

# Banking Law No. 5411





# **Banking Law No. 5411**

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## Law Amending the Banking Law No.5411

<i>Law No.</i>	<i>Official Gazette Date</i>	<i>Official Gazette Number</i>
5472	14.03.2006	26108
5667	30.05.2007	26537
5754	08.05.2008	26870
5766	06.06.2008	26898
6111	25.02.2011	27857 (repeated)
Decree Law No. 2011/662	02.11.2011	28103
6300	10.05.2012	28288
6327	29.06.2012	28338
6352	05.07.2012	28344
6362	30.12.2012	28513
6456	18.04.2013	28622
6462	03.05.2013	28636
6487	11.06.2013	28674
6493	27.06.2013	28690
6495	02.08.2013	28726

## Banking Law\*

Law No.	: 5411
Adoption Date	: October 19, 2005
Official Gazette	: November 1, 2005, 25983 re.

### PART ONE General Provisions

#### Objective

**Article 1-**The objective of this law is to regulate the principles and procedures of ensuring confidence and stability in financial markets, the efficient functioning of the credit system and the protection of the rights and interests of depositors.

#### Scope

**Article 2-** The deposit banks, participation banks, development and investment banks, the branches in Turkey of such institutions established abroad, financial holding companies, Banks Association of Turkey, Participation Banks Association of Turkey, Banking Regulation and Supervision Agency, Savings Deposit Insurance Fund and their activities shall be subject to provisions of this law.

The provisions of this law shall also apply to banks that have been established as per their special laws, on the condition to preserve the provisions of their special laws.

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\* *The Banking Law No.5411 was amended by the Laws No. 5472, 5667, 5754, 5766, 6111 Decree Law No. 2011/662, 6300, 6327, 6352, 6362, 6456, 6462, 6487, 6493 and 6495.*

## Article: 2, 3

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The general provisions shall apply to cases for which provisions are not set out in this law.

### Definitions and abbreviations

**Article 3-** For the implementation of this Law, the following terms shall have the meanings indicated below:

**Relevant Minister:** The Prime Minister or State Minister to be authorized by the Prime Minister,

**Board:** Banking Regulation and Supervision Board,

**Agency:** Banking Regulation and Supervision Agency,

**Chairman:** The Chairman of the Banking Regulation and Supervision Board,

**Central Bank:** Central Bank of Turkish Republic Inc. Co.,

**Fund:** Savings Deposit Insurance Fund,

**Fund Board:** Savings Deposit Insurance Fund Board,

**Fund Chairman:** The Chairman of Savings Deposit Insurance Fund Board,

**Credit institution:** Deposit banks and participation banks,

**Associations of institutions:** The Banks Association of Turkey and The Participation Banks Association of Turkey,

**Bank:** Deposit banks, participation banks and development and investment banks,

**Deposit bank:** The institutions operating primarily for the purpose of accepting deposit and granting loan in their own names and for their own accounts as per the provisions of this Law and the branches in Turkey of such institutions established abroad,

**Participation bank:** The institutions operating primarily for the purposes of collecting fund through special current accounts and participation accounts and granting loan pursuant to this Law and the branches in Turkey of such institutions established abroad,

**Development and investment bank:** The institutions operating primarily for the purposes of granting loan and/or to fulfill the duties assigned thereto by their special laws, other than accepting deposit or participation fund pursuant to this Law, and the branches in Turkey of such institutions established abroad,

**Financial holding company:** Institution whose all or majority of subsidiaries are credit institutions or financial institutions, provided that at least one of them is credit institution,

**Branch:** Any work place like stationary or mobile bureau, which constitutes a legally bound part of banks and which partly or entirely performs the activities of these institutions, excluding units solely composed of electronic devices,

**Central branch:** The branch established in Turkey by a bank established abroad, or in the case of multiple branches in Turkey, the branch notified to the Agency and to be approved by the Board,

**Fund bank:** The banks whose shareholder rights, excluding dividends, and management and control have been transferred to the Fund within the framework of this Law, the repealed Banks Law No. 3182 and the Banks Law No. 4389 which has been repealed by this Law and the banks whose majority shares are owned by the Fund,

**Financial institution:** Institutions, other than credit institutions, which have been established to perform insurance, individual private pension fund or capital market activities or to engage in min-

## Article: 3

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imum one of the fields of activity set out in this Law, development and investment banks and financial holding companies,

**Control:** The power to appoint or remove from office the decision-taking majority of members of board of directors through direct or indirect possession of the majority of a legal person's capital irrespective of the requirement of owning minimum fifty-one per cent of its capital; or by having control over the majority of the voting right as a consequence of holding privileged shares or of agreements with other shareholders although not owning the majority of capital,

**Parent undertaking:** Bank or financial holding company that consolidates, under its own body, the financial tables of the undertakings under its control as well as the undertakings that are defined through the principles and procedures set by the Board,

**Subsidiary:** Undertakings operating under the control of a parent undertaking,

**Qualified shares:** The shares that represent, directly or indirectly, ten per cent or more of the capital or voting rights of an undertaking or that yield the privilege to appoint members to board of directors even though such rate is below ten per cent,

**Dominant partner:** Natural or legal persons that directly or indirectly, individually or jointly control an undertaking,

**Managers:** Banks' board of directors, audit committee and credit committee chairmen and members as well as general managers, deputy general managers and officials that have a signing authority on behalf of the bank, including regional managers, branch managers and the managers of the units within the head office central organization such as departments, sections, groups, etc.,

**Deposit:** Money accepted by announcing to the public, verbally or in writing or in any manner, in return for or without a consideration or to be returned on a certain date of maturity or whenever it is called,

**Savings deposit:** The deposit accounts opened at a deposit bank, by natural persons and not subject to commercial transactions excluding check drawings exclusively,

**Special current account:** The accounts opened at participation banks and that consists of funds that can be partially or fully withdrawn upon request any time and for which no charge is paid to the owner of the account in return,

**Participation account:** Accounts constituted by funds collected by participation banks that yield the result of participation in the loss or profit to arise from their use by these institutions, that do not require the payment of a pre-determined return to their owners and that do not guarantee the payment of the principal sum,

**Participation fund:** The funds at special current and participation accounts opened at participation banks by natural and legal persons,

**Outsourcing institution:** The institution which handles in the name of the bank the activities of the bank, except for acceptance of deposits or participation funds, and lending of all kinds and types of cash and non-cash loans, and other transactions considered as loan for the purposes of implementation of this Law, and which offers auxiliary services to the bank in management and handling of such operations, also including the marketing of any of such operations, other than acceptance of deposits or participation funds, except for advertisement,<sup>1</sup>

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<sup>1</sup> *As amended by the Law No. 6111.*

**Off-shore banking;** Banking activities performed outside the borders of a given country or outside the coverage of the economic and financial legislation applied country-wide or whereby the deposits and funds from the residents of that country where it is established cannot be accepted.

### Fields of activity

**Article 4-** Without prejudice to the provisions of other laws, banks may carry out the following activities:

- a) Accepting deposits,
- b) Accepting participation funds,
- c) Granting any sort of loan, either cash or non-cash,
- d) Carrying out any type of payment and collection transactions, including cash and deposit payment and fund transfer transactions, correspondent bank transactions, or use of check accounts,
- e) Purchasing transactions of commercial bills,
- f) Safe-keeping services,
- g) Issuing payment instruments such as credit cards, bank cards and travel checks, and executing relevant activities,
- h) Carrying out foreign exchange transactions, trading of money market instruments, trading of precious metals and stones and safekeeping such,
- i) Trading and intermediation of forward, future and option contracts, simple or complex financial instruments which involve multiple derivative instruments, based on economic and financial indicators, capital market instruments, goods, precious metals and foreign exchange,

- j) Purchase and sale of capital market instruments and repurchasing or re-sale commitments,
- k) Intermediation for issuance or public offering of capital market instruments,
- l) Transactions for trading previously issued capital market instruments for intermediation purposes,
- m) Guarantee transactions like undertaking guarantees and other liabilities in favor of other persons,
- n) Investment counseling services,
- o) Portfolio operation and management,
- p) Primary market dealing for purchase-sales transactions within the framework of liabilities assumed by contracts signed with Treasury Undersecretariat and/or Central Bank and associations of institutions,
- r) Factoring and forfeiting transactions,
- s) Intermediating fund purchase-sale transactions in the inter-bank market,
- t) Financial leasing services,
- u) Insurance agency and individual private pension fund services,
- v) Other activities to be determined by the Board.

Deposit banks shall not be engaged in activities cited in subparagraphs (b) and (t); participation banks shall not be engaged in activities cited in sub-paragraph (a) and development and investment banks shall not be engaged in activities cited in subparagraphs (a) and (b).

### Indirect share ownership

**Article 5-** In the implementation of this Law, for the purposes of determining indirect share ownership by a real person, the shares belonging to real person, his spouse and children and the undertakings in which such persons participate with unlimited responsibility as well as the shares belonging to undertakings controlled by such individually or jointly, shall be taken into account together. For the purposes of determining indirect share ownership by legal persons, the shares belonging them as well as the shares belonging to undertakings which are controlled by such shall be taken in to account together.

The principles and procedures applicable to the implementation of this article shall be established by the Board.

## **PART TWO**

### **Transactions Subject to Permission**

#### **SECTION ONE**

##### **Permissions for Establishment and Operation**

###### **Permission for establishment or opening branches and representative offices in Turkey**

**Article 6-**The establishment of a bank in Turkey or the opening up of the first branch in Turkey by a bank established abroad shall be permitted upon affirmative votes of at least five members of the Board provided that the establishment conditions laid down in this Law are fulfilled.

The principles and procedures for permission applications and granting permissions shall be determined by a regulation to be issued by the Board. The decision regarding the permission shall be notified to the applicant within three months following the application date or after the applicant provides the missing application documents, if any. If any missing document is not provided within six months, then the application shall become invalid.

The details regarding the establishment of a bank to be engaged exclusively in offshore banking or the opening of a branch in Turkey by such banks established abroad for such purposes, and their fields of activity and financial reporting and audit procedures as well as the details regarding the temporary suspension or revocation of their activities shall be determined by Board decision.

The banks established abroad may open up representative offices in Turkey with the permission of the Board provided that

## **Article: 6, 7**

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they do not accept deposits or participation funds and those they operate within the framework of the principles to be set by the Board.

### **Establishment conditions**

**Article 7-** Any bank to be established in Turkey shall fulfill the following requirements:

- a) It should be established as a joint stock company,
- b) Its shares should be issued against cash and to name,
- c) The founders should meet the requirements indicated herein,
- d) Its members of board of directors shall bear the qualifications set out in the corporate governance provisions in this Law and shall have the professional experience required for carrying out the planned activities,
- e) Its envisaged fields of activity shall be in harmony with planned financial, managerial and organizational structure,
- f) Its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than 30 million New Turkish Liras,
- g) Its articles of association shall not be in conflict with the provisions of this law,
- h) There should be a transparent and open partnership structure and organizational chart that will not constitute an obstacle for the efficient supervision of the institution,
- i) There should not be any element that hampers its consolidated supervision,
- j) The work plans for the envisioned fields of activity, the projections regarding the financial structure of the institution includ-

ing capital adequacy, the budgetary plan for the first three years and an activity program including internal control, risk management and internal audit system showing the structural organization must be submitted.

For development and investment banks, their paid-up capital shall not be less than two-thirds of the amount provided in subparagraph (f) of the first paragraph.

The principles and procedures applicable to the enforcement of this article shall be set by the Board.

### **Qualifications of founders**

**Article 8-** The founders of banks shall;

a) Not have been declared bankrupt within the framework of the provisions of the Execution and Bankruptcy Law No. 2004, not be in possession of a certificate of bankruptcy, not have an approved application for restructuring through reconciliation or not have been issued a decision for postponement of bankruptcy,

b) Not have qualified shares or not hold control in banks that have been subjected to Article 71 of this Law or that have been transferred to the Fund before the effectiveness of this Law,

c) Not have qualified shares or not hold control in banker subjected to liquidation, and in other financial institutions subject to liquidation, excluding voluntary liquidation, in development and investment banks whose operating permissions have been revoked, or in credit institutions whose shareholder rights except dividends and management and control have been transferred to the Fund or whose permission to conduct banking transactions and accept deposits and participation funds have been re-

## Article: 8

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voked, before the transfer of aforementioned credit institutions to the Fund or before their permission and authorization for accepting deposit and participation fund have been revoked,

d) Have not been sentenced to heavy imprisonment or imprisonment of more than five years pursuant to the repealed Turkish Penal Code No. 765 or other laws, even though pardoned, with the exception of negligent offenses, have not been sentenced to imprisonment of more than three years pursuant to the Turkish Penal Code No. 5237 or other laws or have not been convicted of the violation of the provisions, that require imprisonment, of the repealed Banks Law No. 3182, of the Banks Law No. 4389 which is repealed by this Law, of this Law, the Capital Market Law No. 2499 and of the legislation on lending transactions, or have not been convicted of infamous crimes such as embezzlement, extortion, bribery, theft, swindling, forgery, breach of trust, fictitious bankruptcy, smuggling offenses other than those arisen by the acts of using and consuming, fraudulent acts in official tenders and trades, money laundering or crimes committed against the prestige of the State and unveiling State secrets, offenses committed against the sovereignty of the state or the prestige of its organs, offenses committed against the security of state, offenses committed against the constitutional order or the functioning of the constitutional order, offenses committed against national defense, offenses committed against the secrets of the state and espionage, offenses committed against relations with other states as well as tax evasion or have not been engaged in such offenses under the repealed Turkish Penal Code No. 765, Turkish Penal Code No. 5237 or other laws.

e) Have necessary financial strength and respect,

f) Have the honesty and competence required for the business,

g) In case of a legal person, have a transparent and open partnership structure together with the risk group.

The natural person shareholders of the legal person founders of banks with qualified shares shall meet the conditions laid down in sub-paragraphs (a), (b), (c), (d), (e) and (f) of the first paragraph of this article.

The provisions of items (b) and (c) of the first paragraph of this Article shall not be applicable for the multi-lateral credit institutions and financial institutions that are established by international agreements to which Turkey is a party.

### **Requirements for the opening of a branches in Turkey by banks headquartered abroad**

**Article 9-** Any bank established abroad that will operate in Turkey by opening branch within the framework of the principles and procedures set by the Board should to meet the following conditions:

a) Its primary activities must not have been prohibited in the country where they are headquartered,

b) The supervisory authority in the country, wherein the headquarters of the bank is located should not have negative views regarding its operation in Turkey,

c) The paid-in capital reserved for Turkey should not be less than the amount indicated in Article 7,

d) The members of the board of managers should have adequate professional experience to be able to satisfy the require-

## Article: 9, 10

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ments laid down in the corporate governance provisions and to perform the planned activities,

e) It must submit an activity program indicating work plans for the fields of activity covered by the permission, the budgetary plan for the first three years as well as its structural organization,

f) The group including the bank must have a transparent partnership structure.

An application for operating permission cannot be granted for the activities prohibited due to the violation of the local legislation in the country where such institutions are headquartered.

### Operating permission

**Article 10-** The banks that are permitted to be established in Turkey or permitted to open up branches in Turkey within the framework of the provisions of Article 6 of this Law shall be obligated to receive permission for operation from the Board. The permission to be given upon an application to be accompanied by a declaration shall cover all activities set out in Article 4 of this Law, within the framework of the limitations set out in the last paragraph of the said article, unless otherwise decided by the Board. The permissions granted shall be issued in the Official Gazette. The decision regarding the permission shall be made within three months, the latest, following the date of application for permission.

The Agency shall give a certain period of time, which shall not be more than six months, for those who do not bear the conditions laid down in this Law and the regulations issued under this Law so that they can make the necessary arrangements and eliminate the deficiencies. Those applications not approved as

a result of the review conducted upon such re-applications filed within due course shall be notified, in writing, of the result and the establishment permission that has been issued shall be revoked. The banks that have received establishment permission shall be required to meet the following criteria in order to commence their operations:

a) Their capital should have been paid in cash and must be at a level that enables the execution of planned activities,

b) Minimum one fourth of the system entrance fee, equivalent to ten percent of the minimum capital requirements indicated in Article 7 of this Law, should have been paid to the account of the Fund and the related document submitted to the Agency by the founders,

c) Their activities should be in compliance with corporate governance provisions and should have the required personnel and technical infrastructure,

d) Their managers should bear the qualifications set out in the corporate governance provisions,

e) The Board should comment that they bear the qualifications required for executing the activities.

The commitment in writing indicating that the remaining portion of the system entrance fee will be paid to the account of the Fund, within the framework of the payment plan prepared by the Board following the start of operation shall be submitted to the Agency. System entrance fee shall be collected for only one time. Bank shareholders shall be jointly responsible for the payment of the system entrance fee.

The Board shall be authorized to set the principles and procedures applicable to the implementation of this article.

## **Revocation of establishment permission**

**Article 11-** The establishment permission of a bank shall be revoked by the Board decision taken through the affirmative votes of minimum five Board members, in case of one or more of the following conditions:

- a) The permission is based on non-factual declarations,
- b) Failure to apply for operating permission within nine months following the issue of establishment permission,
- c) Clearly stating the decision to waive the establishment permission,
- d) Losing the eligibility qualifications for permission until commencement of operation,
- e) Failure to get operating permission,
- f) Voluntary waiver from the whole activities listed in Article 4 of this Law, or completion of voluntary liquidation,
- g) Completion of the merger and disintegration procedures of transferred banks,
- h) Completion of liquidation or bankruptcy proceedings under Article 106 of this Law.

## **Revocation or restriction of operating permission**

**Article 12-** In cases where a bank has received the operating permission on the basis of non-factual declaration or has failed to commence the activity within six months after getting the operating permission or failed to perform the activity for an uninterrupted period of six months within one year following the start of activity, the operating permission of such bank shall be revoked. In cases where a bank has not become a

member of the relevant association of institutions within one month after receiving the operating permission or has failed to pay the remaining portion of the system entrance fee to the account of the Fund and has failed to fulfill these obligations despite the warning of the Agency, such bank's fields of activity other than those covered by sub-paragraphs (a) and (b) of the first paragraph of Article 4 of this Law may be individually restricted by the Board.

Such decisions shall be notified in writing to the relevant parties and be published in the Official Gazette.

In cases where the operating permission of any bank established abroad and having branch in Turkey has been revoked, its activities have been suspended, it has been decided to be declared bankrupt or liquidated and it has declared bankrupt in the country of establishment, the Board shall revoke the operating permission of the branches of such bank in Turkey.

The Board's revocation of the authorization given to a credit institution under sub-paragraphs (a) and (b) of the first paragraph of Article 4 of this Law shall mean the revocation of the operating permission.

### **Opening domestic branches**

**Article 13<sup>2</sup>** - On the condition to comply with the principles to be determined by the Board and with the corporate governance and protective provisions set forth in this Law and providing that the Agency is notified thereof, banks may open branches within Turkey.

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<sup>2</sup> *As amended by the Law No. 5472.*

### **Cross border activities**

**Article 14-** Banks established in Turkey may open branches or representative offices abroad, including off-shore banking regions, on the condition to set up undertakings or participate in existing undertakings comply with the corporate governance and protective provisions set forth herein and to comply with the principles to be established by the Board.

### **Permission for authorization of independent audit, valuation and rating Institutions**

**Article 15-** It is in the jurisdiction of the Board to decide authorization, or termination of authorization temporarily or permanently, of institutions appointed for independent audit activities of the banks, and if ordered by the Board, for valuation of the assets, rights and obligations of the banks or of the guarantees received from borrowers, and for rating of banks or their borrowers. The principles and procedures applicable for this shall also be determined by the Board in consultation with the relevant professional associations.<sup>3</sup>

## **SECTION TWO**

### **Provisions Pertaining to Articles of Association**

#### **Amendments in articles of association**

**Article 16-** Any amendment to the articles of association of a bank shall require an approval of the Agency. A proposed amendment not approved by the Agency shall not be decided over in the general meeting of shareholders. The amendments in articles of association that have been made without the approval of the

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<sup>3</sup> *As amended by the Law No. 6111.*

Agency shall not be registered in the Commercial Registry Gazette. The applications for permission, approval or positive opinion for amendments in the articles of association as required by this Law and other applicable legislation shall be replied within fifteen working days by the relevant authorities.

Banks shall keep their up-to-date articles of association on their websites. In case of any amendments, the articles of associations shall be updated within ten working days following the date of amendments.

### **Capital increases**

**Article 17-** The capital increased shall be paid in cash as free from any collusion and without using internal resources, excluding resources permitted to be added to capital by the related legislation. The Agency's approval shall be required for the registration of the capital increase in the Commercial Register Gazette.

Any portion of the capital, which has been determined to have been increased in breach of applicable laws, shall not be taken into consideration in calculation of own funds.

The principles and procedures applicable to capital increases under this article shall be determined by the Board.

### **Acquisition and transfer of shares**

**Article 18-** Any acquisition of shares that result in the acquisition by one person directly or indirectly of shares representing ten percent or more of the capital of a bank or if shares held directly or indirectly by one shareholder exceed ten percent, twenty percent, thirty-three percent or fifty percent of the capital as a result thereof, and assignments of shares that result in shares held by

## Article: 18

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one shareholder falling below these percentages, shall require the permission of the Board.

Assignment and transfer of preferential shares with the right of promoting a member to the board of directors or audit committee or issue of new shares with privilege shall be subject to the Board's authorization irrespective of limits defined above.

For granting these permission, a transfer fee valued at one percent of the nominal value of the transferred shares of the bank shall be paid to the Fund by the transferee.

Transactions resulting in the number of shareholders falling below five, and transferring of shares affected without permission, shall not be recorded in the book of shares. Any records made in the book of shares in breach of the foregoing provision shall be null and void. The provisions of this paragraph shall also apply to the acquisition of voting rights and establishment of usufructory rights on shares.

The shareholders with qualified shares shall be required to meet the criteria applicable to founders. The shareholders with qualified shares who do not bear the conditions required for founders any more shall not benefit from the shareholder rights other than dividends. In such cases, other shareholder rights shall be used by the Fund, upon the notification of the Agency. Such shareholders shall not use their preferential rights until the rate of their direct or indirect shares in the capital fall below ten percent.

The transfer of shares of legal persons directly or indirectly, who own ten percent or more of the capital of a bank, under terms and conditions mentioned in the first paragraph shall be subject to the permission of the Board. The permission might be given on the condition that the person who acquires the shares bears the qualifications required for the founders.

In cases where the shares are transferred without the permission of the Board, the shareholder rights of the legal person stemming from these shares, other than dividends, shall be used by the Fund.

The Board shall determine the principles and procedures regarding the transactions to be performed in case the shares of banks whose shares are exchanged on the market are purchased from the stock exchange or in case the shares of banks are purchased from the execution office in line with the provisions of Execution and Bankruptcy Law No. 2004 as well as the principles and procedures applicable to the enforcement of this article.

### **SECTION THREE**

## **Merger, Disintegration, Changes of Shares and Voluntary Liquidation**

### **Merger, disintegration and change of shares**

**Article 19-** Board permission shall be required for a bank operating in Turkey to merge with one or several other banks or financial institutions, or to transfer all its assets and liabilities and other rights and obligations to another bank operating in Turkey, or to take over all the assets and liabilities and other rights and obligations of another bank, or to disintegrate, or to change shares. In the event that the relevant bodies of banks do not take a decision and commence procedures within three months after the date of permission, the permission shall be null and void. In mergers, disintegrations and transfers of banks to be carried out pursuant to the provisions of this Law, the provisions of Turkish Commercial Code No. 6762 and, on the condition that the sectorial share of the total assets of the banks subject to merger

## **Article: 19, 20**

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or integration does not exceed twenty percent, the provisions of Articles 7, 10 and 11 of the Law No. 4054 on the Protection of Competition, shall not be applied. Following the finalization of merger or transfer procedures, all assets and liabilities as well as other rights and obligations of the transferred institution shall be transferred to the overtaking bank, the legal person position of the transferred institution shall be annulled and its register shall be deleted from the Commercial Register.

The principles and procedures applicable to the implementation of the provisions of this article shall be set out in a regulation to be issued by the Agency.

### **Voluntary liquidation**

**Article 20-** The Board's permission and the Agency's supervision shall be required for ceasing banks activities and their liquidation.

In cases where any bank operating in Turkey wants to cease and liquidate their activities, such bank shall promptly announce such case in minimum two national newspapers published and circulated in Turkey, and shall inform their depositors, the owners of participation funds, their creditors and other such persons through registered mail and shall return all the balance of their cash or in-kind deposits, participation funds, trusts and deposit accounts, and pay all their debts, without waiting for their maturity, if any, within two months. Any deposit, participation funds trusts and receivable whose owners do not apply within such period of time shall be transferred to the Agency. The Agency shall keep such values for a period of ten years, by duly announcing them at the beginning of every year, beginning from the year following the transfer. Such values for which no application has not been

in demand within six months after the last date of announcement shall be registered as income by the Fund.

The principles and procedures applicable to the enforcement of the provisions of this article shall be set in a regulation to be issued by the Agency.

## **SECTION FOUR**

### **Rejection of Applications for Permission**

#### **Rejection of applications for permission**

**Article 21-** The permission applications filed the Agency as per the provisions of this Law shall be rejected in case it is deemed that there are direct and indirect relations that prevent the efficient supervision of such institutions or that the conditions, qualifications, eligibility required for the activity subject to permission have been lost or could not be fulfilled during the application for permission or within the evaluation process. The decisions for rejection shall be notified to relevant applicants together with the reasons for such rejection.

## **PART THREE**

### **Corporate Governance**

#### **SECTION ONE**

##### **Management**

#### **Principles of corporate governance**

**Article 22-** The Board shall determine the structures and processes of corporate governance and the applicable principles, upon consulting the Capital Market Board and associations of institutions.

#### **Board of directors**

**Article 23-** The board of directors of any bank shall have at least five members including the general manager. The general manager of the bank and, in his absence, his deputy shall be a natural member of the board of directors. The qualifications required for the general manager in this Law shall also be required for majority of the board of directors. Managing directors shall satisfy the same conditions as the general manager. The persons elected as board of directors' members or the persons appointed as board of directors' members for vacated position shall be informed to the Agency, together with documents indicating that they bear the requirements laid down in this article, within seven working days. General manager and the chairman of board of directors shall not be the same person. Board of directors' members shall bear the requirements set out in sub-paragraphs (a), (b), (c) and (d) of the first paragraph of Article 8 of this Law.

An at least three-member board of managers, including the manager of the main branch office and having the authority and

responsibilities of a board of directors, shall be formed at the main branch office in Turkey of a bank established abroad and operating in Turkey through branches. For the purposes of the implementation of this Law, the three-member board of managers shall be equivalent to board of directors and the requirements set out in the first paragraph shall be required for the members of the board of managers as well.

The responsibilities of the board of directors shall include ensuring the establishment, functionality, appropriateness and adequacy of internal control, risk management and internal audit systems in conformity with the applicable legislation; securing financial reporting systems; and specification of the powers and responsibilities within the bank.

### **Audit committee**

**Article 24-** Banks' board of directors shall establish audit committees for the execution of the audit and monitoring functions of board of directors. Audit committee shall consist of minimum two members. Audit committee members shall be appointed amongst the members of the board of directors who do not have executive duties. For banks operating in Turkey as branches, a member of the board of managers to whom no executive unit is attached shall be appointed to fulfill the duties of audit committee.

Members of the audit committee shall bear the qualifications to be set by the Board. The information and documents attesting to such qualifications shall be submitted to the Agency within seven working days, at the latest, following the date of appointment.

The duties and responsibilities of the audit committee include the supervision of the efficiency and adequacy of the bank's internal control, risk management and internal audit systems, function-

ing of these systems and the accounting and reporting systems within the framework of this Law and the relevant legislation, and the integrity of the information produced; conducting the necessary preliminary evaluations for the selection of independent audit firms by the board of directors; regularly monitoring the activities of independent audit firms selected by the board of directors; and in case of parent undertakings covered by this Law, ensuring that the internal audit functions of the institutions that are subject to consolidated supervision are performed in a consolidated and coordinated manner, on behalf of the board of directors.

Audit committee shall be responsible for ensuring that units established within the scope of internal control, risk management and internal audit systems and the independent audit firms regularly provide reports regarding the execution of their tasks and promptly notify the board of directors of the factors that could hinder uninterrupted and reliable execution of the banks' activities or of the violations of the Law and the applicable legislation,

The audit committee shall, one every six months at the maximum, report to the board of directors the results of its activities; the measures to be taken in the bank; the practices that need to be introduced; as well as other matters that it deems necessary for the sound operation of the bank.

The audit committee shall be authorized to receive documents and information from all units of the bank and the contracted outsourcing institutions and independent audit firms and to procure consulting services from expert persons, as subject to the approval of the board of directors and financing by the bank. The audit committee's duties, powers and responsibilities as well as working principles and procedures shall be set by the board of directors.

## General managers and deputy general managers

**Article 25<sup>4</sup>**- The general manager of a bank must have at least undergraduate degrees in the disciplines of law, economics, finance, banking, business administration, public administration and related fields and those that have undergraduate degrees in engineering fields must have a graduate degree in the aforementioned fields, and they must have at least ten years of professional experience in the field of banking or business administration.

Deputy general managers must have at least seven years of professional experience and minimum two thirds of them must have at least undergraduate degree in the disciplines listed in the first paragraph. Even if employed with different position titles, other executives whose authority and duties are comparable to a deputy general manager or who occupy higher executive positions shall be subject to the provisions of this Law pertaining to deputy general managers.

Those who are to be appointed to the position of general manager or deputy general manager, shall be required to submit documents to the Agency proving that they in fact meet the qualifications required by this article. Such persons may carry on with their positions if the Agency does not communicate any negative view within seven days following the notification.

In case of the resignation of a general manager or deputy general manager, the reasons for such resignation shall be reported, within seven working days, to the Agency by the related person and the bank concerned.

For the implementation of this article, in respect of the qualifications to be born by general managers as well as the requirements with regard to their appointment or removal from office,

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<sup>4</sup> *The last paragraph of the Article is repealed by the Law No. 6111.*

the manager of the head office in Turkey of a bank established abroad shall be considered as general manager.

### **Prohibition from working and signing**

**Article 26-** The persons who do not bear the qualifications set out in sub-paragraphs (a), (b), (c), and (d) of the first paragraph of Article 8 can not work at any bank as general manager, deputy general manager or in a position wherein they have signing authority. Banks shall immediately revoke the signing authorities of these persons.

The signing authority of any bank employee, who, as a result of supervision, is found to have infringed provisions of this Law or other applicable laws and put the bank's safe operation into danger and legal proceedings have been requested to initiated for them shall be temporarily revoked upon the Board's decision. Such persons may not be employed by any bank as an employee vested with signing authorities unless permitted by the board.

### **Oath and declaration of property**

**Article 27-** After the election or appointment of the chairman and members of the board of directors or board of managers of banks, they shall be required to take an oath in the presence of the local commercial court after their appointment or election. These persons, general managers, deputy general managers and the managers with signing authority, including regional managers, branch managers and the managers of the units within the head office such as departments, sections, groups, etc., shall be subject to the provisions of the Declaration of Personal Property and Elimination of Bribery and Embezzlement Law, No. 3628.

The Board shall set the principles and procedures applicable to oath-taking and declaration of property.

## Docket

**Article 28-** Resolutions adopted by the board of directors, audit committee, credit committee and board of managers shall be entered into a separate book with consecutive pages certified in accordance with provisions of the Turkish Commercial Code No. 6762 relating to keeping of books by allocating a date and number to each decision without leading to any doubt as to authenticity of the text provided that no space is left between each text and there is no addition between lines and each resolution shall be signed by members within maximum one month following the date of decision. Within the framework of the principles and procedures to be set by the Board banks may use a loose-leaf book each sheet of which shall be certified by a notary public in place of dockets, bearing consequential numbers subject to the Agency's approval provided that it is bounded at the end of each year.

## SECTION TWO Internal Systems

### Obligations pertaining to internal systems

**Article 29-**The banks are obliged to establish and operate adequate and efficient internal control, risk management and internal audit systems that are in harmony with the scope and structure of their activities, that can respond to changing conditions and that cover all their branches and undertakings subject to consolidation in order to monitor and control the risks that they encounter.

