

By the Banking Regulation and Supervision Agency:

REGULATION ON OWN FUNDS OF BANKS

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SECTION ONE

Objective and Scope and Basis and Definitions

Objective and Scope

ARTICLE 1 – (1) The objective of this Regulation is to regulate the procedures and principles related to calculation of the sums of own funds and consolidated own funds to be considered in respect of limits to be observed pursuant to the Banking Law Nr. 5411 dated 19/10/2005 and in calculation of the standard rates concerning own funds.

Basis

ARTICLE 2 – (1) This regulation has been prepared on the basis of Articles 44 and 93 of the Banking Law Nr 5411 dated 19/10/2005.

Definitions

ARTICLE 3 – (1) The following terms used in this Regulation shall have meanings designated to them below:

- a) Banks: Banks which are defined by Article 3 of the Law
- b) Borrowing instruments: Capital market instruments other than the shares covered by Law on the Capital Market Nr 2499 dated 28/7/1981
- c) Financial organization(s): Financial organization(s) which are defined by Article 3 of the Law
- ç) Law: the Banking Law Nr. 5411
- d) Board: Banking Regulation and Supervision Board
- e) Agency: Banking Regulation and Supervision Agency
- f) Qualified shares: Qualified shares which are defined by Article 3 of the Law

SECTION TWO

Elements of own funds

Principal capital

ARTICLE 4 – (1) The following items are taken into account in calculation of principal capital.

- a) **(Amended: OG-10.03.2011-27870)** Paid up capital which comes the last of all other receivables considering the claims in the case of liquidation of bank and inflation based correction difference thereof
- b) Share issue premiums
- c) Share cancellation profits
- ç) Legal reserves and inflation based correction difference thereof
- d) Net period profit and previous years' profit
- e) Portion of unattached reserves allocated for potential risks, which is up to twenty five per cent of principal capital
- f) Participation and subsidiaries shares and real estate incomes to be added to capital
- g) **(Amended: OG-10.03.2011-27870)** Primary subordinated debts on condition not to extend the limits stated in paragraph eight
- h) **(Amended: OG-10.03.2011-27870)** Developments costs for operating leasing
- ğ) The portion of the sum of net period loss and previous years' loss, which may not be met by legal reserves
- h) Particular cost expenses
- ı) **(Abolished: OG-10.03.2011-27870)**
- i) Non tangible fixed assets
- j) Portion of deferred tax assets, which is in excess of ten per cent of principal capital
- k) The portion in excess which is defined in Article 56(3) of the Law.

(2) Principal capital is calculated by subtracting from the sum of the items indicated by paragraphs (a), (b), (c), (ç), (d), (e), (f) and (g) of the first subparagraph the sum of the items covered by paragraphs (ğ), (h), (ı), (i), (j) and (k) thereof.

(3) Legal reserves are calculated by subtracting the sum of legal reserves allocated by banks as per Turkish Commercial Code Nr 6762 of 29/6/1956 and relevant laws as well as their articles of association the sum of net period loss and previous years' loss indicated by the balance sheets.

(4) Of the first subparagraph;

a) The sum of principal capital to be taken into account in calculation of the item concerning paragraph (e) refers to the value to be found as per the second subparagraph irrespective of the items covered by paragraphs (e), (g) and (j) of the same subparagraph

b) The sum of principal capital to be taken into account in calculation of the item concerning paragraph (b) refers to the value to be found as per the second subparagraph irrespective of the items covered by paragraphs (g) and (j) of the same subparagraph

c) The sum of principal capital to be taken into account in calculation of the item concerning paragraph (j) refers to the value to be found as per the second subparagraph irrespective of the item in question.

(5) In calculation of the paid up capital covered by paragraph (a) of the first subparagraph, the portion of the capital, which has been established as having been increased contrary to the legislation as per the third subparagraph of Article 12 of the Regulation on Banks' Transactions Subject to Permission and Direct Shareholding is not included in the sum of paid up capital. Any inflation based correction differences concerning the said portion of capital which has been established as having been increased contrary to the legislation are not also taken into consideration in calculation of the inflation based correction differences concerning the paid up capital.

