

**DIRECTIVE**

From the Prime Ministry (Undersecretariat of Treasury):

**REGULATION ON INSURANCE AND REINSURANCE BROKERS****SECTION ONE****Objective, Scope, Legal Basis, Definitions and Abbreviations****Objective and Scope**

**ARTICLE 1** – (1) The objective of this Regulation is to determine the framework of the brokerage activities and to determine the fundamental principles regarding such activities in order to ensure that the insurance brokerage and reinsurance brokerage activities are conducted to that the confidence in the insurance sector is increased, as well as protecting the rights and obligations of the parties.

(2) This Regulation covers the principles and procedures regarding the qualifications of the real and legal entities wishing to conduct brokerage activities, establishment of their organizations, their authority and responsibilities and their activities.

**Legal Basis**

**ARTICLE 2** – (1) This Regulation has been prepared based on article 21 of the Insurance Law No. 5684 dated 03/06/2007.

**Definitions and Abbreviations**

**ARTICLE 3** – (1) In this Regulation, the following terms will have the meanings ascribed to them hereinbelow:

- a) **Broker** refers to any insurance and/or reinsurance broker of real or legal entity nature as defined in the first paragraph, sub-paragraph (d) of article 2 of the Insurance Law No. 5684;
- b) **Brokers' Information System** refers to the Insurance and Reinsurance Brokers' Information System;
- c) **Law** refers to the Insurance Law No. 5684 dated 03/06/2007;
- d) **Property Holding** refers to the total amount of the movables and immovables which are owned by the real persons and which are measurable with money;
- e) **Undersecretariat** refers to the Undersecretariat of Treasury;
- f) **Shareholders' Equity** refers to the paid-in capital or capital of brokers assigned to Turkey, all legal reserves, revaluation fund, net profit for the period and profits from previous years,

profit and capital reserves as well as the amount remaining upon deduction of loss for the period, losses from the previous years and other sums to be considered necessary by the undersecretariat from capital equivalent assets and other assets to be deemed proper and suitable by the Undersecretariat;

- g) **SEGEM** refers to the Insurance Training Center established based on article 31 of the Insurance Law no. 5684;
- h) **Company** refers to the insurance, pension and reinsurance companies established in Turkey and the Turkish organizations of the insurance, pension and reinsurance companies established abroad and any reinsurance company established abroad;
- i) **Technical Personnel** refers to any personnel performing such works as the promotion of, and giving information regarding, the insurance products, evaluation of the insurance risks, preparation and conclusion of the insurance offers in the brokers;
- j) **TSB** refers to the Association of Insurance, Reinsurance and Pension Companies of Turkey.

## **SECTION TWO**

### **PROVISIONS REGARDING THE ESTABLISHMENT AND ORGANIZATION**

#### **Broker of Real Person Nature**

**MADDE 4 – (1)** The following qualifications are sought for the real persons wishing to conduct brokerage activity:

- a) He/she should be a resident in Turkey;
- b) He/she should be at responsible age;
- c) He/she should not be imprisoned for a period of more than 5 years due to an intentionally committed crime even if he/she is pardoned or he/she should have not been sentenced to imprisonment or judicial fine more than once due to any act which is contrary to the insurance legislation or he/she should have not been convicted of any crime committed against the security of the state, Constitutional order and the operation of this order, national defence and the secrets of the state and the infamous offences such as espionage, embezzlement, corruption, bribery, theft, fraud, falsification, breach of trust, fraudulent bankruptcy, bid rigging, gross misconduct, prevention and destruction of information system, destruction of, and making change in, data, misuse of bank or credit cards, laundering the proceeds of crime, terrorism financing, smuggling, tax evasion or unjustified benefit;
- d) He/she should have the minimum property holding as specified in article 11;
- e) He/she should have the physical location, technical and administrative infrastructure and human resources and sufficient equipment required for the conduction of brokerage activities;

- f) He/she should have completed such levels of education and the professional experience durations as specified in Annex-1/A.

### **Brokers of legal entity nature**

**ARTICLE 5** – (1) The following qualifications are sought for the corporate bodies wishing to conduct brokerage activities:

- a) Their headquarter should be in Turkey;
- b) They should be established in the form of joint stock company or limited liability company;
- c) They should have fulfilled the minimum paid-in capital requirement as specified in article 11;
- d) They should have the physical location, technical and administrative infrastructure and human resources and sufficient equipment required for the conduction of brokerage activities;
- e) They should have a general manager and sufficient number of deputy general managers who are responsible for the issues related to the insurance business and insurance technique with regard to the branches where an activity is conducted.

