katılım Bankası in its \$75 million *murabaha* syndication project.

Gedik is also active in bank lending transactions. In one standout deal, he advised ABN Amro and Citibank on the \$4.7 billion refi-

nancing of Türk Telekom's privatisation. Merrill Lynch also sought representation by the firm in the €43.8 million financing of a real-estate project. "Hakki's knowledge of banking law is second to none," says one client of the firm.

Hergüner Bilgen Özeke is particularly active in the M&A sector. In one notable transaction, the firm advised British American Tobacco on its \$1.7 billion acquisition of Tekel. In another high-profile M&A deal, the firm advised the shareholders of the Ülker and Boydak groups on Türkiye Finans Katılım Bankası's \$1.2 billion sale of 60% of its shares.

The project finance team was strengthened in the past year with the recruitment of Asli Budak, a former partner of Reisoglu-Ensari-Budak. The practice is jumping on the wave of energy transactions in Turkey. Highlight deals include providing legal assistance to Akbank, International Financial Corporation and WestLB as joint lead arrangers in the financing to EnerjiSA to fund the first phase of its capital investment program for 2008 to 2012. The \$2 billion project will see the construction of a natural-gas-fired thermal plant and 10 hydroelectric power plants in various locations in western and southern Turkey.

#### Leading lawyers

Hakki Gedik  
Ümit Hergüner  
Ender Özeke

#### Paksoy

In the past year Paksoy & Co underwent a rebranding exercise which saw it renamed Paksoy.

Paksoy's reputation was solidified this year by winning some of the most noteworthy M&A deals in the market. In one such deal, Paksoy's M&A team advised Magnitogorsk Iron and Steel Works on its plans to build a \$1.1 billion steel manufacturing facility in the south of Turkey. Another outstanding deal saw the firm advise Agrokor and Blackstone in the bidding process for the \$1.7 billion acquisition of a 50% stake in the largest supermarket chain in Turkey, Migros.

Name partner Serdar Paksoy advised European financial services group Eureko in its €500 million acquisition of a controlling stake in Turkish insurance company Garanti Sigorta. In the equity capital markets, Ömer Çollak and Burcu Dal advised Turkish food manufacturer Ülker on its planned IPO of its chocolate-making unit, Ülker Çikolata.

Bank lending instructions have also been a cornerstone of the firm's workload, with Elvan Aziz Bikmen recognised by the market as particularly visible. On one prominent deal, Paksoy acted for JP Morgan as arranger in a

\$1.5 billion secured financing to Çukurova Group. In another notable banking deal, the firm represented Yapi Kredi on the sale of its non-performing loan portfolio to Lehman Brothers. Halide Duren, a former White & Case lawyer, is recognised as a rising star in Turkey's banking market. "I have worked with her and she is a good young solutions-oriented lawyer - she has a western style of trying to get things done," says one competitor.

#### Leading lawyers

Elvan Aziz Bikmen  
Serdar Paksoy

#### Pekin & Bayar

Market commentators are impressed by Pekin & Bayar's work in capital markets, banking and Islamic finance transactions.

In one notable equity capitals markets deal, Selin Bayar advised Credit Suisse as underwriter on Turkish drugmaker Eastpharma's \$174 million IPO of GDRs on the London Stock Exchange. "Selin Bayar has benefited from the experience of her mother [Sefika Pekin]," says a client. "She is good at listening and understanding your issue and providing well thought-out solutions in the shortest space of time."

On the debt side, the firm acted for ABN Amro bank on a \$50 million master *murabaha* agreement between ABN Amro and Ekim Turizm. The firm also advised Barclays Capital on a *murabaha* deed and global netting agreement.

Bayar is also active in bank lending deals. In October 2007 Bayar advised ABN Amro on a \$150 million secured finance facility agreement to Toprak Mahsulleri Ofisi. ABN Amro also sought the firm's counsel in a \$50 million loan facility to the Istanbul Metropolitan Municipality for the purchasing of fire engines and multi-purpose disaster vehicles.

On the M&A side, the firm acted as legal counsel BC Partners in its agreement to buy Migros Turk for \$3.2 billion - the country's biggest-ever LBO. The firm is also active in cross-border project financing deals, such as acting for Société Générale in a €70 million financing for airports operator Tav's airport project in Tunisia.