6) **(Additional: OG-10.03.2011-27870)** In the case that the bank is a founder of securitization transaction, net profits which arise from capitalization of income to be obtained in the future from securitized assets and which ensures the improvement of loan quality of securitization positions are excluded from the scope of the item stipulated in paragraph (1d).

7) **(Additional: OG-10.03.2011-27870)** Items subject to any limitation in the prompt meeting of risks or losses occur are not taken within the scope of items stipulated in paragraph 1(a) to (g).

8) **(Additional: OG-10.03.2011-27870)** Primary subordinated debt amount is subject to the following limitations:

- a) In the case that early retirement option is not used, primary subordinated debt amount which foresees interest or dividend increase for latter periods can not exceed fifteen percent of principal capital.
- b) In the case that early retirement option is not used, primary subordinated debt amount which does not foresee interest or dividend increase for latter periods and which is not convertible to stock within the scope of sub-paragraph (c) as well as total amount of primary subordinated debts subject to sub-paragraph (a) can not exceed thirty-five percent of principal capital.
- c) In the case that own funds are inadequate according to the regulations on capital adequacy or liquidity is inadequate according to regulations on liquidity adequacy, primary subordinated debts which must be converted to stock or which gives initiative to the Agency to convert into stock without any limitations as well as total amount of primary subordinated debts subject to sub-paragraphs (a) and (b) can not exceed fifty percent of principal capital.

9) **(Additional: OG-10.03.2011-27870)** In the calculation of exceeding amount determined in sub-paragraph (k) of the first paragraph, exceeding amount calculated over the own funds amount stipulated in Article 11(2) is taken into consideration.

Tier-II capital

ARTICLE 5 – (1) Tier-II capital comprises of the sum of:

- a) General reserves
- b) Securities re-valuation value increases
- c) Real estate re-valuation value increases
- ç) (**Amended: OG-10.03.2011-27870**) Shares acquired free of charge from subsidiaries, affiliates and jointly controlled partnerships and cannot be accounted within profit of period,
- d) Portion of debts similar to primary capital, which is not taken into account in calculation of principal capital
- e) Debts similar to secondary capital
- f) Value increases concerning disposable securities and participations and subsidiaries
- g) inflation based correction differences of capital reserves, profit reserves and previous years' profit and loss excluding the inflation based correction difference concerning legal reserves.

(2) (**Amended: OG-10.03.2011-27870**) The portion of tier-II that exceeds one hundred per cent of tier-I is not taken into consideration in own funds account. The portion of total subordinated debts and primary subordinated debts that is subject of paragraph (1d) that exceeds fifty per cent of tier-I and the portion of general reserves that exceeds one hundred twenty five per thousand of total of sum as a basis for credit risk, market risk and operational risk are not taken into consideration in calculation of tier-II capital.

(3) For the purpose of implementation of paragraph (a) of the first subparagraph in respect of the participation banks, the sums of general reserves reflected by these banks in their expense accounts are taken into consideration.

(4) In calculation of Tier-II capital, the items in paragraphs (b), (c) and (f) are taken into consideration at a rate of forty five per cent. In the case that the item in subparagraph (f)

of the first paragraph have a debit balance, the whole of the said balance is included in the Tier-II capital calculation together with its negative value.

(5) **(Additional: OG-10.03.2011-27870)** Limits specified in paragraph two by one hundred per cent and fifty per cent may not be applied temporarily in extraordinary conditions upon the permission of the Agency.

(6) **(Additional: OG-10.03.2011-27870)** Items that are subject to any limitations in meeting the risks or losses that arise immediately are not included in items specified in subparagraphs (b), (c) and (f) of paragraph one.

