

Banking Law No. 5411

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Laws Amending the Banking Law No:5411

Law No.	Official Gazette Date	Official Gazette Number
5472	14.03.2006	26108
5667	30.05.2007	26537
5754	08.05.2008	26870
5766	06.06.2008	26898
6111	25.02.2011	27857 (repeated)
Decree Lav No. 2011/662	02.11.2011	28103
6300	10.05.2012	28288
6327	29.06.2012	28338
6352	05.07.2012	28344
6362	30.12.2012	28513
6456	18.04.2013	28622
6462	03.05.2013	28636
6487	11.06.2013	28674
6493	27.06.2013	28690
6495	02.08.2013	28726
Judgment of the Constitutional Court of 04.06.2014, no. in case file 2014/85.	12/09/2014	29117
Decree Law No. 2016/678	22.11.2016	29896
Decree Law No. 2017/684	23.01.2017	29957
Decree Law No. 2017/687	09.02.2017	29974
7071	08/03/2018	30354(First Repeated)
7074	08/03/2018	30354 (First Repeated)
7076	08/03/2018	30354 (First Repeated)
Decree Law No. 2018/703	09/07/2018	30473 (Third Repeated)
7186	19/07/2018	30836 (First Repeated)
7192	22/11/2019	30956
7222	25/02/2020	31050
7247	26/06/2020	31167
7292	7/3/2021	31416
7319	25/5/2021	31491
7338	1/1/2022	31640
7407	28/5/2022	31849

Banking Law

Law No. : 5411
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PART ONE General Provisions

Objective

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

Scope

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

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

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

Definitions and abbreviations

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

Relevant Minister: A vice President or a minister designated and nominated by the President,¹

Board: Banking Regulation and Supervision Board,

Agency: Banking Regulation and Supervision Agency,

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

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

Fund: Savings Deposit Insurance Fund,

Fund Board: Savings Deposit Insurance Fund Board,

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

Credit institution: Deposit banks and participation banks,

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

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

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

¹ As amended by the Decree-Law no. 2018/703.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Outsourcing institution: The institution which handles in the name of the bank the activities of the bank, except for acceptance of deposits or participation funds, and lending of all kinds and types of cash and non-cash loans, and other transactions considered as loan for the purposes of implementation of this Law, and which offers auxiliary services to the bank in management and handling of such operations, also including the marketing of any of such operations, other than acceptance of deposits or participation funds, except for advertisement,²

² As amended by the Law No. 6111.

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

Fields of activity

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

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

j) Purchase and sale of capital market instruments and repurchasing or re-sale commitments,

k) Intermediation for issuance or public offering of capital market instruments,

l) Transactions for trading previously issued capital market instruments for intermediation purposes,

m) Guarantee transactions like undertaking guarantees and other liabilities in favor of other persons,

n) Investment counseling services,

o) Portfolio operation and management,

p) Primary market dealing for purchase-sales transactions within the framework of liabilities assumed by contracts signed with Treasury Undersecretariat and/or Central Bank and associations of institutions,

r) Factoring and forfeiting transactions,

s) Intermediating fund purchase-sale transactions in the inter-bank market,

t) Financial leasing services,

u) Insurance agency and individual private pension fund services,

v) Other activities to be determined by the Board.

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

Indirect share ownership

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

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

PART TWO

Transactions Subject to Permission

SECTION ONE

Permissions for Establishment and Operation

Permission for establishment or opening branches and representative offices in Turkey

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

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

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

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

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

Establishment conditions

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

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

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

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

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

Qualifications of founders

Article 8- The founders of banks shall;

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

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

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

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

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

e) Have necessary financial strength and respect,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Operating permission

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

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

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

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

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

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

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

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

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

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

Revocation of establishment permission

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

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

Revocation or restriction of operating permission

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

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

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

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

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

Opening domestic branches

Article 13³ - On the condition to comply with the principles to be determined by the Board and with the corporate governance and protective provisions set forth in this Law and providing that the Agency is notified thereof, banks may open branches within Turkey.

³As amended by the Law No. 5472.

Cross border activities

Article 14⁴- Banks established in Turkey may open branches or representative offices abroad, including off-shore banking regions, on the condition to set up undertakings or participate in existing undertakings comply with the corporate governance and protective provisions set forth herein and to comply with the principles to be established by the Board.