The principles and procedures applicable to the establishment, functioning and adequacy of internal control, risk management and internal audit systems; the units to be established; the activities to be performed; the duties and obligations of se-

nior management; and the reporting to be made to the Agency shall be set by the Board.

### **Internal control system**

**Article 30-** Within the scope of internal control system, banks shall (i) ensure the execution of their activities in compliance with the legislation, internal regulations and banking ethics; (ii) secure the integrity and reliability of accounting and reporting systems and timely accessibility of information through continuous control activities to be complied with and performed by the personnel at any level; (iii) ensure the functional distribution of the duties and the sharing of powers and responsibilities the fund payments, the reconciliation of bank's transactions, protection of assets and control of liabilities; (iv) identify and evaluate any risk encountered and prepare the infrastructure required for managing such risks; and (v) establish an adequate information exchange network. Internal control activities shall be carried out by the internal control department and the internal control personnel to work under the board of directors.

### **Risk management system**

**Article 31-** Within the scope of risk management system, banks shall establish, implement and report risk policies within the framework of the principles set by the Board. Risk management activities shall be performed by the risk management department and personnel to work under the board of directors.

### **Internal audit system**

**Article 32-** Banks shall establish internal audit systems that involve all their units, branches and undertakings subject to consolidation. In this context, bank auditors shall investigate the con-

formity of the banking activities to the legislation, articles of association, internal regulations and banking principles.

Internal audit activities shall be performed in an impartial and independent manner exercising due professional care by the adequate number of auditors. Those persons charged with the internal audit of the parent undertaking banks may exercise the internal audits of undertakings subject to consolidation. The internal audit report to be prepared by the internal audit unit and the authorized inspector pursuant to the second paragraph of Article 29 of this Law shall be submitted to the board of directors by way of the audit committee in three-month periods, at minimum.

## **SECTION THREE**

### **Authorized Institutions**

#### **Independent audit firms**

**Article 33<sup>5</sup>**- Additional requirements to be requested from the independent audit firms authorized by Public Oversight, Accounting and Auditing Standards Authority within the scope of Article 15, are set by the Board through receiving the opinion of the Central Bank and associations of institutions, and the list of independent audit firms meeting these requirements is disclosed to the public. The Board is authorized to remove those independent audit firms identified to be in breach of the standards and regulations within the framework of this Law temporarily or permanently from the list by means of quality control and audit. The Board will declare the results of its quality control and audit works to the Public Oversight, Accounting and Auditing Standards Authority. Independent audit firms shall be liable to the third parties for all the damages caused pursuant to their activities under this Law.

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<sup>5</sup> *As amended by the Law No. 6362.*

If, during their audits, independent audit firms detect any matter that may endanger the existence of the bank or an evidence demonstrating that their managers have severely violated the Law or the articles of association, the independent audit firms shall promptly notify the Agency thereof. Such notification does not mean the violation of the professional confidentiality principles and agreements or the obligations pertaining to confidentiality.

### **Valuation and rating institutions**

**Article 34-** The valuation and rating services required by this Law and the regulations issued under this Law shall be provided by valuation and rating institutions within the framework of the principles and procedures to be set by the Board.

### **Outsourcing institutions**

**Article 35<sup>6</sup>-** The Banks will, before receiving outsourcing services, prepare a written report, for submission to the Agency if and when required, containing the probable risks of outsourcing services to be received, and management of such risks, as well as the expected benefits and costs thereof. However, neither the operations which are solely required to be performed by the bank's board of directors or organizational units in its internal units, nor the activities relating to accounting of transactions and issuance of financial reports, may be the subject of outsourcing services. The outsourcing services to be received shall not either prevent the banks from fulfilling their legal duties and obligations, conforming to the relevant legislation, and being audited efficiently. The Board will, in its sole discretion and whenever deemed necessary, be authorized to determine and limit the subjects of outsourcing services that may be received by banks,

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<sup>6</sup> *As amended by the Law No. 6111.*

or to prohibit the subjects of outsourcing services by banks or by bank groups, or to impose the requirement of liability insurance, or to impose conditions of permission on such services depending on the kind of outsourcing services.

The institutions founded by or operating within the organization of the Central Bank, and clearing, custody and central registry service providers and institutions under the supervision of the Capital Markets Board are not considered as an outsourcing institution for the purposes of implementation of this Law.

### **Liability insurance**

**Article 36<sup>7</sup>:** Independent audit firms are under obligation to arrange a liability insurance against probable risks of losses that may be caused by their services, in insurers or insurance carriers established in Turkey or abroad, under general terms and conditions to be determined by the Treasury Undersecretariat or under conditions certified to be compliant with the said general terms and conditions. Valuation, rating and outsourcing institutions shall arrange liability insurance only if demanded so by the banks or if and when deemed necessary by the Board.

## **SECTION FOUR Financial Reporting**

### **Accounting and reporting system**

**Article 37<sup>8</sup>-** Banks are obliged to implement uniform chart of accounts in accordance with the principles and procedures to be determined by the Board in consultation with Public Oversight Accounting and Auditing Standards Authority and associations of in-

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<sup>7</sup> As amended by the Law No. 6111.

<sup>8</sup> As amended by the Law No. 6362.

stitutions and to account all transactions in an accurate manner, and to timely arrange the form and content of financial reports in a clear, reliable, and comparable way to meet the information requirements as well as to be truly compatible with audit, analysis and interpretation in accordance with the accounting and financial reporting standards issued by the Public Oversight, Accounting and Auditing Standards Authority.

Banks shall not settle their balance sheets without ensuring reconciliation with legal and auxiliary books and records, branches and domestic and foreign correspondents.

In cases where it is determined that the financial statements have been misrepresented, the Board shall be authorized to take necessary measures.

### **Consolidated financial reports**

**Article 38-** A parent undertaking, shall prepare consolidated financial reports within the framework of the principles and procedures according to the article 37 in order to provide information about their financial positions and activity results as a whole. The undertakings subject to consolidation shall provide any information and document requested during the preparation of consolidated financial reports.

### **Signing, submission, announcement and auditing of financial reports**

**Article 39-** The Board-requested financial reports prepared by banks shall be signed, with names, surnames and titles indicated, by the chairman of the board of directors, the members of the audit committee, general manager, deputy general manager responsible for financial reporting as well as the relevant

unit manager or equivalent authorities, declaring that the financial report is in compliance with the legislation pertaining to financial reporting and with the accounting records. The signing responsibility shall be fulfilled by the members of the board of managers of branches in Turkey of banks established abroad.

The annual financial reports to be presented by banks to their general assemblies shall be approved by independent audit firms.

Banks shall submit to related authorities and publish their financial reports within the framework of the principles and procedures to be determined by the Board.

### **Annual activity report**

**Article 40-** Banks shall prepare an annual activity report that includes information about their status, management and organization structures, human resources, activities, financial situations, assessment of the management and expectations from the future; together with financial statements, summary of board of directors' report and independent auditing report. The principles and procedures regarding preparation, submission and publication of the activity report shall be established by the Board.

### **Responsibility**

**Article 41-** Pursuant to Article 37 of this Law, the board of directors shall be responsible for setting the basic policies, duties, powers and responsibilities pertaining to financial reporting system, including the accounting of activities, preparation, approval, audit, submission to relevant authorities and the publication of financial statements, for making information systems efficient and supervising its implementation.

**Record keeping**

**Article 42-** The original letters received and activity-related documents, or proper copies where the original ones are not available, as well as the photocopies of letters written shall be kept in order of their number and dates for a period of ten years within the body of the relevant bank. It is possible to keep such documents in the form of micro films or in electronic or magnetic environments. The principles and procedures applicable to the implementation of this article shall be determined by the Board.

## **PART FOUR**

### **Protective Provisions**

#### **SECTION ONE**

#### **Own Funds and Standard Ratios**

##### **Protective regulations**

**Article 43-** The Board is authorized to make the necessary regulations and to take any measure regarding banks in order to specify, analyze, monitor, measure and evaluate the relationship and balance between the assets, receivables, own funds, debts, liabilities, commitments of banks, revenues and expenses of banks, all other factors affecting their financial structures, and the risks encountered, by setting limitations and standard ratios as well. For a parent undertaking that have to prepare consolidated financial statements as per Article 38, this provision shall be applicable both on a consolidated and non-consolidated basis within the framework of the principles and procedures to be set by the Board. Banks shall comply with the regulations; shall calculate, comply with and maintain the limitations and standard ratios on a consolidated basis, too; and shall take and enforce the associated measures required by the Agency within due course.

Taking into consideration the implementation of corporate governance provisions and protective provisions, the Board shall be authorized to set more cautious different minimum or maximum standard ratios or limits from those set for each bank or group of banks or to change the calculation and reporting periods, or to set ratios and limits that have not been set in general terms.

In case the restrictions and threshold related to the standard ratios set in this Law are reached or exceeded, the relevant bank shall promptly inform the Agency thereof.

### **Paid-up capital, reserved funds and own funds**

**Article 44-** The paid-up capital means. any bank's actual paid-up capital or paid-up capital set aside for Turkey free of any collusion less its loss disclosed in the balance sheet not met from reserves.

Reserves means any reserve set aside by banks in accordance with provisions of the Turkish Commercial Code No. 6762 and other relevant acts and articles of association thereof less any balance sheet loss, if any.

The own funds shall be calculated by subtracting the deductible values from the total of core capital and supplementary capital.

For the calculation of credit limits and standard ratios to be applied on a consolidated basis, consolidated own funds shall be calculated pursuant to the third paragraph of this article.

The principles and procedures related to this article shall be set by the Board.

### **Capital adequacy**

**Article 45-** Capital adequacy means keeping adequate own funds against losses that could arise from the risks encountered, in the implementation of this Law. Banks shall be obliged to calculate, achieve, perpetuate and report capital adequacy ratio, which shall not be less than eight percent, within the framework of the regulation to be issued by the Agency.

The Board shall be authorized to increase the minimum capital adequacy ratio, to set different ratios for each bank and to

revise the risk weights of assets that are based on participation accounts, taking into consideration the banks' internal systems as well as their asset and financial structures.

### **Adequacy of liquidity**

**Article 46-** Banks shall calculate, achieve, perpetuate and report the minimum liquidity level in accordance with the principles and procedures to be set by the Board upon the approval of the Central Bank.

### **Elimination of excesses**

**Article 47-** The excesses of limitations and ratios set forth in this Law and in the regulations issued under this Law shall be eliminated within the framework of the principles and procedures to be determined by the Board.

In cases where excesses occur in the limitations and standard ratios associated with a certain rate of the own funds due to possible decreases in the own funds and in cases where conditions so require, such excesses shall be eliminated within the period to be given by the Agency. Within the period set for the elimination of excesses, the provisions of this Law pertaining to administrative fines shall not be applicable.

## **SECTION TWO**

### **Loans and Risk Group**

#### **Loans**

**Article 48-** The cash loans and non-cash loans such as letters of guarantee, counter-guarantees, suretyships, avals, endorsements, acceptance loans and commitments bearing such characteristics,

bonds and similar capital market instruments that have been purchased, funds lent through making a deposit or other ways, receivables arising from the installment sales of assets; overdue cash loans, accrued but non-collected interests, values of non-cash loans that have been converted to cash, receivables incurred from reverse repurchasing transactions, risks undertaken within the scope of futures and option contracts and other similar contracts, partnership shares and transactions recognized as loan by the Agency shall be considered as loans in the implementation of this Law, irrespective of the accounts they are booked.

For the implementation of this Law, in addition to those mentioned in the first paragraph, loans shall also include the finance provided through the financial leasing method by development and investment banks the payment of all movable and immovable property and services fees of participation banks or the profit and loss sharing investments, immovable, equipment or property procurement or financial leasing or joint investments by financing documents in return for property, and similar methods.

### **Risk group**

**Article 49-** A real person and his spouse and children, the undertakings where they are members of board of directors or general manager or the undertakings which they or a legal person control individually or jointly, directly or indirectly or participate with unlimited responsibility, constitute a risk group.

A bank and its qualified shareholders, board of directors' members and general manager as well as the undertakings they control individually or jointly, directly or indirectly or participate with unlimited responsibility or where they are members of board of directors or general manager constitute a risk group including the bank.

In the identification of the above-mentioned risk groups, jointly-controlled undertakings shall be included in the risk group of each shareholder that controls together these undertakings.

For the implementation of this article, risk groups shall also include real and legal persons that have surety, guarantee or similar relationships where the insolvency of one will lead to the insolvency of the other.

The banks whose majority of capital is owned separately or jointly by the Treasury Undersecretariat, Privatization Administration or the administrations subject to the general budget or annexed budget shall constitute a risk group together with the undertakings that they directly or indirectly control.

The non-bank state economic enterprises or other public institutions and enterprises whose majority shares are owned by the Privatization Administration shall constitute a risk group together with the subsidiaries, associates and enterprises in which they are determining in terms of capital, management and supervision.

The Board shall set the principles and procedures of implementation of this article and principles and procedures to be applicable to the identification of the real and legal persons to be included in the same risk group, in the context of the board of directors' member and general manager of banks and their undertakings as well as their children who are not under their custody.

### **Conditions of granting loans to the risk groups including the bank and its employees**

**Article 50-** Banks shall under no condition and in no way grant cash or non-cash loans, and purchase bonds or similar securities of;

a) Their board of directors' members, general manager, deputy general managers and employees that are authorized to extend loans; their spouses and children under their custody; and the undertakings where they individually or jointly own twenty-five percent or more of the capital,

b) Their employees other than those mentioned in sub-paragraph (a) and their spouses and children under their guardianship,

c) The funds, associations, unions or foundations established by or for their employees.

The provisions of the first paragraph shall not be applicable for real and legal person shareholders who are original members of the board of directors or have representative in the board of directors and directly or indirectly own qualified shares in the bank's capital.

The fact that the persons in the board of directors and audit boards of the undertakings of a bank are at the same time the employees of the relevant bank shall not constitute an obstacle for the undertakings to make transactions with that bank.

It is obliged that in cases where loans will be made available to real and legal persons in the bank's risk group, the necessary decision be taken by two thirds majority of the board of directors' members and that the loan conditions not vary from the loans made available to other persons and groups and from market conditions, in favor of the borrower.

The provisions of paragraphs one and four shall not apply to the loans to be made available to the board of directors' members and employees of bank as well as their spouses and children under their custody not exceeding the five times of the monthly net total remunerations of them; to be extended through issuing

check books and credit cards up to three times the monthly net total remunerations of the member and to be extended in return for the securities mentioned in sub-paragraphs (a) and (b) of Article 55 of this Law.

Banks shall regularly report to the Agency the loans extended to persons who are in their risk groups.

It is obligatory to liquidate the loans that turn out to be in violation of this article later on, within six months at the latest.

## **Extending loan**

**Article 51-** The power to extend loans shall be held by the board of directors. The board of directors shall be responsible for ensuring the establishment, implementation and monitoring of policies for extending and approving loans and other administrative matters and for taking the necessary measures.

Board of directors may assign the power to extend loans to the credit committee or head office within the framework of principles and procedures to be set by the Board. The head office may use the power to extend loans assigned thereto by way of other units, regional directorates or branches. The principles applicable to the credit committee's establishment, operations and decision-taking shall be set by the Board. The power to extend loans that are not subject to the provisions of this Law pertaining to credit limits may be transferred within the framework of the principles and procedures to be established by the board of directors.

Those persons empowered to extend loans cannot take part in the evaluation and decision-taking phases for the loan transactions involving themselves, their spouses and children under their guardianship and the real and legal persons that constitute

a risk group with them, and shall inform the relevant authorities of this fact in writing.

In cases where the Board determines that loans extended in violation of this article and Article 50, the Board shall be authorized to decide for considering such loans as items of reduction in the calculation of the relevant bank's own funds and to require the obtainment of additional own funds in the amount of such loans.

### **Monitoring of loans**

**Article 52-** Banks shall measure the risks to be encountered due to their loans; regularly analyze and monitor the financial standing of the counterparty; obtain the necessary information and documents; and establish the relevant procedures. In this context, the borrowers shall provide the documents and information requested on a consolidated and non-consolidated basis.

In cases where the amount of loans to be extended and the surety bonds or guarantees to be provided to the institutions and undertakings and non-bank customers, whose more than half capital is owned by administrations covered by general and annexed budgets, state economic enterprises and the institutions covered by the Law No. 3291 dated 28.5.1986, is higher than the amount to be set by the Agency; the conformity of the chart of account standing to be received and its attached balance sheets and profit-loss tables to the generally-accepted accounting principles shall be approved by professionals authorized for auditing and licensed as per the Law No. 3568 dated 1.6.1989, within the framework of the principles to be set by the Agency.

The principles and procedures applicable to this provision shall be set by the Board.

## Loan provisions and guarantees

**Article 53-** Banks shall make, implement and regularly review the policies regarding compensating for the damages that have arisen or are likely to arise in connection with the loans and other receivables and to reserve adequate level of provisions against impairment in the value of other than those assets, for the quality and classification of assets; receiving of guarantees; measurement of value and reliability of them, monitoring the loans under follow-up and the repayment of overdue loans, and establish and operate the structures that could execute all these issues. The principles and procedures applicable to the implementation of this paragraph shall be set by the Board.

The whole amount of the provisions set aside for loans and other receivables as per this article shall be considered as expenditures in the calculation of the corporate tax base in the year they are set aside.

## SECTION THREE Restrictions

### Loan limits

**Article 54-** The total amount of loans to be extended by a bank to a real or a legal person or a risk group shall not be more than twenty-five percent of its own funds. This rate shall be applied as twenty per cent for a risk group defined in the second paragraph of Article 49. The Board may increase this rate up to twenty-five percent or to lower it down to the legal limit. The loans made available to an unincorporated undertaking shall be considered made available to partners in proportionate to their responsibilities.

The total of loans to be made available by banks to all shareholders, irrespective of whether they are dominant partners or whether they own qualified shares (excluding those that have less than one percent share in the capital of banks), and to persons who have indirect loan relations with such persons, shall not exceed fifty percent of own funds.

The loans made available to jointly-controlled undertakings shall be considered to have been made available to the risk group including each jointly controlling shareholder, at the rate of the shares owned by such shareholders in the undertaking's capital, to the total of undertaking's capital.

The loans made available to a real or legal person or a risk group that equals to or exceeds ten per cent of own funds shall be considered large loans and the total of such loans shall not exceed eight times of the own funds.

The avals, guarantees and suretyships of real and legal persons in a risk group for the guarantee of the loans extended to that risk group shall not be taken into account in calculating the loan limits applicable to that risk group.

The non-cash loans; futures and option contracts and other similar contracts; avals, guarantees and suretyships; transactions carried out with credit institutions and financial institutions; transactions carried out with the central governments, central banks and banks of countries to be accepted by the Board or bills, bonds and similar capital market instruments issued and guaranteed to be paid by them; and the transactions carried out pursuant to guarantees shall be taken into account within the framework of the principles and ratios set by the Board in calculating the loan limits.

The provisions of this article shall apply on the consolidated basis as well, for parent undertaking.

## Transactions that are not subject to loan limits

**Article 55-** The following loan transactions shall not be subject to the restrictions laid down in Article 54:

a) Transactions against cash, cash-like asset and accounts as well as precious metal,

b) Transactions carried out with the Treasury Undersecretariat, Central Bank, Privatization Administration and the Public Housing Administration as well as the transactions carried out against bills, bonds and similar securities issued and guaranteed by these administrations,

c) Transactions carried out in the Central Bank markets or other legally organized money markets,

d) In case of new loans made available to the same person or to the same risk group, rises due to volatility of exchange rates, taking into consideration the current exchange rate of the loans, excluding checks and credit cards, made available earlier in foreign currency or exchange rate, at the date when the subsequent loan was extended; as well as interests accrued on overdue loans, dividends and other elements,

e) Partnership shares acquired as free of charge due to any capital increase and value increases that do not necessitate any fund outflow,

f) Transactions carried out among banks within the framework of the principles to be set by the Board,

g) Partnership shares acquired within the scope of public offering intermediary undertakings, provided that such shares will be sold off within the period to be set by the Board,

h) The transactions that are considered items to be deducted in the calculation of the own funds,

h) Other transactions to be determined by the Board.

## **Restrictions pertaining to partnership shares**

**Article 56-** A bank shall not acquire shares at a undertaking other than credit institutions and financial institutions at an amount that exceeds fifteen percent of its own funds, and the total amount of its shares in these undertakings shall not be more than sixty percent of its own funds.

The transactions mentioned in sub-paragraph (e) of Article 55 of this Law shall not be taken into account in the calculation of the limits set out in the first paragraph.

In case the limits mentioned in the first paragraph are exceeded, the exceeded amount shall be taken into account as an item of reduction from core capital in the calculation of own funds.

Banks shall not directly or indirectly own shares in undertakings or institutions that directly or indirectly own shares within themselves, shall not admit their shares as pledge and shall not give advance payments in return for.

## **Transactions on property and commodity**

**Article 57-** The total of the net book values of a bank's properties shall not exceed fifty percent of that bank's own funds. In this calculation, the value increases due to valuation and inflation-correction and added to property account shall be taken into account at the rate of fifty percent.

Banks shall not engage in trading property and commodity for commercial purposes, excluding the contracts based on property and commodity under the Capital Market Law No. 2499 and the trading of precious metals to be deemed appropriate by the Board, and shall not participate in undertakings whose main field of activity is property trading except for mortgage financing institutions and real estate investment trust.

The transactions on property and commodity regarding of the liabilities undertaken by participation banks due to activities of procuring property, equipment or commodity, financial leasing, profit or loss sharing investment, or activities of providing financing through joint investments and similar activities shall not be considered within the scope of activities prohibited under this article.

The principles and procedures applicable to the disposal of properties and commodities that have been acquired due to receivables shall be set by the Board.

### **Transactions pertaining to funds and foundations**

**Article 58<sup>9</sup>**- For the funds and foundations established by banks exclusively for their employees with a view to providing health, social aid, retirement, prudence and savings services; no resource shall be transferred for financing their deficits.

### **Grant limits**

**Article 59**- The amount of grants to be extended by banks and institutions subject to consolidated supervision in a fiscal year shall not exceed four per thousand of the bank's own funds. However, minimum half of the grants and aids shall be composed of grants and aids that may be considered as expenditure or deductible costs in the calculation of the corporate tax base. The principles and procedures applicable to the implementation of this provision shall be set by the Board.

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<sup>9</sup> See the 73<sup>rd</sup> and 74<sup>th</sup> articles of the Law No. 5754.

## PART FIVE

### Provisions Regarding Collection of Deposits and Participation Funds

#### Acceptance of deposits and participation funds

**Article 60-** Other than credit institutions and those authorized by special laws, no real or legal person, essentially or secondarily by assuming a profession, shall accept deposits or participation funds. Neither shall they make announcements to the public by notice or advertisement using commercial titles or other expressions nor terms that give similar impressions thereof.

Providing in return a receipt, participation certificate, bond or other similar document instead of an bank book is not an obstacle to considering the money accepted as deposit or participation fund acceptance.

In private and public institutions and undertakings, the funds and foundations established for the purposes of providing health and social assistance, retirement, reserves and savings, which only belongs to the employees, and money collected exclusively from the members of foundations for these purposes as well as the transactions of insurance companies shall not be considered acceptance of deposit or participation fund in the enforcement and interpretation of this Law.

The funds received by development and investment banks from their own borrowers, partners and undertakings within the framework of general principles as well as the resources to be obtained from banks, money markets, capital markets and legally organized markets shall not be considered as deposits in the implementation of this Law.

The overseas branches and undertakings of credit institutions established in Turkey shall carry out the transactions for the preparation of books and other relevant documents pertaining to the collection of funds, in the country where they operate. Under no condition, shall books or documents pertaining to collection of funds be prepared or granted in Turkey for such branches and undertakings.

When the credit institutions established in Turkey keep books or documents, and employ personnel to collect deposits or participation funds from people residing in Turkey on behalf of their undertakings abroad or other banks or financial institutions abroad, direct their customers to their subsidiaries or other banks or financial institutions abroad through paying charges, commissions, premium, etc. to their personnel on the deposit and participation fund to be collected for such undertakings abroad or other credit institutions or financial institutions or through having such institutions advertised or promoted by their personnel, collect deposits and funds for institutions established abroad using such methods, then the deposits and participation funds collected as such shall be considered non-permitted deposit and participation fund acceptance under this article.

Credit institutions shall classify deposit accounts and participation fund accounts according to maturity and type as determined by the Central Bank upon receiving the views of the Board and shall separate their saving deposit accounts and participation funds belonging to real persons from other accounts.

The provisions of this article shall not be applied to capital market instruments issued in accordance with the provisions of Capital Market Law No. 2499.

## **Withdrawal of deposits and participation funds**

**Article 61-** With the reservation of the provisions set forth and the authorizations provided and obligations imposed by the Turkish Civil Code No. 4721 of pertaining to pledges and general liens, and by the Debts Law No. 818 pertaining to the transfer and assignment of claims and exchange, as well as other provisions of these laws and other laws; the rights of account holders to withdraw their deposits and participation funds shall not be restricted in any way whatsoever. The agreed conditions regarding maturity and notice period between deposit or participation fund account owners and credit institutions shall be reserved.

The principles and procedures applicable to the implementation of this article shall be set by the Board.

## **Prescription**

**Article 62-** The deposits, participation funds, bailed goods or receivables at banks that has not been claimed by their owners within ten years following the latest request, transaction and written directive of their owners, shall be subject to prescription.

Any deposit, participation fund, bailed goods and receivable that have been subjected to prescription shall be registered income for the Fund, following the publication of the announcement, if the bank cannot contact the owners of such.

The principles and procedures applicable to the enforcement of this article shall be determined by the Board.

## **Insurance of deposits and participation funds**

**Article 63-** The savings deposit and participation funds belonging to real persons in credit institutions shall be insured by the Savings Deposit Insurance Fund.

Credit institutions shall insure their savings deposit and participation funds belonging to real persons on the basis of the portion subject to insurance, and shall pay the premiums on this basis.

The coverage and amount of the savings deposit participation funds belonging to real persons which will be subject to insurance shall be set by the Fund Board upon the approval of the Central Bank, the Board and the Treasury Undersecretariat. The risk-based insurance premium rate shall not exceed twenty per thousand of the deposit and participation fund subject to insurance on an annual basis. The tariff, collection time, method and other conditions of the risk-based insurance premium shall be set by the Fund Board upon consulting the Board.

The owners of deposits and participation funds shall be treated as privileged creditors with respect to the part of their accounts not subject to insurance, pursuant to Article 206, line 3 of the Execution and Bankruptcy Law No. 2004, and shall receive their receivables after the payment of the receivables of the Fund and the claims of the state and social security organizations covered by the Law No. 6183 in the case of the bankruptcy of credit institutions.

The insurance premiums paid by credit institutions to the Fund shall be considered as expenditure in determining the corporate tax base.

The insured portions of the clearly proven savings deposit and participation funds at the credit institutions whose operating permission has been revoked shall be paid from the resources of the Fund.

**Deposits and participation funds not covered by insurance**

**Article 64-** The below-listed savings deposit and participation fund accounts shall not be subject to insurance:

a) Deposits, participation funds and other accounts belonging to dominant partners of the relevant credit institution as well as their fathers, mothers, spouses and children under their custody,

b) Deposits, participation funds and other accounts belonging to the chairman and members of the board of directors of the relevant credit institution, its general managers and deputy general managers as well as their spouses, fathers, mothers and children under their custody,

c) Deposits, participation funds and other accounts covered by assets generated through the offenses mentioned in Article 282 of the Turkish Penal Code No. 5237 and dated 26.9.2004,

d) Other deposits, participation funds and accounts determined by the Board.

## **PART SIX**

### **Supervision and Measures to be Taken**

#### **Supervision**

**Article 65-** The institutions under the scope of this Law and their activities shall be subject to supervision of the Agency.

The Agency may send representatives to the meetings of the general assemblies of banks, for observation purposes.

#### **Consolidated supervision**

**Article 66-** The parent undertaking that are subject to limitations and standard ratios on a consolidated basis pursuant to the first paragraph of Article 43 of this Law as well as their domestic and foreign subsidiaries, their jointly-controlled undertakings, their branches and representative offices shall be subject to consolidated supervision.

The institutions mentioned in the first paragraph shall primarily keep their information and documents regarding their internal control, risk management and internal audit systems, accounting and financial reporting units, financial statements and reports as well as loans extended to risk groups, as ready and appropriate for consolidated supervision.

The consolidated supervision of subsidiaries and jointly-controlled undertakings as per the provisions of this Law shall be performed together with the officials of the Agency and other authorities that are legally authorized for the regulation and supervision of institutions subject to consolidated supervision, where necessary. The results of such supervision and the information and documents forming the basis of such supervision shall be

shared and used within the framework of the principles and procedures to be set by the Board upon consulting the above-mentioned authorized bodies.

### **Cases where measures are required to be taken**

**Article 67-** The measures laid down in Articles 68, 69 and 70 of this Law shall be taken promptly against the relevant bank if, as a result of consolidated or non-consolidated supervision, it is determined that;

a) Its assets are likely not to meet its obligations in terms of maturity or that the bank does not comply with the provisions pertaining to liquidity,

b) Its profitability is not at level that is sufficient to reliably perform its activities, due to impaired balance and relations between revenues and expenses,

c) Its own funds is inadequate pursuant to the provisions pertaining to capital adequacy, or such case is likely to occur,

d) The quality of its assets have deteriorated in such a manner that its financial structure will weaken,

e) Its decisions, transactions and practices are in violation of this Law and the applicable regulations,

f) It cannot establish its internal audit, internal control and risk management systems or cannot operate these systems efficiently or there is a factor that impedes supervision,

Due to the incompetence of the management, the risks defined in this Law and the applicable legislation have increased remarkably or have concentrated in such a manner that they may weaken the financial standing.

## Corrective measures

**Article 68-** In reference to the cases listed in Article 67, the Agency may call on the board of directors of relevant banks to take the following measures;

a) To increase the amount of the bank's own funds or to suspend the distribution of profits temporarily and transfer such to the reserves, or to increase the provisions set aside, or to stop extending loans to shareholders; or to ensure liquidity by selling off assets; or to restrict or stop new investments, or to restrict payment of fees and other types of payments, or to stop long-term investments if any one or more of the cases in items (a), (b), (c) and (d) is detected,

b) To eliminate the violations, to review the loan policies and to avoid and stop risky transactions, and to take the necessary measures to mitigate the maturity, exchange rate or interest risks encountered if the any one or more of the cases in items (e), (f) and (g) is detected,

The Agency shall require the board of directors of banks to take and implement one, several or all of the above measures as well as other measures to be deemed appropriate by the Agency, within a time period to be set by the Agency, within the framework of a plan to be approved by the Agency.

## Rehabilitating measures

**Article 69-** In cases where the bank fails to take the measures laid down in Article 68, or the consequences of such cases cannot be prevented despite the measures taken, or the Agency considers that no result can be obtained even after taking such measures, the Board shall directly require the bank's board of directors to take and promptly implement any measure, including the following:

a) in the context of sub-paragraphs (a), (b), (c) and (d) of Article 67; to correct the financial structure, to raise one or both of the capital adequacy or liquidity levels, give a reasonable period of time to sell off long-term or fixed assets, to restrict operational and management expenditures, to stop any payments to employees other than the regular payments and to restrict or prohibit the provision of cash or non-cash loans to certain persons, institutions, risk groups or sectors,

b) in the context of sub-paragraphs (e), (f) and (g) of Article 67 to eliminate violations; to call on the general assembly to convene extraordinarily to change one or several or all of the members of board of directors or to appoint new members by increasing the number of board members if the board of directors' members have responsibility in decisions, transactions and practices or to or remove from office the responsible employees; in order to mitigate the risks arising within the framework of sub-paragraph (g), to prepare short, medium and long-term plans to be approved by the Board; and the members of the board of directors and the shareholders with qualified shares to turn this plan into a written commitment and to request the results of the implementation of such plans periodically.