Tier-III capital

ARTICLE 6 – (Abolished: OG-10.03.2011-27870)

Debts similar to primary capital

ARTICLE 7 – (1) Borrowing instruments issued by banks and registered with the Capital Market Board may be taken into consideration as debts similar to primary capital for the purpose of implementation of this Regulation in case an application to be made with a written declaration by the board of directors of the bank that they meet the conditions listed below is found adequate by the Agency.

- a) They are at call
- b) Payment has been collected in cash entirely
- c) They give a receivable right to holders for recovery after debts similar to secondary capital in case of liquidation of the bank
- ç) They are not covered by any actions which would give holders a priority in respect of the order of power in paragraph (c) in respect of guarantees, securities or any other means
- d) The banks has the authority relating to the amount, time and cancellation of related term dividends and interest payments and in the case the said power is used, the difference between the payment amount paid including the amount determined in the

contract and the non-paying situation is not paid in subsequent periods, provided that there is a resolution in place that no dividends would be distributed to the shareholders in the relevant period and that this would not be in question for the subsequent periods as well

e) The banks holds powers to determine any sums of dividends or interest to be distributed or paid including timing of such payments

f) Calculation method already established in terms of dividend or interest rates or dates of their issues may not be changed and dividend and interest payments are met by the items under which dividend distribution may be carried out

g) Investor has no redemption right and early redemption by the bank is subject to approval by the Board.

ğ) Qualifications and nature are made public in a clear and understandable manner in respect of rights, interests and obligations

h) They are purchased by persons other than the bank's affiliates or subsidiaries

i) **(Amended: OG-10.03.2011-27870)** That does not include more than one early retirement option,

i) **(Additional: OG-10.03.2011-27870)** That prescribes interest and default payments to be cancelled in case the bank has not sufficient own funds to meet its risks and depending also on the condition set forth in sub-paragraph (d).

(2) As part of applications to be made to the Agency under the first subparagraph, the letter of registration of such borrowing instruments with the Capital Market Board and the text of the borrowing instrument are also submitted to the Agency.

(3) Borrowing instruments for which dividend or interest increase is envisaged for subsequent periods in case they grant the bank an early redemption option and the early redemption option is not exercised by the bank are considered at call for the purpose of implementation of this Regulation in case they meet one of the following conditions:

(a) Dividend or interest increase takes place from the tenth year following the date of issue

(b) Dividend or interest increase is only once

(c) The increase in dividend or interest rate is not higher than one per cent or not in excess of fifty per cent of the initially implemented credit spread

Borrowing instruments which are not considered debts similar to primary capital just because they do not meet the conditions under first subparagraph are considered debts similar to primary capital for the subsequent period following the date of eligibility for exercise of the option in case the option is not exercised.

(4) It is obligatory to obtain permission from the Agency for redemption of the borrowing instruments, the qualifications of which are indicated by the first subparagraph. The following conditions are sought for permission to be granted by the Agency:

a) At least five years have elapsed as of the date of the issue of a borrowing instrument

b) It is established that the bank has adequate own funds to meet its risks or a similar element of capital is provided to compensate for any losses that may occur in own funds

c) The bank shall have adequate liquidity to meet its liabilities with its assets or to ensure resource to compensate the loss to occur in liquidity.

(5) For the purpose of implementation of the first subparagraph, payment of cancelled dividends or interest in the subsequent periods by giving bonus shares is not considered payment of cancelled dividends or interest payments in the subsequent periods.

(6) Of the borrowing instruments issued by banks and financial institutions abroad and purchased by banks, the ones followed up in the accounts equivalent to debts similar to primary capital by the one who issued the borrowing instrument pursuant to the related country legislation, are taken into consideration as debt similar to primary capital granted regardless of whether or not they have the quality stipulated in this article.