Permission for authorization of independent audit, valuation and rating Institutions

Article 15⁵- It is in the jurisdiction of the Board to decide authorization, or termination of authorization temporarily or permanently, of institutions appointed for independent audit activities of the banks, and if ordered by the Board, for valuation of the assets, rights and obligations of the banks or of the guarantees received from borrowers, and for rating of banks or their borrowers. The principles and procedures applicable for this shall also be determined by the Board in consultation with the relevant professional associations.

SECTION TWO

Provisions Pertaining to Articles of Association

Amendments in articles of association

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

⁴ As amended by the Law No. 6111.

⁵ As amended by the Law No. 6111.

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

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

Capital increases

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

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

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

Acquisition and transfer of shares

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

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

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

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

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

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

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

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

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

SECTION THREE

Merger, Disintegration, Changes of Shares and Voluntary Liquidation

Merger, disintegration and change of shares

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

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

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

Voluntary liquidation

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

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

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

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

SECTION FOUR

Rejection of Applications for Permission

Rejection of applications for permission

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

PART THREE

Corporate Governance

SECTION ONE

Management

Principles of corporate governance

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

Board of directors

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

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

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

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

Audit committee

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

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

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

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

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

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

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

General managers and deputy general managers

Article 25⁶- The general manager of a bank must have at least undergraduate degrees in the disciplines of law, economics, finance, banking, business administration, public administration and related fields and those that have undergraduate degrees in engineering fields must have a graduate degree in the aforementioned fields, and they must have at least ten years of professional experience in the field of banking or business administration.

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

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

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

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

⁶ The last paragraph of the Article is repealed by the Law No. 6111.

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

Prohibition from working and signing

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

Signature authorization of bank officers who, as a result of audits of the Agency, are detected to have breached the provisions of this Law or other relevant laws and regulations pertaining hereto and to have endangered the safe operation and functioning of the banking system or the relevant bank and are therefore reported in writing by a complaint to the concerned Chief Public Prosecutor's Office is temporarily removed by a decision of the Board. These persons can by no means be employed in any bank as personnel with signature authorization, without a prior consent or permission of the Board.⁷

Oath and declaration of property

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

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

⁷ As amended by the Law no. 7222.

Docket

Article 28- Resolutions adopted by the board of directors, audit committee, credit committee and board of managers shall be entered into a separate book with consecutive pages certified in accordance with provisions of the Turkish Commercial Code No.

6762 relating to keeping of books by allocating a date and number to each decision without leading to any doubt as to authenticity of the text provided that no space is left between each text and there is no addition between lines and each resolution shall be signed by members within maximum one month following the date of decision. Within the framework of the principles and procedures to be set by the Board banks may use a looseleaf book each sheet of which shall be certified by a notary public in place of dockets, bearing consequential numbers subject to the Agency's approval provided that it is bounded at the end of each year.

SECTION TWO Internal Systems

Obligations pertaining to internal systems

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

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

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

Internal control system

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

Risk management system

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

Internal audit system

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

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

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

SECTION THREE

Authorized Institutions

Independent audit firms

Article 33⁸- Additional requirements to be requested from the independent audit firms authorized by Public Oversight, Accounting and Auditing Standards Authority within the scope of Article 15, are set by the Board through receiving the opinion of the Central Bank and associations of institutions, and the list of independent audit firms meeting these requirements is disclosed to the public. The Board is authorized to remove those independent audit firms identified to be in breach of the standards and regulations within the framework of this Law temporarily or permanently from the list by means of quality control and audit. The Board will declare the results of its quality control and audit works to the Public Oversight, Accounting and Auditing Standards Authority. Independent audit firms shall be liable to the third parties for all the damages caused pursuant to their activities under this Law.

⁸As amended by the Law No. 66362.

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

Valuation and rating institutions

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

Outsourcing institutions

Article 35⁹- The Banks will, before receiving outsourcing services, prepare a written report, for submission to the Agency if and when required, containing the probable risks of outsourcing services to be received, and management of such risks, as well as the expected benefits and costs thereof. However, neither the operations which are solely required to be performed by the bank's board of directors or organizational units in its internal units, nor the activities relating to accounting of transactions and issuance of financial reports, may be the subject of outsourcing services. The outsourcing services to be received shall not either prevent the banks from fulfilling their legal duties and obligations, conforming to the relevant legislation, and being audited efficiently. The Board will, in its sole discretion and whenever deemed necessary, be authorized to determine and limit the subjects of outsourcing services that may be received by banks,

⁹ As amended by the Law No. 6111.

