

Pensions issues in cross-border acquisitions Q&A: Turkey

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Country Q&A | Law stated as at 31-Mar-2020 | Turkey

This Q&A provides country-specific commentary on *Practice note, Pensions issues in cross-border acquisitions: Cross-border*, and forms part of *Cross-border private company acquisitions*.

1. Is there a legal requirement on both employers and employees to make pension contributions to the government to fund some form of state retirement pension in your jurisdiction? If so, how does this requirement operate?

Main types of social security insurance

The social security system in Turkey is run by the government. Compulsory contributions are collected from employers and employees. The Social Security and General Health Insurance Code (Law No. 5510) sets out various contribution rates depending on the type of insurance. There are three main types of insurance recognised under Law No. 5510:

- Short-term insurance (covering occupational accidents and diseases, illness insurance, and maternity insurance). Only the employer contributes for this insurance, at 2% of the employee's gross salary.
- Long-term insurance (covering old-age insurance, disability insurance, and retirement insurance). Payment is made to the persons who were looked after by the employee who is deceased. Employers contribute 11% of the employee's gross salary and the employee contributes with 9%, deducted by the employer.

Unemployment insurance. Unemployment insurance is regulated under the Unemployment Insurance Law No. 4447 (published in the Official Gazette dated 8 September 1999 and numbered 23810). The employer contributes 2% of the employee's gross salary, the government contributes 1% and the employee contributes 1%. This insurance provides security for employees who are dismissed by their employers without just cause.

Eligibility and thresholds. To be eligible for a state-originated pension, a person must both:

- Be of retirement age (see below).
- Have had long-term insurance contributions (see above, *Main types of social security insurance*) paid for the requisite number of days (see below).

The limits and thresholds vary according to the date on which the insurance commenced. The receivable amount of government pension depends on the length of time long-term insurance contributions were paid in the name of the employee.

Entrants into the system between September 1999 and May 2008 can draw a pension if they are age 60 (men) or 58 (women) and have either:

- 7,000 days' worth of social security contributions.
- 25 years in the social security system, with 4,500 days of contributions.

Entrants into the system after May 2008 can draw a pension if either:

- They are aged 60 to 65 (men) or 58 to 65 (women) (the current applicable ages are 60 and 58, respectively, but retirement age under Law No. 5510 will gradually increase from 2036, so 65 will be the retirement age for both men and women by 2048) and have 9,000 days' worth of social security contributions (or 7,200 days of contributions for insured persons who fall within the scope of 4/a (see [Question 2](#))).
- They are three years older than the age limit (see above) and they have 5,400 days of contributions, provided that they are not over the age 65. For example, a male entrant after May 2008, who is 64 years old and has 5,400 days of contributions, can draw a pension.

2. Is supplementary (that is, non-state) pension provision available and/or legally required in your jurisdiction? If so:

- Is this provided mainly through contractual arrangements between individuals and product providers (such as insurers) or by employer-sponsored and/or industry-wide schemes?
- Is tax relief available on contributions made to such schemes for both employees and employers?

Provision of supplementary pension schemes

Private pension schemes. The Code on Individual Pension Savings and Investment Systems, No. 4632 (Law No. 4632) sets out a private pension system, which is supplementary to the state-originated pension system. This law regulates the pension schemes offered by private insurance companies. Participants in this system are not dependent on a single plan and are instead entitled to choose among different plans, depending on the amount they wish to contribute and the amount to be received under the scheme.

Individuals with full legal capacity to act can join the private pension systems. To do so, an individual must do all of the following:

- Execute a pension agreement with an adequate private pension company. Individuals directly execute the pension agreement with the private pension company.
- Establish a private pension account.
- Pay the required minimum contributions set out in the pension agreement.

There is no maximum contribution limit in the private pension system, so the individual can pay higher contributions at their own discretion.

Pension agreements can be executed as private or group pension agreements (*Private Pension Regulation*).

Group pension agreements. Group-based private pension agreements can be executed as an employer group pension agreement between the employer and employee, under which the employer pays the contribution margin on behalf of the employee. However, under the group pension system, employees can only gain vesting rights for the paid contribution margins and returns if they are employed for a term determined by the group pension agreement. There is no minimum term and employers are free to determine the length at their own discretion. However, the term cannot be longer than seven years.

Auto-enrolment system. Following the recent amendments to Law No. 4632 and the enactment of the Regulation on the Procedures and Principles in Relation to the Auto-Enrolment of Employees to Pension Schemes by Employers (Auto Enrolment Regulation), individuals must be auto-enrolled in a private pension system regardless of whether or not they have an existing private pension contract, if they both:

- Are Turkish citizens who are under the age of 45.
- Work within the scope of 4/a and 4/b covered security for an employer who falls within the scope of the auto-enrolment system. Article 4/a of Law No. 5510 covers security for employees working under an employment contract for one or more employers, whereas Article 4/b covers independent merchants and freelancers, artisans and craftsmen, certain company shareholders and persons who carry out agricultural activities.

