

REGULATION ON THE DISCLOSURE OF CONFIDENTIAL INFORMATION

SECTION ONE

Purpose and Scope, Basis and Definitions

Purpose and Scope

ARTICLE 1 – (1) The purpose of this Regulation is to determine the scope, form, procedures and principles regarding the sharing and transfer of bank secrets and client secrets.

Basis

ARTICLE 2 – (1) This Regulation has been prepared based on Articles 73 and 93 of the Banking Law dated 19/10/2005 and numbered 5411.

Definitions

ARTICLE 3 – (1) In this Regulation;

- a) Explicit consent; refers to the explicit consent as defined in Article 3 of the LPPD,
- b) Parent company; refers to the parent company as defined in Article 3 of the Law,
- c) Principal Capital; refers to the capital to be calculated in accordance with the procedures and principles set out in the Regulation on Equity of Banks published in the Official Gazette dated 5/9/2013 and numbered 28756,
- ç) Anonymization; refers to making the data related to the client impossible to be associated with an identified or identifiable real/legal person client under any circumstances, even if it is matched with other data,
- d) Bank; refers to the banks defined in Article 3 of the Law,
- e) Financial institution; refers to a financial institution as defined in Article 3 of the Law,
- f) Group company; refers to the subsidiaries operating under the control of a parent company or a dominant partner resident in Turkey or abroad,
- g) Dominant partner; refers to the dominant partner as defined in Article 3 of the Law,
- ğ) ICAAP Regulation; refers to the on Banks' Internal Systems and Internal Capital Adequacy Assessment Process published in the Official Gazette dated 11/7/2014 and numbered 29057
- h) Permanent data storage; refers to the text message, electronic mail, internet, CD, DVD, memory card and any other similar means or medium that allows the information sent or received by the client to be recorded and copied unchanged in a way that allows the client to examine this information for a reasonable period of time in accordance with its purpose and to access this information exactly as it is,
- i) Law; refers to the Banking Law dated 19/10/2005 and numbered 5411,
- ı) De-identification; refers to the processing of client-related data in such a way that it cannot be associated with the relevant client without being combined with other data stored in a different environment, provided that technical and administrative measures are taken to ensure that the data cannot be associated with the identified or identifiable real/legal person client,
- j) Personal data; refers to the personal data defined in Article 3 of the LPPD,
- k) Control; refers to the control as defined in Article 3 of the Law,
- l) Board; refers to the Banking Regulation and Supervision Board,
- m) Agency; refers to the Banking Regulation and Supervision Agency,
- n) LPPD; refers to the Law on Protection of Personal Data, dated 24/3/2016 and numbered 6698,
- o) Risk Center; refers to the Risk Center regulated in Annex Article 1 of the Law,

ö) Aggregation; refers to the processing of client-related data in a way that cannot be associated with an identified or identifiable real/legal person client by combining it with data related to other clients for statistical purposes such as grouping, summarizing, collective display,

p) Asset owner; refers to the asset owner defined in Article 3 of the Regulation on Information Systems and Electronic Banking Services of Banks published in the Official Gazette dated 15/3/2020 and numbered 31069,

r) Data processing; refers to obtaining, recording, storing and preserving, modification, reorganization, disclosure, sharing, transfer, acquisition, acquisition of data and any operation performed on the data, such as making it available, classifying it or preventing its use,

SECTION TWO

Confidentiality Obligation and Sharing of Confidential Information

Confidentiality obligation

ARTICLE 4 – (1) Those who learn the secrets of banks or their clients due to their titles and duties shall not disclose such secrets to anyone other than the authorities expressly authorized by law in this regard. This obligation continues even after leaving office.

(2) The obligation under the first paragraph applies to client secrets automated or if it is obtained or learned by methods that are not part of any data recording system.

(3) Specific to banking activities, data pertaining to natural and legal persons that arise after the establishment of a client relationship with banks becomes a client secret. Any information indicating that a real or legal person client is a client of the bank is also a client secret. Even if a client relationship has not been established, obtaining and learning client confidential information held by another bank is also subject to the obligation under the first paragraph.

