

CIRCULAR LETTER
Issue: 2011/68.eng

Istanbul, 28.03.2011
Ref: 4/68

Subject:

IMPORTANT CHANGES HAVE BEEN MADE TO THE INSURANCE STATUS OF FOREIGN-NATIONAL EMPLOYEES IN TURKEY

“The Regulations on the Amendment of the Regulations on Social Insurance Transactions” were published in the Official Gazette dated 02.03.2011 and numbered 27862.

In accordance with Law No. 5510 on Social Insurance and Universal Health Insurance Article 6 (e), which governs “Individuals not deemed Insured”, the following is stated:

- Individuals who are sent to Turkey for a specific job by and on behalf and on account of a company established in a foreign country and document that they are subject to social insurance in that foreign country and
- Those individuals who work independently in Turkey in their own name and account and reside abroad and are subject to social security legislation of their country of residence

shall not be deemed insured in Turkey. Paragraph (d) of Article 10 of the Social Insurance Transactions Regulation dated 12.05.2010 contained the same explanations.

However, **although no amendments were made to Article 6 of Law** No. 5510, the above-mentioned Regulation Article was changed and **the duration of not being insured for individuals coming from abroad for a temporary period was restricted to 3 months.**

The pre-amendment and the amended versions of the said Regulation Article are as follows:

Pre-amendment:

Amended:

<p>Individuals not deemed Insured ARTICLE 10 – (1) In the enforcement of the law provisions on short and long-term enforcement insurance branches:</p> <p>(d) Individuals who are sent to Turkey for a specific job by and on behalf and on account of a company established in a foreign country and document that they are subject to social insurance in that foreign country and those individuals who work independently in Turkey in their own name and account and reside abroad and are subject to social security legislation of their country of residence,</p>	<p>Individuals not deemed Insured ARTICLE 10 – (1) In the enforcement of the law provisions on short and long-term enforcement insurance branches:</p> <p>d) Individuals who are sent to Turkey for a specific job <u>for a maximum term of 3 months</u> by <u>and</u> on behalf <u>and</u> on account of a company established in a foreign country <u>and</u> document that they are subject to social insurance in that foreign country and those individuals who work independently in Turkey in their own name and account and reside abroad and are subject to social security legislation of their country of residence,</p>
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Naturally, any **bilateral social security agreements** signed need to be taken into consideration.

For example: in accordance with Article 8 of the convention on social security signed between Turkey and the Netherlands, the period before which an individual sent in the name and account of a company established in one contracting country to the other becomes subject to that other contracting country's social security legislation is 24 months. Where there is the possibility that such term of employment may be longer than 24 months, the said period may be extended provided that the social security institutions of both countries agree to such an extension.

THE CONVENTION ON SOCIAL SECURITY BETWEEN THE REPUBLIC OF TURKEY AND THE NETHERLANDS

ARTICLE 7

Subject to the provisions of this title, an employed person or a person treated as such who is employed in the territory of one of the Contracting Parties shall be subject to the legislation of that Party, even if he is still deemed to be resident in the territory of the other Party or his employer or the principal place of business of the enterprise which employs him is in the territory of the other Party.

ARTICLE 8

The principle laid down in the preceding article shall be subject to the following exceptions:

(a) An employed person or a person treated as such who is in the service of an enterprise having in the territory of one Contracting Party an establishment in which he is normally employed and who is sent by that enterprise to work in the territory of the other Contracting Party shall remain subject to the legislation of the first Party for a period of twenty-four months as though he continued to be employed in its territory ; if the duration of the work in the territory of the second Party exceeds such period, the legislation of the first Party shall continue to apply, provided that the approval of the competent authority of the Contracting Party whose legislation would be applicable under article 7 has been requested before the end of such period either by the employer with the approval of the employed person or by the employed person with the approval of his employer. The competent authority of that Party shall give its approval only with the consent of the competent authority of the other Party.

(b) An employed person or a person treated as such who is in the service of an enterprise engaged, on behalf of others or on its own account, in the transport of passengers or goods by rail, road, air or water or in maritime fishing, with its principal place of business in the territory of one of the Contracting Parties, and who is employed in a travelling or seagoing capacity shall be subject to the legislation of the Contracting Party in whose territory the

enterprise has its principal place of business ; if, however, the enterprise has a branch or a permanent agency in the territory of the other Contracting Party, persons employed by such

branch or permanent agency shall be subject to the legislation of the Contracting Party in whose territory the branch or permanent agency is situated.