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

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

Liability insurance

Article 36¹⁰: Independent audit firms are under obligation to arrange a liability insurance against probable risks of losses that may be caused by their services, in insurers or insurance carriers established in Turkey or abroad, under general terms and conditions to be determined by the Treasury Undersecretariat or under conditions certified to be compliant with the said general terms and conditions. Valuation, rating and outsourcing institutions shall arrange liability insurance only if demanded so by the banks or if and when deemed necessary by the Board.

SECTION FOUR

Financial Reporting

Accounting and reporting system

Article 37¹¹- Banks are obliged to implement uniform chart of accounts in accordance with the principles and procedures to be determined by the Board in consultation with Public Oversight Accounting and Auditing Standards Authority and associations of in-

¹⁰ As amended by the Law No. 6111.

¹¹ As amended by the Law No. 6362.

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

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

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

Consolidated financial reports

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

Signing, submission, announcement and auditing of financial reports

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

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

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

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

Annual activity report

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

Responsibility

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

Record keeping

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

PART FOUR Protective Provisions

SECTION ONE Own Funds and Standard Ratios

Protective regulations

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

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

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

Paid-up capital, reserved funds and own funds

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

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

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

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

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

Capital adequacy

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

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

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

Adequacy of liquidity

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

Elimination of excesses

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

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

SECTION TWO

Loans and Risk Group

Loans

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

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

In addition to those listed and mentioned in the first paragraph, the finances provided by development and investment banks and by participation banks through payment of price of movable and immovable assets and services or through profit and loss partnership investments, or provision of real estates, equipments or commodities, or by financial leasing, leasing of documents against goods, joint investments or other methods to be determined by the Board are also considered and treated as credit facilities for the purposes of this Law.¹²

Risk group

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

A bank and that bank's qualified shareholders, directors, general manager, assistant general managers and its executives working in job positions equivalent or superior to the ones listed above in terms of their powers and job duties, even if actually employed with other job positions, and their spouse and children, and the partnerships or corporations controlled by them directly or indirectly, jointly or alone, or participated by them with unlimited liability, or served by them as a director or as general manager constitute the risk group of that bank.¹³

¹² As amended by the Law no. 7222.

¹³ As amended by the Law no. 7222.

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

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

The banks whose majority of capital is owned separately or jointly by the Treasury Undersecretariat, Privatization Administration or the administrations subject to the general budget or annexed budget shall constitute a risk group together with the undertakings that they directly or indirectly control.¹⁴

Each of the public economic enterprises and of other public entities and administrations the majority of capital shares of which is held and owned by the Presidency of Privatization Administration, Türkiye Varlık Fonu Yönetimi Anonim Şirketi (Asset Fund of Turkey Management Co., Inc.) or the Asset Fund of Turkey, constitutes a separate risk group, together with the affiliates, subsidiaries and corporations controlled by them in terms of management and supervision.¹⁵

The Board is authorized to determine the procedures and principles regarding implementation of this article.¹⁶

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

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

¹⁴ As amended by the Law no. 7222.

¹⁵ As amended by the Law no. 7222.

¹⁶ As amended by the Law no. 7222.

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

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

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

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

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

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

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

for the securities mentioned in sub-paragraphs (a) and (b) of Article 55 of this Law.

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

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

Extending loan

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

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

Those persons empowered to extend loans cannot take part in the evaluation and decision-taking phases for the loan transactions involving themselves, their spouses and children under their guardianship and the real and legal persons that constitute a risk group with them, and shall inform the relevant authorities of this fact in writing.

In cases where the Board determines that loans extended in violation of this article and Article 50, the Board shall be autho-

rized to decide for considering such loans as items of reduction in the calculation of the relevant bank's own funds and to require the obtainment of additional own funds in the amount of such loans.

Monitoring of loans

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

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

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

Loan provisions and guarantees

Article 53- Banks are under obligation to formulate and implement policies regarding the adequate level of reserves required to be set aside for meeting the losses which are actually borne or may in the future be borne in respect of credits, and the quality and classification of credit facilities, and the receipt of guarantees and collaterals, and the measurement of value and

of credits pursued in legal proceedings and write-down of them in accordance with the Turkish Financial Reporting Standards published by the Public Supervision, Accounting and Audit Agency, and the repayment of credits, also including their restructuring, and to regularly revise them, and build and operate the required structures and mechanisms for implementation of all these systems. Procedures and principles in respect of enforcement of provisions of this paragraph are determined and regulated by the Board.