### **Restrictive measures**

**Article 70-** In cases where the bank fails to take the measures laid down in Article 68 and/or 69, or the consequences of such cases cannot be prevented despite the measures taken, or it is considered that no result can be obtained even after taking such measures, the Board shall require the bank to take and implement one or more of the following measures or other measures deemed appropriate;

a) Restrict or temporarily suspend its activities, as inclusive of all the organization of the relevant activity, or the domestic or overseas branches to be deemed necessary or the relations with correspondent banks,

b) Impose any restriction or limitation pertaining to the collection and extension of funds, including interest rates and maturity limitations,

c) Dismiss some or all of the general manager, deputy general managers, relevant unit and branch directors including board of directors and obtain the approval of the Agency for persons to be appointed or selected in place of the persons removed from office,

d) Provide long-term loans to an extent that is not more than the amount of deposit or participation funds that is subject to insurance, with adequate guarantee to be provided from the shares of dominant partners and other assets,

e) Restrict or suspend the activities that are causing losses and liquidate the low-efficient and inefficient assets,

f) Merge with another willing bank or banks,

g) Find new shareholders to be deemed appropriate, in order to increase own funds,

h) Deduct the arising loss from the own funds.

## **Revocation of operating permission or transfer to the Fund**

**Article 71-** In case the Agency determines, as a result of supervision, that;

a) The bank has not taken, either partially or completely, the requested measures indicated in Article 70 of this Law within the

## Article: 71

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period given by the Board or within maximum 12 months otherwise, or, even if having taken these measures, either partially or completely, the financial structure has not been strengthened or, it is considered that it cannot be strengthened even if the measures are taken,

b) The continuation of the bank's activities will endanger the rights of the owners of depositors and participation funds as well as the security and stability of the financial system,

c) The bank has not fulfilled its obligations as they fall due,

d) The total value of the liabilities of the bank exceeds the total value of its assets,

e) The dominant partners or managers of the bank fraudulently use the resources of the bank directly or indirectly in their own or others' favor in such a manner that the sound operation of the bank will be at stake, thus causing a loss for the bank.

The Board shall be authorized, with the affirmative votes of minimum five Board members, to revoke the operating permissions of that banks or to transfer the shareholder rights except dividends and the management and supervision of the banks to the Fund, for the purposes of transferring, selling or merging them partially or fully, on the condition that the loss will be deducted from the capital of the existing partners.

The credit institutions whose operating permissions have been revoked shall be liquidated as subject to the provisions of this Law and such development and investment banks shall be liquidated as subject to general provisions.

The Board decisions taken within the scope of this article shall be published in the Official Gazette. The publication date shall be regarded as the date of notification to relevant parties.

**Measures to be taken against systemic risk**

**Article 72<sup>10</sup>**

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<sup>10</sup> *The Article repealed by the Law No. 6362.*

## PART SEVEN

### Legal Obligations

#### Confidentiality

**Article 73-** Chairman and Board members and Agency personnel as well as the Fund Board Chairman and members and the Fund personnel shall not disclose the confidential information that they acquire as part of their duties pertaining to banks as well as their associates, subsidiaries, jointly-controlled undertakings and customers to anybody other than those who are authorized by this Law and those who are authorized by their private law and shall not use such information in their own or other's benefit. The outsourcing institutions from which the Agency receives support services and the employees of such institutions shall also be subject to the provisions of this article. Such obligation shall continue after leaving office.

The information and documents to be provided by the Agency under memorandums of understanding signed with equivalent foreign supervisory authorities, as per the provisions of this Law, shall not be covered by the confidential information and documents mentioned in the first paragraph. The Board shall be responsible for keeping the confidentiality of information and documents obtained within or outside the scope of memoranda of understanding to be signed. The confidential information and documents to be obtained by the Agency may be used for the purposes of issuing establishment and operating permissions, supervision of activities, monitoring compliance with the legislation, and for the administrative lawsuits to be filed against the decisions of the Board. The confidential information and documents that may be obtained by the Agency under this paragraph cannot be disclosed to any person or entity, other than the public pros-

ecutors and criminal courts if and when needed in the course of criminal proceedings and prosecutions, and the Chairman and members of the Board and personnel of the Agency if and when they demand for investigations, prosecutions or proceedings initiated against them with regard to the crimes alleged to have been committed by them in the course of performance of their duties, even if they have already left their job position therein.<sup>11</sup> The Agency shall not be held responsible for the disclosure of confidential information and documents over which a court judgment has been issued.

Those who, by virtue of their positions or in the course of performance of their duties, have access to confidential information about banks or clients are not permitted to disclose such confidential information to any person or entity other than the authorities expressly authorized by law. This confidentiality obligation shall survive termination of employment contracts of them. In the event that the wages, salaries, premiums, bonus pays and similar other pays due and payable to workers, seamen and journalists employed pursuant to and under the Code of Obligations No. 818 dated 22/04/1926, and the Law on Relations Between Employers and Employees in Press and Media Professions No. 5953 dated 13/06/1952, and the Maritime Labor Act No. 854 dated 20/04/1967, and the Labor Act No. 4857 dated 22/05/2003, are deposited to a bank account specifically opened for this purpose, then and in this case, disclosure of any data, information and documents relating to such accounts to the Ministry of Labor and Social Security, the Ministry of Finance, and the Treasury Undersecretariat or other institutions and entities associated thereto, or disclosure or provision of the information and documents relating to implementation of provisions of Articles 8 and 100 of

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<sup>11</sup> *As amended by the Law No. 6111.*

the Social Securities and Public Health Insurance Law No. 5510 dated 31/05/2006 or relating to conduct of income test in the public health insurance system to the Social Security Institution and to the Family and Social Policies Ministry, Social Relief General Directorate for the purpose of determination of people eligible for social relief and aid to be distributed by provincial or county social aid and solidarity foundations and conduct of income tests cannot be considered as disclosure of confidential information. The procedures and principles relating to the disclosure of such data, information and documents will be determined by the Ministry of Labor and Social Security, the Ministry of Finance, the State Ministry in charge of the Treasury Undersecretariat, and the Board.<sup>12</sup>

However, the confidentiality obligation excludes disclosure of confidential information in relation to banks or information pertaining to secrets of their clients, provided that such information and documents relate to entities under supervision of the Agency or their partners, affiliates or subsidiaries or partnerships under joint control with them, or to activities, operations, clients of these institutions and that such an exchange is required to meet information requests of entities or authorities equivalent to the Agency and of those authorized to audit pursuant to the laws of foreign countries, and a confidentiality agreement is signed in connection therewith, and disclosure of data is kept limited only for specified purposes as such during exchanges of all kinds of information and documents among banks or financial institutions either directly or indirectly, or through a risk center or through firms to be established by at least five banks or financial institutions, and also during meeting information and document requests for use in the valuation process carried out by potential buyers

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<sup>12</sup> *As amended by the Law No. 5754, 6111, 6327.*

for the sale of shares over ten percent or more of the capital through direct or indirect shareholdings, or in preparation of consolidated financial statements and accounts of parent companies, also including credit institutions and financial institutions, established and headquartered in Turkey or abroad, holding ten percent or more of capital, or in their risk management and internal audit practices, or in valuation for the purpose of sale of their assets or their asset-based securities, also including the loans, or in purchasing of valuation, rating or outsourcing services or in independent audit services, or in purchases of services by taking the required actions in connection therewith.<sup>13</sup>

### **Protection of reputation**

**Article 74-** No real or legal person shall intentionally damage the reputation, prestige or assets of a bank or disseminate inaccurate news either using any means of communication defined in the Press Code No. 5187 or radio, television, video, internet, cable TV or electronic data communication devices and similar tools.

### **Ethical principles**

**Article 75-** Banks and their personnel shall ensure that the banks' activities are performed in compliance with this Law, the applicable regulations and the banks' establishment goals and policies and comply with ethical principles that take justice, fairness, honesty and social responsibility as a basis in their management.

Ethical principles shall be established by the associations of institutions upon the approval of the Board.

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<sup>13</sup> *As amended by the Law No. 6111.*

### Customer rights

**Article 76-** Banks shall set up under their own bodies a system that will respond to the problems and complaints of their customers stemming from the services provided thereto and shall inform their customers of this service. Banks shall provide an approved copy of loan contracts to their customers and shall provide the customers with a copy of all documents pertaining to the transactions carried out with their customers upon the request of customers.

The minimum requirements pertaining to the format and contents of the contracts to be signed between banks and their customers pertaining to the activities mentioned in Article 4 of this Law as well as the transactions for which uniform contracts will be applicable shall be established by the associations of institutions upon obtaining the approval of the Board. The provisions of the Law No. 4077 shall be reserved.

Banks shall not open deposit, participation fund, credit or other accounts, sign contracts, provide remittance and foreign exchange services and other banking and financial services for clients that do not document their identities and tax numbers. The principles and procedures applicable to the implementation of this paragraph shall be governed by the Ministry of Finance upon consulting the Agency. The enforcement of the provisions of Article 5 of the Law No. 4358 and dated 2/4/1998 for those persons who violate the provisions of this paragraph and the regulations of the Ministry of Finance shall not be subject to the provisions of this Law pertaining to prosecution procedures.

## **PART EIGHT**

### **Development and Investment Banks and Financial Holding Companies**

#### **Provisions pertaining to development and investment banks**

**Article 77-** Development and investment banks shall be subject to the provisions of this Law excluding Articles 54, 55, 56, 57, 61, 63, 64, Articles between 106 and 129, 130(a), Articles between 131 and 142.

#### **Financial holding company**

**Article 78-** The Board shall be authorized to specify the scope of financial holding companies, to oblige their establishment and to set the principles and procedures applicable for the capital adequacy, internal systems, consolidated supervision and the coordination of supervision. The Board shall also be authorized to establish the provisions to be applicable for a group which is not obliged to establish a financial holding company although it is included in the scope set by the Board.

Within the framework of the principles and procedures to be set by the Board, Articles 14, 15, 16, 18, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 47, 65, 66, 67, 68, 69, 70, 71, 72, 73, 78, 93, 95, and 96 of this Law as well as the penalty provisions pertaining to these articles shall be applicable to financial holding companies.

The standard ratios and limits to be set and the calculations to be made for financial holding companies shall be taken into consideration only on a consolidated basis.

## **PART NINE**

### **Associations of Institutions**

#### **The Banks Association of Turkey and The Participation Banks Association of Turkey**

**Article 79-** Deposit banks and development and investment banks are obliged to become members of the Banks Association of Turkey, which is a professional organization having the status of public legal person, within one month following the date of receipt of their operating permission. Participation banks shall become members of the Participation Banks Association of Turkey, having the same status, within one month after getting the operating permission.

#### **Duties and powers of associations**

**Article 80-** The duties and powers of associations of institutions shall be as follows:

- a) To ensure the development of the banking profession,
- b) To ensure that members function in a dignified and well-disciplined manner as required by the banking profession and in line with the needs of the economy, by setting professional principles,
- c) To set the ethical professional principles and standards that the personnel of member banks will have to abide by, upon receiving the approval of the Agency,
- d) To monitor the enforcement of the decisions taken pursuant to the applicable legislation as well as the measures required to be taken by the Agency,
- e) To take and implement any measure required for preventing unfair competition among members,

- f) To set the principles and conditions for announcements and advertisements in terms of type, format, qualitative and quantitative elements to be complied by the members, upon receiving the approval of the Agency,
- g) To ensure cooperation among banks for joint projects, in collaboration with the Agency,
- h) To file lawsuits on the basis of board of directors' decision on matters that relate to the common interests of their members,
- i) To set the principles and procedures applicable to contract format and contents envisaged by the provisions regarding customer rights,
- j) To set up a board of arbitrators within the framework of the principles and procedures to be prepared thereby and approved by the Board, in order to evaluate and settle the disputes between the members and their individual clients, with the reservation of their rights to legal application pursuant to the Law No. 4077 regarding the Protection of Consumer Rights and other laws.

## **Organs and statute**

**Article 81-** The elections for positions in the organs of the associations of institutions shall be carried out through secret voting and under judiciary supervision, within the framework of the principles set out in the Law. Minimum fifteen days prior to the general assembly meeting during which the election will be carried out, the list indicating the member banks and their representatives to take part in the elections shall be submitted in three copies to the chairman of the electoral board, who has to be a judge, to be selected by the Supreme Election Board, together with a cover letter indicating the agenda, venue, time of the meeting, and the matters pertaining to the second meeting if meeting quo-

rum cannot be attained. The judge shall review and approve the list and other documents and shall appoint an balloting committee chairman and two balloting committee members as well as substitutes for each of them. The voting procedure shall be performed within the framework of the principles of secret ballot and open vote counts. After the end of the election period, the results of the election shall be recorded in a minute to be signed by the chairman and members of the balloting committee. Any objection to be made against the election results within two days following the signing of the minute shall be reviewed and decided upon by the judge on the day of objection.

The associations of institutions' organs, working principles and scope of activity shall be laid down in statutes to be put in force by Council of Ministers decrees, upon the proposal of the Agency, taking into consideration the views of associations as well. The members shall abide by the statutes of associations as well as the decisions and measures to be taken by associations. The expenditures of the associations of institutions shall be distributed among members in accordance with the number of votes determined pursuant to their statute. The members shall pay their share of expenditures within the period specified in the statute. In cases where contributions to expenditures are not paid within the specified period of time, the associations shall collect such through legal proceedings. The decisions pertaining to the payment of contributions to expenditures shall have the status of official documents as indicated in Article 68 of the Enforcement and Bankruptcy Law No. 2004.

The board of directors of the associations of institutions may impose administrative fines from 2,000 New Turkish Liras to 20,000 New Turkish Liras on members who do not timely and fully comply with the general or specific decisions and measures taken by associations.

## **PART TEN**

### **Provisions Pertaining Banking Regulation and Supervision Agency**

#### **SECTION ONE**

#### **Banking Regulation and Supervision Agency**

##### **Establishment and independence**

**Article 82-** The Banking Regulation and Supervision Agency has been established as a public legal person with administrative and financial autonomy. The Agency is headquartered in İstanbul. The Agency consists of the Banking Regulation and Supervision Board and the Chairman's Office.<sup>14</sup>

The Agency shall independently perform and use the regulatory and supervisory duties and rights assigned thereto by this Law and the applicable legislation, under its own responsibility. The decisions of the Agency shall not be audited for compliance. No organ, authority or person can give instructions and orders to influence the decisions of the Agency.

The Agency shall independently use the financial resources allocated thereto within the framework of the principles and procedures laid down in this Law and the Public Financial Control and Management Law No. 5018, to the extent its duties and powers necessitate within the framework of the principles and procedures set out in its own budget.

The Agency shall employ adequate number of personnel with required qualifications in order to efficiently fulfill its duties and powers.

The properties of the Agency shall be deemed as state property and shall not be seized or pledged.

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<sup>14</sup> As amended by the Law No. 6111.

## **SECTION TWO**

### **Banking Regulation and Supervision Board**

#### **Banking Regulation and Supervision Board**

**Article 83-** The Banking Regulation and Supervision Board is the decision-making organ of the Agency. The Board shall consist of seven members, including one chairman and one vice chairman. The chairman of the Board shall be the chairman of the Agency.

Where the Chairman is absent due to a leave, sickness, an assignment in Turkey or abroad, removal from the office or otherwise, the vice chairman shall act as the chairman. In cases where the vice chairman is also absent, a member to be determined by the Board shall chair the Board.

#### **Appointment of members**

**Article 84-** The members of the Board shall;

a) Bear the conditions laid down in sub-paragraphs (1), (4), (5), (6) and (7) of paragraph (A) of Article 48 of the Civil Servants Law No. 657,

b) Bear the conditions laid down in sub-paragraphs (a), (b), (c) and (d) of the first paragraph of Article 8 of this Law,

c) Not be among those prohibited to work as listed in Article 26 of this Law,

d) Have an undergraduate degree in the disciplines of law, economics, finance, banking, business administration, public administration or equivalent disciplines or have an graduate degree in the above disciplines after completing an undergraduate program in the area of engineering.

Members shall be appointed by the Council of Ministers amongst the people who have at least 10 years of experience after completing higher education or who have worked as members of faculty member in one of the above disciplines for minimum 10 years. Minimum one of the members must be a graduate of law faculty and one must have worked as vice chairman, main service unit manager or professional staff in the Agency. The Council of Ministers shall appoint one of the members as the Chairman and another member as the Vice Chairman. The appointment decree of the Council of Ministers shall be published in the Official Gazette.

Board Chairman and members shall take an oath before the First Presidential Board of the Supreme Court of Appeals that they will perform their duties with due diligence, neutrality and integrity and that they will not infringe and not permit others to infringe provisions of the Law during their respective terms in office. Any application made for taking such an oath shall be accorded priority by the Supreme Court of Appeals. No member of the Board can assume his duties until taking an oath.

### **Terms of office of the chairman and members**

**Article 85<sup>15</sup>**- The terms of office of the Board chairman and members shall be five years. The members whose terms of office expire may be re-appointed for one more term. Where the chairman or any member leaves office for any reason, an appointment shall be made to the vacated position in one month within the framework of the principles set out in Article 84. Those appointed as such will complete the term of office of their predecessor.

Board chairman or members cannot be removed from office before the expiry of their terms of office. However, any chairman

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<sup>15</sup> *As amended by the Law No. 6300.*

or member who is no longer able to fulfill his duties due to heavy illness or disability,<sup>16</sup> or who can no longer meet the conditions required for appointment, or who is found to be violating the provisions of Article 86, or who has been finally convicted by a court due to an offence he has committed in connection with his duties, shall be removed from office upon the approval of Prime Minister. Furthermore, if temporary inability to perform functions lasts for more than three months, then such member shall be removed from office and his successor shall be appointed within one month.

Any Board chairman or member, against whom a criminal lawsuit has been filed in connection with offenses indicated in subparagraph (5) of paragraph (A) of Article 48 of the Civil Servants Law No. 657 and who are not deemed appropriate to stay in office, may be suspended from office by the Council of Ministers, as a precaution. The relevant provisions of the Civil Servants Law No. 657 shall be applicable to the Board Chairman and members who have been suspended from office. The Council of Ministers may appoint members for such temporarily vacated seats amongst the persons who bear the conditions listed in Article 84 to serve until such suspended members take office again, provided that the period of such appointment shall not exceed the term of office of the suspended member.

### Prohibitions

**Article 86-** Excluding activities like scientific courses and conferences and the copyrights which do not constitute an obstacle for performing their primary duties, Board chairman or members cannot accept employment in another public or private entity except for their official duties within the body of the Agency; involve

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<sup>16</sup> *As amended by the Law No. 6462.*

in commercial business; work as managers of societies, foundations, cooperatives and similar entities; perform his/her profession independently; acquire shares in an undertaking operating in the sector or area which the Agency is authorized to regulate and supervise; or serve as a arbitrator or expert witness.

Before taking office, Board chairman and members, their spouses and their children under their custody shall dispose off any security they own, within the framework of any capital market that falls under the Agency's competence of regulation and supervision, other than those issued by the Treasury for borrowing purposes, by selling them to persons other than their spouses, adopted children, blood relatives up to third degree and relatives in law through marriage up to second degree. The members, who do not act in line with the provisions of this paragraph within 30 days after their appointment, shall be considered as having resigned from their positions in the Board. Such cases shall be recorded by a Board decision and be notified to the relevant Minister.

Within two years after leaving office, Board chairman and members cannot take office in any private company that operates in the sector and area regulated and supervised by the Agency. The Board members who violate the provisions of this paragraph shall be subjected to the penalties set out in Article 4 of the Law No. 2531 on the Jobs Prohibited to those who have Left a Position in the Public Sector.

Even though they have left office, Board chairman and members and other personnel shall not disclose the confidential information and commercial secrets regarding the Agency to any person other than the legally authorized persons and shall not use such information for their or other persons' interests.

Board chairman and members shall be subject to the provisions of the Law No. 3628 on Mandatory Declaration of Wealth, Bribery and Corruption.

### **Working principles of the Board**

**Article 87-** The Board shall convene whenever necessary, minimum once a week otherwise. The Board chairman, and in his absence, the Board vice chairman shall chair the board meeting. The agenda of meetings shall be prepared by the Chairman, and in his absence by the vice chairman, and be communicated to the Board members minimum one day before meetings. Before starting to discuss the agenda items, the Chairman shall inform the Board about the activities of the Agency. In order for a new subject to be added to the agenda, a member shall propose it for inclusion in the agenda before the meeting and such proposal has to be adopted by the Board.

The members of the Board who have not attended a total of three meetings in a calendar year without any justifiable excuse, or who have not signed the decisions of the Board within due course, although they have attended the meeting and have not objected to the decision, or who have objected to a decision but has not provided a written justification for such objection within due course shall be deemed to have resigned from membership. Such cases shall be recorded through a Board decision and be notified to the related Minister.

The Board shall convene with the attendance of minimum five members and with the exception of specific decisions that require special quorum under this Law, Board decisions shall be taken with the votes of minimum four members in the same direction. Board members cannot cast abstentious votes. In cases where

decision making quorum cannot be obtained, the decision shall be taken in the following meetings and in case there are equal numbers of votes, the decision voted for by the Chairman's decision shall be adopted. Board decisions shall be recorded in a minute and the minute of decision shall be signed by all attending members during the meeting or in the following working day, at the latest.

In the event that the number of members falls below a level that makes it impossible for the Board to take a decision for any reason, the Agency Vice Chairmen shall substitute for the absent members in order of seniority in order to ensure the meeting quorum, which shall be limited to maximum one month. The financial and personnel rights of any Vice Chairman, who deputizes or substitutes for any member of the Board pursuant to this provision, shall not be affected.

With the reservation of the periods indicated in this Law, Board decisions as accompanied by their rationale, the rationale of votes against and the signatures affixed, shall be registered within fifteen days following the date of meeting in which they are taken.

Board chairman and members can neither attend nor cast votes in the Board meetings regarding themselves, their spouses, their adopted children, blood relatives including the third degree and relatives in law through marriage up to second degree. This shall be indicated in the text of the decision, separately.

Board meetings shall be confidential. The experts who have been consulted by the Board on a specific subject may be invited to Board meetings in which their subject matter will be deliberated. However, Board decisions shall not be taken in the presence of visitors.

After the registration of the Board's regulatory decisions, such decisions shall be sent to the relevant Ministry and to the Prime Ministry for publication within seven working days, at the latest, and shall be published in the Official Gazette within seven days, at the latest, after being sent to the Prime Ministry. With the reservation of the provisions of this Law, supervisory decisions shall be publicized through appropriate means, primarily including the internet environment. The Board may decide not to publish the supervisory decisions that may endanger national economy and public order if published.

The professional principles to be complied by Board members and Agency personnel and the other matters pertaining to the working principles and procedures of the Board shall be set in a regulation to be published by the Board.

### **Duties and powers of the Board**

**Article 88-** In addition to the duties set out in this Law and other applicable Legislation, the Board shall also have the following duties and powers:

a) To prepare the secondary legislation in harmony with the international standards and principles regarding the sector or area which they are authorized to regulate and supervise and take decisions to this effect,

b) To set the strategic plan, performance criteria, goals and objectives and service quality standards of the Agency; to establish the human resources and working policies; to provide suggestions regarding the Agency's service units and their duties,

c) To debate and decide on the proposed budget of the Agency that is prepared in tune with the Agency's strategic plan and goals and objectives,

- d) To approve the reports indicating the performance and financial standing of the Agency,
- e) To appoint the vice chairmen and department heads upon the proposal of the Chairman,
- f) To debate and decide on the suggestions regarding the purchase, sale and leasing of immovable properties,
- g) To fulfill other duties assigned thereto by laws.

## **SECTION THREE**

### **Organization of the Chairman's Office**

#### **Chairman**

**Article 89-** The chairman, who is the top rank manager of the Agency, shall be responsible for administering and representing the Agency.

The duties and powers of the chairman are as follows:

- a) To determine the agenda, date and time of Board meetings; to chair the Board meetings; to carry out the necessary procedures regarding the proposals that are not put on the agenda and to inform the Board of such proposals,
- b) To ensure the publication or notification of Board decisions, to ensure and monitor the enforcement of these decisions,
- c) To present the proposals of service units to the Board after finalizing such proposals,
- d) To prepare the Agency's annual budget and financial statement in tune with the strategies, goals and objectives set by the Board,

## Article: 89, 90

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e) To organize and coordinate the efficient and harmonious functioning of service units, and to resolve the problems to arise between the Agency's service units regarding duties and powers,

f) To prepare annual reports; to make the activities evaluated according to the goals, objectives and performance criteria; and to present them to the Board,

g) To assess the strategies, policies, the relevant legislation and the performance criteria of the Chairman's office and personnel,

h) To execute the relations of the Agency with other institutions and to represent the Agency,

i) To appoint the Agency personnel other than those required to be appointed by the Board,

j) To specify the duties and powers of the personnel that has signing authority on behalf of the Chairman,

k) To fulfill other duties pertaining to the management and functioning of the Agency.

The Chairman may assign some of his duties and powers not relating to the Board, to his subordinates, provided that the boundaries of such assignment are clearly put down in writing.

### Vice chairmen

**Article 90<sup>17</sup>**- Five vice chairmen shall be appointed by Board decision to assist the Chairman. One of the vice chairmen shall be responsible for the units that are charged with on-site and off-site supervision. Vice chairmen shall bear the qualifications laid down in Article 84.

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<sup>17</sup> As amended by the Law No. 6493.

These vice chairmen may assign some of their duties and powers to their subordinates, provided that the boundaries of such assignment are clearly put down in writing.

### **Service units of the Agency**

**Article 91<sup>18</sup>** - The service units of the Agency shall consist of main service, advisory and support service units organized in the form of departments. The number of departments shall not be more than ten. The Board may form new departments upon the approval of the related Minister and the number of such departments shall not be more than twenty in total.<sup>19</sup>

Service units shall be set out in a regulation to be put in force upon the proposal of the Agency and the approval of the Council of Ministers, taking into consideration the fields of activity, duties and functions laid down in this Law.

The Strategy Development Department shall be established as a main service unit. Chairman's advisors may be appointed in areas such as law, press and public relations, management and finance. The number of such advisors shall not be more than fifteen in total<sup>20</sup>.

The Support Services Department shall be established to perform human resources and training, administrative, financial and similar activities. Maximum eight<sup>21</sup> directorates may be established under this department, one of which will be used specifically for the office services of the Board.

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<sup>18</sup> As amended by the Law No. 5667.

<sup>19</sup> As amended by the Law No. 6493.

<sup>20</sup> As amended by the Law No. 5667.

<sup>21</sup> As amended by the Law No. 6493.

Upon a Council of Ministers Decree, the Agency may open up maximum three representative offices in provinces where the sector regulated and supervised by the Agency is concentrated. Upon demand of its members, the Board may determine local representation offices other than the head office as the relevant member's permanent place of work.<sup>22</sup>

### Agency personnel

**Article 92-** The permanent duties and services necessitated by duties and services assigned to the Agency by this Law shall be fulfilled by the professional personnel consisting of sworn bank auditors and assistant sworn bank auditors and banking specialists and assistant banking specialists, legal experts and assistant legal experts, information experts and assistant information experts as well as Banking Regulation and Supervision Agency<sup>23</sup> specialists and assistant specialists. It is compulsory that all personnel of the Agency are required not only to bear the qualifications listed in sub-paragraphs (a), (b) and (c) of the provision of the first paragraph of Article 84 of this Law, but also to satisfy meet other conditions regulated defined under the regulation. Those to be appointed as banking, law, information and Banking Regulation and Supervision Agency assistant specialists and as assistant sworn bank auditors are required to be graduates of law, political sciences, economics and administrative sciences, departments related to economics, business administration faculties providing at least four years of university education as well as banking, banking and finance, physics, mathematics, statistics, statistics and computer, computer engineering, electrical engineering, electronic engineering, electrical-electronic engineering,

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<sup>22</sup> As added by the Law No. 6493.

<sup>23</sup> As amended by the Law No. 6493.

electronic and communication engineering, industrial engineering, mathematical engineering departments in the country or those abroad having approved equivalencies by the Higher Education Council, or to have had postgraduate degrees in the above defined disciplines, and to have passed the entrance exam, and to satisfy all other conditions specified in the regulation. The Board is authorized to determine separately the faculties, and departments by staff titles and/or fields of specialization.<sup>24</sup> Professional staff whose titles defined above can not assume for at least two years any duty in a bank where they conducted on-site and off-site supervision process or practice during the past two years.<sup>25</sup>

Vice chairmen, department heads, directors, chairman's advisors and the professional staff shall be employed under contracts signed for their positions. The Agency personnel employed under contracts signed for their positions shall be subject to the Civil Servants Law No. 657 excluding their remunerations, financial and social rights. The other personnel shall be subject to the Civil Servants Law No. 657 in terms of all their rights and obligations.

Without exceeding the total number of positions given in the Table no. (I) annexed to this Law, and solely for the existing positions or the positions given in tables annexed to Decree in the Power of Law No. 190 regarding General Staff Positions and Procedures changes in the procedures and principles relating to positions, classes, titles and degrees are determined by the Board.<sup>26</sup>

Professional staff shall be employed in the main service units of the Agency for tasks that require expertise. The qualifications of the personnel to be employed in the main service, advisory and support service units shall be set by the Board upon the pro-

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<sup>24</sup> *As amended by the Law No. 6495.*

<sup>25</sup> *As added by the Law No. 6300.*

<sup>26</sup> *As amended by the Decree Law No. 2011/662.*

posal of the Chairman.<sup>27</sup> The number of the Agency personnel that have no manager, advisor and professional staff titles shall not exceed thirty percent of the total number of personnel indicated in the tables annexed to the Law.

The Agency may employ adequate number of experts that have minimum ten years of experience in the sector and have a PhD degree in the relevant disciplines, under service or procurement contracts, provided that the number of such experts shall not exceed ten percent of the number of the Agency's professional staff.<sup>28</sup>

By decision of the Board, and with the consent of the person concerned, the Agency personnel may be temporarily appointed to other public entities and organizations.<sup>29</sup>

Assistant banking, legal information and Banking Regulation and Supervision Agency<sup>30</sup> specialists and the assistant sworn bank auditors shall be recruited amongst those candidates who qualify in the central competition exams. The persons to be appointed as assistant specialists (except assistant Banking Regulation and Supervision Agency specialist<sup>31</sup>) and assistant sworn bank auditors shall take authorization exams at the end of the second year. The principles and procedures applicable to the authorization exam and the authorities of those who succeed in this exam shall be set by the Board. The persons who have been appointed as assistant specialists and assistant sworn bank auditors shall be recruited as banking, legal information and Banking Regulation and Supervision Agency<sup>32</sup> specialists and sworn bank

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<sup>27</sup> As repealed by the decision of the Constitutional Court (Official Gazette 15.12.2007, 26371).

<sup>28</sup> As repealed by the decision of the Constitutional Court (Official Gazette 15.12.2007, 26371).

<sup>29</sup> As amended by the Decree Law No. 2011/662.

<sup>30</sup> As amended by the Law No. 6493.

<sup>31</sup> As amended by the Law No. 6493.

<sup>32</sup> As amended by the Law No. 6493.

auditors, whichever applicable, provided that they have worked for three years as assistant with positive record, that they get a level (C) grade in the Public Servants Foreign Language Exam or an internationally accepted score from the equivalent foreign language exams, that they have succeeded in the proficiency exam, and that their thesis study to qualify for an expert has been accepted by the jury. Such experts and sworn bank auditors may be promoted by one degree for only once. Those who have not prepared their thesis studies or have not attended the exam without any excuse, or have failed in the exam for twice, shall be notified to the State Personnel Department to be appointed to an appropriate position that will fit to their educational status in another public institution.

The principles and procedures applicable to the proficiency and competition tests of the Agency's professional and administrative staff, their qualifications and their working principles and procedures shall be set in a regulation to be issued by the Agency.

The Agency can employ information personnel within the framework of the principles and procedures set forth in supplementary Article 6 of Decree-Law No. 375, dated 27.06.1989. However, the conditions set forth in sub-paragraphs (a) and (b) of third paragraph of the same Article are not required for the Agency.

To carry out the litigation and enforcement proceedings services that are not exceeding ten in number that the Agency is a party thereof, contracted lawyers under an attorney agreement may be employed in accordance with the general legal provisions.