### **General manager and deputy general managers**

**ARTICLE 6** – (1) The general managers of the brokers of real and legal entity nature and their deputy general managers who are responsible for the issues related to the insurance business and insurance technique should have the qualifications as who are responsible for the issues related to the insurance business and insurance technique specified in sub-paragraphs (a), (b) and (c) of the first paragraph of article 4 and they should have completed such levels of education and the professional experience durations as specified in Annex-1/A-B.

### **Brokers established abroad**

**ARTICLE 7** – (1) The brokers established abroad can conduct activity only if they open a branch office in Turkey.

(2) The brokers intending to conduct activity in Turkey by opening a branch office therein should meet the requirements as specified in articles 4, 5 and 6 in addition to the other requirements. The provisions specified in article 12 will apply mutatis mutandis for the brokers intending to conduct in Turkey by opening a branch office.

(3) The documents to be obtained from foreign countries regarding the applications set forth in this Regulation must be approved by the competent authorities of the respective country and by the consulate and embassy of Turkey in the respective country or as per the provisions of the Convention on Elimination of the Approval Obligation of the Foreign Official Documents

prepared within the framework of the Hague International Private Law Conference and notarized translations of the documents must be attached to the application.

## **Technical personnel**

**ARTICLE 8** – (1) The transactions regarding the promotion and introduction of the insurance products, evaluation of the insurance risks, the preparation and finalization of the insurance offers to be realized by the brokers will be carried out only by the technical personnel of the brokers.

(2) The following qualifications are sought for the technical personnel:

a) They should have the qualifications as specified in sub-paragraphs (a), (b) and (c) of the first paragraph of article 4;

b) They should have completed such levels of education and the professional experience durations as specified in Annex-1/C;

c) They should have passed the technical personnel proficiency examination to be held by the Insurance Training Center.

(3) The persons having the authority of acting as intermediary within the framework of the individual retirement legislation are accepted as technical personnel, provided that they pass the proficiency examination specified in sub-paragraph (c) of the second paragraph. The persons who have acquired the title of agency technical personnel are accepted as broker's technical personnel with no need of seeking the requirement of the proficiency examination as specified in sub-paragraph (c) of the second paragraph if they have completed such levels of education and the professional experience durations as specified in Annex-1/C.

(4) The brokers will employ sufficient number of technical personnel for the branches where they conduct activity.

(5) The broker will inform the technical personnel to the Undersecretariat or the professional organization to be designated by the Undersecretariat in electronic environment in order to obtain a registration number and identity card within fifteen business days at the latest following the employment date of the relevant personnel and the same will be recorded in the Insurance and Reinsurance Brokers' Information System. An identity card will be given to the technical personnel. The procedures and principles regarding the technical personnel will be determined by the Undersecretariat.

(6) The technical personnel and his/her broker will be responsible for the damages to be caused to third persons due to the transactions to be carried out by the technical personnel.

## **Physical, technical and administrative infrastructure**

**ARTICLE 9** – (1) The brokerage activity will be conducted at such locations which are allocated for brokerage activities only.

(2) The minimum physical properties of the location where the brokerage activity will be conducted is determined by the Undersecretariat by obtaining the professional organization to be designated by the Undersecretariat.

(3) The brokers should have an appropriate information system which is suitable for conducting insurance intermediary activities as a minimum, a sufficient archiving system, electronic data network and e-mail address in order to be found qualified with regard to technical aspects.

### **Organization of brokers**

**ARTICLE 10** - (1) The brokers may be organized outside their headquarters.

(2) The branch offices of the brokers other than their headquarters will have the same title as the broker.

(3) The requirements sought with regard to physical location, technical and administrative infrastructure for the headquarters will also be sought for the branch offices of the brokers. The requirements as specified in the second paragraph of article 11 are also sought with regard to the capital stock.

(4) The information related to the branch offices other than the headquarter will be added to the information included in the Insurance and Reinsurance Brokers' Information System.

### **Minimum paid-in capital, shareholders' equity and property holding**

**ARTICLE 11** – (1) The minimum paid-in capital for the brokers legal entity nature shall be 250.000 YTL, based on the type of the company, on the condition not to be less than the amount to be designated by the Ministry of Industry and Commerce, and an additional 50.000 YTL for each and every license to commence operation. All share certificates must be of registered type.