The special reserves set aside with respect to the credit facilities pursuant to this article are fully considered and treated as an expense item in calculation of the corporate income tax base in the year they are reserved.

Loans written down due to becoming uncollectible after setting aside of special reserves as per this article are deemed and accepted as uncollectible and worthless receivables within the meaning ascribed thereto by Article 322 of the Tax Procedures Code no. 213 dated 4/1/1961.¹⁷

SECTION THREE

Restrictions

Loan limits

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

¹⁷ As amended by the Law no. 7186.

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

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

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

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

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

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

Transactions that are not subject to loan limits

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

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

b) Transactions effected with the Undersecretariat of Treasury, the Central Bank, the Presidency of Privatization Administration, the Presidency of Mass Housing Administration, Türkiye Varlık Fonu Yönetimi Anonim Şirketi (Asset Fund of Turkey Management Co., Inc.) or the Asset Fund of Turkey, and transactions backed by bonds, debentures or similar other securities issued or guaranteed for payment by these public administrations.¹⁸

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

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

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

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

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

¹⁸ As amended by the Law no. 7222.

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

i) Other transactions to be determined by the Board.

Restrictions pertaining to partnership shares

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

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

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

Transactions on property and commodity

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

Banks shall not engage in trading property and commodity for commercial purposes, excluding the contracts based on property and commodity under the Capital Market Law No. 2499

¹⁹ Third paragraph of this Article is repealed by the Law no. 7222.

and the trading of precious metals to be deemed appropriate by the Board, and shall not participate in undertakings whose main field of activity is property trading except for mortgage financing institutions and real estate investment trust.

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

Transactions pertaining to funds and foundations

Article 58²¹- For the funds and foundations established by banks exclusively for their employees with a view to providing health, social aid, retirement, prudence and savings services; no resource shall be transferred for financing their deficits.

Grant limits

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

²⁰ *Third paragraph of this Article is repealed by the Law no. 7222.*

²¹ *See the 73rd and 74th articles of the Law No. 5754.*

PART FIVE

Provisions Regarding Collection of Deposits and Participation Funds

Acceptance of deposits and participation funds

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

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

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

Funds to be provided by development and investment banks from credit customers, partnerships and their partners within the frame of procedures and principles to be determined by the Board, and funds to be used by them from banks, monetary markets, capital markets and organized markets are not considered and treated as deposits for the purposes of this Law.²²

²² As amended by the Law no. 7222.

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

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

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

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

Withdrawal of deposits and participation funds

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

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

Prescription

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

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

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

Insurance of deposits and participation funds

Article 63- All deposits and participation funds held with credit institutions, other than those belonging to official institutions, credit institutions and financial institutions, shall be insured by the Savings Deposit Insurance Fund²³.

²³ As Amended by the Law no. 7407. By Article 1 of the Law no. 7407, amendments are made in this article to become effective three months after its date of promulgation (i.e. 28/8/2022).

Credit institutions are under obligation to insure the deposits and participation funds held with them on the basis of the portion subject to insurance therein, and to pay insurance premiums on this basis.²⁴

The coverage and amount of the deposits and participation funds to be subject to insurance hereunder shall be set by the Fund Board upon approval of the Ministry of Treasury and Finance, the Central Bank and the Board. The risk-based insurance premium rate cannot exceed twenty per thousand of deposits and participation funds subject to insurance on annual basis. The tariff, collection time and form of risk-based insurance premium, and the minimum level aimed to be reached in deposit insurance reserves, and other related conditions shall be set by the Fund Board upon consulting the Board.²⁵

In the case of bankruptcy or liquidation²⁶ of credit institutions, the owners of deposits and participation funds shall be treated as privileged creditors in third rank with respect to the part of their accounts not subject to insurance, pursuant to Article 206 of the Execution and Bankruptcy Law no. 2004, and shall collect their receivables after payment of the privileged receivables of the Fund and the claims of the state and social security organisations covered by the Law no. 6183.

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

The insured portions of clearly proven deposits and participation funds held with credit institutions whose operating permission has been revoked shall be paid by the Fund from deposits insurance reserve²⁷.

Credit institutions are under obligation to provide the Fund with all kinds of information usable as a base for calculation, follow-

²⁴ As Amended by the Law no. 7407.