For jobs that require special expertise and temporary in nature, the contractual and payment conditions of which to be determined by the Board, services may be outsourced without being subject to the provisions of the Public Procurement Law No. 4734<sup>33</sup>

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<sup>33</sup> *As added by the Law No. 6493.*

## **SECTION FOUR**

### **Duties, Powers and Responsibilities**

#### **Duties and powers of the Agency**

**Article 93-** In order for the establishment of confidence and stability in financial markets, the sound operation of the credit system, the development of the financial sector and the protection of the rights and interests of depositors, the Agency is responsible for;

a) To regulate, enforce and ensure the implementation of the establishment, activities, management and organizational structure, merger, disintegration, change of shares and liquidation of banks and financial holding companies and with the reservation of the provisions of other laws and the related regulation, financial leasing, factoring and consumer financing companies, and monitor and supervise enforcement of such,

b) To become members of international financial, economic and professional organizations, in which domestic and foreign equivalent agencies participate, sign memorandum of understanding with the authorized bodies of foreign countries regarding the matters that fall under the Agency's field of duty,

c) To fulfill other duties assigned by the Law,

The Agency shall be authorized and obligated to prevent any transaction and practice that could endanger the rights of the depositors and the sound and safe operation of banks and severely damage the economy; and to take and implement the decisions and measures in order to ensure the efficient operation of the credit system.

In all its activities, the Agency shall comply with the principles, strategies and policies set out in the development plan, programs and the government program, with the reservation of powers assigned thereto in this Law.

The Agency shall use the powers assigned thereto in this Law and the applicable legislation through regulatory transactions to be made and specific decisions to be taken by the Board. The Agency shall be authorized to issue regulations and communiqués regarding the enforcement of this Law, through Board decisions<sup>34</sup>.

Before putting into force the regulatory procedures other than the internal regulations, the Agency shall consult the related Ministry in order to check the harmony with the sector strategy and policies; and the Undersecretariat of the State Planning Organization and other related institutions and organizations in order to check conformity with the development plan and annual plan. If the related Ministry and the Undersecretariat of the State Planning Organization do not convey their views within seven days, then their views shall be deemed to have been received.

The drafts of the secondary legislation to be prepared by the Agency shall be made public for minimum seven days to inform the public opinion thereof through appropriate means primarily including the Agency's website.

Those specific decisions that are deemed necessary shall be notified directly to the related persons and institutions, and shall be made public through the Agency's weekly bulletin if deemed appropriate.

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<sup>34</sup> *As amended by the Law No. 5472.*

The public institutions and authorities shall provide the necessary assistance to the Agency in their fields of duty as set out in the Laws.

The Agency is liable for and authorized to prevent the use of banking services and transactions, bank debit cards and credit cards defined under the framework of Bank Cards and Credit Cards Law no. 5464 dated 23/2/2006 in commission of crimes cited in Article 5 of the Law on Organization of Games of Chance and Bet in Football and Other Sports Competitions no. 7258 dated 29/4/1959.<sup>35</sup>

### Development of the sector

**Article 94-** For the development of the financial services sector, the Agency shall be authorized to set strategies in order to;

a) Ensure the profitable, efficient and rational operation of banks by minimizing the costs of transactions and intermediary services and; establish an competitive environment among the parties of financial markets,

b) Ensure competitiveness of the financial system, realize integration with other regulations and practices pertaining to financial markets, and establish an efficient and transparent financial system by way of the more efficient operation of the market,

c) Closely following the up the status of international banks in terms of supervision and their fields of activity, benefiting from their experience,

d) Ensure the integration of professionals in the financial market by promoting dialogue and cooperation among units, institutions and professionals as well as international dialogue and cooperation,

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<sup>35</sup> As added by the Law No. 6495.

e) Prepare the regulations pertaining to financial markets in consultation with the relevant parties.

### **On-site and off-site supervision**

**Article 95-** The Agency shall be responsible for (i) the supervision of the implementation of the provisions of this law and other laws applicable for the institutions under the scope of this law and the on-site supervision of all transactions of these institutions; (ii) the on-site and off-site supervision of the relations and balances between the consolidated and non-consolidated risk structures, internal control, risk management and internal audit systems of the institutions under the scope of this Law and their assets, receivables, own funds, debts, profit and loss accounts, liabilities and commitments, the other factors that affect their financial structures, and (iii) the supervision of their conformity to the corporate governance principles.

The Agency shall also evaluate the structure, conformity and reliability of the annual financial reports prepared by independent audit firms.

The institutions subject to this Law shall timely and properly provide the Agency with any consolidated and non-consolidated information, document, table, report, financial statements, as consistent with their account and record systems, within the framework of the principles and procedures set by the Board.

A copy of the reports and studies prepared by authorities empowered to audit firms shall be provided to the Agency.

The Agency shall carry out its examinations within the framework of the working programs approved by the Chairman and as per the authorizations by the Chairman.

For on-site supervision, the Chairman shall appoint an examination team consisting of eligible sworn bank auditors and assistant sworn bank auditors, banking experts and assistant banking experts, information experts and assistant information experts, legal experts and assistant legal experts who constitute the professional staff of the Agency. The professional staff of the Agency authorized for on-site supervision cannot perform on-site supervision before taking oath at the Istanbul Basic Commercial Court. The professional staff of the Agency authorized for on-site supervision shall have all the rights set out in this article pertaining to on-site supervision.<sup>36</sup>

Chairman has the authority to commission independent audit firms to examine specific matters that require expertise where the he/she deems necessary. The auditors of independent audit firms shall bear the powers laid down in this article, as limited to only audit-related matters, and shall be subject to the obligation of keeping the confidentiality of information and documents under this Law.

The Agency shall be authorized to request any information including those classified as confidential, they deem relevant to the provisions of this Law from banks and their subsidiaries, from the undertakings where they hold qualified shares, from the undertakings they control jointly, their branches and representative offices, their outsourcing institutions and from other real and legal persons; to review their ledgers, records and documents including the ones related to taxation, and the parties from whom information is requested shall be obliged to provide the information requested; keep their ledgers, records and documents ready for examination; make their information systems available to the professional staff of the Agency responsible for on-site supervision;

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<sup>36</sup> *As amended by the Law No. 6111.*

ensure the security of their data; and submit all the ledgers, records and statements that they have to keep as well as the micro chips, micro film, magnetic tapes, compact disks and other records for examination.

Public institutions and agencies, Central Bank and similar institutions as well as the Risk Center shall promptly provide any information, including confidential information that may be requested in connection with their duties to the professional staff of the Agency responsible for on-site supervision. The Agency may sign memorandum of understanding with the related parties that regulate the details of such procedures.

If requested during the examinations executed by the Agency, banks shall provide any support including the commissioning of the staff of the internal control, risk management, and internal audit units.

Chairman may assign other duties other than those covered by this Law to the professional staff of the Agency pursuant to other laws, on the condition that their duties mentioned in this article shall have priority.

Regarding the institutions that are mentioned in the provisions of this Law pertaining to the duties, powers and responsibilities of the Agency and which act in violation of the Law No. 1567 and dated 20/02/1930 on the Protection of the Value of Turkish Currency, the Agency shall be entitled to have authorities set out in additional article 1 of the said Law, and to audit the implementation of the provisions of the establishment laws of all banks as well as the provisions of other laws regarding banks.

In cases where the persons performing audits in banks detect a violation of laws apart from this Law, such audit officials shall promptly notify the relevant authorities of such violation.

The principles and procedures applicable to on-site and off-site supervision shall be set in a regulation to be issued by the Board.

### **Document and information requests**

**Article 96-** The institutions mentioned in sub-paragraph (a) of the first paragraph of Article 93 of this Law and their shareholders; their subsidiaries; undertakings where such they hold qualified shares; the undertakings they jointly control; their branches and representative offices; independent audit, valuation and outsourcing institutions shall provide the Agency with any information and document, including those classified as confidential, to be requested by the Agency in connection with the implementation of this Law.

With the exception of provisions pertaining to cases that could give rise to heavy consequences for the security and basic international interests of the state as well as professional secrets, confidentiality of family life and the right to defend; public entities and real and legal persons shall continuously, regularly and timely provide the Agency with any information, document and book, including confidential ones, to be requested by the Agency solely for its duties under this Law, irrespective of the prohibitive and restrictive provisions of special laws, and shall also submit the books and documents requested; keep their ledgers, records and documents ready for examination; make their information systems available to the personnel for audit purposes; ensure the security of their data; and submit all the ledgers, records and statements that they have to keep as well as the micro chips, micro film, magnetic tapes, compact disks and other records for examination.

The parties from whom documents or information is requested shall respond to such requests within the period to be set by

the Agency and shall be obliged to facilitate the execution of the Agency's duties.

### **Transparency and accountability**

**Article 97-** The annual report pertaining to the activities of the Agency shall be submitted to the Council of Ministers until latest by May of the year following the respective term of the report and shall be publicized together with the audited final accounts. The Agency shall inform the Plans and Budget Commission of the Turkish Grand National Assembly about its activities once a year.

The Agency shall brief the Council of Ministers regarding its policies and the implementation of such policies, once every six months.

The Agency shall publish quarterly reports regarding the important developments in the sector as well as regular aggregated reports regarding the performance of the institutions mentioned in sub-paragraph (a) of the first paragraph of Article 93 of this Law. The Agency shall publicize its risk management policies.

The regulations to be issued by the Board shall be publicized on the website of the Agency, by updating them to involve any amendments therein.

The format and contents of the periodical reports to be prepared by the Agency as well as the principles and procedures applicable to such reports shall be determined by the Board.

### **Cooperation among institutions**

**Article 98-** The Agency, Treasury Undersecretariat, State Planning Organization Undersecretariat, the Savings Deposit Insurance

Fund and the Central Bank shall exchange views regarding the implementation of monetary, credit and banking policies.

The Agency, the Fund and the Central Bank shall have access to the jointly-agreed databases of each other within the framework of the principles of confidentiality, in order to fulfill the duties set forth in this Law.

The requests of authorities of foreign countries which have been authorized for supervision under their respective laws and which are equivalent to the Agency, to audit the Turkey branches or undertakings of institutions operating in the financial markets of their own countries and to obtain information about such branches and undertakings, and the requests of information covered by consolidation from the overseas branches and undertakings of banks shall be fulfilled within the framework of the principle of reciprocity and is subject to the permission of the Board.

The Agency shall be authorized also to cooperate and exchange information regarding financial institutions and financial markets with any counterpart supervisory authority of the Agency, within the framework of bilateral memoranda of understanding it will sign with such authorities or through other means in order to conduct audits in foreign countries and to provide training and ensure exchange of personnel aimed at the harmonization of policies and legislation. The Agency shall inform the public opinion of the principles and procedures of such memorandum of understanding.

In cases where the Agency revokes the operating permission of a bank that has branches and undertakings abroad, or transfers such a bank to the Fund, the Agency shall promptly inform the counterpart authority of relevant countries of such revocation.

The principles and procedures applicable to cooperation with domestic and foreign supervisory authorities towards auditing as well as exchange of information shall be set by the Board upon consulting the relevant parties.

### **Financial Sector Commission**

**Article 99-** Financial Sector Commission consisting of the representatives of Agency, Ministry of Finance, the Treasury Undersecretariat, Central Bank, Capital Market Board, Fund, Competition Board, Undersecretariat of State Planning Organization, Istanbul Gold Exchange, securities stock exchanges, Futures and Options Markets and the associations of institutions shall be established under the body of the Agency. The Commission shall ensure exchange of information, cooperation and coordination among institutions, propose joint policies and express views regarding the matters that relate to the future of the financial sector, with a view to establishing and ensuring confidence and stability as well as development in the financial markets.

The Financial Sector Commission shall convene once every six months and shall brief the Council of Ministers regarding the results of its meetings. The working principles and procedures of the Commission shall be set by the Board upon receiving the views of member agencies.

### **Coordination Committee**

**Article 100-** A coordination committee consisting of the Chairman and vice chairmen as well as the Fund Chairman and vice chairmen, shall be set up to ensure that maximum cooperation be established between the Agency and the Fund when it is necessary to carry out transactions in the competency of the Fund,

with respect to the exchange of information regarding the general status of the banking sector, measures to be taken as a result of the supervision of deposit banks, results of analyses indicating the financial standing of credit institutions to be used in calculating the risk-based insurance premiums, the number of deposit and participation fund accounts, total amount of the insured deposits and participation funds and the total amount of deposits and participation funds in these institutions.

The committee shall convene minimum once every three months, at a frequency to be agreed by the parties. Any of the parties shall provide the information and documents requested by the other parties, within the period to be agreed on.

The Agency and the Fund shall jointly establish the principles and procedures applicable to the exchange of information between both parties for the implementation of the provisions of this law that fall under the duty area of both parties.

## **SECTION FIVE**

### **Miscellaneous Provisions**

#### **The budget of the Agency and the audit of its accounts and expenditures**

**Article 101-** The revenues of the Agency shall recover its expenditures. The budget of the Agency shall be prepared and adopted within the framework of the principles and procedures laid down in the Public Financial Control and Management Law No. 5018.

Excess revenues of the Agency at the end of the financial year shall be transferred to the general budget as income in March of the following year. However, taking into account the stand-

ing of its budget, the Agency may transfer the excess revenues earlier.

The Agency's budget year is the calendar year. Expenses of the Agency, are paid by banks leasing companies, factoring companies, finance companies, payment entities and electronic money institutions before enactment of the budget through contribution share to be paid to the Agency. The amount to be collected as contribution share to expenses shall not exceed three per ten thousand of the previous year-end balance sheet totals of such institutions. Any such contribution share not paid within the specified period of time shall be collected pursuant to the provisions of the Law No. 6183.<sup>37</sup>

The internal audit of the Agency shall be performed within the framework of the principles and procedures to be set by the Board. The provisions of Public Financial Management and Control Law No. 5018 shall be applied in relation to the external audit of the Agency.<sup>38</sup>

The Board may have its annual accounts audited by an independent audit firm. In this case, the independent audit report shall be published in the annual report.

Each year at the end of March, the Agency shall publish an activity report that analyzes the decisions taken, the secondary legislation issued and their economic and social implications. The activity report shall also include the comparison of the Agency's performance objectives with the findings.

The annual report, financial statements and final budget account of the Agency shall be submitted to the Turkish Grand Na-

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<sup>37</sup> *As amended by the Law No. 6493.*

<sup>38</sup> *As amended by the Law No. 5667.*

tional Assembly. A copy of the final account shall be sent to the Ministry of Finance.

The Agency shall inform the public about its activities at the maximum level via the internet and official bulletins.

### **Salaries, financial and other social rights**

**Article 102-** Board Chairman shall be paid a monthly salary that is equal to the amount of financial and social rights paid to the Prime Ministry Undersecretary including all kinds of remunerations. The remunerations paid to the Prime Ministry Undersecretary that are not subject to taxation and other deductions shall not be subject to taxation and deduction under this Law, either. The remuneration of Board members shall equal to ninety-five percent of the Board Chairman and shall be subject to the same principles and procedures.

The salaries and other social and financial rights of the permanent contracted personnel of the Agency shall be determined by the Board, on the condition that they will not be more than the maximum amount indicated in the first paragraph.

The Agency personnel may receive overtime working payments and performance-based rewards within the framework of the principles to be set by the Board. Under no condition shall the payments to be made to the Agency personnel exceed the maximum amount indicated in the first paragraph.

The Chairman and Board members and the Agency personnel shall be subject to provisions of the Law on Pension Fund No. 5434 and any addition and amendment thereto. As to retirement rights, Chairman shall be deemed to be equal to the Ministry Undersecretary; Board Members shall be deemed to be equal to the Ministry Deputy Undersecretary; Vice Chair-

men shall be deemed to be equal to Ministry General Director; the first degree department heads shall be deemed to be equal to Ministry Deputy General Directors; Agency advisors shall be deemed to be equal to Ministry advisors; sworn bank auditors and assistant sworn bank auditors shall be equal to the corresponding ministry inspectors and assistant inspectors in terms of acquired rights and monthly degrees; banking, legal and information experts shall be equal to corresponding Prime Ministry specialists in terms of acquired rights and monthly degrees; and the assistant banking, legal and information experts shall be equal to corresponding Prime Ministry assistant specialists in terms of acquired rights and monthly degrees. The length of service in any of the foregoing positions shall entitle the holder of that office, to receive office pays. With the reservation of the conditions required for the acquisition of academic titles, these provisions shall be applied also for the Chairman, members and personnel coming from universities.

Any person who has been appointed as Chairman and Board member and is entitled to retirement, with retirement procedures completed upon his request, shall serve as Board member until the expiry of his term. Any person who has been affiliated with any other social security organization established by law prior to his appointment, shall maintain his affiliation with such organization if he so desires, and the provisions above shall not be applicable for such persons.

The Board members, who have retired from social security organizations other than the Pension Fund of the Republic of Turkey, shall be affiliated with the Pension Fund as from the beginning of the month following the date at which they apply, in writing, to the Pension Fund. The salaries of such members which they receive from other social security organizations shall be discontinued and upon retirement, they shall start receiving salaries pur-

suant to Article 8 of the Law No. 2829 and dated 24/5/1983, by bringing together the periods of time during which they have paid premiums to various social security organizations.

The retirement conditions of other personnel shall be determined comparatively, taking into consideration the provisions of the Law on Pension Fund No. 5434 and any addition and amendment thereto.

The Chairman and Board members shall receive compensation payments every month in the amount of the salaries specified in the first paragraph, and such compensation payments shall not be subject to any deduction other than the stamp duty.

### **Board members leaving office**

**Article 103-** Any person who has been appointed Chairman or a member of the Board shall not work for their previous employers during their term of office in the Board. However, if persons who have been appointed as chairman or Board members when working as a public servant expire their terms of office or wish to leave office and apply to their previous institution within thirty days, then the institution authorized for appointment shall appoint such persons to positions that fit to their acquisitions within one month. Until they are appointed, such persons shall continue receiving all their remunerations from the Agency. If any person who has been appointed as chairman or Board members when not working as a public servant leaves office as explained above, then such persons shall continue to receive all their remunerations from the Agency until they start any work or task. The payments to be made by the Agency to those persons who leave office as explained in this paragraph shall not be made for more than two years.<sup>39</sup>

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<sup>39</sup> *As amended by the Law No. 6300.*

The periods of the terms of office of the chairman and Board members shall be regarded as period of service pursuant to the provisions of the law to which they are subject. This provision shall also be applicable to the chairman and Board members coming from academic positions in universities, with the reservation of the conditions required for the acquisition of academic titles.

### **Penal and legal liabilities of Board members and Agency personnel**

**Article 104-** The investigation of offenses alleged to have been committed by chairman and Board members and Agency staff in connection with their duties shall be carried out according to the general provisions as subject to the permission of relevant Minister for chairman and Board members and the permission of Chairman for the Agency staff. The related Minister shall give the permission for investigations for the Agency personnel in connection with crimes alleged to be committed jointly by the Board members and Agency personnel.

For the initiation of any investigation of offenses alleged to have been committed by chairman and Board members and Agency personnel in connection with their duties there must be a clear and solid evidence indicating that such members or personnel have acted for acquiring interests for themselves or third persons and for causing damages on the Agency or third persons and have acquired interests for themselves or third persons and caused damages as a result of their acts. If a permission for investigation has been issued, the relevant parties shall be notified thereof. For a decision regarding whether permission for investigation will be issued or not issued, an objection application may be filed with the Council of State regarding against decision, within fifteen days following the date of notification. Even

though permission for investigation has been issued, the investigation shall not be initiated until the objection deadline expires or a judgment is made regarding the objection application filed with the Council of State.

The investigations and legal proceedings initiated against chairman and Board members and Agency personnel, even though they have left office, due to any crime alleged to have been committed thereby in connection with their duties shall be followed on by a lawyer to be retained by the Agency, signing an attorney contract with the relevant member or personnel, if he so desires. The legal fees for such lawsuits as well as the attorney's fees, which shall not exceed fifteen times the attorney's fee set in the minimum price tariff announced by the Turkish Association of Bars, shall be financed from the budget of the Agency.

Any legal action for compensation of damages, payment of receivables and executive proceedings taken and to be taken against chairman and Board members and Agency personnel due to the Agency's decisions, actions and transactions taken and carried out in connection with the duties of the Board or the Agency as set out in this Law, both during and after their terms of office, shall be deemed to have been taken against the Agency. In such lawsuits, the Agency shall be set as the defendant. The provisions of the third paragraph pertaining to legal fees and attorney's fees shall apply to such lawsuits, too. In cases where as a result of the lawsuit a judgment has been issued and finalized against the Agency and the Agency has made payments on the grounds of such judgments, the Agency shall claim this amount from the relevant persons. In order for the Agency to be able to claim such payments from the related persons, there has to be a finalized court judgment indicating that such persons are guilty.

## Right to appeal board and agency decisions

**Article 105<sup>40</sup>**- Decisions on administrative sanctions may be brought before the competent administrative court. All kinds of lawsuits brought against decisions of the Board are considered a priority.

The related Ministry may file a lawsuit for the cancellation of the Board's regulatory decisions.

A separate hearing shall be carried out for request of stopping enforcement in the administrative lawsuits to be filed against Board decisions. In this case, the thirty-day period specified in Article 17(5) of the Administrative Lawsuit Procedures Law No. 2577 shall not be applied. The applications for stopping enforcement shall not be concluded before hearing the defense of the Agency. The relevant party shall present his defense within seven days following the notification of the objection application by the court. Otherwise, the decision shall be made without waiting for the defense.<sup>41</sup>

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<sup>40</sup> *As amended by the Law No. 6352.*

<sup>41</sup> *As repealed by the decision of the Constitutional Court (Official Gazette, 10.01.2007, 26399)*

## PART ELEVEN

### Provisions Pertaining to Banks Whose Operating Permission Have Been Revoked or That Have been Transferred to the Fund

#### Revocation of operating permission decisions

**Article 106-** In case the operating permission of a bank is revoked pursuant to the provisions of this Law, its management and supervision shall be transferred to the Fund.

Any and all execution and bankruptcy proceedings against the bank, including preliminary injunctions ordered against it, shall be discontinued as from the date on which the decision of the Board to revoke its permission is published in the Official Gazette, and new execution and bankruptcy proceedings shall not be initiated. In cases where a third person other than the Fund initiates executive proceedings or lawsuit against the bank, the relevant execution office or court shall inform the Fund promptly of such situation.

The Fund shall pay the insured deposits and insured contribution funds with the bank whose management and control has been assumed by it directly or through another bank it may designate and institute bankruptcy proceedings in the name of the owners of deposits and contribution funds against the bank. The Fund shall be exclusively authorized to take the foregoing actions. The provisions of the second paragraph of Article 178 of the Execution and Bankruptcy Law No. 2004 and the provisions of Article 179 of the same law regarding the postponement of bankruptcy shall not apply to bankruptcy proceedings initiated in accordance with provisions hereof.

For the bankruptcy requests filed by the Fund, the prompt trial provisions of the Legal Procedures Law No. 1086 shall be applicable and such bankruptcy requests shall be decided upon within six month, at the latest.

In the event that a bankruptcy judgment is issued against a bank whose management and control have been transferred to the Fund, the Fund shall participate in the committee of bankruptcy as a privileged creditor, having priority over all privileged creditors specified in Article 206 of the Execution and Bankruptcy Law No. 2004, however, after deduction of the receivables of the State and social security organizations set forth in the Law No. 6183 and shall liquidate the bank having the duties and powers of the bankruptcy office and creditors' meeting and the bankruptcy administration described in the referred Law, excluding the rights and powers laid down in Article 166, 218, 219, 223, 234, 236, 249, 251 and 254 of the Execution and Bankruptcy Law No. 2004, as limited to the implementation of this Law.<sup>42</sup>

The debts of the bankrupt bank to the Fund shall be paid without waiting for the completion of the ranking list specified in Article 232 of the Execution and Bankruptcy Law No. 2004, depending on the position of the bankruptcy office. In the event that the three-month period specified in Article 232 of the Bankruptcy and Execution Law for the preparation of the creditors' ranking list is insufficient, the Fund Board may give extra three-month periods upon the request of the bankruptcy office.

In cases where bankruptcy judgment has not been issued for the bank, the voluntary liquidation of the bank shall be executed through the appointment of the members of the liquidation Board

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<sup>42</sup> *As amended by the Law No. 5472.*

by the Fund, without requiring the resolution of the general assembly of the bank and without being subject to the provisions of the Turkish Commercial Code regarding the dissolution and liquidation of joint stock companies.

The provisions of this article shall apply to foreign bank branches whose operating permissions have been revoked pursuant to Article 12 of this Law. The principles concerning the transfer of the assets and claims abroad of these branches shall be determined by the Fund.

The Fund shall not be subject to provisions of Article 9 and other related articles of the Execution and Bankruptcy Law No. 2004 in respect of maintenance and obtaining interest on monetary funds included in assets of a bankruptcy and/or liquidation office as well as monetary funds it has collected in its capacity as a bankruptcy and/or liquidation office. The provision of the first paragraph of Article 36 of the Official Fees Law No. 492 shall not apply to such monetary funds.

The provisions of the Execution and Bankruptcy Law No. 2004, the State Tenders Law No. 2886 and the Public Procurement Law No. 4734 shall not be applicable for the sale of any property owned by the bankrupt.

The principles and procedures regarding the application of the provisions of this Article shall be established by the Fund through a regulation.

### **Provisions regarding the banks transferred to the Fund**

**Article 107-** The Fund shall exercise its powers pertaining to the banks whose partnership rights, excluding dividends, as well as management and supervision have been transferred thereto pursuant to Article 71 of this Law, in line with the principles en-

sure cost efficiency and maintaining the security and stability of the financial system.

The Fund shall be authorized to suspend the activities of any bank whose partnership rights, excluding dividends, as well as management and control have been transferred thereto pursuant to the provisions of Article 71 of this Law, for a period to be determined by the Fund Board. Taking as a basis the balance sheet to be prepared as of the transfer date, the Fund shall also be authorized to;

a) request from the Board to transfer the assets, organization, personnel –unless they otherwise request- as well as the savings deposit and contribution funds subject to insurance together with the interests accrued, provided that it does not exceed the average of interest rates applied by five banks with highest total deposits as of transfer date for deposit banks and the average of return rates applied by three banks with highest total contribution funds for contribution banks, and the provision items on the liabilities side, to a bank to be newly established or any of the existing banks, and/or to terminate the operating permission of the bank, whose assets and liabilities have been transferred partially or completely,

b) provide financial support and take over the losses corresponding to the capital representing the shares transferred thereto, provided that it owns the shares and that the amount of deposits and contribution funds covered by insurance is not exceeded,

c) In case of failure to take ownership of all shares upon assuming the losses; take over the shares in return for the payment of share values to be calculated on the basis of the capital to be calculated upon subtracting the loss from the paid-in

capital, to the bank shareholders within the period to be set by the Fund Board,

d) request the Board to revoke its operating permission.

The shares, representing the provisions of payments to be made for the losses taken over shall be transferred to the Fund, free from any right and restriction.

In cases where the total of assets transferred does not recover the total of liabilities of a bank for which the provisions of sub-paragraph (a) of paragraph (2) of this article have been applied, the difference shall be paid by the Fund, provided that such payment does not exceed the amount of deposits and contribution funds covered by insurance. In this case and in cases where the operating permission of a bank for which the provisions of sub-paragraph (a) of paragraph (2) of this article have been applied has been revoked, the provisions of the second paragraph of Article 106 of this Law and the third paragraph of Article 109 of this Law shall not apply. In cases where bankruptcy offices have been established pursuant to Article 106 of this Law, the Fund shall participate in such as privileged creditor, with priority over all creditors mentioned in the third rank specified in Article 206 of the Execution and Bankruptcy Law No. 2004, however, after deduction of the receivables of the State and social security organizations set forth in the Law No. 6183, in proportion to the amount it has paid for such.<sup>43</sup>

The Fund shall be authorized to;

a) partially or completely transfer the assets and liabilities of a bank, whose majority or all shares have been transferred thereto, to a bank to be newly established or to interested banks, by pro-

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<sup>43</sup> As amended by the Law No. 5472.

viding financial and technical assistance where necessary, or to merge the bank with any other interested bank,

b) in order to strengthen and restructure financial system, as limited to cases where deemed necessary by the Fund Board,

1) to increase its capital,

2) removing default interests arising from the obligations of legal provisions and general liquidity,

3) to purchase affiliates, immovable and other assets; or to take them as guarantee and give advance in return,

4) put deposits in order to eliminate the need for liquidity,

5) overtake receivables or losses,

6) carry out any transaction pertaining to its assets and liabilities and convert them into cash,

c) The Fund shall be authorized to sell to third persons its assets, through applying discounts or other methods and to take any measure it may deem necessary,

d) The Fund may transfer to third persons its shares, by taking the permission of the Board pursuant to Articles 7 and 8 of this Law and within the framework of the principles and procedures to be set by the Fund Board.

The consent of creditors and debtors shall not be sought in transfer transactions to be performed under the provisions of this Article.

The process of restructuring and strengthening financial structures, transferring, merging or selling the banks whose partnership rights, excluding dividends, as well as management and supervision have been transferred thereto pursuant to Article 71 of this Law, shall be completed within maximum nine months fol-

lowing the transfer date. This period may be extended for a period of maximum three months through a Board decision. If the transfer, merger or sale cannot be completed within such period of time, the Board shall revoke the operating permission of the bank upon the request of the Fund.

### **Misuse of bank resources**

**Article 108-** The dominant partners and managers of banks whose operating permission has been revoked or which have been transferred to the Fund pursuant to sub-paragraph (e) of the first paragraph of Article 71 shall return and compensate for the resources used as explained in the below paragraphs as well as the damages to arise from such misuse, within the period of time to be given by the Fund, with the reservation of the provisions of this Law pertaining to personal liability.

In the enforcement and interpretation of this article; fraudulently misused resources shall be considered as the bank resources and assets used by the dominant partners and managers of banks through the executive board, credit committees, managers, branches and other authorized persons and officials in order to acquire or help third persons to acquire money, property and any kind of rights and receivables directly in their own or others' favor through pledging the resources and assets of banks; showing them as guarantee, extending loans to persons clearly having no creditability as of the loan extending date, opening deposit and other accounts in domestic and foreign banks and financial institutions, and showing such accounts as guarantee.

The procedures to form the basis of the request for return and compensation of resources used as explained in this article as well as the amounts to be returned and compensated shall

be determined by the Fund Board within the framework of the findings of the investigation to be carried out by the Agency at the relevant bank.

The amounts not returned or compensated within the period to be given by the Fund in case of the revocation of a bank's operating permission shall become Fund receivables and shall be prosecuted and collected within the framework of the provisions of the Law No. 6183 regarding the Procedures for the Collection of Public Receivables.

Following the transfer of a bank to the Fund, if the resources misused and the losses incurred consequently are not returned or compensated within the period given by the Fund, or they are not guaranteed as accepted by the Fund or the shares belonging to these partners are not transferred to third persons within the period given by the Fund, the shares belonging to partners shall be directly transferred to the Fund without requiring any other procedure, irrespective of the amount of this damage and the resources misused. Following the sale of the shares transferred to the Fund as such to third persons, the sale revenues obtained by the Fund shall be deducted from the debts of dominant shareholders to the bank and/or Fund.

Even though the resources used as explained in this Article and the losses incurred consequently are returned or compensated for within the period given by the Fund, or they are guaranteed as accepted by the Fund, if it is determined that the loss shown in the balance sheet is more than the shareholders' equity, the Fund may request from the Board to terminate the bank's operating permission. In cases where the loss shown on the balance sheet exceeds the shareholders' equity, through a Fund Board decision taken with the affirmative votes of minimum five mem-

bers, the Fund may take over the shares belonging to non-dominant partners, in return for the payment of share values to be calculated on the basis of the capital to be calculated upon subtracting the loss from the paid-in capital, to the bank shareholders within the period to be set by the Board.

**Common provisions applicable to banks whose operating permission has been revoked or that have been transferred to the Fund**

**Article 109-** The Fund shall be authorized to change and register the provisions of the articles of association of a bank whose operating permission has been revoked or that has been transferred to the Fund, without being subject to the provisions of the Turkish Commercial Code and without the convention of its general assembly.

