Republic of Turkey
BANKING REGULATION AND SUPERVISION AGENCY

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Subject: Regarding the Disclosure of Confidential Information.

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As is known, the Regulation on the Disclosure of Confidential Information (the Regulation) was published in the Official Gazette No. 31501 on 04/06/2021, and with the amendments published in the Official Gazette No. 31699 on 24/12/2021, it came into force as of 01/07/2022.

In order to eliminate any doubts that may arise in practice regarding the implementation of the said Regulation, it is hereby notified that the explanations attached, approved by the Board Decision No. 10295 dated 11/08/2022, within the framework of Articles 73(5) and 93 of the Banking Law No. 5411, should be taken into account in the application of the Regulation.

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Chairman

Annex: Explanations

ADDITIONAL EXPLANATIONS ON THE IMPLEMENTATION OF THE REGULATION ON THE DISCLOSURE OF CONFIDENTIAL INFORMATION

1. Explanations Regarding the Obligation to Maintain Confidentiality (Article 4)

1.1. Whether Data Pertaining to Bank Employees Should Be Considered as Confidential Bank Information:

Pursuant to Article 73, paragraph 3, of the Banking Law No. 5411 (the **"Law"**), data generated exclusively in relation to banking activities after establishing a client relationship with a bank are considered client secrets. Article 4, paragraphs 3 and 4, of the Regulation on the Disclosure of Confidential Information (the "**Regulation**"), published in the Official Gazette dated June 4, 2021, and numbered 31501, also stipulates that data belonging to natural or legal persons generated exclusively in connection with banking activities after a client relationship with a bank is established shall be considered client secrets. Furthermore, any information indicating that a natural or legal person is a client of a bank shall be regarded as a client secret. However, data concerning natural or legal persons that existed prior to the establishment of a client relationship with a bank and that do not qualify as the client secret of another bank are not deemed confidential on their own. Such data may acquire the status of client secrets if processed in a way that indicates the individual's status as a client of the bank, either alone or in combination with other data generated after the establishment of the client relationship as outlined in paragraph 3.

In this context, personal data of bank employees obtained through an employer-employee relationship (e.g., Turkish identity number, address, phone number, or human resources data) that are not processed in conjunction with information qualifying as confidential bank data must be treated as personal data within the scope of the Law No.6698 on Protection of Personal Data ("LPPD").

However, certain employee data, such as human resources data, may contain details regarding a bank's financial standing, principles of bank management related to core activities such as lending and deposit collection, the technical methods applied by the bank, or the bank's potential. If it is deemed beneficial for such data to be protected and kept confidential by the bank, they may also be considered within the scope of "bank secrets".

On the other hand, as stated above, in cases where a client relationship exists between the bank and the employee, it is evident that personal information regarding the employee may become a client secret if processed in a manner indicating that the individual is a client of the bank, either alone or in conjunction with other data generated after the establishment of the client relationship.

2. Explanations Regarding Exceptions to the Obligation to Maintain Confidentiality (Article 5)

2.1. Under paragraph four of Article 5 of the Regulation ("…Disclosure for compliance risk purposes must be based on national or international legislation applicable to the party sharing the information or the counterparty receiving the information."), if the information requested for compliance risk management clearly originates from a valid legislative provision or is required by the relevant regulator as part of a control framework authorized by legislation, or if the information requested for compliance risk purposes is based on internal policies or business processes established within the legal obligations of the parent/main shareholder, then it is possible to share client information that does not qualify as "common client" information without adhering to subparagraph (ç) of the first paragraph of Article 6 of the Regulation:

Paragraph four of Article 5 of the Regulation specifies that disclosure of information for risk management purposes under subparagraph (b) of paragraph two and paragraph three of Article 5 encompasses risk management activities related to all risk categories, including **compliance**, credit, and reputation risks, as outlined in the Regulation on Banks' Internal Systems and Internal Capital Adequacy Assessment Process (the "ICAAP Regulation") published in the Official Gazette dated July 11, 2014, and numbered 29057.

Furthermore, under subparagraph (b) of paragraph two of Article 5 of the Regulation, the provision of information and documents to parent companies, including domestic or foreign credit and financial institutions holding 10% or more of a bank's capital, is exempted from the confidentiality obligation, provided that a confidentiality agreement is executed and the sharing is limited strictly to the specified purposes, such as the preparation of consolidated financial statements, risk management, and internal audit practices.

In this context, while the disclosure of client information for risk management and consolidation purposes is permissible under the provisions of the Regulation, **such disclosure is expected to be "proportionate**." The minimum elements required to ensure proportionality in such sharing are outlined in the first paragraph of Article 6 of the Regulation. Foremost among these requirements is that "**the disclosed information must contain only the data necessary for the stated purpose of the disclosure, and it must be demonstrable that the entire data set subject to disclosure is essential for fulfilling the stated purposes**."

In addition, according to the first paragraph of Article 6 of the Regulation, if the client whose information is to be disclosed is not also a common client of the parent company/dominant partner, the confidential information related to the natural or legal person client in question must not be disclosed in a manner that makes the client's identity explicit or identifiable; in other words, such information must not be disclosed openly. Furthermore, under the eighth paragraph of Article 6 of the Regulation, the condition of being a common client, which is required for the explicit sharing of client confidential information, is only applicable to shares made under subparagraph (b) and the third paragraph of the second section of Article 5 of the Regulation, and this condition is not required in the following cases:

1. When extensive data sharing involving a large number of clients is required for purposes such as credit provisioning calculations or internal capital adequacy calculations**, provided that the Agency's prior approval has been obtained**,

2. When the sharing is for compliance risk purposes involving the counterparty, provided that the Agency's prior approval has been obtained.

3. When the sharing involves data concerning a natural or legal person or a risk group to which credit has been extended in an amount equal to or greater than 10% of the bank's primary capital, and the sharing is for consolidated risk management purposes**, in which case the Agency's prior approval is not required**.

Within this framework, it is permissible for the bank to disclose confidential client information explicitly with its parent company/dominant partner for the purpose of managing compliance risk. However, in its application to the Agency under the eighth paragraph of Article 6 of the Regulation, the bank must clearly specify which data will be disclosed within the scope of the planned disclosure with the parent company/dominant partner, whether the disclosed data is necessary for fulfilling the purpose of the disclosure, and whether the information requested for compliance risk management originates from a valid legislative provision. Furthermore, the original texts of the foreign legislative provisions subject to compliance risk, along with their Turkish translations, must be included in the application to the Agency. Additionally, the bank must submit the proportionality assessment conducted by the Information Sharing Committee established under Article 7 of the Regulation, as well as the committee's opinion regarding the appropriateness of the sharing request, to the Agency.

Similarly, if the information subject to sharing falls within a control framework where the relevant foreign regulatory authority has requested its implementation from the parent company/dominant partner based on its rights under its legislation, and if the parent company/dominant partner's failure to meet this request would expose it to potential sanctions by the relevant regulatory authority, such requests are also evaluated within the framework of compliance risk. In such cases, the bank must fulfill the conditions specified above in its application to the Agency and clearly demonstrate the situation.