²⁵ As Amended by the Law no. 7407.

²⁶ As Amended by the Law no. 7407.

²⁷ As Amended by the Law no. 7407.

up, validation and payment of the insured deposits and participation funds, and to build and establish their systems needed therefor. Procedures and principles for establishment, operation and supervision of this system shall be determined by the Fund Board upon consulting the Board.²⁸

Deposits and participation funds not covered by insurance

Article 64- The below-listed deposit and participation fund accounts shall not be subject to insurance:²⁹

a) Deposits, participation funds and other accounts belonging to controlling shareholders or qualified shareholders of the relevant credit institution, as well as legal entities under their control, and fathers, mothers, spouses and children under custody of the real person controlling shareholders.³⁰

b) Deposits, participation funds and other accounts belonging to chairman and members of board of directors or board of managers of the relevant credit institution, and its general manager and deputy general managers, as well as legal entities and partnerships under their control individually or collectively, and fathers, mothers, spouses and children under custody of them.³¹

c) Deposits, participation funds and other accounts covered by assets derived from crimes as referred to in Article 282 of the Turkish Criminal Code no. 5237 dated 26.9.2004.

d) Deposits, participation funds and other accounts determined by the Fund Board upon consulting the Board.³²

²⁸ As Added by the Law no. 7407.

²⁹ As amended by the Law no. 7407.

³⁰ As Amended by the Law no. 7407.

³¹ As Amended by the Law no. 7407.

³² As Amended by the Law no. 7407.

PART SIX

Supervision and Measures to be Taken

Supervision

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

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

Consolidated supervision

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

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

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

cedures to be set by the Board upon consulting the above-mentioned authorized bodies.

Precaution plan to be prepared by banks

Article 66A- Banks classified by the Board as systematically important banks are under obligation to prepare and submit to the Board a precaution plan in advance within the frame of the principles and procedures to be determined by the Board with a view to proactively determining the measures and precautions to be taken upon occurrence or probability of occurrence of any one of the events which may lead to a breakdown of their financial structure or situation due to non-compliance with the protective provisions of the Law and the regulations issued in reliance upon the Law or otherwise.

As a result of assessments to be made on consolidated or non-consolidated basis, in case of occurrence or probability of occurrence of any one of the events which may lead to a breakdown of their financial structure or situation, these banks are under obligation to take the measures and precautions included in their precaution plan and applicable on consolidated or non-consolidated basis and to report the same urgently to the Agency.

As a result of assessments to be made on consolidated or non-consolidated basis, in case of occurrence or probability of occurrence of any one of the events which may lead to a breakdown of the bank's financial structure or situation, the Agency may request the bank to take any one or more of the measures and precautions in its precaution plan. The procedures and principles relating to implementation of this article are determined by the Board.³³

³³ As added by the Law no. 7222.

Cases where measures are required to be taken

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

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

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

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

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

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

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

h) Failure to immediately take the measures and precautions specified in the precaution plan under Article 66/A, or failure in remedy of problems in spite of precautions, or determining that no result can be achieved even if the specified precautions are taken,³⁴

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

³⁴ As amended by the Law no. 7222.

Corrective measures

Article 68 The Authority requests the bank's board of directors to take and implement within a period of time to be deemed fit and under a schedule to be approved by the Authority any one or several or all of the measures of:

(a) Increase of the shareholders' equity of the bank, or temporary suspension of distribution of profit and transfer of the profits and earnings to reserve funds, or increase of the reserve funds set aside, or provision of liquidity through stoppage of lending of credit facilities to shareholders or disposal of assets, or limitation or stoppage of new investments, or limitation of fee, wage and other payments, or stoppage of long-term investments, in the case of detection of any one or more of the events described in paragraphs (a), (b), (c), (d) or (h) of article 67; or³⁵

(b) In the case of detection of any one or more of the events described in paragraphs (e), (f) or (g) of article 67, remedy or correction of these non-conformities, or revision of crediting policy and stoppage of risky banking transactions, or taking of measures required for reduction of the maturity, exchange rate or interest risk exposures,

as well as any other measures or precautions that may be deemed fit and necessary by the Authority.³⁶

Rehabilitating measures

Article 69- In cases where the bank fails to take the measures laid down in Article 68, or the consequences of such cases cannot be prevented despite the measures taken, or the Agency considers that no result can be obtained even after taking such measures, the Board shall directly require the

³⁵ As amended by the Law no. 7222.