With respect to banks whose operating permission has been revoked or that have been transferred to the Fund; the Fund shall be authorized to request from dominant shareholders, managers as well as real persons who own more than 10 percent of the capital of corporate bodies that are shareholders of the bank, their spouses, blood relatives up to third degree and relatives by marriage up to second degree, their adopted children and their adopting parents to furnish the Fund with a statement of wealth including themselves, showing immovables and their interests and their movables, rights and receivables which are attachable and securities and all kinds of revenues and incomes as well as immovable, attachable movables, rights, receivables and securities which they have acquired or assigned with or without a gratuitous contract, over the past two years prior to the date of such declaration. Such statement of wealth shall be

submitted to the Fund within seven days at the latest. The relevant provisions of the Execution and Bankruptcy Law No. 2004 shall be applicable to the provisions and consequences of such statement of wealth.

The Fund shall take any and all measures for the protection of the rights of depositors and other creditors of the bank whose operating permission has been revoked and that has been transferred to the Fund. A preliminary injunction or preliminary attachment may be issued by a court upon the Fund's request in respect of properties, rights and receivables of dominant shareholders, managers as well as real person shareholders who own more than 10 percent of the capital of corporate bodies that are shareholders of the bank whose operating permission has been revoked or that has been transferred to the Fund, without requiring a security deposit, and such persons may be prohibited from leaving Turkey. Any such preliminary injunction or preliminary attachment so issued shall automatically become null and void unless no action or execution-bankruptcy proceedings are instituted within six months from the date of the order. The requirement of 'certificate of insolvency' shall not be sought in lawsuits of abrogation to be filed against the related persons as per the provisions of Part Eleven of the Execution and Bankruptcy Law No. 2004.

The debtors who acquire receivables through assignment from the receivables of the bank as from the date of the revocation of the bank's operating permission or the bank's transfer to the Fund shall neither request the clearing of its debts through its receivables acquired through assignment nor deduction of such. Clearing and deduction transactions to give rise to such consequence shall be deemed null and void for the bank.

### Personal Liability

**Article 110-** If it is determined that the managers and auditors a bank, or its general manager and assistant general managers, or its authorized signatory officers have caused the application of the provisions of Article 71 for the bank through their decisions and actions that are in violation of the applicable laws, on the basis of a decision of the Fund Board and upon the request of the Fund, such person shall be held personally liable to the extent of the damage they have caused to the bank and a court may declare any such person bankrupt. Where any such decision or act have been made or taken in order to provide benefits to dominant partners of the bank, the same provision shall also be applied to such dominant partners to the extent of the benefits so obtained. The outstanding amount of the collected funds after the deduction of deposits and contribution funds as well as their accessory obligations paid by the Fund shall be returned to the bank whose liquidation or bankruptcy procedures have been initiated.

The Fund shall institute legal proceedings against any person declared bankrupt by court.

The courts shall apply the provisions of the Article 257 and the following articles of the Execution and Bankruptcy Law No. 2004 when dealing with those whose bankruptcy is claimed under the provisions of this Article.

The provisions of Article 106 and 109 shall be applicable for those that are personally declared bankrupt as per the provisions of this article.

## **PART TWELVE**

### **Provisions Regarding Savings Deposit Insurance Fund**

#### **SECTION ONE**

#### **Savings Deposits Insurance Fund**

##### **Establishment and independence of the Fund**

**Article 111-** The Savings Deposit Insurance Fund, which is a public legal entity and which has administrative and financial autonomy has been established to insure deposits in order to protect the rights and interests of depositors and to ensure confidence and stability in financial markets; insure deposits and contribution funds; manage the banks with the Fund; strengthen and restructure their financial standing; transfer, merge, sell or liquidate such banks; execute and conclude the follow-up and collection transactions of the receivables of the Fund, manage the Fund's assets and resources and perform other duties assigned thereto by the Law, within the framework of the powers given by this Law and other applicable legislation.

The Fund shall be independent when executing its duties. Decisions of the Fund shall not be supervised for appropriateness. No organ, authority or person may issue orders or instructions to influence the decisions of the Board.

The Fund consists of the Savings Deposit Insurance Fund Board and the Chairman's Office.

The Fund is headquartered in Istanbul. Upon a Council of Ministers Decree, the Fund may open up maximum three represen-

tative's offices in provinces where duty and authorization areas of the Fund are concentrated.

The Fund shall not be subject to the provisions of the Law No. 3346 on the Audit of State-Owned Economic Enterprises and Funds by the Turkish Grand National Assembly, the Public Tenders Law No. 2886 and the Public Procurement Law No. 4734.

The Fund shall employ adequate number of personnel with required qualifications in order to efficiently fulfill its duties and powers.

The properties of the Fund shall be deemed as state property. The properties, rights and receivables of the Fund shall not be seized or pledged.

## **SECTION TWO**

### **Savings Deposits Insurance Fund Board**

#### **Savings Deposits Insurance Fund Board**

**Article 112-** The Savings Deposits Insurance Fund Board is the decision-making organ of the Fund. The Board shall consist of seven members, including one chairman and one vice chairman. The chairman of the Fund Board shall be the chairman of the Fund.

Where the Chairman is absent due to a leave, sickness, an assignment within or without Turkey, removal from the office or otherwise, the vice chairman shall act as the chairman. In cases where the vice chairman is also absent, a member to be determined by the Fund Board shall chair the Fund Board.

## Appointment of Fund Board members

**Article 113-** The members of the Fund Board shall;

a) bear the conditions laid down in sub-paragraphs (1), (4), (5), (6) and (7) of paragraph (A) of Article 48 of the Civil Servants Law No. 657,

b) bear the conditions laid down in sub-paragraphs (a), (b), (c) and (d) of the first paragraph of Article 8 of this Law,

c) not be among those prohibited to work as listed in Article 26 of this Law,

d) have an undergraduate or graduate degree in the disciplines of law, economics, finance, banking, business administration, public administration or equivalent disciplines.

Members shall be appointed by the Council of Ministers from amongst the people who have a minimum 10-year professional experience after completing higher education or who have worked as members of teaching staff in one of the above disciplines for minimum 10 years. Minimum one of the members must be a graduate of law faculty and one must have worked as vice chairman, main service unit manager or professional staff in the Fund. The Council of Ministers shall appoint one of the members as the Chairman and another member as the Vice Chairman. The appointment decree of the Council of Ministers shall be published in the Official Gazette.

Fund Board chairman and members shall take an oath before the First Presidential Board of the Supreme Court that they will perform their duties with due diligence, neutrality and integrity and that they will not infringe and not permit others to infringe provisions of the Law during their respective terms in office. Any application made for taking such an oath shall be accorded priority by the Supreme Court. No member of the Fund Board can assume his duties until taking an oath.

### **Terms of office of the Fund Board chairman and members**

**Article 114<sup>44</sup>**- The terms of office of the Fund Board chairman and members shall be five years. The members whose terms of office expire may be re-appointed for one more term. Where the chairman or any member leaves office for any reason, an appointment shall be made to the vacated position one month within the framework of the principles set out in Article 113. Those appointed as such will complete the term of office of their predecessor.

Fund Board chairmen or members cannot be removed from office before the expiry of their terms of office. However, any chairman or member who is no longer able to fulfill his duties due to heavy illness or disability<sup>45</sup> or who can no longer meet the conditions required for appointment, or who is found to be violating the provisions of Article 115 or who has been finally convicted by a court due to an offence he has committed in connection with his duties, shall be removed from office upon the approval of Prime Minister. His successor shall be appointed within one month. Furthermore, if temporary inability to perform functions lasts for more than three months, then such member shall be removed from office and his successor shall be appointed within one month.

### **Prohibitions for the Fund Board chairman and members**

**Article 115**- Excluding activities like scientific publications, courses and conferences and the copyrights which do not constitute an obstacle for carrying out their primary duties, Fund Board chairman or members cannot accept employment in another public or private entity except for their official duties within the body of the Fund; involve in commercial business; work as managers

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<sup>44</sup> *As amended by the Law No. 6300.*

<sup>45</sup> *As amended by the Law No. 6462.*

of societies, foundations, cooperatives and similar entities; perform his/her profession independently; acquire shares in the institutions covered by this Law or their direct or indirect partnerships; or serve as a referee or expert witness.

Before taking office, Fund Board chairman and members, their spouses and their children under their custody shall dispose off any security they own in the credit institutions covered by this Law as well as their direct or indirect partnerships, within the framework of any capital market that falls under the Fund's competence of regulation and supervision, other than those issued by the Treasury for borrowing purposes, by selling them to persons other than their spouses, orphans, blood relatives up to third degree and relatives by marriage up to second degree. The Fund Board members, who do not act in line with the provisions of this paragraph within 30 days after their appointment, shall be considered as having resigned from their positions in the Fund Board. Such cases shall be recorded by a Fund Board decision and be notified to the relevant Minister.

Within two years after leaving office, Fund Board members cannot take office at the institutions whose management and control have been transferred to the Fund or at their direct or indirect partnerships. The Fund Board members who violate the provisions of this paragraph shall be subjected to the penalties set out in Article 4 of the Law No. 2531 on the Jobs Prohibited to those who have Left a Position in the Public Sector.

Even though they have left office, Fund Board chairman and members and other personnel shall not disclose the confidential information and commercial secrets regarding the Fund to any person other than the legally authorized persons and shall not use such information for their or other persons' interests.

Fund Board chairman and members shall be subject to the provisions of the Law No. 3628 on Mandatory Declaration of Wealth, Bribery and Corruption.

### **Working principles of the Fund Board**

**Article 116-** The Fund Board shall convene whenever necessary, minimum once a week otherwise. The Fund Board chairman, and in his absence, the Fund Board vice chairman shall chair the board meeting. The agenda of meetings shall be prepared by the Fund Board Chairman, and in his absence the Fund Board vice chairman, and be communicated to the Board members minimum one day before the meeting. Before starting to discuss the agenda items, the Chairman shall inform the Fund Board about the activities of the Fund. In order for a new subject to be added to the agenda, a member shall propose it for inclusion in the agenda before the meeting and such proposal has to be adopted by the Fund Board.

The Fund Board shall convene with the attendance of minimum five members and with the exception of specific decisions that require special quorum under this Law, Fund Board decisions shall be taken with the votes of minimum four members in the same direction. Fund Board members cannot cast abstentious votes. In cases where decision making quorum cannot be obtained, the decision shall be taken in the following meetings and in case there are equal number of votes, the decision voted for by the Fund Chairman shall be adopted. Fund Board decisions shall be recorded in a minute and the minute of decision shall be signed by all attending members during the meeting or in the following working day, at the latest.

The members of the Fund Board who have not attended a total of three meetings in a calendar year without any justifiable

excuse, or who have not signed the decisions of the Fund Board within due course, although they have attended the meeting and have not objected to the decision, or who have objected to a decision but have not provided a written justification for such objection within due course shall be deemed to have resigned from membership. Such cases shall be recorded through a Fund Board decision and be notified to the related Minister.

In the event that the number of members falls below a level that makes it impossible for the Fund Board to take a decision for any reason, the Fund Vice Chairmen shall substitute for the absent members in order of seniority in order to ensure the meeting quorum, which shall be limited to maximum one month. The financial and personnel rights of any Vice Chairman, who deputizes or substitutes for any member of the Fund Board pursuant to this provision, shall not be affected.

With the reservation of the periods indicated in this Law, Fund Board decisions as accompanied by their rationale, the rationale of votes against and the signatures affixed, shall be registered within fifteen days following the date of meeting in which they are taken.

Fund Board members can neither attend nor cast votes in the Board meetings regarding themselves, their spouses, their adopted children, blood relatives up to third degree and relatives by marriage up to second degree. This fact shall be noted down in the text of the decision.

Fund Board meetings shall be confidential. The experts who have been consulted by the Fund Board on a specific subject may be invited to Fund Board meetings in which their subject matter will be deliberated. However, Fund Board decisions shall not be taken in the presence of visitors.

After the registration of the Fund Board's regulatory decisions, such decisions shall be sent to the relevant Ministry and to the Prime Ministry for publication within seven working days, at the latest, and shall be published in the Official Gazette within seven days, at the latest, after being sent to the Prime Ministry. With the reservation of the provisions of this Law, decisions of the Fund Board shall be publicized through appropriate means, primarily including the internet. The Fund Board may decide not to publish the supervisory decisions that may endanger national economy and public order if published.

For fines indicated in Article 130(e) of this Law against which judgments for stopping enforcement or precautionary measure are taken, but their application for abrogation is turned down at the last stage, interest shall accrue on the fine starting from the notification date of the fine to the related person. Fines shall be collected pursuant to the provisions of the Law No. 6183.

The professional principles to be complied with by Fund Board members and the other matters pertaining to the working principles and procedures of the Fund Board shall be set in a regulation to be published by the Fund.

## **Duties and powers of the Fund Board**

**Article 117-** In addition to the duties set out in this Law and other applicable Law, the Fund Board shall also have the following duties and powers:

a) to set the main strategy, performance criteria, goals and objectives and service quality standards of the Fund; to establish the human resources and working policies; to provide suggestions regarding the Fund's service units and their duties,

b) to debate and decide on the proposed budget of the Fund that is prepared in tune with the Fund's main strategy and goals and objectives,

c) to approve the reports indicating the performance and financial standing of the Fund,

d) to appoint the vice chairmen and department heads upon the proposal of the Fund Chairman.

## **SECTION THREE**

### **Organization of the Chairman's Office**

#### **Fund Chairman**

**Article 118-** The Fund Chairman, who is the highest rank manager of the Fund, shall be responsible for administering and representing the Fund Board.

The duties and powers of the Fund Chairman are as follows:

a) to determine the agenda, date and time of Fund Board meetings; to chair the Board meetings; to carry out the necessary procedures regarding the proposals that are not put on the agenda and to inform the Fund Board of such proposals,

b) to ensure the publication and notification of Fund Board decisions, to ensure and monitor the enforcement of these decisions,

c) to present the proposals of service units to the Fund Board after putting the final touches on such proposals,

d) to prepare the Fund's annual budget and financial tables in tune with the strategies, goals and objectives set by the Fund Board,

e) to organize and coordinate the efficient and harmonious functioning of service units and to resolve the problems to arise between the Fund's service units regarding duties and powers,

f) to prepare annual activity reports; to evaluate the activities according to the goals, objectives and performance criteria; and to present them to the Fund Board,

## **Article: 118, 119, 120**

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g) to assess the strategies, policies, the relevant legislation and the performance criteria of the Fund and its personnel, in the Fund's field of duty,

h) to execute the relations of the Fund with other institutions and to represent the Agency,

i) to appoint the Fund personnel other than those required to be appointed by the Board,

j) to specify the duties and powers of the personnel that have signing authority on behalf of the Fund Chairman,

k) to fulfill other duties pertaining to the management and functioning of the Agency.

The Chairman may assign some of his duties and powers not relating to the Fund Board, to his subordinates, provided that the boundaries of such assignment is clearly put down in writing.

### **Fund Vice Chairman**

**Article 119-** The Fund Board shall appoint two vice chairmen to assist the Fund Chairman in his duties as the chairman. Fund Board vice chairman shall bear the qualifications laid down in Article 113.

The Fund Vice Chairmen may assign some of their duties and powers to their subordinates, provided that the boundaries of such assignment is clearly put down in writing.

### **Service units of the Fund**

**Article 120-** The service units of the Fund shall consist of main service, advisory and ancillary service units organized in the form of departments. The number of departments shall not be more than ten.

Service units shall be set out in a regulation to be put in force upon the proposal of the Fund and the approval of the Council of Ministers, taking into consideration the fields of activity, duties and functions laid down in this Law.

A Strategy Development Department shall be established as a main service unit. Chairman's advisors may be appointed in areas such as law, press and public relations, management and finance. The number of such advisors shall not be more than fifteen in total.<sup>46</sup>

A Support Services Department shall be established to perform human resources and training, administrative, financial and similar activities. Maximum four directorates may be established under this department, one of which will be used specifically for the office services of the Fund Board.

### **Fund personnel**

**Article 121-** The duties and services necessitated by duties and services assigned to the Fund by this Law shall be fulfilled by the professional personnel consisting of the Fund lawyers, Fund auditors and assistant auditors, Fund specialists and assistant specialists as well as other administrative personnel. All personnel of the Fund shall bear the qualifications listed in all sub-paragraphs of the first paragraph of Article 113 of this Law, excluding sub-paragraph (d).<sup>47</sup>

Vice chairmen, department heads, managers, chairman's advisors and the professional staff shall be employed under contracts signed for their positions. The Fund personnel employed under contracts signed for their positions, shall be subject to the Civil Servants Law No. 657 excluding their remunerations, financial and social rights.

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<sup>46</sup> As amended by the Law No. 5667.

<sup>47</sup> As repealed by the decision of the Constitutional Court (Official Gazette 15.12.2007, 26371).

## Article: 121

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Without exceeding the total number of positions given in the table no. (II) annexed to this Law, and solely for the existing positions or the positions given in tables annexed to Decree in the Power of Law No. 190 regarding General Staff Positions and Procedures changes in the procedures and principles relating to positions, classes, titles and degrees are determined by the Fund Board.<sup>48</sup>

Professional staff shall be employed in the main service units of the Fund for tasks that require expertise.

The Fund personnel to be employed for the positions indicated in the annexed Table III, other than those mentioned in the second paragraph of this article, shall be employed under administrative service contracts. The Fund Board shall be authorized to change the titles of staff positions, provided that the total number of positions indicated in the said table will not be exceeded.<sup>49</sup> The Fund personnel employed under administrative service contracts shall be subject to the Social Security Law No. 506 in terms of retirement and social security.

The Fund personnel cannot be temporarily appointed to other public institutions and agencies.

Fund assistant auditors and Fund assistant specialists shall be recruited from amongst those candidates who qualify in the central competition exams. The persons who have been appointed as Fund assistant specialists and assistant auditors shall be recruited as specialists and auditors, whichever applicable, provided that they have worked for three years as assistant with positive record, that they get a level (C) grade in the Public Servants For-

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<sup>48</sup> As amended by the Decree Law No. 2011/662.

<sup>49</sup> As repealed by the decision of the Constitutional Court (Official Gazette 15.12.2007, 26371).

oreign Language Exam or an internationally accepted score from the equivalent foreign language exams, that they have succeeded in the proficiency exam, and that their thesis study has been accepted by the jury. Such specialists and certified bank auditors may be promoted by one degree for only once. Those assistant specialists who have not prepared their thesis studies or have not attended the exam without any excuse, or have failed in the exam for twice, shall be notified to the State Personnel Department to be appointed to an appropriate position in another public institution that will fit to their educational status.

The principles and procedures applicable to the proficiency and competition tests of the Fund's professional and administrative staff, their qualifications and their working principles and procedures shall be set in a regulation to be issued by the Fund.<sup>50</sup>

## **SECTION FOUR**

### **Duties, Powers and Responsibilities**

#### **Duties and powers of the Fund**

**Article 122-** In addition to the duties set out in this Law and other applicable Law, the Fund shall also have the following duties and powers:

- a) ensuring the enforcement of the Fund Board decisions,
- b) establishing the human resources policies of the Fund,
- c) becoming members of international financial, economic and professional organizations, in which domestic and foreign equivalent agencies participate, signing memoranda of understanding

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<sup>50</sup> *As repealed by the decision of the Constitutional Court (Official Gazette 15.12.2007, 26371).*

with the authorized bodies of foreign countries regarding the matters that fall under the Agency's span of duty,

d) fulfilling other duties assigned by the Law.

The Fund shall be authorized to issue regulations and communiqués regarding the enforcement of this Law, through Fund Board decisions.

The Fund may ask the Board to provide the information and documents to form the basis of the calculation of the insurance premium of the savings deposit and contribution funds subject to insurance and to supervise whether these premiums are paid within the framework of the principles set. The Agency shall obtain the information requested by the Fund in a reasonable period of time that will not exceed two months and shall supervise whether the premiums are paid or not.

In all its activities, the Fund shall comply with the principles, strategies and policies set out in the development plan, programs and the government program, with the reservation of powers assigned thereto in its establishment law.

The drafts of the legislation to be prepared by the Fund shall be made public for minimum seven days to inform the public opinion thereof, through appropriate means primarily including the Fund's website.

The public institutions and authorities shall provide the necessary assistance to the Fund in their fields of duty as set out in the Laws.

### **Power of the Fund to request information and documents**

**Article 123-** With the exception of provisions pertaining to cases that could give rise to heavy consequences for the secu-

urity and basic international interests of the state as well as professional secrets, confidentiality of family life and the right to defend; public institutions and agencies and real persons and legal entities shall continuously, regularly and timely provide the Fund with any information, document and book, even though confidential, to be requested by the Fund solely for its duties under this Law, irrespective of the prohibitive and restrictive provisions of special laws, and shall also submit the books and documents requested.

The parties from whom documents or information is requested shall respond to such requests within the period to be set by the Fund and shall be obliged to facilitate the execution of the Fund's duties.

## **SECTION FIVE**

### **Miscellaneous Provisions**

#### **The budget of the Fund and the audit of its accounts and expenditures**

**Article 124<sup>51</sup>** - The internal audit of the Fund shall be performed within the framework of the principles and procedures to be set by the Fund. The external audit of the Fund shall be performed through examination of the annual revenues and expenditures of the Fund by the Turkish Court of Accounts.

The annual accounts of the Fund shall be audited an independent audit institution. The independent audit report shall be incorporated into the annual activity report.

By the end of March every year, the Fund shall publish an activity report that analyzes the activities of the Fund in the previ-

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<sup>51</sup> *As amended by the Law No. 5667.*

ous year, including the decisions taken, the legislation issued and their economic and social implications. The activity report shall also include the comparison and assessment of the Fund's performance criteria and the results of implementation.

The annual activity report, financial tables and final budget account of the Fund shall be submitted to the Turkish Grand National Assembly. A copy of the final account shall be sent to the Ministry of Finance.

The Fund shall inform the public of its activities at the maximum level using the internet and official bulletins.

The Fund shall inform the public opinion every three months through reports involving the lawsuits, receivables, legal proceedings, collected funds, restructuring and other activities. The Fund shall brief the Plans and Budget Committee of the Turkish Grand National Assembly in meetings to be held for minimum once a year.

### **Salaries, financial and other social rights of the Fund Board chairman and members and Fund staff**

**Article 125-** Fund Board Chairman shall be paid a salary that is equal to the monthly salary paid to the Prime Ministry Undersecretary including all kinds of financial and social rights. The remunerations paid to the Prime Ministry Undersecretary that are not subject to taxation and other deductions shall not be subject to taxation and deduction under this Law, either. The salaries of Fund Board members shall equal to ninety-five percent of the Board Chairman and shall be subject to the same principles and procedures.

The salaries and other social and financial rights of the contracted and other personnel of the Fund shall be determined by

the Fund Board, on the condition that they will not be more than the salary cap set in the first paragraph.

The Fund personnel may receive overtime working payments and performance-based rewards within the framework of the principles to be set by the Fund Board. Under no condition shall the total of payments made to the Fund personnel exceed the salary cap indicated in the first paragraph. The principles to be set by the Board shall be applicable to the distribution of attorney fees designated in favor of lawyers the represent the Fund in lawsuits to which the Fund is a party.

The Fund's Chairman and Fund Board members as well as vice chairmen, department heads, directors, advisors and professional staff shall be subject to provisions of the Law on Pension Fund No. 5434 and any addition and amendment thereto. As to retirement rights, Fund Board Chairman shall be deemed to be equal to the Ministry Undersecretary; Fund Board Members shall be deemed to be equal to the Ministry Deputy Undersecretary; Fund Vice Chairman shall be deemed to be equal to Ministry General Director; Chairman of Certified Bank Auditors Fund Board shall be deemed to be equal to Ministry Fund Board Chairman; the first degree department heads shall be deemed to be equal to Ministry Deputy General Directors; Fund advisors shall be deemed to be equal to Ministry advisors; Fund auditors and assistant auditors shall be equal to the corresponding ministry inspectors and assistant inspectors in terms of acquired rights and monthly degrees; Fund lawyers and Fund specialists shall be equal to corresponding Prime Ministry specialists in terms of acquired rights and monthly degrees; and the Fund assistant specialists shall be equal to corresponding Prime Ministry assistant specialists in terms of acquired rights and monthly degrees. The length of service in any of the foregoing positions shall entitle

the holder of that office, to receive office pays. With the reservation of the conditions required for the acquisition of academic titles, these provisions shall be applicable also for the Fund Board members and personnel coming from universities.

Any person who has been appointed as Fund Board Chairman and member and is entitled to retirement, with retirement procedures completed upon his request, shall serve as Fund Board member until the expiry of his term. Any person who has been affiliated with any other social security organization established by law prior to his appointment, shall maintain his affiliation with such organization if he so desires, and the provisions above shall not be applicable for such persons.

The Fund Board members, who have retired from social security organizations other than the Pension Fund of the Republic of Turkey, shall be affiliated with the Pension Fund as from the beginning of the month following the date at which they apply, in writing, to the Pension Fund. The salaries of such members which they receive from other social security organizations shall be discontinued and upon retirement, they shall start receiving salaries pursuant to Article 8 of the Law No. 2829 and dated 24/5/1983, by bringing together the periods of time during which they have paid premiums to various social security organizations.

Fund chairman and members shall receive compensation payments every month in the amount of the salaries specified in the first paragraph, and such compensation payments shall not be subject to any deduction other than the stamp duty.

The civil servants and other public officials appointed to the executive boards, audit committees or liquidation boards of the companies whose management and control have been taken over by the Fund within the framework of the provisions of this Law may

receive salaries to be set by the Fund such that the amount of such salaries shall not be more than three times the salary paid to the executive board members of state-owned enterprises.

### **Fund Board members leaving office**

**Article 126-** Any person who has been appointed Chairman or a member of the Fund Board shall not work for their previous employers during their term of office in the Fund Board. However, if persons who have been appointed as Fund Board chairman or members when working as a public servant expire their terms of office or wish to leave office and apply to their previous institution within thirty days, then the institution authorized for appointment shall appoint such persons to positions that fit to their acquisitions within one month. Until they are appointed, such persons shall continue receiving all their remunerations from the Fund. If any person who has been appointed as Fund Board chairman or members when not working as a public servant leaves office as explained above, then such persons shall continue to receive all their remunerations from the Fund until they start any work or task. The payments to be made by the Fund to those persons who leave office as explained in this paragraph shall not made for more than two years.<sup>52</sup>

### **Responsibilities of the Fund, the managers appointed by the fund or representing the Fund, the bankruptcy office staff and the Fund personnel**

**Article 127-** The investigation of offenses alleged to have been committed by Fund Board chairman and members and Fund staff in connection with their duties shall be carried out according to the general provisions as subject to the permission of relevant Minister

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<sup>52</sup> *As amended by the Law No. 6300.*

for the Fund Board chairman and members and the permission of the Fund Board chairman for the Fund staff. The related Minister shall give the permission for investigations for the Fund personnel in connection with crimes alleged to be committed jointly by the Fund Board members and Fund personnel.

For the initiation of any investigation of offenses alleged to have been committed by Fund Board chairman and members and the Fund staff in connection with their duties, there must be a clear and solid evidence indicating that such members or personnel have acted for acquiring interests for themselves and third persons and for causing damages on the Fund and third persons and have acquired interests for themselves or third persons and caused damages as a result of their acts. It is possible to file an objection against the decisions as to whether investigation permission will be given or not, with the Council of State within fifteen days following the date of notification. Even if the investigation permission is granted, the investigations shall not commence until the finalization of the time period allowed for objections or until decision of the Council of State.

The investigations and legal proceedings initiated against the Fund Board chairman and members and the Fund personnel, even though they have left office, due to any crime alleged to have been committed thereby in connection with their duties shall be followed on by a lawyer to be retained by signing an attorney contract with the relevant member or personnel, if he so desires. The legal fees for such lawsuits as well as the attorney's fees, which shall not exceed fifteen times the attorney's fee set in the minimum price tariff announced by the Turkish Association of Bars, shall be financed from the budget of the Fund.

Any legal action for compensation of damages and payment of receivables taken and to be taken against Fund Board mem-

bers and the personnel of the Fund due to the Fund Board's or Fund's decisions, actions and transactions taken and carried out in connection with their duties set out in this Law, both during and after their terms of office, shall be deemed to have been taken against the Fund. In such lawsuits, the Agency shall be set as the defendant. The provisions of the above paragraph pertaining to legal fees and attorney's fees shall apply to such lawsuits, too. In cases where as a result of the lawsuit a judgment has been issued and finalized against the Agency and the Agency has made payments on the grounds of such judgments, the Agency shall claim this amount from the relevant persons. In order for the Fund to claim such amounts from the relevant persons, there must be a finalized court judgment indicating that they are guilty.

With regard to the banks subjected to prosecution pursuant to the provisions of Articles 64 and 65 of the repealed Banks Law No. 3182, Article 14 of the Banks Law No. 4389 repealed by this Law and Article 71 of this Law, the lawsuits commenced in respect of performance of duties against the members of the executive board and board of auditors appointed by the Minister, the Board or the Fund Board shall be deemed to have been brought forward against the Agency or Fund, whichever has made the appointment. In cases where as a result of the lawsuit a judgment has been issued and finalized against the related institution and a payment has been made as a result of the finalization of the judgment, the related institution shall claim such damage from the relevant persons. In order for the related institution to claim such amounts from the relevant persons, there must be a finalized court judgment indicating that they are guilty.

All kinds of actions for damages, debt and personal liability filed and to be filed against the members of the executive

board, board of auditors, board of managers and liquidation officers appointed by the Fund as per the provisions of Article 134 of this Law and/or sub-paragraph (a) of paragraph (7) of Article 15 of the Banks Law No. 4389 repealed by this Law, and the members of executive board, board of auditors, board of managers who represent the bank at the subsidiaries of the banks whose management and control or shares have been transferred to the Fund, and/or the members of executive and audit boards and board of managers as well as bankruptcy and liquidation personnel representing the Fund at the companies whose shares have been transferred to the Fund in connection with the performance of their duties, shall be deemed to have been filed against the Fund. The principles and procedures indicated in the fourth paragraph of this article shall be applicable to the recourse of the amounts paid by the Fund to the related persons. The executives appointed in this way shall not be held personally liable for non-payment of the present or future public debts and debts owed to the Social Security Agency, any labor receivables and other liabilities arising from other legislation by the companies to which they have been appointed or are working in.

The Fund Board chairman and members as well as the persons referred to in the above paragraph, who have been appointed by the Fund, shall not be obliged to send a notice to the competent court about loss of capital and/or insolvency of the company. These persons shall not be subject to the provisions of Articles 179 and 277 and following articles and Article 345(a) of the Execution and Bankruptcy Law on the grounds of their failure in reporting, nor can a personal liability suit be brought forward against these persons pursuant to and under Article 341 of the Turkish Commercial Code No. 6762.

The members of the executive board or the board of auditors and managers, appointed by the Fund to the companies whose management and control is not transferred to the Fund, cannot be dismissed by a decision of the general assembly of shareholders, nor can a personal liability suit be brought forward against them for any transaction during or after their terms of office in the company through refusal of their release from their liabilities in connection therewith.

### **Right to appeal Fund Board decisions**

**Article 128-** Applications made against to the decisions of the Fund Board shall be accorded priority.<sup>53</sup>

A separate hearing shall be carried out for request of stopping enforcement in the administrative lawsuits to be filed against Fund Board decisions. In this case, the thirty-day period specified in Article 17(5) of the Administrative Lawsuit Procedures Law No. 2577 shall not be applied. The applications for stopping enforcement shall not be concluded before hearing the defense of the Fund. The relevant parties shall present their defense within seven days following the notification of therequest for stopping enforcement thereto. Otherwise, the decision shall be made without waiting for the defense<sup>54</sup>.

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<sup>53</sup> *As amended by the Law No. 6352.*

<sup>54</sup> *As repealed by the decision of the Constitutional Court (Official Gazette 10.01.2007, 26399).*

## **The budget of the Fund**

**Article 129<sup>55</sup>** - The expenditures of the Fund shall be funded by its revenues. The budget year of the Fund shall be the calendar year.

The Fund shall freely and independently use the resources allocated thereto within the framework of the principles and procedures laid down in this Law, to the extent they are required for performance of its duties and for enforcement of its powers.