Debts similar to secondary capital

ARTICLE 8 – (1) In case it is considered appropriate upon an application to be made along with a written declaration by the bank Executive Board that they meet the following qualifications, credits to be secured by banks from any parties other than their subsidiaries and participations or borrowing instruments to be issued by them to any parties other than these, which are to be taken under registration by the Capital Market Board are considered debts similar to secondary capital for the purpose of implementation of this Regulation.

a) They have an initial term of minimum five years and they do not have options for principal payment within the initial five years or repayment earlier than their terms

b) They do not contain any multiple payment options earlier than their terms and dates on which options may be exercised in case of any repayment options are expressly and clearly stipulated

c) Lenders or investors agree that payment is effected immediately before shares and debts similar to primary capital after all the other debts in case of liquidation of the bank

ç) They are drawn all at once / in a lump sum in respect of credits and payment thereof has not been received in cash totally in respect of borrowing instruments

d) It is declared in writing that such is not linked to any derivative transactions or contracts of such a nature that would lead to violation of the condition under paragraph (c) that such is not directly or indirectly made the subject of any guarantees in any manner and means and that they may not be assigned to the affiliates and subsidiaries of the bank.

e) (Abolished subparagraph: OG-29/09/2007- 26658).

f) Payment earlier than terms is subject to approval by the Agency.

(2) Any borrowing instruments which may not be considered debts similar to primary capital just because they do not meet the conditions under the third subparagraph of Article 7 are considered debts similar to secondary capital provided that the date of eligibility for exercise of the early redemption option is after the fifth year that follows

the date of issue. For the purpose of implementation of the eighth subparagraph, the date of eligibility for exercise of the option is taken as a basis for the term of such borrowing instruments considered debts similar to secondary capital.

(3) In applications to be made to the Agency under the first subparagraph, the following are sent as applicable:

a) Original or notarized copy of the credit contract or draft contract if the credit contract is not signed yet provided however that its original or notarized copy must be submitted within five business days from the date of signature

b) Letter of registration by the Capital Market Board and text of the borrowing instrument

(4) In case of any differences between the provisions of the draft contract and signed contract where the credit contract draft is submitted as part of an application made to the Agency pursuant to paragraph (a) of the third subparagraph, it is also obligatory to submit to the Board a written declaration by the bank's board of directors that such differences do not eliminate the qualification of the credit as being similar to capital. Unless otherwise commented by the Agency, any credits received are included in calculation of debts similar to secondary capital as credits similar to capital.

(5) In the event that the interest rates to be applied to debts similar to secondary capital are not clearly established by the credit contract or by the promissory note text of the credit or that the interest rate is excessively higher compared with similar credits or borrowing instruments, the Agency may not issue permission for inclusion of such credits or borrowing instruments in calculation of Tier-II capital.

(6) Debts similar to secondary capital, which are approved by the Agency, are included in accounts of Tier-II capital as of the date of transfer to the relevant accounts in the bank records.

(7) In issue of approval by the Board for repayment of debts similar to secondary capital earlier than their terms pursuant to paragraph (f) of the first subparagraph:

- a) it is sought as a condition that the bank holds an adequate level of own funds to meet its risks or that it provides a similar element of capital that would compensate for any losses which would occur in relation to own funds,
- b) The bank shall have adequate liquidity to meet its liabilities with its assets or to ensure resource to compensate the loss to occur in liquidity.

(8) Of the debts similar to secondary capital included in calculation of Tier-II capital, those with a remaining term of less than five years are transferred to the accounts of Tier-II capital by reducing them at a rate of twenty per cent per annum. Any debts similar to secondary capital with a remaining term of less than one year are not considered in calculation of Tier-II capital.

(9) For the purpose of implementation of the eighth subparagraph, the remaining term in respect of the debts similar to secondary capital which grant an option for payment earlier than the term and envisages an increase of interest in case this option is not exercised is determined by taking as a basis the date of respective term in case the interest increase to be made on the basis of the interest rate envisaged on the date of debt acquisition

- a) is not higher than one per cent or
- b) is not in excess of fifty per cent of the initially implemented credit spread

and taking as a basis the date for eligibility for exercise of the option in other cases. In case the option is not exercised with regard to debts similar to secondary capital for which terms are set by taking as a basis the date of eligibility for exercise of the option, debts to secondary capital continue being included in Tier-II capital by starting at the rates corresponding to the new remaining terms to be established according to terms from this date.