(4) Data, including personal data, relating to natural and legal persons that existed before the establishment of a client relationship with banks and that do not constitute a client secret of another bank shall become a client secret when processed alone or in combination with data generated after the establishment of the client relationship referred to in the third paragraph, in a manner to indicate that the person concerned is a client of the bank, although they do not fall within the scope of the secret alone. The obligation under the first paragraph regarding such data shall commence as of the date such data becomes a client secret.

Exemptions from the confidentiality obligation

MADDE 5 – (1) Sharing information that is a bank secret or client secret with the authorities expressly authorized by law in this regard does not constitute a breach of the confidentiality obligation.

(2) Provided that a confidentiality agreement is concluded and limited to the specified purposes only, the sharing of information that is a bank secret or client secret in the following cases does not constitute a breach of the confidentiality obligation:

a) Exchanging all kinds of information and documents among banks and financial institutions directly or through the Risk Center or companies to be established by at least five banks or financial institutions.

b) Providing information and documents to the parent companies of banks, including domestic or foreign credit institutions and financial institutions holding ten percent or more of their capital, within the scope of consolidated financial statement preparation, risk management and internal audit practices.

c) Providing information and documents to prospective buyers to be used in the valuation studies to be conducted for the sale of shares representing ten percent or more of the bank's capital through direct or indirect shareholding, or providing information and documents to be used in the valuation studies to be conducted for the sale of assets, including loans, or securities based on these assets.

ç) Providing information and documents to the service providers for use in valuation, rating, outsourcing services and independent audit activities or provided that the necessary technical and administrative measures are taken, in transactions for service procurement

(3) Provided that the disclosures to be made within the scope of subparagraph (b) of the second paragraph are limited to the purposes specified in the said subparagraph, a confidentiality agreement is made, and the provisions of the said agreement ensure that the counterparty takes the necessary technical and administrative measures, it does not constitute a breach of the confidentiality obligation to make the disclosures with the dominant partner or with a group company determined by the dominant partner / parent company, from which it receives services within the scope of consolidated financial statement preparation or consolidated risk management practices.

(4) The risk management-related sharing permitted under subparagraph (b) of the second paragraph and the third paragraph encompasses risk management activities pertaining to all risk categories within the risk management system outlined in the ISEDES Regulation, including compliance, credit, and reputational risks. The financial crime risk associated with the commission of offenses defined in Law No. 5549 on the Prevention of Laundering Proceeds of Crime, dated October 11, 2006, and Law No. 6415 on the Prevention of the Financing of Terrorism, dated February 7, 2013, is also considered within the scope of compliance risk. For sharing conducted for compliance risk purposes, it is mandatory that such sharing is based on national or international legislation applicable to the party making the disclosure or the receiving party.

(5) Disclosure of bank confidential information, which is not a client secret but only contains information belonging to the Bank, with third parties under the responsibility of the Bank upon the decision of the Board of Directors of the Bank does not constitute a breach of the confidentiality obligation. The Board of Directors of the Bank may delegate this authority to the General Directorate by determining the procedures and principles.

(6) Provided that the banks, Risk Center or companies established by at least five banks or financial institutions have received the client's request or instruction regarding the confirmation of the client secret information provided by the clients to public institutions and organizations upon their own request, responding to the said public institutions and organizations only as to whether such information is correct or not does not constitute a breach of the confidentiality obligation.

(7) In case it is mandatory for the proof of the claim or defense in disputes to which the bank is a party, the disclosures made with respect to client confidential information or bank confidential information belonging to real or legal persons who are parties to the dispute in question, to the judicial authorities at home or abroad, to the authorities authorized to resolve alternative disputes such as arbitration, mediation and arbitral tribunals, or to the parties representing the bank in such disputes in order to share with these authorities shall not constitute a breach of the confidentiality obligation.