³⁶ As amended by the Law no. 7222.

bank's board of directors to take and promptly implement any measure, including the following:

a) Upon occurrence of any one or more of the events listed and described in paragraphs (a), (b), (c), (d) and (h) of Article 67, correction of financial structure and standing, rise of any one or both of capital adequacy or liquidity levels, disposal of long-term or fixed assets by granting an appropriate time therefor, reduction of operating and administrative expenses, or stoppage of all kinds of payments to its members, other than the payments made regularly under any name whatsoever, and limitation or prohibition of extension of cash and non-cash credit facilities to certain persons, entities, risk groups or sectors;³⁷

b) With respect to paragraphs (e), (f) and (g) of Article 67, correction or remedy of breaches, and in cases where the board of directors may be held liable for decisions, transactions and applications, calling of the general assembly of shareholders for an extraordinary meeting as soon as possible, and replacement of any one or several or all of the directors, or increase of the number of directors, and appointment of new directors, or dismissal of its members who can be held liable for the relevant decisions and transactions, or preparation of a short, medium and long-term program, acceptable to the Board, for reduction of risk exposures, and requesting the directors and the qualified shareholders to commit that program in writing, and to report and submit the results of application as of the end of periods determined in advance.³⁸

Restrictive measures

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

³⁷ As amended by the Law no. 7222.

³⁸ As amended by the Law no. 7222.

implement one or more of the following measures or other measures deemed appropriate;

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

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

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

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

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

f) Merge with another willing bank or banks,

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

h) Deduct the arising loss from the own funds.

Revocation of operating permission or transfer to the Fund

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

a) The bank has not taken, either partially or completely, the requested measures indicated in Article 70 of this Law within the period given by the Board or within maximum 12 months otherwise, or, even if having taken these measures, either partially or

completely, the financial structure has not been strengthened or, it is considered that it cannot be strengthened even if the measures are taken,

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

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

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

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

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

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

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

Measures to be taken against systemic risk

Article 72³⁹

³⁹ *The Article repealed by the Law No. 6362.*

PART SEVEN

Legal Obligations

Confidentiality

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

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

they demand for investigations, prosecutions or proceedings initiated against them with regard to the crimes alleged to have been committed by them in the course of performance of their duties, even if they have already left their job position therein.⁴⁰ The Agency shall not be held responsible for the disclosure of confidential information and documents over which a court judgment has been issued.

Those who, by virtue of their positions or in the course of performance of their duties, have access to confidential information about banks or clients are not permitted to disclose such confidential information to any person or entity other than the authorities expressly authorized by law. This confidentiality obligation shall survive termination of employment contracts of them. Data and information belonging to natural persons or legal entities collected in the course of banking activities and transactions after establishment of customer relations with banks become and are classified as customer secrets. Without prejudice to the mandatory provisions of other laws, such data and information classified as customer secrets may not be disclosed to or shared with third parties resident at home or abroad, without a demand or instruction received from the customer therefor, even if the customer's explicit consent is taken pursuant to the Personal Data Protection Law no. 6698 dated 24/3/2016, except for the cases and events exempted from the secrecy obligations set down in this article. As a result of an assessment relating to economic security, the Board is authorized to prohibit the sharing with or disclosure to third parties resident abroad of all kinds of data classified as customer secrets or bank secrets and also to decide and order the keeping at home of all information systems employed by banks for their banking activities and of their backups. Also including the disclosures that may be made in cases or events exempted from the secrecy obligation stipulated in this article, the information classified as customer secrets and bank secrets may be shared or disclosed only for the specified purposes, providing that it is kept limited only by the data required

⁴⁰ As added by the Law no. 6111.

for said purposes in accordance with the principle of proportionality.⁴¹

However, the confidentiality obligation excludes disclosure of confidential information in relation to banks or information pertaining to secrets of their clients, provided that such information and documents relate to entities under supervision of the Agency or their partners, affiliates or subsidiaries or partnerships under joint control with them, or to activities, operations, clients of these institutions and that such an exchange is required to meet information requests of entities or authorities equivalent to the Agency and of those authorized to audit pursuant to the laws of foreign countries, and a confidentiality agreement is signed in connection therewith, and disclosure of data is kept limited only for specified purposes as such during exchanges of all kinds of information and documents among banks or financial institutions either directly or indirectly, or through a risk center or through firms to be established by at least five banks or financial institutions, and also during meeting information and document requests for use in the valuation process carried out by potential buyers for the sale of shares over ten percent or more of the capital through direct or indirect shareholdings, or in preparation of consolidated financial statements and accounts of parent companies, also including credit institutions and financial institutions, established and headquartered in Turkey or abroad, holding ten percent or more of capital, or in their risk management and internal audit practices, or in valuation for the purpose of sale of their assets or their assetbased securities, also including the loans, or in purchasing of valuation, rating or outsourcing services or in independent audit services, or in purchases of services by taking the required actions in connection therewith.⁴²