On the other hand, in cases where confidential information requested by the relevant foreign regulatory authority, authorized for supervision under the laws of a foreign country and equivalent to the Agency, from the parent or dominant partner is not a general request covering all subsidiaries of the parent or dominant partner worldwide but rather a specific request directed at subsidiaries in Turkey, or where such a request does not pose a risk of being subject to sanctions by the relevant authority (i.e., a request that does not fall within the scope of compliance risk), these information requests must be addressed within the framework of the ninth paragraph of Article 6 of the Regulation. In this context, information-sharing requests that require obtaining the Agency's consent for compliance risk purposes under the eighth paragraph of Article 6 of the Regulation and requests that must be addressed within the scope of the ninth paragraph of Article 6, even if they pertain solely to information considered as banking secrets, cannot be fulfilled under the fifth paragraph of Article 5 of the Regulation.

Additionally, if the information requested under the scope of compliance risk is based on internal policies or business processes established by the main/dominant partner within the framework of its legal obligations, the disclosures made within this context can only be considered as compliance risk-related if not disclosing the information would subject the main/dominant partner to potential sanctions by the relevant regulatory authority. Furthermore, in the bank's application to the Agency, it must clearly demonstrate this risk and meet the aforementioned conditions while providing concrete evidence.

Moreover, as specified in Article 5, paragraph two (a) of the Regulation, the exchange of any information and documents directly between banks and financial institutions, or through the Risk Center or companies established by at least five banks or financial institutions, is exempted from the obligation to maintain confidentiality, provided that a confidentiality agreement is executed and the exchange is limited solely to the specified purposes. Disclosures of information/documents between **banks located in Turkey** that are subsidiaries of the main/dominant partner and under its indirect control are also covered under this exemption. Therefore, if the main/dominant partner is a bank established in Turkey and requests data from another bank that is its domestic affiliate under its status as a domestic main/dominant partner, for the purpose of managing compliance risks arising from national regulations, such disclosures can be made without the need for the prior approval of the Agency and without the need to ensure compliance with the Article 6, paragraph one (ç), of the Regulation, provided that they are made in accordance with Article 5, paragraph two (a), of the Regulation.

2.2. Within the scope of prevention of laundering proceeds of crime and prevention of financing of terrorism; in cases where the main/dominant partner, acting as a correspondent bank, requests information related to its post-transaction controls of SWIFT transactions as part of its efforts to prevent money laundering and prevention of the financing of terrorism, the disclosure of transaction details (e.g., nature, parties involved, additional information or documents related to the transaction), client information regarding parties involved in the transaction—whether they are bank clients or not (e.g., client name, identification details, ownership structure, ultimate beneficiary name, senior executive names, address information, business activities, profession details), client account movements, and other financial or non-financial client-related information/documents to the main/dominant partner is contingent on the nature of the transaction, even if the client is not a "common client.":

Article 5, paragraph four, of the Regulation states: "… *The financial crime risk associated with offenses defined under the Law on the Prevention of Laundering Proceeds of Crime, dated October 11, 2006, numbered 5549, and the Law on the Prevention of Financing of Terrorism, dated February 7, 2013, numbered 6415, is also addressed within the scope of compliance risk. Disclosures for compliance risk purposes must originate from national or international legislation applicable to either the disclosing party or the receiving party*."

Within this scope, it is possible to address the confidential information requested by the main/dominant partner for the controls conducted to mitigate the financial crime risk associated with the fund transfer transactions in which it acts as a correspondent bank, as part of compliance risk. However, as stated above, while it is possible under the provisions of the Regulation to share customer information for risk management purposes in such cases**, it is expected that such sharing be "proportional." In this regard, the bank is required, in its application to the Agency under the eighth paragraph of Article 6 of the Regulation, to explicitly detail the following: which data are planned to be shared within the scope of the intended sharing with the parent entity under compliance risk considerations, whether the data to be shared are necessary to fulfill the intended purpose of sharing, and whether the information requested for compliance risk management is based on a valid provision of legislation. The application must also include the original texts of the foreign regulations related to the compliance risk, along with their Turkish translations. Additionally, as part of this process, the bank is required to submit the proportionality assessment conducted by its Information Sharing Committee, established under Article 7 of the Regulation, and the Committee's opinion regarding the appropriateness of the disclosure request to the Agency.**

On the other hand, in Article 6, paragraph six of the Regulation, it is stated: "If, ***by the nature of the transaction***, ***interaction*** *with domestic or foreign banks, payment service providers, payment, securities settlement, or messaging systems* ***is required****, and the sharing of client confidential information with domestic or foreign parties is a necessary element* ***for the completion of the transaction,*** *for transactions such as domestic/foreign fund transfers, foreign letters of credit, guarantees, or reference letters, the initiation of the transaction by the client or the entry of the order by the client through electronic banking service distribution channels will replace the client's request or instruction for the purposes of such disclosures".* **However, for transactions initiated by the client or orders entered, where client confidential information may be shared with domestic or foreign parties based on this provision, it is necessary that, according to the system rules provided by the bank to the client, such information sharing is an essential element for the completion of the transaction. Therefore, if the system rules provided to the client do not require such information sharing but the main/dominant partner mandates sharing of client information within its own risk management controls, the disclosure must be carried out within the scope of the risk management and compliance risk provisions in the Regulation, as noted above, and not under this paragraph.**

Additionally, following **the completion of money transfer transactions such as SWIFT transactions**, if correspondent banks request information related to the transaction and the parties involved, as required by system rules or regarding post-transaction matters, and if the bank has not committed to providing such information before the transaction, making it impossible for the transaction to be completed, such post-transaction disclosures will be considered as "**disclosures of confidential client information to domestic or foreign parties as an essential part of the transaction**" as defined in Article 6, paragraph 6 of the Regulation. **However, in such cases, since transactions initiated by the client and orders placed will serve as the client's request or instruction, the client must be informed by the bank about the system rules applicable before the transaction and what information can be shared with correspondent banks about the transaction and the parties involved after the transaction.**

2.3. Whether the third parties referred to in paragraph five of Article 5 of the Regulation, for whom information can be shared with the approval of the Board of Directors, include the parties mentioned in paragraphs one and two of Article 5, and whether the approval of the Board of Directors is required before disclosing client confidential information to these parties; and whether Board approval is required if independent audit reports and publicly disclosed information are shared with third parties:

In paragraph one of Article 5 of the Regulation, it is stated that the **sharing of** client secret or **bank secret** information **with authorities explicitly authorized by law is exempt from the confidentiality obligation. In paragraph two of the same article outline the conditions under which the sharing of client secret or bank secret information, provided that a confidentiality agreement is made and the sharing is limited to specified purposes, is also exempt from the confidentiality obligation. Subsequent paragraphs of the same article outline the conditions under which the sharing of information, including bank secrecy information, is exempt from the confidentiality obligation.**

In paragraph five of Article 5 of the Regulation, it is stated that: "*The **sharing** of information that is confidential but does not qualify as client confidential information, and that only contains bank-related information, **with third parties** under the responsibility of the bank, may be done with the decision of the bank's Board of Directors without violating the confidentiality obligation. The Board of Directors may delegate this Agency to the General Directorate by determining the procedures and principles*." The "third parties" mentioned in this provision refer to the parties with whom information is shared, outside the cases exempted from the confidentiality obligation mentioned elsewhere in Article 5 of the Regulation.

Therefore, the Board of Directors' decision required under paragraph five of Article 5 of the Regulation pertains to the sharing of bank secrecy information with third parties, except in cases where exceptions to the confidentiality obligation are stated elsewhere in the same article.

On the other hand, as long as the information is not covered under paragraph one or five of Article 5 of the Regulation, it is not possible for bank secrecy information to be publicly disclosed or shared with third parties through independent audit reports. Therefore, there is no need for an additional Board decision for the sharing of such publicly disclosed information with third parties.