(2) In addition to the above mentioned amounts, a paid-in capital of minimum 25.000 TL is required for each branch office to be opened by the brokers.

(3) The property holdings to be declared by the real entities cannot be less than the minimum paid-in capital requirement sought for the brokers of legal entity nature.

(4) The shareholders' equity of the brokers in operation cannot be less than 10% of their annual operating revenues and the sum total of:

a) the due debts to the companies the for which a delay of 1 to 30 days has occurred after the maturity date are multiplied by the coefficient of (0,25);

b) the due debts to the companies the for which a delay of 31 to 60 days has occurred after the maturity date are multiplied by the coefficient of (0, 5);

c) the due debts to the companies the for which a delay of 61 days to one (1) year has occurred after the maturity date are multiplied by the coefficient of (0,8);

d) the due debts to the companies the for which a delay of more than one (1) year has occurred after the maturity date are multiplied by the coefficient of (1).

This calculation is made as of year-ends. In an additional capital is required, the deficient amount will be completed until the end of the year following the accounting period.

(5) The brokers cannot distribute any dividend if as a result of such a distribution, their shareholders' equity falls below the amount specified in the fourth paragraph. The measures specified in article 21 will be taken for the brokers failing to complete their shareholders' equity deficit.

(6) The procedures and principles related to the tracing of the issues specified in this article may be determined by the Undersecretariat.

### **License**

**ARTICLE 12** - The brokerage license is granted separately for any or several of life insurance, non-life insurance or reinsurance fields.

(2) The real and legal entities wishing to conduct brokerage activity will file an application in order to obtain license within the framework of the procedures and principles to be determined by the Undersecretariat.

(3) The Undersecretariat may appoint non-governmental and professional organizations for the examination of the transactions related to license and making them available for approval. The procedures and principles regarding the examination to be made will be determined by the Undersecretariat.

(4) The brokers determined as a result of the said examination that they have the necessary qualifications will be given license in the relevant fields.

(5) The information regarding the brokers to which a license is given will be announced in the internet site of the Undersecretariat.

### **Professional liability insurance**

**ARTICLE 13** – (1) The brokers will take out professional liability insurance against any and all damages that could be incurred by the insured due to their professional activities. No brokerage activity can be conducted without professional liability insurance.

(2) The procedures and principles regarding the professional liability insurance will be determined by the Undersecretariat.

### **Insurance and Reinsurance Brokers' Information System.**

**ARTICLE 14** – (1) A safe and back-up information system is established for the supply of the information regarding the requirements sought for the brokers pursuant to this Regulation.

(2) The brokers are obliged to participate in the information system and the relevant expenses within the framework of the procedures and principles to be determined by the Undersecretariat.

(3) The procedures and principles regarding the operation of the information system will be determined by the Undersecretariat. The Undersecretariat may appoint the institutions, corporations, non-governmental and professional organizations for the conduction of the affairs and transactions related to the information system.

## **SECTION THREE**

### **Provisions Regarding Operations**

#### **Granting brokerage authority**

**ARTICLE 15** – (1) The brokerage authority will be given to the broker together with a certificate of authorization containing the transactions concerning the conduction of the preparatory works prior to the execution of the agreements by the party to be represented and the implementation of the agreements, if need be. If, however, it is not possible for the parties to meet physically and in cases where the delivery of a certificate of authorization is not required, the delegation of authority may be realized verbally or through electronic environment.

(2) The scope, limit and duration of the authority will be explicitly specified in the certificate of authorization. The brokerage authority cannot be assigned by the broker to another brokers or persons.

(3) It is a principle that the brokers authorized will receive quotation by submitting their certificates of authorization and inform these quotations and the comparative prices to the party which has given the brokerage authority.

#### **Protocol and premium payment**

**ARTICLE 16** – (1) The scope and limit of the authority to be delegated by the companies to the brokers and the working principles may be determined based on a protocol. The brokers cannot make and portfolio commitments towards the companies.

(2) It is a principle for the company to ensure that the premium is directly collected from the policy owner. The procedures and principles regarding the authorization of the broker by the company for the premium transfer may be determined by the Undersecretariat.

(3) The payment made by the company to the brokers authorized for the premium transfer will be deemed to have been made to the company.

(4) The premium returns made by the companies to the brokers will not be deemed to have been paid unless they are collected by the beneficiary.

(5) The brokers authorized regarding premium transfer in the protocol may transfer the premiums paid by the policy owner/insured only through the accounts of the customers who have exactly stopped the relation.