The Board is authorized to determine the scope, format, procedures and principles of sharing and disclosure of information classified as secrets pursuant to third and fourth paragraphs or to impose limitations thereon.⁴³

⁴¹ As amended by the Law no. 7222.

⁴² As amended by the Law no. 7222.

⁴³ As added by the Law no. 7222.

Protection of reputation

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

Ethical principles

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

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

Customer rights

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

Relations between banks and their customers in respect of the fields of activity mentioned in Article 4 of this Law are regulated by contracts to be entered into in writing, or on distance basis by using remote communication means, or by methods, whether on distance basis or not, determined by the Board as a valid alternative to the written form, to be applied by means of an information or electronic communication device, in such manner to allow verification of identity of customer, and the procedures and principles pertaining thereto are determined by the Board.⁴⁴

⁴⁴ As Amended by the Law no. 7247.

Without prejudice to the provisions of the Law on Protection of Consumers no. 6502 dated 7/11/2013, minimum contents required to be included in contracts to be signed between banks and their individual customers, and transactions to which standard uniform contracts are applicable shall be determined by the unions of institutions upon approval of the Board.

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

Manipulations and Deceptive Transactions in Financial Markets

Article 76A- Transactions and practices of banks governed by and subject to this Law aiming to ensure artificial price formation, also including artificial supply, demand or exchange rates, in financial markets, through transactions listed in Article 4 hereof, and dissemination of untrue or misleading information by using different means, also including internet media, or direction or guidance of savers or account owners untruly or in a misleading manner, or similar other transactions and practices for the same purposes are considered and treated as manipulations and deceptive transactions in financial markets. Transactions and practices covered by this article are determined by the Board and Published in the Official Gazette.⁴⁵

⁴⁵ As added by the Law no. 7222.

PART EIGHT

Development and Investment Banks and Financial Holding Companies

Provisions pertaining to development and investment banks

Article 77- Development and investment banks are subject to all provisions of this Law, other than second paragraph of Article 43, and Articles 54, 55, 56, 57, 61, 63, 64, 106 to 129, and subparagraph (a) of first paragraph of Article 130, and Articles 131 to 142.

By also considering the implementation of corporate governance provisions and protective provisions, the Board is authorized to determine a more prudent ratio or limit different from the minimum or maximum standard ratios and limits as determined for any one or a group or all of development and investment banks, or to differentiate the calculation and reporting periods, or to determine generally undetermined ratios and limits.

The Board is authorized to determine the procedures and principles relating to activities that may be conducted by participation banks and development and investment banks by interest-free methods.

Participations and ventures entered into by participation banks and development and investment banks for interest-free financing purposes are not considered and treated under second paragraph of Article 49.

Total sum of capital shares that may be acquired by participation banks in corporations and partnerships through provision of finance by interest-free methods cannot exceed fifty percent of total sum of participation funds accepted by participation banks, and will not be taken into consideration in calculation of limits specified in first paragraph of article 56. Transactions executed on real estates and commodities due to the obligations assumed by participation banks through provision of finance by interest-free methods are not considered and treated as a part of Article 57.⁴⁶

⁴⁶ As amended by the Law no. 7222.