2.4. According to paragraph six of Article 5 of the Regulation, which types of transactions require obtaining a request or instruction from the client in the relationship between banks and their clients:

Paragraph six of Article 5 of the Regulation states: "*Banks, the Risk Center, or companies established by at least five banks or financial institutions may provide confirmation to public institutions and organizations regarding client confidential information given by clients at their own request, provided that the client's request or instruction has been obtained. This confirmation, which only verifies whether the information is correct, does not constitute a violation of the confidentiality obligation*."

In this context, for any transaction to be carried out with a public institution or organization, in order for the client-provided confidential information to be confirmed by the relevant public institution or organization, banks, the Risk Center, or the companies referred to in the mentioned provision must obtain the client's request or instruction in order to provide the public institution or organization with information about the accuracy of the data.

2.5. According to paragraph nine of Article 5 of the Regulation, when the semi-annual reporting will commence, in which format/method the reports will be made, how the shared information will be made available for auditing at the bank, and for how long these records will be kept:

The Regulation entered into force on 01/07/2022, and according to the provision of paragraph nine of Article 5, which states: "*In the form and methods deemed appropriate by the Agency, reports shall be submitted on a semi-annual basis, and in case of a significant change, such change must be reported to the Agency immediately…*," the semi-annual reports are required to be submitted to the Agency in the format and content deemed appropriate by the Agency, following the guidelines provided by the Agency. For the July-December reporting period, the report must be submitted by **January 31**, and for the January-June reporting period, by **July 31**. **The appropriate format and content will be announced by the Agency**, and if deemed necessary, the Agency may modify and update these formats and contents.

With regard to all disclosures made under Article 5 of the Regulation, which are limited to those that can identify or make a client identifiable, the shared information must be stored electronically at the bank for a period of ten years in a manner that is readily available for audit, in accordance with Article 42 of the Law. Furthermore, when requested by the Agency, these records must be converted into a format suitable for examination within a reasonable time and submitted to the Agency's representatives.

2.6. Whether the requirement to keep all disclosures that can identify or make the client identifiable available for audit at the bank, as stipulated in paragraph nine of Article 5 of the Regulation, refers to the retention of the disclosed information itself, whether this obligation applies to disclosures made to public institutions and organizations, even if required by legal obligations, and whether it is necessary to specify the public institutions and organizations with which the disclosures were made when reporting the titles and countries of all third parties to whom bank secrets and client secrets were transferred, as per the provisions of paragraph nine of Article 5 of the Regulation:

According to paragraph nine of Article 5 of the Regulation,

- In relation to disclosures made under paragraph two, subparagraph (b), and paragraph three of Article 5 of the Regulation;
    - A copy of the confidentiality agreement,
    - The purposes of the disclosure,
    - The technical and administrative measures taken by the parent company or the entities providing services on behalf of the parent company to ensure the confidentiality and security of the disclosed information

- The titles and countries of all third parties (including domestic entities) to whom bank secrets and client secrets have been transferred **under the provisions of Article 5 of the Regulation**,

It is required that reports be submitted in the format and methods deemed appropriate by the Agency, on a semi-annual basis, with any critical changes reported to the Agency immediately in relation to the specific change. **Additionally, all disclosures that can identify or make the client identifiable, as stated in this article (Article 5), must be kept available for audit at the bank, and these disclosures must be submitted to the Agency in the format and methods deemed appropriate by the Agency upon request.**

In this context, **all confidential information** shared within the framework of Article 5 of the Regulation, which could make the client's identity identifiable or determinable, must be kept in a ready-to-audit form (including the information mentioned in the introductory part of the ninth paragraph provision). **However, pursuant to subparagraph (ç) of paragraph 2 of Article 5 of the Regulation, there is no need to create a separate copy of data storage for information shared with organizations providing continuous support services within the bank's primary systems. For such disclosures, it will be sufficient to report to the Agency, within the scope of the ninth paragraph of Article 5, in a manner that shows the scope and parties of the disclosure, and in the format and content deemed appropriate by the Agency, in accordance with the guidelines provided by the Agency on this matter.**

On the other hand, all disclosures made under this article, including those to public institutions and organizations, and other legally authorized bodies, that can identify or make the client identifiable, must also be kept available for audit at the bank, including the information mentioned above.

2.7. What the minimum requirements are for the measures to be taken by banks under the obligation of "technical and administrative measures to be taken by the dominant partner/parent company or the parties serving the dominant partner/parent company" as specified in various articles of the Regulation:

In accordance with

- The subparagraph (ç) of paragraph two of Article 5: "*Provision of information and documents to service providers for the purposes of valuation, rating, support services, independent auditing, or transactions related to the* ***procurement of services, subject to the condition that the necessary technical and administrative measures are taken***.",

- The paragraph three of Article 5: "*The sharing to be made under subparagraph (b) of the second paragraph shall be limited solely to the purposes specified in that subparagraph,* ***provided that a confidentiality agreement is made and the necessary technical and administrative measures are ensured*** *by the counterparty under the provisions of the agreement. In such cases, sharing with the dominant partner or with a group company that the dominant partner/parent company has designated for consolidated financial statement preparation or consolidated risk management practices shall not constitute a violation of the obligation to maintain confidentiality*.",

- The ninth paragraph of Article 5 stipulates that: "*A copy of the confidentiality agreement pertaining to the information sharing to be conducted under subparagraph (b) of the second paragraph and the third paragraph, the purposes of the sharing,* ***the technical and administrative measures taken by the dominant partner/parent entity or the parties from whom the dominant partner/parent entity receives services in this regard to ensure the confidentiality and security of the confidential information****, as well as the titles and the country information of all third parties to whom the confidential information classified as bank secrets or customer secrets under this article has been transferred, shall be reported to the Agency in a format and manner deemed appropriate by the Agency, on a semi-annual basis, and immediately in the event of a critical change specifically concerning the said change. All information shared under this article in a manner that identifies or makes identifiable the customer's identity shall be maintained in an auditable manner by the bank and, upon request, shall be submitted to the Agency in a format and manner deemed appropriate by the Agency*."

Under these provisions, it is stipulated that banks must implement the necessary technical and administrative measures to ensure the confidentiality and security of confidential information shared during the procurement of services."

As is known, the minimum procedures and principles regarding the management of information systems used by banks in their operations and the provision of electronic banking services, as well as the necessary controls over these information systems, are regulated in the Regulation on the Information Systems of the Banks and Electronic Banking Services ("**BSEBY**"), published in the Official Gazette No. 31069 on 15/03/2020. These provisions also set out the necessary minimum technical and administrative measures to ensure the confidentiality, security, integrity, and accessibility of banks' information systems and data.

In this context, the term "**necessary technical and administrative measures" mentioned in the provisions of the Regulation above refers, in general terms, to the provisions set out in**

the BSEBY regarding data confidentiality and security. It should be understood that the counterparty sharing the secret information is not expected to fully comply with the provisions of the BSEBY. However, by applying generally accepted standards and frameworks for data confidentiality and security, the technical and administrative measures taken by the counterparty can be considered sufficient to meet the requirements of the BSEBY provisions.