"I like the accuracy and speed of advice we are receiving from Pekin & Bayar," says one client of the firm.

#### Leading lawyers

Selin Bayar  
Sefika Pekin

#### Pekin & Pekin

Pekin & Pekin enters the project finance rankings for the first time after receiving a raft of recommendations from peers and clients. Says one projects client: "The firm was selected by our managing director for Turkey because of their excellent reputation."

The firm is renowned as being one of the finest law practices in Turkey and remains one of the most competitive, taking on many of the best newly-trained lawyers. "The firm has a young generation of lawyers," says a competitor. "I have worked with Mete Yegin many times; he is certainly a capable and a well-established lawyer."

Yegin recently advised on financing the privatisation of Tuvturk - a vehicle inspection station in Turkey. In one debt capital markets transaction the firm acted for Citigroup and HSBC Bank on a \$1 billion offering by the Republic of Turkey.

The firm is also seeing a flurry of activity in the banking sector. In one standout deal Ahmed Pekin and Mete Yegin advised Citibank on a €150 million Tier II quasi-capital credit facility to Yapi Kredi Bank.

Ayça Sevimay is active on a number of M&A transactions. One notable transaction saw Sevimay advise Lehman Brothers on the \$1 billion privatisation of Tekel, the largest cigarette and tobacco manufacturer in Turkey. Sevimay also acted for Citigroup on the \$2.7 billion private auction of Oyak Bank. "Ayca is very professional and thorough. She worked long hours and also gave us guidance during the acquisition process and on Turkish law of the healthcare sector," says a client of the firm.

#### Leading lawyers

Ahmed Pekin  
Ayça Sevimay  
Mete Yegin

### Foreign firms active in Turkey

#### Recommended firms

##### Tier 1

White & Case Müsavirlik

##### Tier 2

Denton Wilde Sapte Danismanlik  
Gide Loyrette Nouel Müsavirlik  
Salans

#### White & Case Müsavirlik

White & Case is the first international firm to have set up a practice in Turkey, and by all accounts it is the biggest and most established. The firm works in association with two of the

top local law firms in Turkey - Düren Akol and Çakmak. "We use them for the bulk of our transactions," says a client. "They provide great advice on complex legal issues."

Asli Basgoz, the head of the corporate and commercial department, is particularly reputable. In one high-value equity capital markets transaction, Basgoz represented Deutsche Bank in the \$2.1 billion IPO of Turk Telecom. In the past year the firm also represented EastPharma, a Bermudian company, in its \$200 million IPO of GDRs on the London Stock Exchange.

Banking deals are a cornerstone of the firm's corporate activities. In July 2007, White & Case acted for Çukurova Holding in its \$1.5 billion facility from a syndicate of financial investment banks led by JP Morgan.

White & Case also maintained its strong position in the M&A market. One notable transaction saw the firm represent Verbund in its \$410 million purchase of 49.9% of shares in power generation company EnerjiSA through a combination of a share purchase and a capital increase. The firm also acted for Great Circle Capital Fund in its purchase of 49.1% of shares in BLG Logistics for €25 million.

On the project finance side, the firm assisted TGT Enerji Üretim ve Ticaret, a subsidiary of power company Gama Holding, on a €31.5 million financing loan agreement for a hydroelectric power project.

### **Other notable firms**

**Denton Wilde Sapte** established its Turkish office in 1995 and has since grown into one of the leading corporate, banking and energy practices in Turkey. The highly recommended Brett Hailey heads up the firm's banking practice. The firm also benefits for a close working relationship with Güner Law Office.

**Gide Loyrette Nouel** experienced a successful year in banking and project finance transactions. The firm has been advising the Black Sea Trade and Development Bank on a proposed €20 million financing to a company incorporated in Albania. The firm is also acting for nuclear supplier Areva NP on the construction and operation of nuclear power plants and the sale of energy output.

**Salans** moves up in the rankings after a wave of recommendations from peers and clients. In one high-status deal the firm advised Socar & Turcas Enerji on its \$2.04 billion privatisation bid to acquire a 51% stake in Turkish petroleum company Petkim Petrokimya. The team comprised lawyers from Salans and its local associated firm Özel & Özel.