The principles and procedures for use of the Fund assets and the principles and procedures for enforcement of the powers vested by the Law to the Fund shall be set forth in the regulation to be prepared by the Fund, and the Fund expenses shall be paid out of the Fund resources.

The expenses of the Fund shall be made according to the annual budget prepared on the basis of the strategic plans and performance goals that are put in force by a Fund Board decision, as well as institutional, functional and economic classification system.

## **Revenues of Fund**

**Article 130-** The resources of the Fund shall consist of the following:

- a) deposit and contribution fund insurance premiums,
- b) deposits, contribution funds, custody accounts and claims which have been subjected to time-limitation pursuant to Article 62 hereof,
- c) contributions deposited by the founders of a bank, which is granted permission for establishment, into the Fund within one

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<sup>55</sup> *As amended by the Law No. 5472.*

year following the commencement of their activities, at an amount equal to ten percent of the minimum capital required in Article 7 of this Law for entry to the system,

d) the funds to be paid to the Fund pursuant to Article 18,

e) fifty percent of judicial fines to be imposed on account of violations of the provisions of this Law as well as ninety percent of administrative fines,

f) revenues from the assets of the Fund, and other revenues,

g) the funds to be registered income to the Fund under Article 20.

### **Powers of the Fund to borrow funds and receive advances**

**Article 131-** The Fund may borrow, upon an authorization from the Treasury Undersecretariat, or it might borrow government securities from the Treasury, where it is deemed necessary. The principles and procedures regarding government securities including their interest rates and terms and conditions of repayments to the Treasury shall be determined together by the Treasury Undersecretariat and the Fund. The provisions concerning indebtedness contained in financial year budget laws as well as the provisions of Articles 5 and 6 of the Law No. 4749 on the Regulation of Public Finances and Debt Management shall also be valid for these securities.

On the condition to receive the consent of the Agency, if the assets of the Fund are insufficient to meet the needs, then, advance payments may be received from banks in the amount of up to the total insurance premium paid by them in the previous year, which will be deducted from their future premium obliga-

tions. The decisions regarding such advances shall also indicate the interest rate applicable.

In emergency cases where the resources of the Fund cannot meet the needs, the Central Bank may give advances to the Fund. The maturity, amounts, repayment conditions, interest rates and other conditions of the advance shall be determined by the Central Bank by receiving the opinion of the Fund.

## **SECTION SIX**

### **Prosecution and Collection Procedures**

#### **Powers and procedures regarding the prosecution and collection of Fund receivables**

**Article 132-** The Fund shall be authorized to prosecute and collect the revenues listed down in Article 130 of this Law and the receivables cited in Articles 108 and 135, pursuant to the provisions of the Law No. 6183 regarding the Procedures for the Collection of Public Receivables.

The Fund shall begin the collection process of (i) the receivables indicated in Article 108 of this Law on the basis of the total amount of receivables consisting of the principal amount as well as any other interest, commission or charge as indicated on the bank's books, records and documents starting from the date when the bank resources were used, (ii) the receivables indicated in Article 130 of this Law on the basis of the accrued principal and (iii) the receivables indicated in Article 135 on the basis of the amount calculated for payment, and shall apply the default interest rate applicable to the receivables covered by the Law No. 6183 regarding the Procedures for the Collection of Public Receivables.

For the purposes of implementing the provisions of Law No. 6183 on Procedures for Collection of Public Receivables, the Fund shall exercise authorities vested by the referred Law in the Ministry of Finance, collection offices and other authorities and committees.

If the debtor or the debtor's properties are located at other locations, the Fund may enforce the provisions of the Law No. 6183 on Procedures for Collection of Public Receivables through its own collection offices, or in the case of unavailability of a collection office, the referred law provisions may, upon demand of the Fund, be enforced by the Collection Offices of the Ministry of Finance in that location.

The Fund may also apply provisions of the referred Law for cashing in any security related to its receivables, which prosecutes in accordance with the Law No. 6183 on Procedures for Collection of Public Receivables.

In auctions to be held pursuant to Law No. 6183 on Procedures for Collection of Public Receivables, the Fund may decide to collect the sale proceeds in installments. However, this decision and the conditions of such forward sale shall be mentioned in the sale announcement and the Terms of Reference for the sale.

The Fund may participate or offer a price in a tender in connection with the properties, rights and receivables it has put to tender pursuant to the provisions of the Law No. 6183 on the Procedures for the Collection of Public Receivables; and purchase properties, rights and receivables in the tender by deducting its receivables.

In cases where the receivables of a bank are taken over under Article 107 of this Law, such receivables shall become Fund receivables as of the transfer date and the lawsuits initiated against the debtor for the prosecution and collection of such receivables

under the provisions of the Execution and Bankruptcy Law No. 2004 shall continue.

In cases where persons indebted to the Fund because of the receivables taken over pursuant to Article 107 of this Law are declared bankrupt, the Bankruptcy Office defined in Article 221 of the Execution and Bankruptcy Law No. 2004 shall be set up with participation of the Fund's representative. If required by the Fund, at least one of the members of the bankruptcy office indicated in Article 223 of the Execution and Bankruptcy Law No. 2004 shall be elected by the execution examination authority among candidates to be nominated by the Fund (the number of the candidates shall be twofold of the number of the member to be selected). The Fund shall be entitled to request at least two members be elected among its candidates in order to ensure the collection of its receivables. In such cases, at least two members shall be selected among the Fund's candidates. If only one member has been selected among candidates nominated by the Fund, then the execution examination authority shall elect one member among two members to be nominated by the creditors, whose number of debtors is higher than others, and one member among the members to be nominated by creditors whose amount of receivables is higher than other. Where two members have been selected among candidates nominated by the Fund, another member shall be selected by execution examination authority among two members to be nominated by the creditors, whose number of debtors is higher than others.

In connection with its all kinds of claims the Fund shall be authorized to make all kinds of dispositions including discount; to enter into compromises; to sell or buy back, to take over movables and immovable and all kinds of rights and claims on account of its claim under the conditions it will specify; to enter into agreements with debtors including application of a new re-

payment plan for the claim; and to apply or not to apply custody measure under the principles and procedures to be determined by the Fund Board pursuant to provision of this Law under the agreements it has made with the debtors; to file or not to file lawsuits and to ask the court to suspend the lawsuits already filed, during the validity period of the agreements made.

As a security for all kinds receivables, the Fund will be entitled and authorized to demand and receive all kinds of personal guarantees and guarantees in kind, including, but not limited to cash collaterals and/or real estate mortgages and/or chattel mortgages in New Turkish Lira and/or foreign currency.

As the party suffering from the offense, the Fund shall acquire the capacity of intervening party in all kinds of criminal lawsuits, including offenses that are prosecuted upon complaint, brought or to be brought forward upon applications filed pursuant to this Law against the banks whose operating permissions have been revoked pursuant to Article 71 of this Law or whose management and control have been transferred to the Fund.

The provisions of Article 22 of the Passport Law No. 5682 shall be applicable for the real persons and legal representatives of the legal entities that are indebted to the Fund, upon the application of the Fund.<sup>56</sup>

The principles and procedures applicable to the enforcement of this article shall be set by the Fund through a regulation.

### **Exceptional powers pertaining to liability lawsuits**

**Article 133-** In case the liquidation transactions of the banks whose operating permissions have been revoked have been

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<sup>56</sup> *As repealed by the decision of the Constitutional Court (Official Gazette 13.11.2008, 27053).*

completed but the receivables of the bankruptcy and liquidation offices have not been collected, the Fund may file lawsuits, within five years following completion of liquidation, against the bank's partners, former executive board members and auditors found to be liable, with the request for cancellation of their acquittal, if any, and for compensation, in the name of the Fund, of the loss they have inflicted due to their actions.

In cases where the shares of Fund Banks are transferred to third persons, the lawsuits filed by the banks against its former partners, executive board members and auditors shall continue without any interruption, the Fund acting as the legal successor. The amounts payable as a result of these lawsuits and legal proceedings shall belong to the Fund. In the event that such banks are transferred to another bank, merged with another bank, their shares are transferred to third persons or they are decided to be liquidated; the Fund may file lawsuits, within five years following completion of these procedures, against the bank's former executive board members and auditors found to be liable, with the request for cancellation of their acquittal, if any, and for compensation, in the name of the Fund, of the loss they have inflicted due to their actions. The decision of the Fund Board for the initiation of the lawsuit shall serve as the general assembly resolution required for initiating a lawsuit.

Fixed attorney's fees shall be applied to the relevant party in lawsuits initiated or to be initiated under this Article and in lawsuits which are prosecuted with the title of legal successor.

## Other powers regarding the collection of the Fund's receivables

**Article 134-** With respect to Fund banks';

a) affiliates whose management and control are held,

b) legal entity dominant partners,

c) companies whose real person and legal entity partners are dominant partners,

d) partners of companies acting on behalf of the above-listed persons and entities or acquiring funds or rights on their account

if deemed necessary and useful for collection of Fund's receivables, and irrespective of their being indebted to the Fund or not, the Fund shall be authorized (i) to take over their partnership rights, except for dividends, associated to all and/or some of their shares, and their management and control, and (ii) irrespective of the number of directors, managers and auditors of that bank as specified in its articles of association and whether they are appointed as representatives of privileged shares or not, to appoint all or any of the members of such boards through dismissing and/or increasing and/or decreasing the full number of members.

In cases where the number of shareholders in the banks or companies being directly or indirectly managed and audited by the Fund and/or in companies whose management and supervision it has taken over pursuant to this article and in the affiliates of the Fund falls below the compulsory number of shareholders as set out in the Turkish Commercial Code No. 6762 and in the specials laws, their legal entity status shall not be damaged.

The Fund or the members of the executive board, managers or board of auditors, appointed by the Fund, of the companies which are under management and control of the Fund and/or of banks whose management and control has been taken over by the Fund

## Article: 134

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under this paragraph, and the company employees, such as general manager, deputy general managers and managers, authorized by these Fund-appointed executives to represent and bind the company, will, after appointment by the Fund, be authorized.

a) to sell the company shares held by the real persons or legal entities referred to in this paragraph; and/or licenses, permits and all other rights and assets including rights arising from the temporary frequency utilization, channel utilization and concession contracts under Provisional Article 6 of the Law No. 3984 dated 13/4/1994; and/or the company assets in proportion to the referred shares, and

b) to apply the proceeds of such sales to the receivables of the Fund, or to use the proceeds of such sales in payment of the public debts and/or debts to the Social Security Agency or other debts of the company, and

c) to take decisions in relation therewith,

without being bound by the provisions of Article 324 of the Turkish Commercial Code No. 6762.

More than forty-nine percent of these companies and their affiliates as well as their properties, rights and assets may be sold to foreign real persons or legal entities, with the reservation of the restrictions provided in special laws pertaining to immovables.

In order to ensure the collection of Fund receivables, the Fund Board shall be authorized to (i) sell in a manner that will ensure commercial and economic integrity by bringing together the assets attached pursuant to the provisions of the Law No. 6183 on the Procedures for the Collection of Public Receivables, the rights arising from licenses, permits and concession contracts, and all other rights and assets stemming from the contracts that are ac-

cessories or inseparable parts of these assets but do not have an economic value alone, (ii) sell the attached properties if they belong to more than one debtor and/or more than one creditor has caused the attachment, (iii) establish the payment method and currency of the tender value, the conditions required to be met by buyers, then payment date, other principles and procedures applicable to the tender as well as sale conditions as independent from the provisions of the Law No. 6183, (iv) buy the commercial and economic integrity put to sale for deduction from its receivables, (v) deduct from the tender value the past debts of the companies owning the assets put to sale arising from the procurement of technical information, software, hardware, equipment, goods and services, or (vi) require such debts to be paid by the buyer. Following the sale decision, the Fund Board shall set up a Sale Committee consisting of minimum three members to execute the sale process and shall appoint the chairman of the committee. The Sale Committee shall convene in the presence of the absolute majority of the total number of committee members and shall take decisions with the affirmative votes of the absolute majority of the total number of committee members. The estimated value of the commercial and economic integrity shall be set by the Fund Board within the framework of a report to be prepared by the Sale Committee taking into consideration of the valuation reports by expert persons and entities, without the requirement for the valuation of each asset constituting the integrity. In cases where more than one person has in-kind or personal rights on the assets that constitute the economic integrity or in cases where they are owned by more than one person, the values of such assets and/or rights shall be determined separately. In the sale processes to be executed pursuant to the provisions of this article, publication of the sale announcement in the Official Gazette shall be deemed as no-

tification to relevant parties. The sale of assets and/or rights that are decided to be constituting a commercial and economic integrity shall be carried out by either or both of the methods of receiving bids in sealed envelopes and auction. Then, the tenders may proceed through the bargaining method if the Fund Board approves. The method to be applied shall be decided by the Fund Board taking into consideration the characteristics of the assets and rights constituting the commercial and economic integrity. The priority list to be taken as a basis in the distribution of the sale value shall be prepared by the Sale Committee. The tenders shall be finalized upon the approval of the Fund Board. The lawsuits filed for the termination of tender regarding sales to be executed under this provision shall be heard by the administrative courts of the city where the Fund is headquartered. Within two years after the decision for constituting as commercial and economic integrity is taken, third persons including privileged creditors cannot request the detainment or sale of the assets and rights constituting the commercial and economic integrity without the permission of the Fund, the owners of the components of commercial and economic integrity cannot be declared bankrupt, and periods of time limitation and extinguishment of rights regarding the relevant encumbrances shall stop running.

The transfer and registration procedures for concession contracts, licenses, permits, operating permissions, preliminary permissions, broadcasting permissions, temporary frequency and channel utilization permits covered by Provisional Article 6 of the Law No. 3984 that are given to companies whose management and control or shares have been taken over by the Fund in the telecommunication, energy, transportation, radio, audio and visual media and other sectors within the framework of the above provision, shall be completed by the relevant agencies, institu-

tions, upper boards within one month, at the latest, following the completion of the necessary documents and information, without the requirement for any other transaction.

The other principles and procedures applicable to the sales to be carried out pursuant to this provision shall be set out in a regulation to be issued by the Fund.

Out of the proceeds of sale of the assets and properties of the natural or legal persons, either as a part of a commercial and economic integrity within the framework of the provisions of this article or separately and individually through forced execution sales within the framework of the provisions of this Law, first, the past period outstanding debts of the companies arising out of purchase of technical knowledge, software, hardware, equipments, goods and services, and secondly, the outstanding debts owed by persons to the State and the social security organizations and covered by the Law No. 6183, and thirdly, the outstanding debts of the share of the Treasury arising out of the GSM concession agreements, that have accrued by the date of sale, will be deducted and settled if so decided by the Fund Board, and the balance thereof will be used for settlement and repayment of the outstanding debts owed by persons to the other public institutions and enterprises and the upper regulatory boards, on a pro rata basis. Any outstanding debt after the pro rata distribution of the proceeds of sale according to this article shall not preclude or prevent the transfer and registration transactions to be carried out by the public agencies, institutions and the upper regulatory boards for the transfer to and operation by the new buyers of the licenses, permits, concession agreements, temporary frequency and channel utilization rights and similar other rights.<sup>57</sup>

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<sup>57</sup> *As amended by the Law No. 5472.*

The companies covered by this Article and paragraph (7) of Article 15 of the Banks Law No. 4389 repealed and superseded by this Law, and the companies more than 50% of capital shares of which are owned and held by the Fund, the Fund Bank or the subsidiary undertakings of the Fund, will be dissolved and liquidated by a Fund Board decision on the basis of their balance sheets to be issued following a call to be made by their board of directors to their creditors and debtors within the framework of principles to be determined by the Board, without being bound by and subject to the provisions of the Execution and Bankruptcy Code and the Turkish Commercial Code. A Fund Board decision for liquidation will stand for a decision for dissolution of the company, and such companies will be deleted from the relevant public registry upon a written notice of the Fund, without any further or separate transaction. The lawsuits that may be commenced by the relevant persons against a decision of liquidation will be in the jurisdiction in venue of the administration courts in the city of the head offices of the Fund. The companies decided to be liquidated by a Fund Board decision cannot be requested or claimed to be adjudged bankrupt or to be recovered. The receivables registered as a result of the said public call will be allocated and distributed to the creditors of the company decided to be liquidated, according to a list of creditors to be issued by the Fund in accordance with the provisions of this Law, the Law No. 6183 and Article 206 of the Execution and Bankruptcy Code. The pending legal actions of personal liability, actions for insolvency and bankruptcy and actions of debts, brought forward against the controlling shareholders and directors of a company decided to be dissolved and liquidated according to the provisions of this Article or against third persons, will be continued to be handled by the Fund as and in the capacity of a legal suc-

cessor, while the pending criminal actions will be continued to be handled by the Fund as and in the capacity of a legal intervening (joining) party. The collections, if any, made by a court judgment as a result of these legal actions will, without any further legal proceedings, be distributed according to the list of creditors issued as above. The creditors whose receivables are not fully paid through such distribution will, if they demand so, be given a certificate verifying that the debtor company is dissolved and liquidated and no proceeds of liquidation have remained for distribution. Such certificate will be usable pursuant to Article 105 of the Execution and Bankruptcy Code. Any balance of the proceeds of liquidation remaining after distribution to the creditors according to the list of creditors will be allocated and paid to the company shareholders pro rata their existing shares in the capital. Procedures and principles of liquidation will be dealt with in a regulation to be issued by the Fund Board.<sup>58</sup>

With regard to the Fund receivables arising out of use of the resources of banks whose permission for banking transactions has been revoked or that have been transferred to the Fund pursuant to Article 71(1-e) of this Law and the banks that have been liquidated or started to be liquidated, all kinds of money, properties, rights and receivables acquired by the real persons or legal entities referred to in the first paragraph of this Article as well as their relatives by blood and marriage and/or acquired by third persons by way of the referred real persons or legal entities and/or other bank resources as above will be deemed to have been acquired by and/or through the referred real persons or legal entities through use of the bank resources. The Fund shall be authorized to implement the provisions of this paragraph on all kinds of money, properties, rights and receivables acquired as

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<sup>58</sup> *As added by the Law No. 5472.*

above by the referred real persons or legal entities. The transactions such as sales, transfer and assignment, or establishment of limited rights in kind in favor of third persons, and all personal rights and rights in kind granted to and in favor of third persons, in respect of all kinds of money, properties, rights and receivables acquired and/or deemed to be acquired as above, after the date of use of the original loan and/or other bank resources shall not be valid for the Fund. The provisions of this Article will be applicable also on all kinds of money, properties, rights and receivables acquired by and/or through all and any persons, who are a party to the referred legal transactions, also including their total or universal successors, as a result of the aforementioned transactions.

The third persons, who are a party to the transactions mentioned above, cannot raise the plea of good faith for the transactions executed after the revocation of the bank's operating permission or the transfer of the management and control of the bank to the Fund, while the persons referred to in the first paragraph of this article cannot raise the plea of good faith for the transactions executed before and/or after the revocation of the bank's operating permission or the transfer of its management and control to the Fund. Third persons, who become a party to sales, rent, transfer and assignment or other transactions relating to establishment of personal rights or rights in kind before the revocation of the bank's operating permission or the transfer of the bank's management and control to the Fund, shall be under the obligation to prove that they have acted in good faith in such transactions.

The loans and/or bank resources which are extended to the companies where the persons, employed temporarily and/or permanently with or without an employment contract in the com-

panies and/or business enterprises under management and/or supervision of the real persons or legal entities referred to in paragraph (1) of this article are a founder, partner, executive, manager or auditor; or to persons who temporarily and/or permanently represent the aforementioned persons by proxy and/or as a trade representative and/or agent and/or in reliance upon any legal theory or relationship such as representation without a proxy or power of attorney, and to the natural and/or legal persons represented by them; or to any persons other than the persons mentioned in this paragraph and/ or to the companies founded by them, under terms and conditions in contradiction with the banking legislation and practices and/or without any guarantee and/ or with inadequate guarantees, as well as the loans and/or bank resources which are extended to the real persons or legal entities who later transfer the loans and/or bank resources to the real persons or legal entities listed in the preceding paragraphs or to the real persons or legal entities who directly and/or indirectly, alone and/or jointly, hold the control of management and control of the bank, and/or to the subsidiaries and/or direct and/or indirect affiliates of the referred persons and/or the bank, who generally use the same address as their place of activity and/or who make use of the loans and/ or bank resources by incorporating in the agreements some certain clauses such as the right of renunciation and/or the transfer of debts, shall be considered as the bank resources used directly by the bank shareholders who directly and/or indirectly, alone or jointly hold the control of management and control of the bank; and accordingly, the provisions of this article shall be applicable both on these persons and on all kinds of money, properties, rights and receivables acquired by them and/or acquired by third persons through them.

The agreements for establishment of all kinds of limited rights in kind, such as real estate mortgages, chattel mortgages, other mortgages, rights of construction, rights of usufruct and rights of habitation, and any disposition including contracts for transferring any personal right and/or ownership, whether or not recorded or inserted on its special register or book, and the ordinary rent contracts or the contracts of lease of proceeds and profits in respect of movable properties such as land, air and sea transportation means or immovable properties such as seaside mansions, villas, islands, apartments, farms and their annexes, and the financial lease agreements on real or personal properties, and the agreements on satellite and cable TV broadcast rights, and the agreements on transfer and use of publishing / broadcast rights, trademark and license of television channels and newspapers, and the powers of attorney for management and other services, and the life, individual pension, old age and medical insurance contracts and policies requiring payment of premiums above the standards of the European Union, and the credit card and ATM card agreements with or without limits, and the individual or back-to-back bank letters of guarantee, acceptance loans and avals/endorsements issued, and any share transfer contract signed by the dominant shareholders, or members of the executive board, members of audit board, general manager, deputy general managers and their spouse, children and foster children, and their other blood relatives and relatives by marriage, and the authorized signatories of a bank whose operating permission has been revoked or that has been transferred to the Fund pursuant to Article 71(1-e) of this Law, or between them and third persons, may be rendered invalid by a Fund decision. In the actions for damages that may be commenced by the counter-party for invalidation and nul-

lity of these contracts and agreement, the burden of proof that the agreement is not simulated and the amount paid thereunder is the current market price without any simulation shall lie with the plaintiff therein.

The contracts of rent of a personal dwelling house by the debtor that fits to his position shall be out of scope of the preceding paragraph.

The Fund shall be authorized to obtain a cautionary attachment on the money, goods, rights or receivables cited in this article or to put them in custody and take over any such assets, at a value to be determined taking into consideration reports to be designated by the Fund and prepared by institutions, to be deducted from its receivables.

A default interest shall be paid for such receivables from the date of the unjust transaction, which has led to the loss and/or the receivable, at a rate specified in Article 51 of the Law No. 6183 on Procedures for Collection of Public Receivables.

No security shall be required by any court for issuing an injunction in any lawsuit which may be filed by the Fund in any administrative court against transactions defined in the provisions of this paragraph.

The provisions of the Turkish Commercial Code No. 6762 shall not apply to any action to be taken by the Fund in accordance with the provisions of this Law. Such transactions shall be exempted from any tax, duty and fee. The powers vested by this paragraph in the Fund Board shall be exercised by a decision issued by the Fund without any further action. Any action, which is subject to registration, shall be registered and promulgated, where deemed necessary, upon the Fund's request.

**Prosecution and collection provisions applicable in case the insured amount of deposits and contribution funds has been notified less than the actual amount**

**Article 135-** In case there is a difference between the amount of the savings deposit and contribution funds subject to insurance that is declared to the competent authorities by the bank pursuant to the Law No. 1211 on the Turkish Central Bank and this Law and the amount of the savings deposit and contribution funds determined by the Fund, upon demand of the Fund, the judge of the criminal court of peace having jurisdiction in the city of the headquarters of the relevant bank, or in the course of trials, the relevant court shall decide to freeze, up to the referred difference, all of the rights and receivables, including the contents of the safe deposit boxes, and all of the bank accounts, including, but not limited to, foreign currency deposit accounts, and credit card and ATM card accounts with or without limits, held with the banks and the non-bank financial institutions and other real persons or legal entities, and owned by the members of executive board and credit committee, and general directors, assistant general directors, authorized signatories and branch managers of the bank, and the bank shareholders directly or indirectly, alone or jointly holding the control of management and control of the bank, and their spouse and children, and to withdraw their rights of disposal in full or in part on all kinds of real and personal properties, including the land, air and sea transportation means and other securities such as domestic and overseas Treasury bills, State bonds, share certificates, investment fund participation certificates and independent commercial enterprises, factories and plants, and trademark and license rights for operation of such plants, and licenses and operation rights for foundation and operation of television channel, power stations

and similar other plants arising out of the public concession and licensing agreements, and share certificates and other rights in respect of companies operating such plants with or without a license, permit and operating rights and to seize all and any of the properties, cash funds, negotiable instruments, securities and other assets mentioned above and/or to restrict them by injunctions and encumbrances registered in the official registers, and to deposit them to a trustee and to restrict the proceeds, rights and receivables in relation therewith by other injunctions, and to take such precautionary measures also on proceeds of all kinds of real and personal properties, rights and receivables, negotiable instruments, cash funds and securities and trademark and license rights for foundation and operation of plants, and certificates of shares of the companies operating such plants with or without a license.

The Fund may decide to prosecute and collect the aforementioned difference in accordance with the provisions of this Law. These provisions shall also be applicable on the persons who act on behalf of the persons mentioned above or the persons who acquire money, properties or rights on such persons' account, but in their own name.

The demands for injunctions shall be finalized by the judge or the court immediately and in any case within twenty-four hours as a result of a review on the documents. The Chief Public Prosecutors may also decide to freeze the referred rights and receivables in cases where a delay is considered to be harmful. The Chief Public Prosecutors shall notify this decision to the judge of the criminal court of peace within twenty-four hours, the latest. The judge shall decide to approve or refuse this decision within twenty-four hours, the latest. The decisions not approved by the judge shall become null and void.

The decisions taken by the judge of the criminal court of peace shall be executed by the execution office in charge in the location of the court taking the injunction decision. The injunctions ordered by the judge of the criminal court of peace shall be terminated if the Fund does not make a denunciation of offence within one year following the date of the injunction decision revoking the bank's permission for banking operations and for accepting deposits and contribution funds and/or if the procedures for collection of the receivable is not commenced as per the provisions of Law No. 6183 and/or there is no lawsuit filed for collection of the receivable in civil courts. In case any of such actions is taken, the injunctions will remain in force until the ordered amounts are fully paid. The court shall order the responsible persons to reimburse directly to the Fund the amount of money paid and/or to be paid by the Fund according to the provisions of this Law. In this case, the injunctions will remain in force until ordered amount will be received from the money, properties, receivables, rights and other belongings of the responsible persons enjoined pursuant to this paragraph.

The provisions of this article may also be applicable also for all kinds of properties, limited rights in kind or limited personal rights and receivables which are subject to the provisions of the preceding paragraphs and which have previously been transferred to the possession of the divorced or widow spouse or other blood relatives or relatives by marriage of the responsible persons or third persons. In all of the lawsuits commenced or to be commenced in respect of all of these properties, rights and receivables, these persons will not be entitled to the presumption of good faith vested by Article 3 of the Turkish Civil Code or the presumption of ownership and the principle of good faith trust in all official registers vested by article 985 of the same Code. If and

to the extent they prove to have acquired these properties in good faith and the amount paid by them is the current market value of these properties without any simulation, the court will judge and order refund of such payment to these persons out of the properties and other assets of the responsible persons.

Persons who request payment to be made to themselves or other persons by submitting fraudulently prepared documents or by knowing that such documents have been fraudulently prepared, although they do not have deposit or contribution fund accounts at a bank whose permission for carrying out banking operations or admitting deposits and contribution funds shall be sentenced to penalties required by general provisions for embezzlement or swindling and forgery of documents, non-recording of transactions and non-factual accounting or prevention or disruption of information systems, deletion or modification of data.

The provisions of this article shall be applicable on all assets, rights and receivables of persons having caused or causing the Fund to make payments due to actions before the enforcement of this Law, and of their spouses and children.

### **Legal guarantees for Fund receivables**

**Article 136<sup>59</sup>** - In order to ensure the collection of the Fund receivables; all money, properties, rights and receivables over which a precautionary attachment or an injunction is placed pursuant to the precautionary attachment or injunction orders taken in the course of the lawsuits brought forward and/or to be brought forward by the Fund in accordance with the provisions of this Law shall constitute a legal security for all receivables, that are the subject matter of such lawsuits, and shall remain so until the court

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<sup>59</sup> *As amended by the Law No. 5472.*

judgments becomes final therein until the finalization of the judgment or the prosecution for the collection of such receivables. The receivables and claims ordered to be paid by a final judgment of the court shall be recovered and collected from the proceeds of the money, properties, rights and receivables subjected to injunction, in the first order as privileged receivables and claims, however, after deduction of the receivables of the State and social security organizations set forth in the Law No. 6183.

### **Burden of Proof**

**Article 137** – The burden of proof shall be on the part of defendants in lawsuits filed or to be filed by the Fund pursuant to Articles 108 and 110 of this Law.

### **Exceptions regarding prosecution and collection of Fund receivables**

**Article 138**– In case any kind of lawsuit and executive proceeding, to which the Fund is a signatory, is concluded against the Fund in whole or in part, the compensation and penalties stated in the Execution and Bankruptcy Law No. 2004 shall not be applicable for the Fund.

In case the Fund takes over the claims of or assumes the debts, liabilities of a bank pursuant to Article 107 of this Law, all kinds of time periods, including the periods that cause extinguishment of rights and time-limitation periods as stated in the laws, shall stop running as far as the Fund is concerned, for a period of nine months from the date when the claim was taken over or when the debt, liability has been assumed, for the lawsuit and execution proceedings filed or to be filed in connection with such debts, liabilities and claims.

In tenders where the Fund submits a bid for the enforcement of this Law, the Fund shall not be obligated to provide bid bonds.

In proceedings carried out under the Execution and Bankruptcy Law No. 2004, where the Fund is the creditor, the objections made by debtors shall not stop the transactions of proceedings excluding sales.

The notification of the valuations in the files in which the Fund is a creditor, and sale announcements to persons other than debtors, shall be made to the latest known addresses, provided that the deadline given in the announcement is valid, or such disposal shall otherwise be made public through announcement.

In the execution proceedings where the Fund is the creditor, the proceeds of sale which become payable to the Fund, shall be paid promptly before the date of finalization of the list of loans without any security.

### **Powers of the Fund pertaining to its affiliates**

**Article 139–** The Fund shall be authorized to take all kinds of measures including provision of resources under the principles and procedures to be determined by the Fund Board for the purposes of protecting and evaluating the properties, rights and receivables of the below-mentioned companies as well as restructuring them including the capital increases to be effected without applying the provisions of the Turkish Commercial Code No. 6762 in connection with the subsidiaries (those having economic value) of the Fund and of the banks whose operating permissions have been revoked or that have been transferred to the Fund and with the companies whose management and control have been transferred thereto under Article 134 of this Law and Article 15(7) of the Banks Law No. 4389 which is annulled by this Law.

**Financial exceptions regarding the Fund and the banks whose operating permissions have been revoked**

**Article 140-** The Fund shall be exempted from all taxes, charges and duties.

If the Fund takes over the claims of and/or assumes the debts and/or liabilities of the banks whose operating permissions have been revoked or the bankruptcy and liquidation trustees of banks whose liquidation is carried out by the Fund, then the transfer and assignment agreements regarding the claims taken over and/or liabilities and/or debts assumed by the Fund, establishment and lifting of all kinds of collaterals, cancellation of agreements, lawsuit and execution proceedings and all kinds of transactions related with such debts and/or claims and/or liabilities as well as the papers issued in connection with such transactions shall be exempt from all kinds of taxes, duties, fees and fund levies and from the provision of Article 1 of the Law No. 2548 on the Fees to be Collected for Construction of Prisons and Court Houses and Food Amounts Payable by Prisoners.

All kinds of taxes, duties, fees and fund levies, also including the fees of collections, which are due and payable by the debtor, cannot be deducted from such receivable. The revolving capital fees arising from such transactions shall not be paid and other deductions shall not be made.