3. Explanations Regarding the General Principles on the Disclosure of Confidential Information (Article 6)

3.1. The distinction between "transfer" and "sharing" mentioned in the first paragraph of Article 6 of the Regulation, in addition to the sharing itself:

As stated in the definition of "data processing" in Article 3 of the Regulation, transfer, like sharing, refers to a data processing activity. In the first paragraph of Article 6 of the Regulation, it is explained that, including the sharing carried out under Article 5 of the Regulation, information that qualifies as client secrets and bank secrets can be shared only for the specified purposes and in accordance with the principle of proportionality, meaning that only as much data as necessary to fulfill these purposes can be shared. It is also stated that the transfer of information that qualifies as secret is considered sharing, regardless of whether the recipient of the information is aware of the content of the information.

In this context, the term "transfer" mentioned in the Regulation refers to both a data processing and a sharing method. Even if the recipient of the transferred information does not learn the content of the data, all obligations related to the sharing of secret information set out in the Regulation will still apply in the case of a transfer.

Thus, if confidential data is transferred to the recipient in an encrypted form or if access controls are applied to prevent unauthorized access, these actions are merely considered "**technical measures**" as stated in various provisions of the Regulation. Arguing that the recipient is prevented from learning the content of the data through the application of such technical measures does not mean that the secret data has not been shared with the recipient. On the contrary, the confidential information is considered to have been shared with the recipient, and the obligations specified in the Regulation must still be fulfilled.

On the other hand, the concept of "counterparty," to which obligations arise when secret data is transferred under the Regulation, does not include parties that merely facilitate data transfer, such as internet service providers that provide electronic communication services and/or electronic communication networks and operate the infrastructure.

3.2. The application of the provision in subparagraph (b) of the first paragraph of Article 6 of the Regulation, which states "It must be demonstrable that all the data or data sets included in the sharing are necessary for the achievement of the specified purposes," and what is meant by "it must be demonstrable that it is necessary":

The phrase "it must be demonstrable that it is necessary" in subparagraph (b) of the first paragraph of Article 6 refers to the requirement that it must be clearly shown whether the data or data sets involved in the sharing are necessary for the fulfillment of the sharing purpose.

For example, if information is shared for the purpose of valuation work related to the sale of assets, and that shared information includes data that is not necessary for achieving that goal, it would be in violation of this provision. Similarly, in the case of resolving a dispute related to an expense objection, if information is shared that exceeds the scope of the objection—such as sharing information related to credit card expenses—it would also constitute a violation of the stated provision.

3.3. "Whether the headquarters of multinational companies at the "Master Group" level, along with other group companies, affiliates, and branches, can be considered as a "common client," and whether the information of a client from such a Master Group, for risk management and/or consolidation purposes, can be shared with the bank's parent company in accordance with the client's instructions, and limited to the information explicitly defined in the instruction:

Pursuant to Article 73, Paragraph 3 of the Law and the provisions of the Regulation, client information, which is considered a client secret, cannot be shared with third parties in Turkey or abroad without the client's explicit consent, even if the client's consent is obtained. The client's consent or instruction cannot be made a precondition for the services provided by the bank. An exception to this condition applies only to cases exempted from the confidentiality obligation under Article 5 of the Regulation.

In this context, for bank clients who are internationally operating companies based in Turkey, it is possible for their client information to be shared with the bank's parent company in order to carry out global risk management, provided that the consent or instructions of the clients in this regard are obtained. However, in accordance with subparagraph (b) of the second paragraph of Article 5 of the Regulation, sharing of information with the parent company of the bank, including financial institutions and credit institutions located within or outside the country, which hold 10% or more of the bank's capital, is exempt from the confidentiality obligation under the conditions of executing a confidentiality agreement and restricting it solely to the specified purposes for the preparation of consolidated financial statements, risk management, and internal audit activities. According to the first paragraph of Article 6 of the Regulation, **if** the client whose information is being shared **is not a common client** of the parent company, dominant partner, or group company, **the confidential information regarding that individual/legal entity client to be shared with these parties** must not be of a nature that can identify or make the client identifiable. Additionally, for such shares, it is required that methods such as anonymization, de-identification, and aggregation be used.

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Furthermore, in Paragraph 8 of Article 6 of the Regulation, it is stated;

"(8) In accordance with subparagraph (b) of the second paragraph and the third paragraph of Article 5, ***for data sharing that requires comprehensive information about multiple clients****, such as credit provision calculations and internal capital adequacy calculations, and* ***for data sharing to be conducted for the counterparty's compliance risk purposes****,* ***provided that the prior approval of the Agency is obtained****,* ***the provisions of subparagraph (ç) of the first paragraph shall not apply.*** *If the data to be shared for consolidated risk management purposes under subparagraph (b) of the second paragraph and the third paragraph of Article 5* ***pertains to a natural or legal person, or a risk group, to which ten per cent or more of the bank's core capital has been lent, prior approval from the Agency must be obtained for the sharing of such data, and compliance with subparagraph (ç) of the first paragraph shall not be required.*** *The Board is authorized to modify the limitations set forth in this paragraph or to impose new limitations regarding the matters contained in this paragraph.*

In this context, the concept of "common client" in Paragraph 1 of Article 6 of the Regulation refers to a real or legal person who is simultaneously a client of both the bank and its parent company, dominant partner, or group company. Therefore, if the parent company of an international group is a client of the bank and the group's affiliate in Turkey (which is an affiliate of the bank's parent company in Turkey) is also a client of the bank, <u>the "common client" condition is not met</u>.

Furthermore, as noted above, even for disclosures that may be made under Article 5, Paragraph 2(b) without the client's request or instruction, Paragraph 8 of Article 6 of the Regulation specifies situations where the prior approval of the Agency is required. To avoid leaving room for the application of this paragraph, banks must refrain from resorting to obtaining the client's request or instruction.

Additionally, considering that such a sharing request is made by the bank's parent company for the purpose of global risk management, if a request, which does not originate from the client or is not likely to occur under normal circumstances as part of the parent company's risk management, is treated as if it were a request from the client, and if it is stated that otherwise, the client will be denied the provision of products and services, this would also violate the third paragraph of Article 6 of the Regulation. **In this context, even if the sharing is intended to be carried out through a request or instruction from the client, this method will not eliminate the obligations arising from the eighth paragraph of Article 6 of the Regulation for the bank.**

3.4. In the provision stipulated under subparagraph (ç) of the first paragraph of Article 6 of the Regulation, which states: "If the customer whose information will be shared is not also a joint customer of the parent entity, dominant partner, or group company, the confidential information regarding the said real or legal person customer to be shared with these parties must not be in a manner that identifies or makes identifiable the customer's identity, and the methods specified in subparagraph (c) must be used," it is questioned whether the term "group company" refers exclusively to the "group company designated by the dominant partner/parent entity within the scope of preparing consolidated financial statements or consolidated risk management practices," as stated in the third paragraph of Article 5 of the Regulation, and whether information sharing can continue under the exemption granted in subparagraph (a) of the second paragraph of Article 5 of the Regulation with companies that are subsidiaries of banks and are also under the indirect control of the same parent entity/dominant partner.

In the provision of Article 6, Paragraph 1, Subparagraph (ç) of the Regulation, which states, "*If the client whose information is to be shared is not also a common client of the parent company, the dominant partner, or the group company, the confidential information about the said natural/legal person client to be shared with these parties must not be of a nature that would make the identity of the said client identifiable, and the methods specified in Subparagraph (c) must be used*," the term "**group company**" refers to only the "group company that is determined by the dominant partner/parent company, and with which services are provided under the consolidated financial statement preparation or consolidated risk management practices" as mentioned in Paragraph 3 of Article 5 of the Regulation. This group company must be a company with which the dominant partner/parent company provides services under consolidated financial statement preparation or consolidated risk management practices, and not just any group company determined by the dominant partner/parent company.