(10) In the event that, as regards debts similar to secondary capital containing an option for repayment earlier than terms, the repayment option is not exercised at the rate of interest envisaged to be applied to such debts and no index value is established for the interest rate to be applied, their values on the date of application made to the Agency are taken as a basis in calculation of the interest increase to be made as per the ninth

subparagraph so that such indexes may be included in the Tier-II capital account of debts similar to secondary capital. Premiums, expenses, compensation and additional obligations under similar titles, which are envisaged depending on the non exercise of the option, are included in the account of interest increase. Permission may be issued by the Agency for exercise of the option in debts similar to secondary capital, which grant a repayment option before terms and for which the remaining term is determined by taking as a basis the respective date of term, provided that it is established that the bank has adequate own funds to meet its risks or that a similar element of capital is provided to compensate for losses that would occur with regard to own funds.

(11) In case of permission by the Agency, any resources placed with the bank as a pledge, which are committed by the shareholders definitively in writing to be used for capital expansion by the bank, in exchange for which no interest accrual and payment is made in any manner and means whatsoever and it is agreed to be paid immediately before shares and after all the other debts in case of liquidation, which are not made the subject of any guarantees in any manner or means directly or indirectly and which are not linked to any derivative transactions and contracts, are included in calculation of debts similar to secondary capital.

(12) Of the loans granted by banks to banks and financial institutions abroad or of the borrowing instruments purchased which are issued by the said institutions, the ones followed up in the accounts equivalent to debts similar to secondary capital by the one who issued the borrowing instrument pursuant to the related country legislation, are taken into consideration as debt similar to secondary capital granted regardless of whether or not they have the quality stipulated in this article.

Allowance for debts similar to capital

ARTICLE 9 – (1) In the event that cash credits are extended by the bank to a person or persons holding ten per cent or more of borrowing instruments considered for the purpose of implementation of Article 7 and Article 8 excluding the eleventh subparagraph thereof

or extending Tier-2 capital or to those who are in the same risk groups with them or that borrowing instruments issued by them are bought, the sum of credit extended or the value of purchased borrowing instruments are deducted off the sum of debts similar to primary or secondary capital.

(2) There is a relationship of correspondence between the persons extending Tier-2 capital covered by the first subparagraph or buying borrowing instruments and the bank, the bigger of the balances of the said accounts is deducted from the sum of debts similar to primary or secondary capital in respect of the days, when capital adequacy standard rates are calculated, on the basis of the previous month average for solo calculation and previous quarter average for consolidated calculations with regard to the balances which will emerge due to this relationship.

Values deducted from capital

ARTICLE 10 – (1) The values deductible from capital comprise of:

- a) Shareholdings in those of banks and financial organizations (both local and foreign) in which ten per cent or more of capital is held, which are not consolidated
- b) Sum of shareholdings in the banks and financial organizations (both local and domestic) in which less than ten per cent of capital is held, which is in excess of ten per cent or more of the sum of the bank's principal capital and Tier-II capital
- c) Credits having the nature of debts similar to capital extended to banks and financial organizations (both local and foreign) or to qualified shareholders and borrowing instruments having the nature of debts similar to primary or secondary capital, which are purchased from them
- ç) Credits extended contrary to the provisions of Articles 50 and 51 of the Law
- d) Portion of the sum of the banks' real estate net book values, which is in excess of fifty per cent of their own funds and net book values of those of merchandise and real estate which have to be acquired due to their receivables and disposed of pursuant to Article 57 of the Law, which cannot be disposed of despite the lapse of a period of five years since the date of such acquisition

e) (**Amended: OG-10.03.2011-27870**) Securitization positions preferred to be decreased from own funds instead of putting into a thousand fifty per cent of risk weight according to the procedures and principles for calculating the capital adequacy ratio determined pursuant to the Article 45 of the Law,

f) (**Additional: OG-10.03.2011-27870**) Other accounts to be determined by the Board.