If any movables or immovable are purchased by the Fund or by the banks whose management and control have been transferred to the Fund through either consent or enforcement, in return for any Fund receivable, then financial obligations such as tax, duty, fee and revolving capital fee payable by the parties in connection with such transactions shall not be applicable.

The Fund, Fund banks and the bankruptcy and liquidation office of any bank, which is being liquidated by the Fund, may obtain a final court judgment and request for its notification without being required to ensure that the fee imposed on the other party has been paid or to deposit a security in connection with a request for obtaining any injunction or cautionary attachment or postponement of execution.

In any legal action relating to Fund receivables, provisions of the Code of Civil Procedures (Law No. 1086) on rapid trial procedures shall be applicable.

The agreements, contracts, documents and certificates issued with regard to the transactions between the Fund, Fund banks and the bankruptcy and liquidation trustees of the banks whose liquidation is carried out by the Fund, and/or between them and other real persons or legal entities, as well all kinds of documents and/or certificates issued in respect of amendment, renewal, extension, assignment or transfer of them, or making a new redemption schedule, or collateralization of receivables, or taking over of collaterals or settlement and/or discharge of the parties thereto, and/or any other transaction in connection therewith under any name whatsoever shall be exempt from all kinds of taxes, duties, fees and all other financial liabilities imposed by private laws pertaining thereto. This provision shall be applicable on third parties if and to the extent they are a party to the bankruptcy and/or liquidation trustees' transactions for collection of receivables of the Fund and/or a bank that is transferred to the Fund and/or the bankrupt banks whose liquidation is carried out by the Fund.

Any borrowing or advance transaction to be carried out by the Fund pursuant to Article 131 of this Law shall be exempted from any tax, duty and charge.

Any transaction, lawsuit and debt collection procedure to be carried out for the purposes of collecting the receivables of the Fund banks and the bankruptcy and liquidation offices of banks whose operating permission have been revoked and are being liquidated by the Fund shall be exempted from any tax, charge or fund, and from the provisions of Article 1 of the Law No. 2548 on the Charges to be Collected for the Construction of Prisons and Court Buildings and on the Food Charges to be Collected from Prisoners.

In case of the transfer of the funds of the banks whose operating permissions have been revoked or the Fund banks to the Social Securities Agency, the actual and technical deficits determined by actuaries shall not be revoked to the banks whose operating permissions have been revoked, to the Fund and/or to the Fund banks.

### **Time limitation**

**Article 141-** The lawsuits and prosecutions pertaining to the Fund receivables covered by this Law shall be subject to a time limitation of twenty years.

### **Authorized and competent courts**

**Article 142-** Any civil action, which may be instituted by the Fund, the Fund banks and the bankruptcy and liquidation offices of the banks whose operating permission has been revoked, shall be heard by commercial courts. If there is more than one commercial court in a locality, such actions shall be heard by the first and second commercial courts of first instance.

Any civil action or bankruptcy proceeding which may be brought by the Fund, the Fund banks and the bankruptcy and liquidation offices of the banks whose operating permission has been revoked, against any person whose registered office or abode is located within the boundaries of Istanbul province, shall be heard by Istanbul Commercial Courts of First and Second Instance. If a bankruptcy proceeding has been instituted, then the court referred to above shall notify the commercial court of first instance, located in the place wherein the debtor, against whom the bankruptcy proceedings have been instituted, has his registered office, that a bankruptcy proceeding has been instituted against the debtor.

All types of lawsuits initiated or to be initiated pursuant to the provisions of this Law shall be continued during the judicial holiday, and in these lawsuits, experts will be appointed among the officers of the public administrations and entities, and the hearings may not be adjourned for a period longer than thirty days.

### **Asset Management Company**

**Article 143-** Asset management companies may be established for the purposes of purchasing, collecting, restructuring and selling the receivables and other assets of banks and other financial institutions including the Fund. The principles applicable to the establishment and operation of asset management companies shall be set by the Board. Asset management companies shall be authorized to perform any activity, including the provisional of additional financing for debtors or participation in their shares, for the purposes of operating, leasing and investing in the immovable properties or other rights and assets acquired for the collection of its receivables and/or restructuring of other assets.

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The Fund shall be authorized to become founding partner or shareholder of the asset management companies to be established, by providing capital.

Assets Management Companies, of which the Fund owns minimum twenty percent shares, shall use the rights and powers assigned to the Fund by Articles 132(8) and 138(5) of this Law regarding the receivables taken over from the Fund.

Asset Management Companies shall reserve provisions in order to recover the unknown amounts of damages that have arisen or are likely to arise in connection with such transactions. The characteristics of the receivables for which provisions will be reserved and the principles and procedures applicable to provisions shall be set by the Board. The whole amount of the provisions reserved by Asset Management Companies pursuant to this paragraph shall be considered as expenditure in the calculation of the Corporate Tax base in the year they are reserved.

The transactions of the asset management companies established under this Law and by the asset management companies established under the regulation issued pursuant to Article 3(7) (which is repealed by this Law) of the Law No. 4743 regarding the Restructuring of Debts to Financial Sector and the Amendment of Some Laws, as well as the documents prepared for such transactions, including the establishment transactions, shall be exempted from the stamp taxes required to be paid under the Stamp Tax Law No 488, from the duties required to be paid under the Duties Law No. 492; the funds to be collected under any name shall be exempted from the banking and insurance transactions tax required to be paid under the Expenditure Tax Law No. 6802, from the deductions to be made for the resource utilization support fund and from the provisions of Article 39 of the

Law No. 4054 on the Protection of Competition, during the year in which they are established and the following five years.

In cases where the asset management company undertakes these debts and commitments or take over receivables and assets, the asset management company shall automatically become an intervening party, as the sufferer from the offense, to any criminal lawsuit initiated or to be initiated in connection with such debts, commitments, receivables and assets, as from the date when the receivable is taken over or the debt and commitment is undertaken.

The asset management companies established before the publication date of this Law shall continue their operation as subject to the provisions of this Law.

## **PART THIRTEEN**

### **Other Provisions**

#### **Interest rates and other benefits**

**Article 144-** The Council of Ministers shall have the authority to determine maximum interest rates to be applied to banks' loans and deposits, the loss or profit participation rates in participation accounts and the nature and maximum quantity or rates of other interests that will be acquired as a result of the transactions indicated in this article including special current accounts and to liberate such amounts and rates in whole or in part. The Council of Ministers may delegate these powers to the Central Bank.

#### **Monetary amounts**

**Article 145-** Except for the provisions applicable to fines, any financial amount and limit specified in this Law may be increased by a decision of the Board provided that it does not exceed the amount and limit corresponding to increase rate in the annual producer prices index announced by the State Institute of Statistics.

## **PART FOURTEEN**

### **Provisions Pertaining to Sanctions, Investigations and Legal Proceedings**

#### **SECTION ONE**

#### **Administrative Fines**

##### **Administrative fines for institutions**

**Article 146-** Pursuant to a resolution adopted by the Board, and with specified reasons, the following administrative fines may be imposed on the institutions covered by this Law:

a) From 15,000 New Turkish Liras to 50,000 New Turkish Liras in the event a branch or representative office has been opened in breach of Articles 13 and 14,

b) From 5,000 New Turkish Liras to 15,000 New Turkish Liras in the case of conflicting with the provisions of the second and fourth paragraphs of Article 18,

c) From 10,000 New Turkish Liras to 40,000 New Turkish Liras in the event any person has been appointed in breach of Article 25 or any person identified in 26 thereof has been appointed to a prohibited position, and if such default has not been rectified within ten business days from the date of receipt of a notice to that effect, then an amount corresponding to ten percent of the fine for each day after the expiry of the foregoing period,

d) From 5,000 New Turkish Liras to 15,000 New Turkish Liras in case of the violation of the provisions of Article 28,

e) From 10,000 New Turkish Liras to 25,000 New Turkish Liras for actions in breach of Article 33 or Article 34 or paragraph (1) of Article 37 or Articles 38 and 39 or 42,

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f) From 5,000 New Turkish Liras to 15,000 New Turkish Liras in case the declarations required by Article 43 have not been made,

g) For failure to comply with the loan prohibitions provided in Article 50, up to five percent of the loan granted, which shall not be less than 5,000 New Turkish Liras,

h) From 5,000 New Turkish Liras to 10,000 New Turkish Liras for breach of the provisions of Article 52,

i) Up to two per thousand of any provisions required to be set aside pursuant to Article 53 in the event such provisions have not been set aside provided that such amount is not less than 5,000 New Turkish Liras; and an amount equal to three percent of the provisions not established if such default has not been remedied within a period to be granted by the Agency provided that such period is not less than three months,

j) Up to one percent of any amount which exceeds and thus constitutes a violation of the loan limits set forth in Article 54 hereof provided that it shall not be less than 50,000 New Turkish Liras,

k) Up to five percent of any amount which constitutes a default in the event any restriction to acquire partnership shares specified in Article 56 provided that it shall not be less than 20,000 New Turkish Liras and if such default has not been remedied within one year from the date of receipt of a notice to that effect, an amount equal to one percent of the fine imposed for each day elapsing from the date of expiry of such one-year period until the date when it was rectified,

l) Up to ten percent of any amount which is in violation of a restriction or prohibition defined in Article 57 hereof provided that the

fine shall not be less than 20,000 New Turkish Liras and, if such default has not been remedied within one year from the date of receipt of a notice to that effect, an amount equal to one percent of the fine imposed for each day elapsing from the date of expiry of the foregoing period until the date when the default is remedied, except for any breach resulting from utilization of a loan,

m) Up to the amount transferred in case of the violation of the provisions of Article 58, which shall not be less than 5,000 New Turkish Liras, and as much the excess in case the limits set out in Article 59 are exceeded, which shall not be less than 5,000 New Turkish Liras,

n) From 15,000 New Turkish Liras to 50,000 New Turkish Liras in case of breaching the provisions of paragraph six and seven of Article 60,

o) From 5,000 New Turkish Liras to 10,000 New Turkish Liras in case of failure to fulfill the obligation defined in Article 61,

p) From 5,000 New Turkish Liras to 15,000 New Turkish Liras in case of failure to submit the information requested by the Agency from the institutions covered by this Law as per the provisions of Articles 95 and 96; from 5,000 New Turkish Liras to 10,000 New Turkish Liras in case of late submission of such information, and from 5,000 New Turkish Liras to 15,000 New Turkish Liras in case of missing information, control errors or re-occurring control errors,

r) 20,000 New Turkish Liras for the violation of the decisions taken and regulations issued under Article 144; and in cases where quantities or ratios are set by the Council of Ministers or the Central Bank, an amount equal to any benefit obtained by receiving or paying an interest or otherwise in breach of any such decision or regulation.

The Board shall be authorized to reduce the amounts of fines to be imposed pursuant to this Article by 50 percent for the banks that have been subjected to Articles 68, 69 and 70, and by 100 percent for the banks that have been subjected to Article 71 of this Law.

### **Administrative fines applicable to relevant persons**

**Article 147-** Based on Board decision, and with specified reasons, the following administrative fines shall be imposed on the relevant real and legal persons:

a) From 5,000 New Turkish Liras to 15,000 New Turkish Liras in case of the violation of the first, second or fourth paragraphs of Article 18,

b) From 5,000 New Turkish Liras to 20,000 New Turkish Liras, in case of the violation of Article 36,

c) From 5,000 New Turkish Liras to 20,000 New Turkish Liras in case of the violation of Article 38.

### **Administrative fines for violation of restrictions, decisions and regulations**

**Article 148-** Pursuant to a resolution adopted by the Board, and with specified reasons, the following administrative fines shall be imposed on the institutions covered by this Law as well as the relevant real and legal persons :

a) Up to five per thousand of the amount constituting the violation, which shall not be less than 10,000 New Turkish Liras in case the limits set out in this Law and the regulations issued under this Law are violated,

b) From 5,000 New Turkish Liras to 10,000 New Turkish Liras in case of violation of the decisions taken and regulations and

communiqués issued by the Board and the Agency under this Law, as the relevant articles apply.

### **Right to defense and decisions for closure**

**Article 149-** The decisions as to whether the administrative fines shall be implemented or not shall be taken after receiving the defense of the related party. If no such defense has been submitted within one month from the date of receipt of a notice requiring the relevant party to file a defense, then the relevant party shall be deemed to have waived its right to defend him.

While the provisions of Article 146(1a) of this Law shall be applied to any branch or representative office opened in Turkey in breach of the provisions of Article 13 of this Law, these can be closed down permanently or temporarily by governors, upon demand of the Agency.

## **SECTION TWO**

### **Offences**

#### **Operating without receiving related permissions**

**Article 150-** The real persons or officers of a legal persons, without having permission required to be obtained pursuant to this Law, who act as if they were banks or who collect deposits or participation funds, shall be sentenced to imprisonment from three to five years and a judicial fine up to 5,000 days. In addition to this, in cases where this offense is committed within the body of a business place, such business places may be closed from one month to one year or permanently if such acts are repeated.

The real persons or officers of a legal persons, without having permission required to be obtained pursuant to this Law, who use the business title of a bank in their notices and advertisements or public statements and use words and expressions which could create an impression that they were accepting deposits or participation funds or acting as a bank, shall be sentenced to imprisonment from one to three years and a judicial fine of up to 5,000 days. In addition to this, such business places may be closed from one month to one year, or permanently if such acts are repeated.

In cases of the violations cited in the above paragraphs, upon the application of the Agency to the Chief Public Prosecutor's Office by the criminal law judge, if a lawsuit is initiated then the relevant court shall temporarily suspend the activities of the work place and as well as the advertisements thereof and issue an order for the collection of announcements. These measures endure until they are lifted by magisterial decree. These decisions may be appealed.

### **Preventing the rights of the owners of deposits and participation funds**

**Article 151-** The persons who violate the provisions of Article 61 of this Law shall be sentenced to an imprisonment from six months to two years and a judicial fine up to 500 days.

### **Failure to take corrective, rehabilitating and restrictive measures**

**Article 152-** The responsible employees of the banks failing to take the measures required by the Board or the Agency as per the provisions of Articles 68, 69 and 70 of this Law and Article 14 of the Banks Law No. 4389 which is repealed by this Law,

shall be sentenced to imprisonment from two to four years and a judicial fine from 1,000 days up to 5,000 days.

If it is determined that such failure has been caused to provide a benefit for any partner, who hold qualified shares, or their associations and institutions, then such persons shall be sentenced to imprisonment from four to six years and a judicial fine up to 10,000 days.

### **Failure to submit the data and documents required by authorized agencies and auditors and preventing their actions**

**Article 153-** The persons who fail to provide information and documents requested within the scope of article 38 of this Law by the authorized agencies and auditors cited in this Law for the preparation of consolidated financial statements shall be sentenced to imprisonment from one year to three years and a judicial fine from 500 days up to 1,500 days.

Any person who prevents the audit staff authorized by this Law from performing their duties shall be sentenced to imprisonment from two to five years.

### **Failure to comply with the obligation to keep records**

**Article 154-** The persons who do not abide by the obligation of keeping documents specified in Article 42 of this Law shall be sentenced to imprisonment from one to three years and a judicial fine from 500 days up to 1,500 days.

### **False statement**

**Article 155-** The persons who sign the documents of the institutions that are subject to this Law and have made a false state-

ment in such documents or who sign the documents forming the basis of such non-factual documents submitted to any authority or auditor specified in this Law and to courts or documents published, shall be sentenced to imprisonment from one year to three years and a judicial fine which shall not be less than 1,500 days.

### **Non-recording transactions, non-factual accounting**

**Article 156-** Any person who has caused any transaction of institutions covered by this Law not recorded or accounted for in a manner not conforming to their nature or has caused any annual balance sheet thereof closed without ensuring its conformity with the ledger and the subsidiary ledger, branches, correspondent banks in Turkey and abroad and who has signed any document which has been used for taking any of the foregoing actions shall be sentenced to imprisonment between one year and three years and a judicial fine which shall not be less than 1,500 days. The officials of independent audit firms who approve such documents although they know that they have been prepared non-factually shall be sentenced to the same penalties.

### **Impairing and preventing the functioning of the system; disposing or changing data**

**Article 157-** The institutions subject to this Law shall be regarded as bank or credit institution in the context of the offenses of preventing or disrupting system, and deleting or modifying data, as defined in Article 244 of the Turkish Penal Code No. 5237.

### **Actions damaging reputation**

**Article 158-** Any person who violates the provisions of Article 74 of this Law shall be sentenced to imprisonment from

one year to three years and a judicial fine from 1,000 days up to 2,000 days.

If a private or public loss has incurred as a result of the offenses defined in the above paragraph, the penalties shall be increased by one sixth.

### **Disclosing confidential information and documents**

**Article 159-** The persons who do not fulfill the requirements laid down in the first and third paragraphs of Article 73 of this Law shall be sentenced to imprisonment from one year to three years and a judicial fine from 1,000 days up to 2,000 days. The same punishments shall also be applied to third persons who disclose the confidential information or documents of the clients of banks.

In cases where the persons defined in the above paragraph disclosed confidential information and documents with a view to acquiring benefits for themselves or for others, the penalties shall be increased by one sixth. Furthermore, depending on the importance of the offense, the responsible persons shall be prohibited from working at the institutions subject to this Law temporarily for a period that is not less than two years or permanently.

### **Embezzlement**

**Article 160-** If any member of board of directors or employee of a bank embezzles any money, valuable document, securities or other assets, which have been entrusted to them in connection with their duties or put under custody and supervision thereof, in his own or others' favor, he shall be sentenced to imprisonment from six years to twelve years and a judicial fine up to 5,000 days, and shall compensate for the losses incurred by the bank.

Where the offence has been committed by fraudulent acts which would ensure that the offence will not be discovered, then the perpetrator of such act shall be sentenced to imprisonment for minimum twelve years and a judicial fine up to 20,000 days; however the amount of judicial fine shall not be less than three times the loss suffered by the bank. Furthermore, in the event that the loss caused is not compensated, the court shall issue a judgment for the collection of the damage *ex officio*.

In the event that the real person shareholders who *de jure* or *de facto* have held the control the management and supervision of a bank whose permission for banking transactions has been revoked or that has been transferred to the Fund, are proven to have used the credit institution's resources directly or indirectly in their own interests or in the interests of third persons so as to endanger the soundness of the credit institution, thereby causing loss to the credit institution in any manner whatsoever, their such acts shall be considered embezzlement. Those who commit such offence shall be sentenced to imprisonment from ten years to twenty years and a judicial fine up to 20,000 days; however the amount of judicial fine shall not be less than three times the loss suffered by the bank. In addition, the losses incurred shall jointly be indemnified.

Where any embezzled money, money substitute valuable document or security as well as other assets has been fully returned or the loss has been compensated prior to the initiation of investigation, the punishment shall be reduced by two thirds.

Where any embezzled money, money substitute valuable document or security as well as other assets has been fully returned or the loss has been compensated prior to the initiation of legal proceedings, the punishment shall be reduced by half. If such

case takes place prior to the issue of judgment, the punishment shall be reduced by one third.

In cases where the value of the embezzled money, valuable document or security as well as other assets is low, then the punishment shall be reduced up to half from one third.

### **Violation of other laws**

**Article 161-** In case the actions that constitute offense under this Law require penalty pursuant to other laws as well, the article of law that imposes the heaviest penalty on the offender shall be applied. The provisions of the Turkish Commercial Code No. 6762 that requires liability shall be reserved.

## **SECTION THREE**

### **Procedure for Legal Proceedings**

#### **Written application and intervention**

**Article 162-** The initiation of investigation and prosecution for the offenses mentioned in this Law shall be subject to a written application of the Agency or the Fund to the Office of Chief Public Prosecutor. Such application shall be accepted as trial clause. However, the investigation and prosecution of the offenses mentioned in the third paragraph of Article 160 shall be initiated upon the written notice of the Agency or the Fund, or in emergency cases, automatically by the Office of Chief Public Prosecutor, and the Agency and Fund shall be notified thereof. In public lawsuits initiated as a result of the investigations performed pursuant to the provisions of this article, the Agency or the Fund shall take intervening party status upon their application, at the date of application.

The litigation right of the related persons with regard to the offenses of damaging reputation, disclosing confidential information or documents and embezzlement and the provisions of the Criminal Procedures Code No. 5271 dated 4/12/2004 shall be reserved.

### **Objection and notification**

**Article 163-** If it is decided that it is not required to be prosecuted as a result of the legal proceedings initiated pursuant to Article 162 of this Law, such decisions shall be notified to the Agency or Fund, depending on its relevance, and to the relevant bank. The Agency, the Fund and the relevant bank may object to such decisions in accordance with the Criminal Procedures Code No. 5271.

In case of public lawsuits, a copy of the indictment shall be notified to the Agency or the Fund, whichever applicable.

### **Special duty**

**Article 164-** The lawsuits for the offenses of failure to take corrective, rehabilitating and restricting measures; non-registering transactions and fraudulent accounting, embezzlement; preventing or disrupting systems and deleting or modifying data; disclosing the confidential information and documents about banks and customers; swindling in banking transactions; setting up, managing or participating in organizations to commit such offenses; and associated crimes that fall under the duty area of high criminal courts shall be trialed in the high criminal court no. (1) of the city where the act is committed. If deemed necessary, upon a proposal of the Ministry of Justice, the Higher Board of Judges and Public Prosecutors may assign other high

criminal court or may form a new ones in that city for trial of such types of offences.

### **Expert examination**

**Article 165-** For the purposes of the implementation of this Law, in any criminal action instituted in respect of offences defined in this Law and other applicable laws, the court expert shall submit his report to the court within three months from the date the case was referred to him. This period may be extended up to two months by the judge. If the report has not been submitted during this extension period, the court expert shall be discharged without paying a fee and a new court expert shall be appointed. The experts discharged as such shall not be appointed as experts in any lawsuit covered by this Law for a period of one year. Such person shall also be condemned to indemnify any costs caused by the delay in submission of the reports and a judicial fine up to 500 days. The period of prescription shall be suspended and it shall resume to run on the date when the court expert submits his report to the court.

If a court expert examination is considered necessary in respect of a civil lawsuit instituted by Agency, the Fund, Fund banks and the bankruptcy administrations of the banks, the court expert shall submit his report to the court within three months from the date the case was referred to him. This period may be extended up to two months by the judge. If the report has not been submitted during the extension period the expert witness shall be discharged without paying a fee and a new expert witness shall be appointed. Any expert witness so discharged shall not be appointed as an expert witness in any legal proceedings under this Law for a period of one year. Such person shall also be condemned to indemnify any costs

caused by the delay in submission of the reports as well as a judicial fine up to 500 days.

### **Specific legal proceedings and prosecutions**

**Article 166-** The following provisions shall be applicable for the legal proceedings and prosecutions regarding the offences indicated in the third paragraph of Article 160:

a) The investigation will be conducted directly and personally by the Chief Public Prosecutors or the Public Prosecutors to be delegated, according to their relevant responsibilities. These offences and crimes will be directly prosecuted by the Public Prosecutors, even if they are committed during or due to performance of duties.

b) In investigation and prosecution of these offences, the provisions between Article 135 and 138 of the Penal Procedures Law No. 5271 shall also be applicable.

c) In the course of investigations and prosecutions of these offences, the police forces shall be obliged to have the suspects, accused persons, witnesses, experts and injured persons ready at the date, time and place ordered by the Public Prosecutor or the regent judge or the rogatory judge for the purposes of investigation and prosecution. This order empowers the police to use force on the persons who are invited to appear in the court as in bench warrants.

d) If deemed necessary in investigation of these offences, the Chief Public Prosecutors may temporarily demand to make use of the buildings, vehicles, equipment and personnel of the general or annexed budget public administrations or authorities, and all public agencies or institutions, municipalities, and banks within or outside their jurisdiction. Such demands will be fulfilled by the

related entities and authorities without delay. The responsible persons who fail to fulfill such demands without any excuse shall be sentenced to imprisonment from three months to six months.

e) If it is deemed necessary during the course of investigation, an on-site investigation will be held at the location of offence or at the location of evidences.

f) In cases where a delay in the decision of the judge may have unfavorable effects, all kinds of properties, receivables, money and other goods of the perpetrators will be seized upon a written order of the Public Prosecutor until the end of the criminal investigation. All kinds of properties, receivables or other things acquired as a result of transfer of all and any unfair enrichment acts by the perpetrators and accomplices in crime and held in possession of their blood relatives or relatives in law by marriage or other third persons will also be seized by a written order of the Public Prosecutor.

g) The order of seizure shall be presented to the approval of the authorized and competent judge of the criminal court of peace within twenty-four hours. The judge shall declare his judgment within forty-eight hours. Otherwise, the order of seizure shall become null and void.

## **Execution of penalties**

**Article 167-** The provisions of conditional release shall not be applicable for the persons who are sentenced due to the offenses mentioned in Article 160 unless they pay the debts and compensations they owe to the Fund or the Treasury, or these debts and compensations are collected from their possessions.

## PART FIFTEEN

### Final Provisions

#### Provisions repealed and amended

**Article 168-** A) Excluding the provisions in the provisional articles of this Law, the Banks Law No. 4389 dated 18/6/1999 and its annexes and amendments have been hereby repealed.

B) The provisions of the Law No. 4059 and dated 9/12/1994 on Organization and Responsibilities of the Treasury Undersecretariat and the Foreign Trade Undersecretariat regarding the activities of financial leasing and lending, that do not pertain to lending have been repealed.

C) The following amendments have been made in the Financial Leasing Law No. 3226 and dated 10/6/1985:

a) the phrase "Council of Ministers" has been replaced with the phrase "Banking Regulation and Supervision Board" in Articles other than 30 and 34,

b) The phrase "the Ministry in charge of the Treasury and Foreign Trade Undersecretariat reports" has been replaced with the phrase "Banking Regulation and Supervision Agency",

c) Sub-paragraph (b) of Article 32 has been changed as follows "the regulation mentioned in Article 10 shall be issued by the Banking Regulation and Supervision Board".

D) The following amendments have been made in the Decree in the Power of Law No. 90 and dated 30/9/1983 regarding Lending Activities:

a) The phrase "Undersecretariat" in Articles 12 and 13 has been replaced with "Banking Regulation and Supervision Board",

b) The first paragraph of Article 14 has been changed as follows “the financing companies and factoring companies subject to this Decree in the Power of Law shall be supervised by the Banking Regulation and Supervision Agency and the activities of lending institutions by the Undersecretariat.”,

c) The fourth paragraph of Article 14 has been amended to read as: “The Banking Regulation and Supervision Agency may request any information from financing companies and factoring companies, and the Treasury Undersecretariat from the lending institutions.”

E) The phrase “upon consulting the Central Bank of the Republic of Turkey” in the first and second paragraphs of Article 13 of the Decree in the Power of Law No. 90 and the phrase “upon consulting the Central Bank of the Republic of Turkey as well” in the fifth paragraphs have been deleted.

F) Paragraph (I-b) of Article 40 of the Law No. 1211 and dated 14/01/1970 on Central Bank of the Republic of Turkey has been repealed and paragraph II of Article 40 and Article 44 of the said Law have been amended as follows, respectively:

“II- Banks and other financial institutions to be deemed appropriate by the Bank including those that issue electronic payment instruments shall maintain reserve requirements in cash, in proportion to their liabilities in accounts opened at the Bank. The Bank shall set the implementation principles and procedures to be applicable to the scope of liabilities subject to reserve requirements, the ratio and establishment period of reserve requirements, the interest rate to be applied to the said requirements when necessary, and the transactions to be carried out in the case of extraordinary withdrawals from deposit and participation funds, mergers, acquisition and disintegrations.

The Bank shall determine the quality and the ratio of the general liquidity requirement to be maintained by the above-mentioned institutions against their undertakings when necessary.

If the regulation to be issued by the Bank requires the blocking of the reserve requirements in the accounts within the Bank, then the reserve requirements held in the blocked accounts shall not be utilized to finance any purpose or issue, and shall not be assigned or distrained.

The Bank shall be authorized to require the keeping of non-interest deposits in the accounts within the Bank or to accrue default interest on institutions which fail to deposit their reserve requirements and liquidity requirement when due or establish them deficiently, over the deficient portion in accordance with the procedures and conditions to be determined thereof. The accrued default interest claims shall be collected in accordance with Law No. 6183 on the Procedures for the Collection of Public Receivables. The default interest so collected shall be registered as revenue to the Savings Deposit Insurance Fund.”

**“Article 44-** The Bank shall establish a Risk Center in order to collect information about the risk status of the clients of the deposit banks, participation banks, development and investment banks, financial holding companies, financial leasing companies, factoring companies, financing companies operating in Turkey and other financial institutions to be considered appropriate by the Bank and the Banking Regulation and Supervision Board, and to share such information with the Banking Regulation and Supervision Agency and other relevant institutions.

These institutions shall provide any information to be requested in connection with the risk status of their clients, including the pro-

tests notice of lodged by banks. All transactions and records of the Risk Center shall be confidential.

The principles and procedures applicable to the format and contents of the information to be provided by the Risk Center as well as the compilation and sharing of such information shall be set by the Bank upon the approval of the Banking Regulation and Supervision Board.”

G) The following sentence has been added to the first sub-paragraph of paragraph (A) of Article 14 of the Passport Law No. 5682 of 15/07/1950:

“The condition for association with the Pension Fund of the Republic of Turkey and the deduction of pension deductions at these degrees shall not be applicable for the members of the Banking Regulation and Supervision Board and the Savings Deposit Insurance Fund Board.”

H) The seventh paragraph of Article 3 of the Law No. 4743 dated 30/01/2002 has been repealed.

I) The repealed Article 24 of the Municipalities Bank Law No. 4759 dated 13.6.1945 has been amended to read as follows:

“**Article 24-** The requirement of loan loss provisioning shall not be applicable to the Bank as from 24.4.2003.”

J) The phrase “Banking Specialists, Legal Specialists and Informatics Specialists as well as their assistants working for the Banking Regulation and Supervision Agency” has been added to the end of the phrase “Sworn Bank Auditors and Assistant Auditors” in sub-paragraph (b) of Article 33 of the Allowances Law No. 6245 dated 10.2.1954.

K) Article 6 and the first and second paragraphs of Article 15 of the Law No. 6219 and dated 11.1.1954 regarding Türkiye

## **Article: 168, 169, Supplementary Article: 1**

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Vakıflar Bankası Türk Anonim Ortaklığı have been amended to read as follows:

**“Article 6-** Shares shall be categorized as (A), (B), (C) and (D) and shall be issued to name.

The Board of Directors of the Bank shall consist of a total of 9 members including the General Manager. The Bank’s articles of association shall indicate the number of members to be held by each group in the Board of Directors.

One of the members of group (A) shall be selected by Prime Minister to represent the General Directorate for Foundations, and the other members of group (A) and the members of groups (B), (C) and (D) shall be selected by the general assembly.”

### **References to repealed laws**

**Article 169-** All references made to repealed Law No. 3182 and the Law No. 4389 repealed by this Law shall be deemed to have been made to the relevant articles of this Law.

All references made to the special finance institutions in other laws and in the repealed Law No. 3182 and the Law No. 4389 repealed by this Law shall be deemed to have been made to participation banks.

### **Risk Center**

**Supplementary Article 1<sup>60</sup>-** A Risk Center is hereby established within the Banks Association of Turkey for the purpose of collecting the risk data and information of clients of credit institutions and other financial institutions to be deemed eligible by the Board and ensuring that such information is shared with such institutions or with the relevant persons or entities them-

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<sup>60</sup> *Added by the Law No. 6111.*

selves or with real persons and<sup>61</sup> private law legal entities if approved or consented so.

Credit institutions and other financial institutions to be deemed eligible by the Board are under obligation to be a member of the Risk Center. Member institutions are liable to give and disclose all kinds of data and information relating to their clients if and when demanded so by the Risk Center. The Risk Center will be authorized to suspend the flow of information to any member who fails to abide by such obligation.

The Risk Center will be managed by a management committee of nine members, including also one member to be appointed by each of the Agency and the Central Bank from among their own staff members. Members of the management committee of the Risk Center will take office for a term of three years.