On the other hand, as stated in Subparagraph (a) of Paragraph 2 of Article 5 of the Regulation, under the condition that a confidentiality agreement is made and limited to the specified purposes, banks and financial institutions are exempt from the obligation to maintain confidentiality regarding any exchange of information and documents directly between them or through companies established by the Risk Center or at least five banks or financial institutions. Therefore, **for companies based in Turkey** that are subsidiaries of banks and also indirectly controlled by the same parent company/dominant partner, if these companies are also **defined as financial institutions under Article 3 of the Law**, information and document exchanges with them may also be considered under this exception.

3.5. Whether the sharing of client information necessary to determine the "common client" as mentioned in Subparagraph (ç) of Paragraph 1 of Article 6 of the Regulation is outside the scope, considering that information sharing with the parent company/dominant partner may be required to identify the "common client:

According to Subparagraph (ç) of Paragraph 1 of Article 6 of the Regulation, if the client whose information is to be shared is not also a common client of the parent company/dominant partner or group company, the shared information related to this real/legal person client must not be of a nature that would make the identity of the client identifiable or identifiable. Additionally, the eighth paragraph of Article 6 of the Regulation also outlines the situations where the condition

of being a common client, required for the explicit sharing of confidential client information, is not applied.

For the provisions of the Regulation to be applicable, it is required for the bank to conduct a "common client" check. **As part of this check, prior to sharing client information with the parent company/dominant partner or group company, any exchanges of information regarding whether the clients whose information is planned to be shared are clients of the parent company/dominant partner or group company will not constitute a violation of this provision if the information shared does not render the client's identity identifiable or determinable**. However, even during the information exchange with the parent company/dominant partner or group company within the scope of the "common client check," the other "proportionality" criteria specified in Paragraph 1 of Article 6 of the Regulation must be adhered to. For example, a check can be conducted using a personal identification number ID /Tax number that can uniquely identify the client, and/or the client's first and last name information can also be shared in a masked form with the other party, but no more client information than is required for the check should be openly shared. Similarly, in cases where a request is made by the parent company/dominant partner or group company, the sharing should, to the extent possible, be carried out by the parent company/dominant partner or group company, and not by the bank. In this way, it must be ensured that the person's information sent by the other party is also checked to confirm whether they are a client of the bank.

3.6. How the provision in Subparagraph 2 of Article 6 of the Regulation, which states, "Even if they are considered client secrets, personal data related to health and sexual life cannot be shared with domestic or foreign parties by relying on one of the exceptions to the confidentiality obligation," should be applied, and whether it also includes the data to be shared with the client themselves:

Article 6, Paragraph 2 of the Regulation states, "*In the sharing of confidential information regarding real person clients, compliance with the general principles outlined in Article 4 of the Law on Protection of Personal Data ("LPPD") is mandatory. Even if it is considered client confidentiality, personal data related to health and sexual life cannot be shared with parties, either domestic or foreign, by invoking one of the exceptions to the confidentiality obligation*." This provision emphasizes that, even though health and sexual life-related personal data may be considered client confidential information, the fact that these are special categories of personal data takes precedence. Therefore, such data should not be subjected to sharing, as if they were ordinary confidential information, by relying on one of the exceptions to the confidentiality obligation outlined in Article 5.

In line with this, Article 6, Paragraph 3 of the LPPD also states:

"(3) *Personal data other than health and sexual life can be processed without the explicit consent of the individual in cases specified by law. However, personal data related to health and sexual life can only be processed without the explicit consent of the individual, and only for the purposes of protecting public health, preventive medicine, medical diagnosis, treatment and care services, planning and management of healthcare services and their financing, by persons or authorized institutions and organizations bound by the confidentiality obligation*."

According to this provision, personal data other than health and sexual life can be processed without the individual's explicit consent in cases specified by law. However, personal data related to health and sexual life can only be processed without explicit consent for the purposes listed in this provision and exclusively by authorized persons, institutions, or organizations.

In this context, as stated in the first paragraph of Article 6 of the LPPD, the processing of sensitive personal data, excluding health and sexual life data, without the explicit consent of the individual is possible in cases provided by law. Therefore, if these sensitive personal data also become client secrets, and as long as it does not violate the LPPD and relevant regulations, there is no obstacle under the Law to process them without the explicit consent of the client, relying on one of the exceptions to the confidentiality obligation.

However, both Paragraph 2 of Article 6 of the Regulation and Paragraph 3 of Article 6 of the LPPD stipulate that personal data related to health and sexual life, even if it has become a client secret, cannot be shared with domestic or foreign parties without the explicit consent of the individual, relying on one of the exceptions to the confidentiality obligation.

On the other hand, even if it contains personal data related to health and sexual life, the sharing of confidential information with the client's own application to the bank, within the framework of the client's explicit consent and request or instruction, **either with the client themselves or their representative, or through a communication address declared to belong to the client or their representative, will be considered as sharing confidential information with the owner of the secret themselves, and therefore, it will not violate the provisions of Article 6, Paragraph 2 of the Regulation. However, in the authorization to be made by the client to establish the representative relationship, and in the request/instruction that the client will submit to the bank, it must be clearly stated that confidential information and documents can also be shared with the representative.**

3.7. How the client's request or instruction, as stated in the third paragraph of Article 6 of the Regulation, will be obtained by the banks with the client playing an active role, and whether the client can transform examples provided by the bank into an instruction for the bank or give this instruction through texts provided by a "push notification" for client satisfaction and process efficiency:

As is known, with the amendment introduced by Law No. 7222 dated 20/2/2020 to the third paragraph of Article 73 of the Law, the following was added: *"... After establishing a client relationship with banks, the data of natural and legal persons belonging to the client becomes a client secret. Except for the mandatory provisions of other laws, client secret information, unless one of the exceptions to the confidentiality obligation outlined in this article applies, cannot be shared or transferred to third parties, either domestic or foreign, even if the client's explicit consent is obtained under the Law on the Protection of Personal Data No. 6698 dated 24/3/2016,* ***without the client's request or instruction***."

With this change, it is aimed to prevent banks, as the entity responsible for maintaining confidentiality, from bypassing this obligation using consent texts they prepare for their own determined purposes and methods when no legal exception or obligation exists. The aim is to allow the removal of the confidentiality obligation not through a method where the bank plays an active role in the consent text, but through the method of "the client's request or instruction," where the client plays an active role.

According to this regulation, the sharing of client secret information will be possible only upon receiving the client's request or instruction, and will be limited to the purpose specified in the request or instruction.