#### **Operating principles**

**ARTICLE 17** – (1) The brokers cannot issue any certificate regarding insurance policy and similar insurance agreement.

(2) The brokers cannot pay any advance regarding insurance indemnity or indemnification.

(3) The brokers cannot conduct any commercial activity other than the brokerage and within the scope of the activities conducted by them, they cannot acquire any benefit other than the commission, consultancy and risk management.

(4) It is a principle that the provision of information within the scope of article 1423 of the Turkish Commercial Code no. 6102 dated 13/01/2011 will be realized by the Broker authorized to execute contract in the name of its client. In this case, the supply of information by the company to the broker will mean that the represented party is informed.

(5) The brokers will keep the agreement recording information the content of which is determined by the Undersecretariat in electronic environment.

### **Title**

**ARTICLE 18** – (1) The brokers will use one of the expressions “insurance brokerage”, “reinsurance brokerage” or “insurance and reinsurance brokerage” in their titles depending on the branches for which a license is obtained. The brokers may also use additional expressions in their titles, provided that they are not contrary to the legislation.

### **Continuous training**

**ARTICLE 19** – (1) The technical personnel will participate in the trainings, the dates and programs of which are to be determined by the Undersecretariat, for the purpose of ensuring the continuity of their professional competency, knowledge and skills.

(2) The training specified in the first paragraph will be provided by the Insurance Training Center or through the service procurement by the Insurance Training Center. The studies regarding the duration, scope, method and fee of, and other conditions related to, the training will be determined by the Undersecretariat after having obtained the opinion of the relevant professional organization.

(3) The activity of the technical personnel who has not completed the training within due time will be stopped until this training is completed. The information related to the technical personnel whose activity is stopped will be communicated to the Undersecretariat by the Insurance Training Center for the purpose of being included in the Insurance and Reinsurance Brokers’ Information System.

## **SECTION FOUR**

### **Provisions Regarding Termination of Activity**

#### **Termination of the brokerage activity**

**ARTICLE 20** - (1) The brokers wishing to terminate the activities at their own request will give a notice to the Undersecretariat or the professional organization to be appointed by the Undersecretariat within fifteen business days at the latest following the date of the decision taken for termination of the activity. In this case, the brokerage licenses will be returned to the Undersecretariat or the professional organization to be appointed by the Undersecretariat. The information regarding the brokers whose activities are terminated will be announced in the internet page of the Undersecretariat.

#### **Measures to be taken by the Undersecretariat and cancellation of license**

**ARTICLE 21** – (1) The brokers will be warned by the Undersecretariat if they act contrary to the provisions of article 32 of the Law, fail to comply with the relevant provisions of the relevant

legislation, lose at least one of the requirements as provided for in the legislation and/or do not meet the requirements specified in article 11. As a result of the evaluation made regarding the situation of the broker following the warning, the brokerage activity of the broker may be temporarily suspended or his/her licences may be cancelled by the Undersecretariat.

(2) If the applications of the broker who is warned and/or whose activities are temporarily based on the first paragraph continue to be contrary to the legislation within one year as of the warning that or in the case where the activity is suspended, as of the date on which the activity is restarted, the licenses of the said broker will be cancelled by the Undersecretariat.

(3) The brokers whose activities are temporarily suspended and whose licenses are cancelled by the Undersecretariat will be announced in the internet page of the Undersecretariat and they are included in the Insurance and Reinsurance Brokers' Information System and informed to the Association of Insurance, Reinsurance and Pension Companies of Turkey.

## **SECTION FIVE**

### **Miscellaneous and Final Provisions**

#### **Increased amounts**

**ARTICLE 22** – (1) The Undersecretariat is authorized to increase or decrease the fixed and relative prices included in this Regulation up to 50% (inclusive).

#### **Repealed Regulation**

**ARTICLE 23** – (1) The Regulation on Insurance and Reinsurance Brokers published in the Official Gazette no. 26913 dated 21/06/2008 has been repealed.

#### **Compliance with the provisions of the Regulation**

**PROVISIONAL ARTICLE 1** – (1) The brokers will bring their situations in compliance with the provisions of this Regulation within one year as of the date on which this Regulation is published. The Undersecretariat may extend the duration for ensuring compliance with the Regulation for 3 months.

#### **Enforcement**

**ARTICLE 24** – (1) This Regulation will come into force as of the date on which it is published.

#### **Execution**

**ARTICLE 25** – (1) The provisions of this Regulation are executed by the Minister to whom the Undersecretariat of Treasury is attached.