In accordance with the initial basic objectives of the Risk Center, the management committee of the Risk Center is authorized to request information from private law legal entities and public administrations and entities and professional associations or organizations classified as a public entity and their supreme institutions and to enter into contracts for exchange of information with such entities or organizations with a prior consent or approval of the Board. All and any private law legal entities and public administrations and entities and professional associations or organizations classified as a public entity and their supreme institutions are under obligation to disclose or provide all information demanded by the management committee of the Risk Center. Subject to prior consent of clients of credit institutions and other financial institutions to be deemed eligible by the Board, the risk data and information belonging to clients and held in possession of such institutions, which may at any time be disclosed or oth-

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<sup>61</sup> *As amended by the Law No. 6456.*

## Supplementary Article: 1

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erwise given to private law legal entities and public administrations and entities and professional associations or organizations classified as a public entity and their top level institutions which have entered into a contract of exchange of information with the Risk Center shall be considered under the forth paragraph of Article 73 of the Law.

The procedures and principles pertaining to establishment, operations and modus operandi of the Risk Center, and composition of management of the Risk Center, and meeting or decision making processes of management committee, and scope, format and contents of information disclosed to the Risk Center, and their sharing and the scope and content of information to be shared, and pricing thereof, and determination of subscriptions payable by the members shall be determined by the Banks Association of Turkey and published in the Official Gazette in due consultation with the Participation Banks Association of Turkey and other professional associations of financial institutions deemed eligible by the Board and with prior consent of the Board and the Central Bank.

Subscriptions and commissions not paid by the members in due time shall be collected by the Banks Association of Turkey through legal proceedings.

The Agency shall, if deemed necessary, audit the Risk Center, and the procedures and principles of audit shall also be determined by the Agency.

The Risk Center is under obligation to provide all of the collected information to the Agency and the Central Bank in the requested format and within the determined time. Provided, however, that if and when real or legal persons or entities make or file a written demand for disclosure of risk information to them or

it is proven that they have shown consent to disclosure of such information to a real person or private law legal entity<sup>62</sup> other than credit institutions and other financial institutions to be deemed eligible by the Board, then and in this case, such information will be provided in return for a particular fee to be paid by the demanding person or entity.

All kinds of transactions and records of the Risk Center are confidential. Risk information are disclosed to any person designated by the owner of relevant confidential information only in case of explicit consent of the owner for disclosure of risk information. The procedures and principles pertaining to disclosure of risk information in reliance upon prior consent of the owner thereof shall be determined by the Banks Association of Turkey and published in the Official Gazette in due consultation with the Participation Banks Association of Turkey and other associations or organizations to be designated by the Board and with prior consent of the Board and the Central Bank.

The provisions of Article 159 hereof shall be applicable on any person who discloses any confidential information in the possession of the Risk Center to any persons or entities other than the authorities expressly authorized by laws, or disseminates, discloses, transfers, acquires and uses this information unlawfully in his own favor or in favor of others. Should any one of the crimes described in this paragraph be committed as a part or as a requirement of operations of a legal entity, the relevant legal entity shall be subject to certain security precautions for legal entities as referred to in the Turkish Penal Code.

The Risk Center may further handle the exchange of all kinds of information through companies to be founded by at least five banks pursuant to forth paragraph of Article 73 and within the framework of contracts to be signed with such companies.”

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<sup>62</sup> *As amended by the Law No. 6456.*

## **Provisional Article: 1, 2, 3**

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**Provisional Article 1-** Any legislation, which has been put into force, based on repealed provisions and the provisions shall remain in force and effect until decrees, regulations and communiqués to be put into effect in accordance with this Law take effect, that are not in conflict herewith.

The regulations set forth in this Law shall be put in force within one year.

**Provisional Article 2-** The provision of Provisional Article 2/a of the Law No. 4672 dated 12.5.2001 shall be reserved.

**Provisional Article 3-** All banks that have received operating permission from the Agency as of the effective date of this Law shall carry on with their activities in the areas they were legally operating pursuant to other laws before the effective date of this Law. Within two months following the effective date of this Law, banks shall submit to the Agency a letter of declaration indicating the fields they have been operating in. Agency permission shall be required for banks to extend their areas of activity under Article 4 of this Law.

Banks and financial holding companies are obliged to harmonize themselves with the provisions of this Law within one year.

Special finance institutions currently in operation shall change their commercial titles including “participation bank” within one year and shall conform their existing positions with the provisions of the Law pertaining to financial reporting. The Association of Special Finance Institutions shall mean The Participation Banks Association of Turkey and shall be subject to the provisions of this Law. The association shall conform its position to the provisions of this Law within three months.

**Provisional Article 4-** Independent audit institutions authorized by the Agency shall harmonize their positions with the provisions of Article 36 by 31/12/2006.

**Provisional Article 5-** The ratio of twenty-five percent indicated in paragraph one of Article 54 of this Law, for the loans to be extended to a certain risk group, shall be implemented as thirty-five percent until 31.12.2005 and as twenty-five percent from 1/1/2006 ; while the ratio of twenty percent in the same paragraph shall be implemented as thirty-five percent until 31.12.2005, as twenty-five percent between 1/1/2006 and 31/12/2006, and as twenty percent from 1/1/2007.

In the calculations to be made for the loan limitations indicated in Article 54 of this Law; partnership shares shall be taken into account as forty percent in 2005, fifty percent in 2006, sixty percent in 2007, seventy five percent in 2008, ninety percent in 2009 and a hundred percent as from 1/1/2010.

**Provisional Article 6-** The credit institutions whose rate of shares in undertakings are below the rates provided in the first paragraph of Article 56 shall under no condition exceed the rates indicated in this Article. The institutions whose shares in undertakings exceed any of the rates provided in the Law as of the effective date of the Law shall eliminate such excesses by redeeming twenty percent of such excess by 31/12/2005, forty percent by 31/12/2006, sixty percent by 31/12/2007, eighty percent by 31/12/2008 and a hundred percent by 31/12/2009.

**Provisional Article 7-** The banks which have funds and foundations under Provisional Article 20 of the Social Security Law No. 506 shall conform their positions to the provisions of Article 58 by 31/12/2007.

## **Provisional Article: 8, 9**

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**Provisional Article 8-** The Agency assistant lawyer specialists (Agency assistant specialists) who have been recruited upon passing an competitive examination before the publication of this Law shall be appointed as banking assistant specialists. The lawyer Agency specialists who have been recruited upon passing the proficiency exam of the Agency shall be appointed as banking specialists. Their length of service for the Agency shall be deemed as service as assistant banking specialists and banking specialists.

The personnel working for the Banking Regulation and Supervision Agency as Agency specialists as of the publication date of this Law who had been recruited as specialists, inspectors and for similar positions having passed professional competition exams and proficiency exams and who have PhD degrees at minimum, shall be appointed as banking specialists. Their length of service in their previous institutions as specialists, inspectors or with similar titles and in the Banking Regulation and Supervision Agency shall be deemed service as banking specialist. The terms of office of the sworn bank auditors and their assistants who have been transferred from other institutions before the publication date of this Law, in their previous institutions, shall be deemed as terms of office at the Agency.

The Agency specialists and lawyers other than those mentioned in the first and second paragraphs of this article shall preserve their positions. No new appointments shall be made to such positions. Such persons shall benefit from the salary, financial, social and retirement rights of banking specialists as long as they remain in their positions.

**Provisional Article 9-** The employees of the Treasury Undersecretariat, who are in charge of implementation of the provisions of the Financial Leasing Law No. 3226 and the provisions of the

Decree in the Power of Law No. 90 on Lending Activities other than those pertaining to providing loans, on the effective date of this Law, shall be appointed to the Agency subject to their consent, provided that they request so by 1.1.2006. Any employee of the Treasury Undersecretariat, who are in charge of implementation of this Law on the effective date and currently assigned to overseas organizations of the foregoing institutions, or who are working for an international organization or attending a foreign university to receive a graduate degree or on leave without receiving a salary due to military service or otherwise, shall reserve his right to be transferred to the Agency provided that any such right shall be forfeited unless it has been exercised within due course.

Any personnel, meets the requirements except age and has a minimum 3-year length of service according to the principles and procedures to be set by the Board, to be transferred from the Treasury Undersecretariat shall be appointed as banking specialists and those with a length of service less than 3 years shall be appointed banking specialist assistant. Their term of employment with their former employers shall be added to their length of service as a banking specialist and banking specialist assistant. The total period during which any person, who is deemed to have been transferred and has an obligation to work for a certain period of time for the Undersecretariat, has worked for the Agency, shall be taken into consideration in fulfillment of such obligation.

The position of any person, who is deemed to have been transferred from the Treasury Undersecretariat to the Agency pursuant to provision of first paragraph of this Article shall be cancelled without further action and shall be deemed to have been

## **Provisional Article: 9, 10, 11**

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excluded from the part of the schedule, attached to the Decree No. 190, relating to the Treasury Undersecretariat.

Any Agency or Fund personnel who has been appointed to the Fund or Agency for temporary service shall be considered to have been appointed to appropriate positions in the Fund or Agency in case they are not returned to their original positions within three months following the publication date of this Law. Provisions of the second paragraph of Provisional Article 20 shall be applicable to differential salary to be paid to such personnel.

**Provisional Article 10-** With regard to the personnel working for the Fund as of the publication date of this Law, the staff to in charge of the primary and permanent duties and other services assigned to the Fund by the Law shall be appointed to the positions indicated in the annexed Tables (II) and (III), taking into consideration their educational status, periods of service and other matters to be specified by the Fund Board.

**Provisional Article 11-** Articles 14, 15, 15/a, 16, 17, 17/a and 18, Additional Articles 1, 2, 3 4, 5 and 6 and Provisional Article 4 of the Law No. 4389, which is repealed by this Law, shall remain to be applicable until the collection of Fund receivables and the finalization of procedures initiated against banks whose shareholder rights, excluding dividends, as well as management and control have been transferred to the Fund and/or whose permission for performing banking transactions and accepting deposits have been revoked by the relevant Minister, Council of Minister or the Board and whose liquidation have been executed or initiated by the Fund, before the publication of this Law until 26/12/2003.

With respect to the persons who are obligated to declare wealth pursuant to the Law No. 4389, which is repealed by this Law, any of their movable or immovable properties, rights, re-

ceivables, incomes and expenses which they have not declared or have declared non-factually shall be subject to the provisions of unfair acquisition of property. This provision shall not be applicable to those persons who have proven that such properties have not been unfairly acquired.

Paragraphs 5 and 6 of Article 14 of the Banks Law No. 4389, which is repealed by this Law, shall continue to apply for the banks that have, been subjected to Articles 64 and 65 of the Banks Law No. 3182 repealed prior to the publication of this Law, and Article 14 of the Banks Law No. 4389, which is repealed by this Law, and for the banks that have been subjected to liquidation or for which liquidation procedures have been initiated.

**Provisional Article 12-** The provisions of Article 2(a6) of the Law No 4208 dated 13/11/1996 shall be applicable (i) to banks whose operating permissions have been revoked or that have been transferred to the Fund pursuant to paragraphs nine, ten, eleven, twelve and thirteen of Article 134 of this Law, Articles 136, 137 of this Law, second paragraph of Article 138 of this Law, the second paragraph of Provisional Article 10 of this Law and the sub-paragraph (e) of the first paragraph of Article 71 of this Law; and (ii) to banks whose shareholder rights, excluding dividends, as well as management and control have been transferred to the Fund and/or whose permission for performing banking transactions and accepting deposits have been revoked by the relevant Minister, Council of Ministers or the Board and whose liquidation have been executed or initiated by the Fund before 26/12/2003.

**Provisional Article 13-** The provisions of Articles 123, 134, 136, 137, 138, 140, 142 and 165 of this Law regarding the receivables of Fund receivables, including the right not to require a certificate of insolvency in lawsuits of the cancellation of rights

## **Provisional Article: 13, 14**

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and the prohibition of the legal representatives and other officials of legal persons from leaving the country, shall be enforced by the banks where the public entities and organizations hold more than half of the capital or where such institutions hold the control of management and representation on majority of shares and banks founded by virtue of private laws, on all contractual rights arising out of the individual or back-to-back bank letters of guarantee, acceptance loans and avals/endorsements and contracts relating to real estate mortgages, chattel mortgages and other mortgages, rights of construction, rights of usufruct and rights of habitation and similar other rights in kind, of the borrowers who have borrowed loan facilities, secured in accordance with the banking practices and/or secured by inadequate guarantees, prior to 26/12/2003, from the banks where the public entities and organizations hold more than half of the capital or where such institutions hold the control of management and representation on majority of shares and banks founded by virtue of private laws (including Emlak Bankası A.Ş. in liquidation process), and whose debts arising out of such loans have not been paid on due dates thereof, or who are not granted any time extension, or whose debts are not restructured, or who have breached the restructuring conditions.

**Provisional Article 14-** The Public Prosecutors and judges dealing with the criminal and legal cases mentioned in sub-paragraphs (6), (7) and (8) of Article 2(a) of the Law No. 4208 dated 13/11/1996 and in Articles 15/a and 22(4) of the Law No. 4389 which is repealed by this Law shall execute these cases immediately, and shall not be appointed to any other place or position for the period of three years, as long as they have no excuse and requests excluding disciplinary causes. Those Public

Prosecutors and judges who complete their terms of office may be appointed again.

**Provisional Article 15-** The liquidation of banks that have been declared bankrupt before the publication of this Law shall be executed by bankruptcy offices pursuant to the provisions of this Law, with the reservation of the matured transactions and the table of orders prepared. For the purposes of the implementation of this article, bankruptcy offices shall bear the powers assigned to the Fund by Articles 106 and 140 of this Law.

**Provisional Article 16-** The provisions of this Law which are in favor of the Fund in terms of time limitation and other matters for the purposes of the collection of Fund receivables shall be retroactive.

**Provisional Article 17-** Excluding the Board Chairman and the Fund Board Chairman, one third of the members appointed as Board and Fund Board members for the first time shall be renewed every two years. The members whose membership expire through drawing lots at the end of the second year, may be appointed again only for one more term.

**Provisional Article 18-** Within one month following the effective date of this Law, the assets of the Assurance Fund established under the repealed Law No. 4389 shall be transferred to the Fund.

**Provisional Article 19-** The memorandum of understanding required to be signed between the Agency and the Fund pursuant to the last paragraph of Article 100 of this Law shall be signed within three months.

**Provisional Article 20-** The personnel of the Agency whose position titles do not change following the new arrangements introduced by this Law shall be deemed to have appointed to

## **Provisional Article: 20**

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their positions with the same title. If the total net value of the payments made to such personnel at the date of their appointment in their previous positions including their salaries (excluding over-time work payments), bonus payments and other similar payments is more than the total net value of payments made to such personnel in their new positions (excluding over-time work payments and performance-based rewards), the difference shall continue to be paid as compensation payment every month as long as they remain their position, without being subject to any tax or deduction. The difference compensation payments shall be ceased upon voluntary change of position title or voluntary transfer to other institutions.

The personnel whose position titles are changed or removed shall be appointed to a new appropriate position in the Agency within one year following the effective date of this Law. They may be assigned duty in the necessary units of the Agency until the completion of appointment procedures. Until their appointment, such personnel shall be receive the salaries (excluding over-time work payments), bonus payments and other similar payments applicable to their previous position titles. The provisions of the first paragraph shall be applicable to any difference in the salary and other financial and social rights of the appointed personnel.

The Board chairman and members in charge of the effectiveness date of this Law shall complete their terms of office. The provisions of the first paragraph shall be applicable to any difference to occur in the salaries and all other financial and social rights of the Board chairman and members because of the arrangements to be introduced by this Law, during their remaining terms of office.

The provisions set out above shall be applicable also to the Fund Board chairman and members as well as the personnel to be appointed to the positions in the annexed Table (II).

Former personnel of public institutions and enterprises and the Central Bank who have been working for the Agency or the Fund shall be appointed to an appropriate position in their original institutions if they so request within one year following the effectiveness date of this Law. In this case, their period of service at the Agency or the Fund shall be added to their period of service pursuant to the provisions of the law to which they are subject.

**Provisional Article 21.-** The periods of service, in the Agency or the Fund, of the Agency or Fund personnel who are subject to the Civil Servants Law No. 657 pursuant to this Law, shall be taken into account in the determination of their acquired right salary degrees and levels on the basis of the additional provisional articles 1, 2 and 3 of the Law No. 657 and the provisions of the Law No. 5289 dated 2.2.2005, on condition that the maximum degree they can be promoted to considering their educational status will not be exceeded.

The past periods of service of the personnel subject to the Law No. 5434, which cannot be taken into account in the acquired right salary degrees as such shall be taken into account in salaries taken as a basis for pension deductions.

No compensation shall be paid to such personnel pursuant to the labor legislation. The periods of service of such personnel which ensure entitlement for severance pays, excluding the periods for which severance pays have been paid earlier, shall be taken into account in the calculation of the retirement pays pursuant to the Law No. 5434 on the Pension Fund of the Republic of Turkey.

**Provisional Article 22-** Those members of the Board or Fund Board who have retired from the social security institutions other than the Pension Fund and have been appointed as Board or Fund Board members before the publication date of this Law and

## **Provisional Article: 22, 23, 24**

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who want to be affiliated with the Pension Fund, shall be affiliated with the Pension Fund as from the beginning of the month following the month in which they started service. The pension deductions and provisions for such period shall be paid to the Pension Fund on the basis of general provisions.

### **Provisional Article 23-<sup>63</sup>**

**Provisional Article 24<sup>64</sup>** - The portion, payable to the Fund as a result of the pro rata distribution to be effected pursuant to eighth paragraph of Article 134 of this Law, of the proceeds of sale of the assets and properties through forced execution proceedings pursuant to the provisions of this Law for recovery and collection of the debts owed to the Fund by the persons, entities and banks (also including those adjudged bankrupt) against whom legal proceedings are started by the Fund prior to the date of promulgation of this article because of a difference found between the amount of insurable deposits declared by the Bank to the official authorities and the amount of deposits calculated by the Fund, will be collected in a bank account for repayment of the outstanding debts owed by the said persons, entities and banks against whom legal proceedings are started by the Fund for the above cited reason, to the State and the social security organizations and covered by the Law No. 6183. The amount remaining after repayment of the outstanding debts owed by the said persons, entities and banks to the State and the social security organizations and covered by the Law 6183 will be set off from the outstanding debts owed to the Fund. The provisions of this article will be applicable also for the sales effected prior to the effective date of this Article.

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<sup>63</sup> *As repealed by the Law No. 5754.*

<sup>64</sup> *As added by the Law No. 5472.*

**Provisional Article 25<sup>65</sup>** - For the deliveries of properties being the subject of the sales which have been advertised and completed by the Fund prior to, but upon which the proceeds of sale have not yet been distributed to the creditors as of the effective date of this article, and the sales which will be advertised until 31.12.2006, the portion of proceeds of sale to be eligible for tax exemption pursuant to sub-paragraph (m) of paragraph (4) of article 17 of the Value Added Tax Law No. 3065 will be calculated and determined over the amount of debt required to be repaid to the Fund in accordance with the provisions of the Banking Law No. 5411 which were in force prior to the effective date of this article.

**Provisional Article 26<sup>66</sup>**- The provisions of Article 35 of the Law No. 6183 are not applicable against the Fund in the companies taken over by the Fund, and the provisions of repeated article 35 of the Law No. 6183 are not applicable against the Fund or Fund personnel in the companies to which the Fund or any Fund personnel is appointed as a trustee or receiver, or against the persons assigned and appointed by the Minister, the Board or the Fund Board in the banks and companies in the scope of this Law and the previous repealed banks laws.

As for the banks whose shareholding rights, except for dividends, and whose management and supervision are taken over by the Fund and/or whose banking operations and deposit collection license or certificate is withdrawn and removed by a decision of the related Minister, the Council of Ministers or the Board and who are in the process of liquidation by the Fund or through the Fund, until the already initiated liquidation processes are completed and all of the debts owed by them to the Fund are recov-

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<sup>65</sup> *As added by the Law No. 5472.*

<sup>66</sup> *As added by the Law No. 5766.*

## Provisional Article: 26

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ered and collected, in the implementation of the provisions of article 35 and repeated article 35 of the Law No. 6183 about and on the ex-directors and ex-managers of the banks and companies whose management and supervision are taken over by the Fund, out of the persons who are authorized to represent such bank or company pursuant to the relevant laws and regulations or by the articles of association thereof or out of the persons who are authorized to represent the bank or company by a decision of the authorized bodies of that legal entity, or out of the persons who manage and direct such unincorporated enterprise, those who hold the legal representative status shall be deemed as its legal representative:

a) for the period from the date the bank funds are used / made available to the date the debt is settled and terminated, in the case of debts owed to the Fund by the Fund banks, or by their subsidiaries which are under management and supervision of them, or by the legal entities which are their controlling partner or shareholder, or by the companies whose controlling partner is the controlling partner natural persons or legal entities of the Fund banks, or by the persons or companies who act for and on behalf of them or who acquire money, rights, interests and properties in the name of them; or

b) for the period from the date the loan facility is made available to the date the debt is settled and terminated, in the case of debts owed to the Fund in respect of corporate credits and loans of the Fund banks; or

c) for the period from the date the debt owed to the Fund is notified to the relevant entity to the date the debt is settled and terminated, in the case of debts owed to the Fund in respect of the Fund income and revenues.”

**Provisional Article 27<sup>67</sup>**- If and to the extent the real properties which have passed to the ownership of the Fund or are sold by the Fund and registered in the name of the buyer in accordance with the pertinent provisions of this Law and the previous repealed banks laws are occupied by the debtor or by third parties, then an eviction order is notified to these persons requesting them to evict the real property within fifteen (15) days. If the real property is not evicted by the end of this period of notice, then, with the help of the security forces if and to the extent required, the debtor or third persons are evicted from the real property, and thus the real property is evacuated by the Fund. The costs of eviction or evacuation will be borne and paid by the new owner of the real property.

In the case of sales which are carried out or have been carried out by the Fund in accordance with the provisions of this Law and the previous repealed banking laws, the provisions of first paragraph of this article shall be applied also if and when the eviction obligation is not fulfilled within the period of time stated in the sales specifications or its exhibits. In this case, the period of 15 days starts as of the end of the period of time stated in the sales specifications or its exhibits with regard to eviction of the real property. The Fund, however, reserves its rights of claim against the buyer due to and on the ground of breach of obligations.”

**Provisional Article 28<sup>68</sup>**: The working procedures and principles of the Risk Center shall be determined by the Banks Association of Turkey at the latest within one year following the date of publishing of this article with specific reference to the procedures described in fifth and ninth paragraphs of Supplementary Article 1.

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<sup>67</sup> As added by the Law No. 5766.

<sup>68</sup> As added by the Law No. 6111.

## **Provisional Article: 28, 29, 30**

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Until a Risk Center duly established by this Law becomes operational, the existing Risk Center within the Central Bank will continue its operations pursuant to the provisions of repealed Article 44 of the Law on Turkish Central Bank No. 1211 dated 14/01/1970.

Thereupon, information in the possession of the Risk Center of the Central Bank shall be transferred to the Risk Center established pursuant to this Law.

**Provisional Article 29<sup>69</sup>:** Until the process for moving the headquarters of the Agency to Istanbul is completed, the Agency's headquarters shall remain in Ankara. The moving of headquarters shall be completed within two years. The Council of Ministers is authorized to extend this period of time.

**"Provisional Article 30<sup>70</sup>:** Memberships of the Board and the Fund Board Chairmen and members in office as of effective date of this Article will continue until the end of their term of office.

The tenure of the members of the Board and the Fund Board appointed to fulfill the remaining in membership periods and of those whose appointment to membership terminated through draw as a result of the regulatory framework shall be void as the term in office with regard to the implementation of the Articles 85 and 114.

Amendments made by this Law to the Articles 126 and 103 are applicable to the Board chairman and members, and to Fund Board Chairman and members whose term in office end before entry into force of the law. However, those Board chairman and members and the Fund Board chairman and members paid for a

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<sup>69</sup> *As added by the Law No. 6111.*

<sup>70</sup> *As added by the Law No. 6300.*

year in accordance with the provisions effective prior to entry into force of the changes cannot benefit from this practice.

**Provisional Article 31<sup>71</sup>:** With respect to implementation of the banking laws and regulations, in the case of a mutual amicable settlement reached upon an application filed to the European Court of Human Rights or under a verdict of the European Court of Human Rights, upon receipt by the relevant Public Prosecutor's Office or the relevant competent court of a statement of the relevant public authority relating to withdrawal of complaint or written application or to quitting from intervention, in the pending investigation or prosecution pertaining to the acts within the scope of amicable settlement, either a decision of non-prosecution or a decision of dismissal is taken about suspects or defendants.

This provision of the preceding paragraph is applicable to the pending investigations or prosecutions as of effective date of this article.

## **Effectiveness**

**Article 170-** Articles 90 and 91 of this Law shall take effect within two months following the publication date of this Law; paragraphs (B), (C), (D) and (E) of Article 168 of this Law shall take effect on 1.1.2006; and the other articles shall take effect as of the publication date of this Law.

## **Enforcement**

**Article 171-** The provisions of this Law shall be enforced by the Council of Ministers.

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<sup>71</sup> *As added by the Law No. 6487.*



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**TABLE (I)**  
**BANKING REGULATION AND**  
**SUPERVISION AGENCY**

<u>Category</u>	<u>Title</u>	<u>Maturity</u> <u>Degree</u>	<u>Number</u>
GAS	Vice Chairman	1	3
GAS	Chairman's Advisor	1	5
GAS	Department Head	1	10
GAS	Senior Certified Banks Chief		
	Auditor	1	30
GAS	Senior Banking Chief Specialist	1	20
GAS	Sworn Bank Chief Auditor	1	9
GAS	Banking Chief Specialist	1	4
GAS	Chief Specialist	1	8
GAS	Agency Specialist	1	4
GAS	Director	1	2
LS	Lawyer	1	1
HS	Doctor	1	1
GAS	Specialist	1	5
GAS	Chief	1	3
GAS	Lawsuit Proceedings Official	1	1
GAS	Secretary	1	1
GAS	Sworn Bank Chief Auditor	2	8
GAS	Chief Banking Specialist	2	4
GAS	Chief Specialist	2	4
GAS	Agency Specialist	2	8
GAS	Director	2	2
GAS	Specialist	2	2
GAS	Defense Specialist	2	1
GAS	Chief	2	2
GAS	Civil Servant	2	2
GAS	Secretary	2	1
GAS	Driver	2	2

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<u>Category</u>	<u>Title</u>	<u>Maturity</u>	
		<u>Degree</u>	<u>Number</u>
GAS	Sworn Bank Chief Auditor	3	13
GAS	Chief Banking Specialist	3	12
GAS	Sworn Bank Auditor	3	20
GAS	Banking Specialist	3	10
GAS	Chief Specialist	3	4
GAS	Agency Specialist	3	4
GAS	Specialist	3	5
GAS	Chief	3	1
GAS	Civil Servant	3	2
GAS	Secretary	3	3
GAS	Sworn Bank Auditor	4	30
GAS	Banking Specialist	4	10
GAS	Agency Specialist	4	7
GAS	Lawyer (Agency Specialist)	4	1
LS	Lawyer	4	1
TS	Engineer	4	1
GAS	Specialist	4	3
GAS	Chief	4	3
GAS	Civil Servant	4	7
GAS	Secretary	4	2
GAS	Driver	4	4
AS	Janitor	4	1
GAS	Sworn Bank Auditor	5	30
GAS	Banking Specialist	5	15
GAS	Assistant Banking Specialist	5	2
GAS	Agency Specialist	5	4
GAS	Specialist	5	5
GAS	Chief	5	1
GAS	Phone Operator	5	1
GAS	Civil Servant	5	1
GAS	Secretary	5	1
GAS	Driver	5	4
AS	Courier	5	1
GAS	Sworn Bank Auditor	6	45

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<u>Category</u>	<u>Title</u>	<u>Maturity</u>	
		<u>Degree</u>	<u>Number</u>
GAS	Banking Specialist	6	40
GAS	Legal Specialist	6	10
GAS	Informatics Specialist	6	15
GAS	Assistant Banking Specialist	6	5
GAS	Agency Specialist	6	4
LS	Lawyer	6	1
TS	Architect	6	1
GAS	Translator-Interpreter	6	2
GAS	Chief	6	3
GAS	Librarian	6	1
GAS	Secretary	6	2
TS	Technician	6	2
GAS	Driver	6	2
AS	Courier	6	1
GAS	Sworn Bank Auditor	7	45
GAS	Banking Specialist	7	30
GAS	Legal Specialist	7	10
GAS	Informatics Specialist	7	15
GAS	Assistant Sworn Bank Auditor	7	10
GAS	Assistant Banking Specialist	7	5
GAS	Agency Specialist	7	1
LS	Lawyer	7	1
GAS	Translator-Interpreter	7	4
HS	Doctor	7	1
GAS	Chief	7	2
GAS	Librarian	7	1
GAS	Civil Servant	7	1
GAS	Secretary	7	10
TS	Technician	7	2
GAS	Driver	7	3
GAS	Assistant Sworn Bank Auditor	8	30
GAS	Assistant Banking Specialist	8	23
TS	Engineer	8	4
GAS	Civil Servant	8	3

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<u>Category</u>	<u>Title</u>	<b>Maturity</b>	
		<u>Degree</u>	<u>Number</u>
GAS	Secretary	8	9
TS	Technician	8	3
GAS	Driver	8	1
GAS	Assistant Sworn Bank Auditor	9	45
GAS	Assistant Banking Specialist	9	20
GAS	Assistant Legal Specialist	9	15
GAS	Assistant Informatics Specialist	9	30
LS	Lawyer	9	3
GAS	Translator-Interpreter	9	4
GAS	Lawsuit Proceedings Official	9	2
GAS	Civil Servant	9	5
GAS	Driver	9	2
GAS	Phone Operator	10	1
HS	Nurse	10	1
GAS	Driver	10	1
GAS	Security Staff	10	1
TS	Technician	12	3
HS	Nurse	12	1
AS	Courier	12	2
GAS	Security Staff	12	4
GAS	Phone Operator	13	2
GAS	Civil Servant	13	2
AS	Courier	13	3
AS	Janitor	13	4
GAS	Vice Chairman <sup>[1]</sup>	1	2
GAS	Director <sup>[1]</sup>	1	4
GAS	Agency Assistant Specialist <sup>[1]</sup>	9	10
<b>GRAND TOTAL</b>			<b>867</b>

GAS: General Administrative Services, LS: Legal Services, HS: Health Services, TS: Technical Services, AS: Ancillary Services

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<sup>[1]</sup> As added by the Law No. 6493.

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**TABLE (II)**  
**SAVINGS DEPOSIT INSURANCE FUND**

<u>Category</u>	<u>Title</u>	<u>Maturity</u>	
		<u>Degree</u>	<u>Number</u>
GAS	Vice Chairman	1	2
GAS	Department Head	1	10
GAS	Chairman's Advisor	1	5
GAS	Director	1	2
GAS	Director	3	1
GAS	Director	4	1
GAS	Auditor	1	2
GAS	Auditor	2	2
GAS	Auditor	3	1
GAS	Auditor	4	1
GAS	Auditor	5	1
GAS	Auditor	6	3
GAS	Auditor	7	5
GAS	Assistant Auditor	7	1
GAS	Assistant Auditor	8	4
GAS	Assistant Auditor	9	5
LS	Lawyer	1	3
LS	Lawyer	2	2
LS	Lawyer	3	3
LS	Lawyer	4	5
LS	Lawyer	5	17
LS	Lawyer	6	14
LS	Lawyer	7	30
LS	Lawyer	8	32
LS	Lawyer	9	24
GAS	Specialist	1	15
GAS	Specialist	2	15
GAS	Specialist	3	16
GAS	Specialist	4	30
GAS	Specialist	5	30

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<u>Category</u>	<u>Title</u>	<u>Maturity</u>	
		<u>Degree</u>	<u>Number</u>
GAS	Specialist	6	40
GAS	Specialist	7	40
GAS	Assistant Specialist	8	40
GAS	Assistant Specialist	9	13
<b>TOTAL</b>			<b>415</b>

**TABLE (III)**  
**SAVINGS DEPOSIT INSURANCE FUND**

<u>Position Title</u>	<u>Number</u>
Administrative Staff	120
Support Staff	35
<b>TOTAL</b>	<b>415</b>



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