The general principles regarding the sharing of client secret information are regulated in Article 6 of the Regulation, and in accordance with the provisions of Article 73 of the Law and Article 5 of the Regulation, which include the cases where the confidentiality obligation is exempted, the sharing of client secret information must comply with the principles of "being limited to the purpose" and "being in accordance with the principle of proportionality." The third, fourth, and seventh paragraphs of Article 6 of the Regulation stipulate the following;

"*Except for the mandatory provisions of other laws, client secret information, unless one of the exceptions to the confidentiality obligation outlined in Article 5 applies, cannot be shared with third parties, either domestic or foreign, even if the client's explicit consent is obtained,* ***without the client's request or instruction****. The client's explicit consent or* ***request or instruction cannot be made a prerequisite for the bank to provide its services****.",*

"*The client's request or instruction as specified in the third paragraph may be obtained in writing or, provided it is in a verifiable form, through a permanent data carrier. The client's request or instruction may cover multiple transactions and may be indefinite for ongoing transactions,* ***provided that it can be canceled or modified*** *by the client using the same method through which the request or instruction was given. Except in the cases specified in the sixth paragraph,* ***the client must be able to query and view the requests or instructions given by them via electronic banking distribution channels***.",

"*When sharing information based on the client's request or instruction, it will be evaluated solely in terms of whether the principle of proportionality mentioned in the first paragraph has been followed and* ***whether the client's request or instruction has been complied with****. If the data set requested by the client to be shared includes information that is client secret related to other clients or clients of other banks, the obligation mentioned in the first paragraph must be followed without any restriction."*

In this context, provided that the principles outlined regarding the client’s request or instruction for sharing their secret information are followed, it is possible for the bank to obtain the client’s request or instruction through clear and understandable sample texts determined by the bank. However, if these sample texts are obtained within the scope of a contract, **they must be clearly distinguishable from the contract text and, after being presented to the client's attention, they must be reviewed by the client and converted into an instruction with the client's active involvement**. Since the client’s request or instruction must clearly express their desire and intent to share their secret information, for the client’s active role to be acknowledged in converting the bank-prepared sample text into the client’s instruction, the following conditions must be met,

- In cases where the request or instruction is received in writing, a written statement confirming that "the client understands the content of the request or instruction and has confirmed that the request/instruction was given voluntarily" must be obtained,

- In cases where the request/instruction is received through a permanent data storage medium, a sample request/instruction text must be sent to the client's verified communication address, and the statement confirming that "the client understands the content of the request/instruction and has confirmed that the request/instruction was given voluntarily" must be obtained from the client via the same verified communication address,

- If the request/instruction is received through internet banking or mobile banking, the sample request/instruction text must be sent to the client through these channels, and the declaration of intent confirming that "the client understands the content of the request/instruction and has confirmed that the request/instruction was given voluntarily," as well as the request/instruction itself, must be digitally signed in accordance with the second paragraph of Article 12 of the "Regulation on Remote Identification Methods Used by Banks and the Establishment of Contractual Relationships in Electronic Environments," published in the Official Gazette dated April 1, 2021, and numbered 31441.

Moreover, for the sharing to comply with the general principles, the sharing of information must be requested by the client; even if there is a sample request/instruction text prepared by the bank, its content must be changeable to meet the client's request or instruction. It must also be ensured that these shareable details are not with third parties who are not authorized by law and do not fall within the exceptions. Furthermore, the requests or instructions for such sharing must not be made a prerequisite for the bank’s services, and the client must be informed about these issues **before the request/instruction is obtained**.

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On the other hand, as stated in the sixth paragraph of Article 6 of the Regulation, in cases where, by the nature of the transaction, it is necessary to interact with domestic or foreign banks, payment service providers, payment systems, securities settlement or messaging systems, and where sharing secret client information with domestic or foreign parties is a mandatory element for the completion of the transaction, for transactions such as domestic/foreign fund transfers, foreign letters of credit, guarantees, reference letters, etc., if the transaction is initiated by the client or if the client enters the order via electronic banking service distribution channels, such sharing is considered as the client's request or instruction. **In cases where information sharing is inherently necessary for the transaction, no additional request/instruction needs to be obtained from the client under this provision.**

3.8. The scope of the provision in the fourth paragraph of Article 6 of the Regulation, which states: "….Except for the situations referred to in the sixth paragraph, it is essential that the client be able to query and view the requests or instructions they have given through electronic banking service distribution channels," and whether allowing the client to query their requests or instructions through internet and mobile banking (excluding ATM and call center) channels meets the requirements of the Regulation:

The fourth paragraph of Article 6 of the Regulation states: "*The request or instruction of the client, as specified in the third paragraph, may be obtained in writing or, provided it is in a verifiable form, through a permanent data storage device. The client's request or instruction may cover multiple transactions and, for transactions with continuity, the request or instruction may be indefinite. **Except for the situations referred to in the sixth paragraph, it is essential that the client be able to query and view the requests or instructions they have given through electronic banking service distribution channels***."

As is well known, the BSEBY sets forth the minimum procedures and principles to be followed in the management of information systems used by banks in the execution of their activities, the provision of electronic banking services, and the management of risks related to them, as well as the information systems controls that must be established. In this regulation, electronic banking services are defined as any electronic distribution channel through which clients can perform remote banking transactions or instruct the bank to perform them, such as internet banking, mobile banking, telephone banking, open banking services, and ATM and kiosk devices. Additionally, in the definition of the mobile banking distribution channel, it is stated that this channel is a specialized internet banking distribution channel.

In this context, under the aforementioned provision of the Regulation, it is sufficient to enable the client to query and view the requests or instructions they have given through at least one of the electronic banking service distribution channels. **However, the querying and viewing services must first be provided through both internet banking channels and the specialized form of this channel, mobile banking channels. After (or simultaneously with) providing these services through the aforementioned channels, it will also be possible to offer these services through other electronic banking distribution channels (such as ATM, kiosk, etc.).**

On the other hand, the obligation specified in the fourth paragraph of Article 6 of the Regulation covers client requests/instructions received in accordance with the Regulation.

However, there is no need to query requests/instructions received prior to the effective date of the Regulation through the aforementioned distribution channels. However, after the effective date of the Regulation, it is necessary to ensure that requests/instructions received from clients, including those obtained on paper, can be queried through the aforementioned distribution channels, regardless of whether the client is a natural or legal person.

3.9. The obligation in the fifth paragraph of Article 6 of the Regulation regarding the provision: "For shares related to support services or purchases of services other than valuation, rating, and independent audit, which are not within the scope of primary systems as defined in Article 3 of the ICAAP Regulation, the client's request or instruction, as specified in the third paragraph, is required. This provision does not apply to shares made under the seventh paragraph of Article 5." Regarding whether the client's request or instruction is required for the sharing of support services or service purchases not within the scope of primary systems:

The fifth paragraph of Article 6 of the Regulation states,

"*In the fifth paragraph of Article 6 of the Regulation, it is stated: "For information sharing related to support services or service procurements other than valuation, rating, and independent audit, which do not fall within the scope of primary systems as defined in Article 3 of the ISEDES Regulation, the presence of the customer's request or instruction, as specified in the third paragraph, is mandatory under subparagraph (ç) of the second paragraph of Article 5. This provision does not apply to information sharing carried out within the scope of the seventh paragraph of Article 5."*

In the relevant provision, the requirement for the client's request or instruction, as stated in the third paragraph of the mentioned article, applies to shares made regarding **support services or** (excluding valuation, rating, and independent auditing) **service acquisitions that are not included within the scope of primary systems** defined in Article 3 of the ICAAP Regulation. Therefore, this obligation applies to all shares related to support services or all service acquisitions (excluding valuation, rating, and independent auditing) that are not part of primary systems.

However, as stated in the seventh paragraph of Article 5 of the Regulation, for shares made with parties who are engaged to represent the bank in disputes involving the bank, and for shares necessary for proving the bank's claim or defense, the requirement for obtaining the client's request or instruction does not apply.