(8) Pursuant to Article 5 of the Law No. 5549, the sharing of information within the group regarding the accounts and transactions by the institutions affiliated to the financial group with the recognition of the client does not constitute a breach of the confidentiality obligation.

(9) A copy of the confidentiality agreement regarding the disclosures to be made within the scope of subparagraph (b) of the second paragraph and the third paragraph, the purposes of the

disclosure, the technical and administrative measures taken by the dominant partner/parent company or by the parties to which the dominant partner/parent company provides services within this scope to ensure the confidentiality and security of the confidential information, and the title and country of location of all third parties to whom the bank secret and client secret information is transferred within the scope of this article, shall be reported to the Agency in accordance with the format and methods deemed appropriate by the Agency, in six-month periods and in case of a critical change, immediately in the event of such change. All disclosures made within the scope of this article in a manner that makes the identity of the client specific or identifiable shall be kept ready for audit at the bank and such information shall be sent to the Agency upon request in accordance with the format and methods deemed appropriate by the Agency.

General principles on disclosure of confidential information

ARTICLE 6 – (1) 5. Information in the nature of client secrets and bank secrets, including the disclosures to be made within the scope of Article 5, may only be shared provided that it is limited to the specified purposes and includes as much data as required for these purposes in accordance with the principle of proportionality. The transfer of confidential information, regardless of whether the other party is aware of the content of the information, is also considered sharing. If the stated purpose can be achieved without some of the shared data, the sharing cannot be considered proportionate. In this context, in order for the disclosures, including those under Article 5, to be proportionate, at least all of the following points must be fulfilled:

a) For the purposes for which it is relevant, sharing should only include as much data as is necessary for those purposes.

b) It can be shown that all of the data or data sets contained in the disclosures are necessary for the fulfillment of the stated purposes.

c) Applying these methods if the purposes can still be achieved when the data to be shared is aggregated, de-identified or anonymized.

ç) 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 confidentiality regarding the real/legal person client to be shared with these parties

the information in the nature of information is not of such a nature as to make the identity of the said client specific or identifiable and the methods specified in subparagraph (c) are used.

d) Designing sharing parties and sharing methods to create the least possible data duplication.

(2) In sharing confidential information regarding real person clients, the general principles set forth in Article 4 of the LPPD must be complied with. Personal data relating to health and sexual life, even if they are in the nature of client secrets, cannot be shared with domestic or foreign parties on the basis of one of the situations exempted from the obligation to keep secrets.

(3) Without prejudice to the mandatory provisions of other laws, except for the cases exempted from the confidentiality obligation specified in Article 5, client confidential information cannot be shared with third parties in Turkey or abroad without a request or instruction from the client, even if the client's explicit consent is obtained, and the client's explicit consent to share the information or the client's request or instruction cannot be made a prerequisite for the services to be provided by the bank.

(4) The client's request or instruction referred to in the third paragraph may be received in writing or via a permanent data storage device, provided that it is provable. The client's request or instruction may cover multiple transactions and the request or instruction for continuous transactions

may be indefinite, provided that it can be canceled or changed by the client at any time by the same methods by which the request or instruction was received. Except for the cases specified in the sixth paragraph, it is essential that the client can query and view the requests or instructions given by the client through the distribution channels for electronic banking services.

(5) For the disclosures to be made pursuant to subparagraph (ç) of the second paragraph of Article 5 regarding outsourcing services or service purchases other than valuation, rating and independent audit, which are not within the scope of primary systems defined in Article 3 of the ICAAP Regulation, the request or instruction of the client specified in the third paragraph must be present. This provision shall not apply to the posts made within the scope of the seventh paragraph of Article 5.

(6) Interaction with domestic or foreign banks, payment service providers, payment, securities settlement or messaging systems is necessary due to the nature of the transaction and the sharing of client confidential information with domestic or foreign parties is a mandatory element of the transaction in order to complete the transaction, For transactions such as domestic/foreign fund transfer, foreign letter of credit, letter of guarantee, letter of reference, the initiation of the transaction by the client or the entry of an order by the client through the distribution channels for electronic banking services shall replace the client request or instruction specified in the third paragraph in terms of such shares.

