

DECODING INSURANCE PAYOUTS: LEGAL CHALLENGES AND REGULATORY RESPONSE

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In the aftermath of the earthquakes that occurred on 06.02.2023 in the southeast region of Turkey, the Natural Disasters Insurance Institution (“DASK”), within a week, promptly started the payment process to the insured owners of the affected buildings as per the respective insurance policies. DASK made these payments based on the tariff valid at the time of the commencement of the insurance policies. The discussion here is that the tariff had been updated before the occurrence, doubling the upper limit of the insurance payouts.

As in every previous year, this update in the Communiqué on Compulsory Earthquake Insurance Tariff and Instructions (“New Tariff”) was issued by the regulative authority, the Private Pension Supervision and Inspection Institution (“SEDDK”) and published in the Official Gazette on 25.11.2022. Accordingly, the upper limit of DASK’s payments in the event of an earthquake was increased from TRY 320,000 to TRY 640,000. However, unlike SEDDK’s earlier updates, the New Tariff has included no transitory provision or explicit wording directing the insured to pay an additional premium to benefit from the new upper limits.

Whilst DASK is believed to have come through this devastating earthquake with its payments for about 600 thousand dwellings totaling about 30 billion Turkish liras, some of the insureds, after having been paid as per the old tariff, applied to the Insurance Arbitration Commission (“Commission”) with the request for an additional payment prescribed by the New Tariff. The Commission’s early awards on these claims in and after June exposed DASK to further claims, potentially totaling another 30 billion Turkish liras (Commission Decision no. 2023/169710, 05.06.2023).

In its decision, the Commission ordered DASK to apply the New Tariff and pay the applicant accordingly. This decision became final upon the higher arbitrator panel’s appellate review (2023/İHK-30829, 23.08.2023). In its ruling, the Commission determined that DASK failed to fulfil its duty to enlighten the insureds about the update in the tariff and invite them to pay the respective premiums along with an endorsement as per Article 1423 of the Turkish Commercial Code (“TCC”).

On the other hand, neither DASK nor SEDDK agreed with this decision. They are of the view that the payment based on the new tariff can only be possible when the insured has applied for an endorsement and paid the premium difference. Moreover,

DASK believes that there is no need to notify the insureds regarding this necessity since the Communiqué was published in the Official Gazette.

The discussions fueled by the social and conventional media escalated and eventually reached out to the Public Ombudsman Institution, positioned as an advisory under the umbrella of the Parliament. The Ombudsman Institution, in its report dated 27.10.2023 ("Advisory Report"), agreed with the Commission's decision.

Not surprisingly, both SEDDK and DASK seem to stick with their position as they have not issued any announcements or taken any steps in response to the Ombudsman's guidance, even though the 30-day period stipulated in the Advisory Report has elapsed.

The outcome of this controversy is yet to be determined by the Court of Cassation which can take one or two years. And until then, there can be more Commission awards, such as those referred to above, that would be finalised without a Court of Cassation review due to their relatively low quantum. So, DASK would be required to pay a severe additional amount even if the Court of Cassation ultimately rules in favour of DASK.

This potential ambiguity created by possibly conflicting judgments may encourage the government to hear DASK's calls and step in to find a practical solution rather than dwelling so much on the legal and academic debates.

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2



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