3.10. Whether the expression "parties representing the bank" in the seventh paragraph of Article 5 of the Regulation includes third parties from whom legal advice can be sought, but who do not have a representation relationship with the bank, and whether, in this case, the client's request or instruction is required in accordance with the fifth paragraph of Article 6 of the Regulation:

The seventh paragraph of Article 5 of the Regulation specifies one of the exceptions to the confidentiality obligation as follows: "*In disputes involving the bank, where it is necessary for proving the bank's claim or defense, shares regarding client secrets or bank secrets of real or legal persons involved in such disputes may be made with judicial authorities* ***in Turkey or abroad, or with alternative dispute resolution authorities such as arbitration, mediation, or arbitral boards, or with parties representing the bank in those disputes for the purpose of sharing such information with these authorities****."*

According to the second paragraph, subparagraph (ç) of Article 5 of the Regulation, sharing information and documents with service providers in connection with service procurements, provided that a confidentiality agreement is made and necessary technical and administrative measures are taken, is also considered an exception to the confidentiality obligation. This includes services such as "**legal advice**."

However, as stated in the fifth paragraph of Article 6 of the Regulation, "*For shares related to services not within the scope of primary systems as defined in Article 3 of the ICAAP Regulation, or for service procurements other than valuation, rating, and independent audit, in accordance with subparagraph (ç) of the second paragraph of Article 5, the client's request or instruction, as specified in the third paragraph, is required.* ***This provision does not apply to shares made under the seventh paragraph of Article 5.***" Therefore, while the client's request or instruction is required for service procurements like "legal advice" that are outside the scope of primary systems defined in Article 3 of the ICAAP Regulation, it is explicitly stated that this requirement does not apply to shares made under the seventh paragraph of Article 5.

When these provisions are considered together

- "Since services such as "legal advice" are considered service procurements under subparagraph (ç) of the second paragraph of Article 5 of the Regulation, **a confidentiality agreement must be made in accordance with the second paragraph of that article, limiting the sharing to the specified purposes**. Additionally, according to the fifth paragraph of Article 6 of the Regulation, the client's request or instruction is also required for shares related to such services;
- In disputes between the bank and its clients, where the bank has the potential to represent itself before judicial authorities in Turkey or abroad, or before alternative dispute resolution authorities such as arbitration, mediation, and arbitral boards, **but has not yet established a "representation relationship" with the parties involved, and where legal advice is sought and the parties are required to review documents and records concerning the dispute and subsequently provide their opinion to the bank, shares made with these parties for legal advisory services must comply with the third paragraph of Article 6 of the Regulation, meaning the client's request or instruction must be obtained.**

On the other hand, if no information is shared in a manner that would identify or make the client's identity determinable with such parties from whom legal advice is obtained (despite the absence of a representation relationship), there is no need to obtain the client’s request or instruction.

3.11. Whether the information requested by correspondent banks (such as identification/address/citizenship/ultimate beneficiary/occupation/activity information of the parties involved in the transaction, as well as third-party information such as the identification/address/citizenship/ultimate beneficiary/occupation/activity and similar details of the parties' partners or affiliates) required to complete transactions under the Law No. 5549 on the Prevention of Money Laundering and the international AML/CTF regulations applicable to banks can be considered as mandatory information to be shared for the execution of the transaction under the sixth paragraph of Article 6 of the Regulation::

According to the eighth paragraph of Article 5 of the Regulation, the sharing of information within the group of financial institutions regarding the identification of the client and the account/transactions, under Article 5 of the Law No. 5549 on the Prevention of Money Laundering, does not violate the confidentiality obligation.

On the other hand, in the sixth paragraph of Article 6 of the Regulation, it is stated that "**Due to the nature of the transaction**, where interaction with a bank, payment service provider, payment, securities settlement, or messaging systems established domestically or internationally is required, and where **sharing client confidential information with parties inside or outside the country is an essential part of completing the transaction**, for transactions such as domestic/international fund transfers, foreign letters of credit, guarantee letters, and reference letters, the initiation of the transaction by the client or the entry of instructions by the client through distribution channels for electronic banking services will substitute the client’s request or instruction as referred to in the third paragraph for these types of shares."

However, based on this provision, for transactions initiated by the client or orders placed by the client, in order to share client secret information with parties within Turkey or abroad, it must be a mandatory component of the transaction as per the rules of the system provided by the bank to the client. Therefore, client information, which is not mandatory under the rules of the system provided to the client but is required to be shared by other parties, such as correspondent banks abroad, due to their own risk management policies or other reasons, must be considered not under the sixth paragraph of Article 6 but under the third paragraph of Article 6 of the Regulation, subject to the explanations made under section 2.2.

3.12. Whether client account activity data, which includes third-party information, needs to be shared with the multinational group's service centers abroad for operations such as bank account reconciliation within the accounting systems of multinational companies operating in Turkey:

As stated in Article 6 of the Regulation, the general principles regarding the sharing of confidential information are that the sharing must be limited to the specified purposes and must be proportional, containing only the data necessary for those purposes, as outlined in the first paragraph of Article 6 of the Regulation.

In accordance with the third paragraph of Article 73 of the Law and the provisions of the Regulation, unless otherwise stipulated by mandatory provisions of other laws, confidential client information cannot be shared with third parties in Turkey or abroad without the client's request or instruction, even with the client's explicit consent. Furthermore, the client's explicit consent or request/instruction cannot be made a precondition for the services provided by the bank. The exceptions to this condition are the cases exempted from the confidentiality obligation as stated in Article 5 of the Regulation.

In this context, in order for companies that are bank clients to send information regarding account activity abroad to the shared service centers of the multinational group they are affiliated with, the client's request or instruction must be obtained.

Article 6 of the Regulation provides that, "*In sharing done upon the client's request or instruction, it is evaluated only whether the principle of proportionality stated in the first paragraph is adhered to, and whether the client's request or instruction is followed. If the data set requested for sharing by the client* ***contains information about other clients or other bank clients that falls under the category of secrets, the obligation in the first paragraph must be followed without any restrictions****."* In the seventh paragraph, it is stated that in sharing based on the client's request or instruction, if the data contains information about other clients' secrets, the sharing must be done in accordance with the principles outlined in the first paragraph of Article 6, namely "limited to the purpose" and "proportionality in terms of the data required for those purposes," and the minimum requirements specified in that provision must also be fulfilled for the sharing to be proportional.

On the other hand, this provision of the Regulation does not prevent sharing client information, such as account activity data containing third-party information, with the client's representative or communication address designated by the client or the representative, based on the client's request or instruction. However, the authorization made by the client to establish such a representative relationship and the request/instruction sent by the client to the bank must explicitly state that confidential client information and documents can also be shared with the representative. In such cases, since the data set requested for sharing by the client may also contain information about other clients or other bank clients' secrets, the bank is not required to comply with the obligation in the first paragraph of Article 6 without any restrictions. As stated in the first sentence of the seventh paragraph of Article 6, in such cases, **the bank's adherence to the principle of proportionality should be evaluated only in relation to whether the client's request or instruction has been followed,**

or in other words, whether the bank has taken the initiative to determine the purpose and method of sharing beyond the limits of the client's request/instruction.

3.13. Whether it is necessary for data shared under the second paragraph, subparagraph (b) of Article 5 of the Regulation (in the context of consolidated financial statement preparation, risk management, and internal audit practices) with bank clients who are not clients of the parent company to be anonymized, and whether a confidentiality agreement is still required if anonymization is performed:

In the cases mentioned in the eighth paragraph of Article 6 of the Regulation, there is no obstacle to the client information being shared with bank clients who are not clients of the parent company, dominant partner, or group company under the second paragraph, subparagraph (b), and third paragraph of Article 5, if such information can identify or make the identity of the clients determinable.