(2) Shareholdings of a temporary nature in any banks or financial organizations, which are acquired as part of public offer intermediation obligations and / or restructuring, are not considered under the first subparagraph.

SECTION THREE

Calculation of own funds and consolidated own funds and calculation periods

Own funds calculation and calculation period

ARTICLE 11 – (Amended: OG-10.03.2011-27870) (1) Own funds are calculated by subtracting the values deducted from the capital the sum of principal capital and supplementary capital of banks.

(2) In the calculation of own funds to be taken into consideration in the calculation of the accordance to the limits specified in the Articles 54 and 56 of the Law, the item cited in the Article 10 (1/e) of the Law is not taken into consideration.

(3) Own funds are calculated at the close of each month. The Agency is entitled to shorten the own funds calculation period even on the basis of banks.

Consolidated own funds calculation and calculation period

ARTICLE 12 – (1) Consolidated own funds are calculated by the banks having the nature of a parent shareholder and a requirement to maintain consolidated financial sheets on the basis of the financial sheets of subsidiaries subject to consolidation, which are consolidated within parent subsidiaries subject to the procedures and principles established by Article 11 according to the arrangements put into force pursuant to the Law provided that the considerations indicated by the second subparagraph hereof are reserved.

(2) (**Amended: OG-10.03.2011-27870**) In determination of own fund elements of consolidated partnerships, the principles and procedures concerning the bank own fund elements is taken into consideration and these elements are added to the consolidated own funds calculation within the frame of the principle of including the extra shares. To include the primary and secondary subordinated debts of partnerships residents abroad subject to consolidation to the calculation of own funds, it is obligatory that; in the country they are residents, the authorized institution responsible for the supervision and surveillance equivalent to the Agency is evaluating similarly the fact that principle capital or supplementary capital elements are taken into account in the calculation of own funds, bank board of management gives a written statement indicating that the fund provided carries the qualifications searched for in the article concerning the subordinated debts and that the examples approved by equivalent authority of legal documents specifying the qualifications of this fund as well as their translations translated to Turkish by sworn translators are kept by banks to be presented during the audits to be performed. In case it is decided that the fund provided does not carry the qualifications searched for in related articles concerning subordinated debts during the evaluation to be made by the Agency, these funds are not into consideration in the calculation of consolidated own funds. Technical provisions of insurance companies are not given place in the calculation of consolidated own funds. If as a result of consolidation operations, net negative consolidation goodwill is found, this amount is included to principal capital; if a positive goodwill is found, this amount is considered as an item of deduction from the capital. In

the calculation of consolidated own funds, the amount of positive consolidation goodwill which is an asset item and the negative consolidation goodwill are deducted and the remaining net amount is included to the related part. In the calculation of consolidated own funds, the partnership shares in banks and financial institutions left outside consolidation due to reasons specified in regulations entered into force pursuant to the Law and the partnership shares of banks and financial institutions consolidated using the own funds method are shown among the assets deducted from capital.

(3) Consolidated own funds are calculated on the basis of the periods for preparation of consolidated financial sheets. The Board is entitled to shorten the periods for preparation of consolidated own funds calculations even on the basis of individual banks.

SECTION FOUR

Provisional and Final Provisions

Adaptation

PROVISIONAL ARTICLE 1 – (1) The items covered by paragraphs (h), (i), (i) and (j) of the first subparagraph of Article 4 are considered the values deductible from capital subject to the first subparagraph of Article 10 without subjecting them to deduction as part of the second subparagraph of the said article until 1/1/2009.

Entry into force

ARTICLE 13 – (1) This Regulation enters into force as of the date of promulgation.

Enforcement

ARTICLE 14 – (1) The provisions of this Regulation are enforced by the Chairman of the Banking Regulation and Supervision Agency.