Under this system, employees are included in the pension schemes within the scope of the contract that their employers execute with a pension company. Employers can only execute these contracts with a pension company determined by the Undersecretariat of the Treasury.

Tax relief on contributions made to supplementary pension schemes

Tax deductions apply to both private and group pension schemes.

Employer contributions. Employers can deduct the amount of their pension contributions when calculating their corporate tax base (Code No. 4697 regarding the Amendment on Certain Tax Codes, published in the Official Gazette 10 July 2001, number 24458). However, employers must comply with the following conditions to become eligible for the tax exemption:

- The private pension contract must be a contract signed with a Turkish pension company.
- The amount deducted must not exceed 15% of the employee's monthly gross salary (the President is entitled to increase this amount to 30% across the board for all employees).

- The annual total amount to be deducted per individual must not exceed the annual gross minimum wage per individual (the President is entitled to double this amount across the board for all employees).

Employee contributions. Employees can deduct pension contributions when calculating their income tax base. The same conditions apply as those relating to employer contributions (see above, *Tax relief on contributions made to supplementary pension schemes*).

3. Where supplementary schemes are provided, do these schemes provide pensions, the value of which:

- Is linked to the employee's salary (defined benefit)?
- Is linked to employer and/or employee contributions and investment return on those contributions (defined contribution)?

Supplementary pension schemes consist of the contributions paid by the employer, employee and the state (that is, related parties), whichever is applicable for the relevant pension scheme.

In general, the related parties' contribution is based on a certain percentage over the employee's base earning, which is calculated by taking into account the gross salary of the employee, without any deductions. However, an employee can make a higher contribution to the supplementary scheme if they wish. Therefore, where the pensions are directly based on the contributions, indirectly, they are also based on the employee's salary for certain schemes.

Furthermore, for private pensions (that are not within the scope of auto-enrolment), these pension schemes are available for unemployed individuals and, therefore, not linked to a salary.

For the group pension system, the employer may decide on a fixed contribution or a contribution based on a percentage of the employee's salary.

4. Please confirm what level of government supervision operates in respect of work-based and/or supplementary pension provision in your jurisdiction. If a specific government body exists to monitor and/or regulate such provision, please confirm the scope of its powers and provide examples of its intervention (if possible).

There is no regulatory body directly regulating work-based or supplementary pension provisions. Private pension companies and individual pension brokers self-regulate supplementary pension schemes, so they play a significant role in the sector. *Emeklilik Gözetim Merkezi A.Ş.*, a legal entity, is authorised as a centre to monitor the safe and efficient operation of the private pension system, to protect the rights and interests of the participants, collect data, produce statistics, and so on.

5. Where an employer elects or is required to provide a work-based pension for its employees is this commonly funded or unfunded in your jurisdiction? If unfunded, how is allowance made for the future funding obligation, and how is this recorded in the employing company's accounts or financial records?

Employers and employees must contribute to the state social security insurance system, which includes pension insurance (*Law No. 5510*). For details of the mandatory state pension scheme, see [Question 1](#). The state is responsible for funding the mandatory state work-based pension system.

For the elective supplementary pension schemes, Law No. 4632 requires the private pension company to establish a fund for the purposes of operating the contributions and allocating the risk.

Pension systems are limited by certain social security classifications, and these classifications provide certain additional benefits for certain occupations. For example, the retirement conditions of underground mining employees are less restrictive than for employees in other professions, due to the occupational risks and hardships faced in the underground mining sector. The state bears the risk of the state pension provision being underfunded in these cases.

6. Are there any established customs and practices to provide pension or retirement benefits for employees in addition to any legal obligations that may already apply to an employer? If so, please explain what these are and (if possible) provide examples of their operation and provision.

Pension or retirement benefits for employees in addition to the compulsory state pension schemes are not common in Turkey, but employers could provide these pension or retirement benefits through supplementary pension schemes. However, the number of employees who enrol in supplementary pension schemes is gradually increasing as a result of the recent amendments to the applicable legal framework, such as the introduction of the auto-enrolment system (see [Question 2](#)).

7. If an employee is transferred as part of a business acquisition, is the transferee obliged to provide pension provision in respect of the transferring employees? If so, is the transferee required to honour existing pension rights or provide equivalent rights? If so, how is this dealt with in practice?