Outside of these cases, the shared information with such parties must not be of a nature that would make the client's identity identifiable or determinable. However, the only method available to prevent the identification or determinability of the client's identity is not limited to "anonymization." Other methods, such as "aggregation" and "de-identification," which are also mentioned in subparagraph (c) of the first paragraph of Article 6 of the Regulation, can also be used.

Furthermore, in all cases where the confidentiality obligation stipulated in the second paragraph of Article 5 of the Regulation, including subparagraph (b), is exempted, a confidentiality agreement is required regardless of whether the information shared is identifiable or determinable.

3.14. What is meant by the condition of "obtaining the Agency's approval" mentioned in the eighth paragraph of Article 6 of the Regulation, and whether the presence of this condition eliminates the bank's responsibility:

The eighth paragraph of Article 6 of the Regulation states: "(8) *For shares that require comprehensive data sharing regarding a large number of clients, such as credit provision calculations and internal capital adequacy calculations, and for shares made for counterparty compliance risk purposes, it is required to obtain the Agency's approval prior to sharing. In such cases, subparagraph (ç) of the first paragraph does not apply. If the data to be shared for consolidated risk management purposes, under subparagraph (b) and the third paragraph of the second section of Article 5, pertains to a natural or legal person or a risk group with at least ten percent of the bank's core capital, obtaining the Agency's approval prior to sharing is sufficient, and compliance with subparagraph (ç) of the first paragraph is not required. The Board is authorized to change the limitations in this paragraph or impose new restrictions regarding the matters contained in this paragraph.*

As stated in sections 2.1 and 2.2, according to this provision, when applying to the Agency, it must be clearly stated which data will be shared within the context of compliance risk with the parent company/dominant partner, whether the shared data is necessary for the purpose of the share, and whether the information requested for compliance risk management originates from a valid legal provision. Moreover, the original texts of the foreign regulations related to the compliance risk must be submitted to the Agency along with their Turkish translations. In this context, the bank's assessment of proportionality carried out by the Information Sharing Committee, established under Article 7 of the Regulation, and its opinion on the sharing request must also be sent to the Agency.

Similarly, for applications to be made to the Agency regarding "*comprehensive data sharing concerning a large number of clients"* as stated in this paragraph, it is necessary to clearly present which data will be shared within the context of the planned share with the parent company/dominant partner, and whether such data is really necessary to fulfill the purpose of sharing. Additionally, the proportionality assessment of the Information Sharing Committee and the bank's opinion on the sharing request, as per Article 7 of the Regulation, should be submitted to the Agency.

In this context, the "Agency's approval" mentioned in this provision does not imply that the content, proportionality, or necessity of the sharing has been approved by the Agency. Rather, it refers to the Agency's approval that the information, documents, and statements submitted by the bank in its application contain sufficient details and scope to allow for the sharing. Therefore, the approval given by the Agency in such applications does not eliminate the bank's compliance obligations and responsibilities under Article 73 of the Law and the Regulation, nor does it imply approval of the proportionality or necessity of the sharing.

3.15. According to the tenth paragraph of Article 6 of the Regulation, whether the sharing of audit working papers, including those under subparagraph (b) and the third paragraph of the second section of Article 5, for the purposes of internal audit practices, which includes client information that could identify or make the client identifiable, would constitute a violation of the proportionality principle as regulated in the first paragraph of Article 6, and how information sharing can be carried out when sharing client information is necessary for audit practices, whether onsite or remote, at the parent company located abroad::

According to the first paragraph of Article 6 of the Regulation, if the client whose information is to be shared is not also a common client of the parent company/dominant partner, the shared information regarding the natural/legal person client must not be of a nature that can identify or make the client's identity identifiable. In other words, the client's identity should not be explicitly shared. Furthermore, under the eighth paragraph of Article 6 of the Regulation, **the condition of being a common client, which is required for the explicit sharing of client confidential information, is only applicable to shares made under subparagraph (b) and the third paragraph of the second section of Article 5 of the Regulation, and this condition <u>is not required in the following cases</u>:**

1. The sharing of extensive data concerning multiple clients, such as credit provisioning calculations and internal capital adequacy calculations**, provided that the approval of the Agency is obtained prior to sharing**,

2. The sharing for the purpose of counterparty compliance risk, provided that the approval of the Agency is obtained prior to sharing.,

3. The sharing for consolidated risk management purposes, which includes data on a natural or legal person or a risk group that has been granted credit equal to or greater than ten percent of the bank's core capital**, without the need to obtain the approval of the Agency before sharing**.

As understood from the relevant provision, when sharing is carried out under the second paragraph, subparagraph (b), and the third paragraph of Article 5 of the Regulation, the condition of "common client" (Article 6/1-ç of the Regulation) is not required only in the cases mentioned above for sharing client identity in a manner that makes it identifiable or determinable. Even in these cases, compliance with the proportionality principle as set out in subparagraph (c) of the first paragraph of Article 6 is required, ensuring that "*when the data to be shared can still achieve the intended purposes when aggregated, anonymized, or de-identified, these methods should be applied*." **In other words, even though the "common client" condition mentioned in subparagraph (ç) of the first paragraph of Article 6 is not required in the cases outlined in the eighth paragraph of the same article, the application of aggregation, de-identification, or anonymization methods is not mandatory, but if the intended purposes can still be achieved through these methods, they must be applied.**

Therefore, in the case of sharing with the parent company, dominant partner, or group company, including for internal audit practices, whether or not the common client condition exists, client information should not be explicitly shared if it is not necessary. The methods outlined above should be applied accordingly.

On the other hand, since the tenth paragraph of Article 6 of the Regulation explicitly states that sharing client information containing data that can identify or make the client identifiable for internal audit purposes, including audit work papers, under the second paragraph, subparagraph (b), and the third paragraph of Article 5, would violate the "proportionality" principle mentioned in the first paragraph of the same article, and no exceptions have been made in the eighth paragraph of Article 6 specifically for internal audit practices, it is not possible to share client information that would identify or make the client identifiable with the parent company, dominant partner, or group company, if the client is not also a common client of those entities.

However, if it can be clearly demonstrated that the parent company needs explicit access to the client information included in the bank's audit work paper or internal audit practices for compliance risk management purposes, upon application to the Agency under the eighth paragraph of Article 6, it may be possible to share the client information without applying methods such as aggregation, de-identification, or anonymization, and without applying subparagraph (ç) of the first paragraph of Article 6

4. Explanations Regarding the Information Sharing Committee (Article 77)

4.1. Whether the Information Sharing Committee, as stated in Article 7 of the Regulation, is required to evaluate all requests for sharing client and bank secret information on a case-by-case basis, or whether it is sufficient for the committee to establish procedures and principles for how shares will be made within the bank and to monitor them in general:

Article 7 of the Regulation states that the Information Sharing Committee is **responsible for coordinating the sharing of client confidentiality and bank secrecy information by banks,** including those made under Article 5 of the Regulation, taking into account the principle of proportionality, **evaluating the appropriateness of incoming sharing requests, and documenting these evaluations.**

Therefore, while the Information Sharing Committee must evaluate all sharing requests on a case-by-case basis, it is possible for the committee to conduct a general evaluation for requests of the same type and those that are recurrent. This evaluation would allow the committee to determine how to handle such shares, meaning the committee does not need to evaluate each recurrent or general sharing request separately.

Furthermore, as indicated in the explanations under sections 2.1 and 2.2 above, in applications to be made by the bank under the eighth paragraph of Article 6 of the Regulation, for each specific sharing request, the bank is required to submit the proportionality evaluation and the committee's suitability opinion on the sharing request to the Agency.