Another example is the convention signed between Turkey and France. In accordance with the convention with France, if the employee sent to the other contracting country stays in that country for a period of less than three years, he shall be subject to the social security system of the sending state. If the duration of assignment exceeds three years, a decision shall be made about which country's social security provisions will apply to the employee, provided that there is a prior and mutual agreement between the competent administrative authorities of the two countries or their representatives.

For other countries, the provisions of the social security agreements signed between Turkey and those countries should be taken into consideration.

**THE GENERAL CONVENTION ON SOCIAL SECURITY BETWEEN THE
REPUBLIC OF TURKEY AND FRANCE**

ARTICLE 3

(The Enforcement of Article 6 of the Agreement)

Employees sent for a temporary period by Employers (up to three years):

The employees specified in Article 6 (1a) of the Convention are each granted a «temporary release certificate» by the competent authorities of the country of origin. This certificate confirms that the employee is subject to the social security system of the country of origin while affirming that during their stay in the other contracting company, the employee and his dependents are entitled to benefit from the other contracting company's sickness and maternity insurance benefits during their stay in the other contracting company in accordance with Article 16 of the Convention and under the terms stipulated in Article 21 of the Convention.

ARTICLE 4

Employees sent for a temporary period by Employers (after three years): Article 4 (1) In order for Article 6 (1b) of the Convention to apply, the competent administrative authority of the country of the place of employment shall send a written reasoned request to the competent administrative authority of the country of temporary assignment, requesting that the employee be excepted from the social security system of the country of temporary assignment or that his existing subjection to the social security system of the country of temporary assignment be continued. Three copies of a formulary containing the agreement of the competent authority of the place of employment of the employee should be annexed to such written request.

(2) Where the competent authority of the country of temporary assignment agrees to the employees exception from the social security system of the country of temporary assignment or to the continuation of his existing subjection to social security system of the country of temporary assignment, such agreement is specified on the formulary and two copies of the formulary are returned to the competent authority of the country of the place of employment.

(3) The «certificate on the exceptional subjection of the employee to his country of employment » given to the employee confirms that the employee continues to be subject to the social security system of his country of origin while affirming that during their stay in the other contracting company, the employee and his dependents are entitled to benefit from the other contracting company's sickness and maternity insurance benefits in accordance with Article 16 of the Convention and under the terms stipulated in Article 21 of the Convention.

In summary, if the duration of assignment of foreign personnel sent to Turkey for a temporary period **exceeds three months** these individuals shall be subject to the social security system of Turkey (provisions such as giving notice of commencement to the Social Security Institution within the scope of Law No. 5510, premium calculation, the declaration to the Social Security Institution and payment of the premiums with a monthly statement and a service statement, etc.). If there is a bilateral social security agreement between Turkey and the sender county, the provisions of such agreements should be studied and any special regulations set out in such agreements should take precedence.

The amendment to the Regulation has entered into force as of March 2, 2011.

Yours faithfully,

**DENGE DENETİM YEMİNLİ
MALİ MÜŞAVİRLİK A.Ş.**

ANNEX:

The Regulation on the Amendment of the Social Insurance Transactions Regulation

REGULATION

From the Social Security Institution Department:

REGULATION ON THE AMENDMENT OF THE SOCIAL SECURITY TRANSACTIONS REGULATION

ARTICLE 1 –The expression “for a maximum term of 3 months” was added after the expression “for a specific job” in subparagraph (d) of paragraph 1 of Article 10 of the Regulation on Social Insurance Transactions dated 12/5/2010 and numbered 27579.

ARTICLE 2 – This Regulation shall enter into effect on the date of its publication.

ARTICLE 3 – The provisions of this Regulation shall be executed by the President of the Social Security Institution.

Date of the Official Gazette in which the Regulation was Published		Issue
12/5/2010		27579
Date of the Official Gazette in which the Regulations amending the Regulation were Published		Issue
1	12/10/2010	27727
2	28/10/2010	27742