(7) In the disclosures to be made upon the request or instruction of the client, whether the principle of proportionality specified in the first paragraph is complied with or not shall be evaluated limited to whether the client's request or instruction is complied with or not. In the event that the data set requested by the client to be shared includes confidential information regarding other clients or clients of other banks, the obligation in the first paragraph must be complied with without any limitation.

(8) Within the scope of subparagraph (b) of the second paragraph and third paragraph of Article 5, subparagraph (ç) of the first paragraph is not applicable for the disclosures requiring comprehensive data sharing for a large number of clients, such as credit provision calculations and internal capital adequacy calculations, and for the disclosures to be made for counterparty compliance risk purposes, provided that the appropriate opinion of the Agency is obtained before the disclosure. If the data to be shared for consolidated risk management purposes within the scope of subparagraph (b) of the second paragraph and third paragraph of Article 5 belongs to a natural or legal person or a risk group to which a loan of ten percent or more of the bank's capital has been extended, the requirement of obtaining the appropriate opinion of the Agency prior to sharing and compliance with subparagraph (ç) of the first paragraph is not required for such data. The Board is authorized to change the limitations set forth in this paragraph or to introduce new limitations regarding the matters set forth in this paragraph.

(9) The provisions of Article 98 of the Law are reserved for the fulfillment of the requests of the authorities authorized to audit according to the laws of foreign countries and equivalent authorities of the Agency for auditing and information on the branches or partnerships in Turkey of the institutions operating in the financial markets in their own countries, and for the fulfillment of the requests regarding the information within the scope of consolidation of the branches or partnerships of banks abroad. The sharing of information upon the request of foreign authorities equivalent to the Agency shall be performed directly by the Agency if it is possible to be met with the information available with the Agency in accordance with Article 98 of the Law, or by the banks within the permission to be granted by the Board if the information available with the Agency is not sufficient.

Pursuant to paragraph 5 of Article 5, sharing of information that is a bank secret with foreign authorities equivalent to the Agency upon the request of such authorities shall not be contrary to this paragraph, provided that the Agency is notified in writing prior to such sharing.

(10) Within the scope of subparagraph (b) of the second paragraph of paragraph 2 and paragraph 3 of Article 5, it shall be considered a violation of the first paragraph if the disclosures made for the purpose of internal audit practices, including audit working papers, contain data that make the identity of the client specific or identifiable.

(11) The Board is authorized to prohibit the disclosure of all kinds of data that are client secrets or bank secrets to third parties abroad, including the disclosures specified in Article 5, as a result of the assessment to be made in relation to economic security. Article 5 shall be based on the principle of reciprocity. The Board is authorized to restrict, suspend or prohibit the shares to be made within the scope of Article 5 with the parties located in a country that is determined not to comply with the reciprocity principle.

Information sharing committee

ARTICLE 7 – (1) Banks are required to establish an Information Sharing Committee, whose job descriptions and working principles are approved by the bank's board of directors, which is responsible for coordinating the sharing of information in the nature of client secrets and bank secrets, taking into account the principle of proportionality, including the sharing to be made within the scope of Article 5, and evaluating the appropriateness of incoming sharing requests and recording these evaluations. At a minimum, this committee is composed of representatives of the business line, internal control unit, compliance unit and legal unit requesting or being requested to share information, as well as the relevant asset owners.

**SECTION THREE
Final Provisions**

Enforcement

ARTICLE 8 – (1)(Amended:OG-24/12/2021-31699)⁽¹⁾ This Regulation shall enter into force on 1/7/2022

Execution

ARTICLE 9 – (1) The provisions of this Regulation shall be executed by the Chairman of the Banking Regulation and Supervision Agency.

Official Gazette where the Regulation was published

Date	Number
4/6/2021	31501

Official Gazettes in which the Regulations Amending the Regulation are Published

Date	Number
24/12/2021	31699

⁽¹⁾ This amendment enters into force on 1/7/2022.