If the workplace or part of the workplace is transferred through a business acquisition, all of the existing employment agreements are also transferred to the new owner, together with all of the rights and obligations that accrued under those agreements (*Article 6, Labour Code*). If the transferee makes any material changes to the relevant

employee's employment conditions, the transferee must obtain the employee's written consent (for example, where the transferee will not provide the same pension scheme as the transferor, the transferee should obtain the employee's written consent). In addition, employees must be treated equally unless there is a justifiable reason to treat them otherwise.

If the company merges with another company, spins off, or changes its type, the employee is entitled to prevent the automatic transfer of their own employment agreement (*Article 178, Turkish Commercial Code*). In such a case, the employee can terminate the employment relationship based on just cause and is entitled to all of their earned rights, such as severance payment, unused annual leave and earned bonuses. However, there is no compensation for the notice period payment as this does not arise in cases of termination for just cause.

8. In the scenario described under [Question 7](#) above, please confirm which party assumes responsibility for the provision and funding of any pension or retirement benefits that have accrued prior to the date of the transfer.

In the case of transfer of a workplace, the former employer and the new employer are jointly and severally liable for the pension premium, default penalty, default interest, and all other secondary debts the former employer failed to pay to the Social Security Institution (*Law No. 5510*). Accordingly, both the new and the former employer are jointly and severally liable for unpaid retirement premiums accrued until the date of the transfer. Also, in a business transfer, the transferee (along with the transferor) is liable for pension or retirement premiums that accrued before the date of the transfer for private pension benefits. However, the transferor's liability for premiums expires two years following the transfer date.

9. Can employees that are working outside of their home jurisdiction, and employees of a subsidiary company in a different jurisdiction, participate in a pension scheme established by a "home" parent company? Are the same tax reliefs referred to in [Question 2](#) still available in these circumstances?

Employees of a Turkish company who are working abroad are entitled to participate in the private pension scheme provided by the company in Turkey, and are also part of the government pension system. However, if the employee works for a company established in a foreign country that is not linked to any company in Turkey, that employee must register themselves with the Turkish state-based pension scheme and pay the necessary contributions to be entitled to retirement benefits in Turkey.

Employees of a foreign subsidiary company can participate in a pension scheme established by the parent company in Turkey if they are included in the payroll of the Turkish company. In such a case, the same tax reliefs referred to in [Question 2](#) are still available. Otherwise, these employees are subject to the pension schemes available in the home country of the company on whose payroll they are registered.

10. What information would a buyer usually request about pensions and other retirement benefits in a due diligence exercise relating to a private company or an asset acquisition? Would the seller commonly provide this information?

The buyer typically requests the following information about pensions and other retirement benefits, and the seller usually provides this information in relation to a private company or an asset acquisition:

- Details relating to pension schemes and retirement plans.
- Details relating to retirement benefits and other benefits, including bonuses, health insurance, life insurance, employee share option schemes, accident insurance, temporary incapacity insurance, car allocation, and premiums provided to employees other than those stipulated by the applicable legislation.
- Details of any agreements executed with third parties in relation to provisions of the benefits mentioned in the previous bullet points.
- Confirmation of payment of the social security premiums of employees, including but not limited to retirement premiums and the non-existence of outstanding or unpaid payments and contributions to the Social Security Institution.
- Confirmation of compliance with the applicable filing requirements before the Social Security Institution, and other procedural requirements arising from the applicable legislation.

Confirmation that records were kept of the employer's and employee's social security contributions in connection with any payment or benefit provided by the seller to or for its employees, ex-employees, officers, and former officers.

11. What provisions would commonly be inserted in a share purchase or asset purchase agreement relating to pensions and other retirement benefits (for example, would specific warranties be given by the seller?)

Share purchase or asset purchase agreements commonly include, from the seller, the following information and representations relating to pensions and other retirement benefits, which may vary depending on the size and operations of the target company and the further specifics of the transaction:

- A representation indicating the complete and accurate records regarding state pension schemes and private pension, retirement, death, illness, housing, or other private benefit programmes or plans for the employees of the target company.
- Information regarding any conflicts, demands, claims, and disputes with employees regarding pension schemes and other retirement benefits.

- A representation indicating compliance with the applicable labour and social security laws, or other applicable legislation, regulations, rules, and principles relating to pensions and other retirement benefits.
- A representation that the company is up to date on the payment of social security obligations (including but not limited to health funds, public pension funds, and unemployment funds).
- A representation indicating that there are no due or outstanding payments or contributions in relation to social security.
- A representation indicating that the company is not a party to, or bound by, any retirement agreement or other employee compensation agreement except as required under the applicable laws.
- A representation indicating that the company has not made any commitment for remuneration in cash or in kind (for the case of retirement) in connection with its employees, executives, or personnel.
- A representation indicating that the execution of the share or asset purchase agreement and the related transaction documents will have no negative effects on the employees' benefits and rights.

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