Financial holding company

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

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

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

PART NINE Associations of Institutions

The Banks Association of Turkey and The Participation Banks Association of Turkey

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

Duties and powers of associations

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

- a) To ensure the development of the banking profession,
- b) To ensure that members function in a dignified and well-disciplined manner as required by the banking profession and in line with the needs of the economy, by setting professional principles,
- c) To set the ethical professional principles and standards that the personnel of member banks will have to abide by, upon receiving the approval of the Agency,
- d) To monitor the enforcement of the decisions taken pursuant to the applicable legislation as well as the measures required to be taken by the Agency,
- e) To take and implement any measure required for preventing unfair competition among members,
- f) To set the principles and conditions for announcements and advertisements in terms of type, format, qualitative and quantitative elements to be complied by the members, upon receiving the approval of the Agency,
- g) To ensure cooperation among banks for joint projects, in collaboration with the Agency,
- h) To file lawsuits on the basis of board of directors' decision on matters that relate to the common interests of their members,
- i) To set the principles and procedures applicable to contract format and contents envisaged by the provisions regarding customer rights,
- j) To set up a board of arbitrators within the framework of the principles and procedures to be prepared thereby and approved by the Board, in order to evaluate and settle the disputes between the members and their individual clients, with the reservation of their rights to legal application pursuant to the Law No. 4077 regarding the Protection of Consumer Rights and other laws.

Organs and statute

Article 81- The elections for positions in the organs of the associations of institutions shall be carried out through secret voting and under judiciary supervision, within the framework of the principles set out in the Law. Minimum fifteen days prior to the general assembly meeting during which the election will be carried

out, the list indicating the member banks and their representatives to take part in the elections shall be submitted in three copies to the chairman of the electoral board, who has to be a judge, to be selected by the Supreme Election Board, together with a cover letter indicating the agenda, venue, time of the meeting, and the matters pertaining to the second meeting if meeting quorum cannot be attained. The judge shall review and approve the list and other documents and shall appoint an balloting committee chairman and two balloting committee members as well as substitutes for each of them. The voting procedure shall be performed within the framework of the principles of secret ballot and open vote counts. After the end of the election period, the results of the election shall be recorded in a minute to be signed by the chairman and members of the balloting committee. Any objection to be made against the election results within two days following the signing of the minute shall be reviewed and decided upon by the judge on the day of objection.

Organs, operating principles and fields of activity of the unions of institutions will be demonstrated and regulated in their statutes of the unions to be put into force by the President upon a proposal to be made by the Authority in due consultation with the unions.* Organs, operating principles and fields of activity of the unions of institutions will be demonstrated and regulated in their statutes of the unions to be put into force by the President upon a proposal to be made by the Authority in due consultation with the unions. Members are under obligation to comply with the statutes of their unions and all of the decisions and measures to be taken by their unions. Expenses of the unions of institutions are distributed to their members depending on the number of votes determined as per their statutes. Members are under obligation to deposit their shares in the expenses by the end of the period of time shown in their statutes. All and any shares in expenses, unpaid by the end of said period of time, are to be claimed, recovered and collected by the unions through execution proceedings. Decisions relating to payment of the shares in expenses are considered and treated as

a type of official documents referred to in article 68 of the Execution and Bankruptcy Code no. 2004.⁴⁷

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

PART TEN

Provisions Pertaining Banking Regulation and Supervision Agency

SECTION ONE

Banking Regulation and Supervision Agency

Establishment and independence

Article 82- The Banking Regulation and Supervision Agency has been established as a public legal person with administrative and financial autonomy. The Agency is headquartered in Istanbul. The Agency consists of the Banking Regulation and Supervision Board and the Chairman's Office.⁴⁸

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

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

⁴⁷ As Amended by Decree Law No 2018/703.

⁴⁸ As amended by the Law No. 6111.

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

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

SECTION TWO

Banking Regulation and Supervision Board

Banking Regulation and Supervision Board

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

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

Appointment of members

Article 84- The members of the Board shall;

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

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

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

d) ⁴⁹

⁴⁹ Subparagraph (d) of first paragraph of this article is repealed by the Decree-Law no. 2018/703.

Chairperson and members are appointed by the President. The President assigns and appoints one of the members as second chairperson.⁵⁰

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

Terms of office of the chairman and members

Article 85⁵¹- In the case of vacancy in chairmanship or membership of the Board for any reason whatsoever, an appointment is to be made to the vacant seat within one month pursuant to the principles set forth in article 84. Any individual appointed as such will complete the term of office of his/her predecessor.⁵²

The Board Chairman or members cannot be dismissed for any reason whatsoever before the end of their term of office. However, the Board Chairman or members who are detected to have become functionless due to severe illness or disability or to have lost their eligibility for appointment or to have breached the provisions of article 86, or who are convicted by a final verdict of conviction due to crimes committed in respect of their job duties are dismissed before the end of their terms of office with a prior approval of the President. They are

⁵⁰ As amended by the Decree-Law no. 2018/703.

⁵¹ As amended by the Law No. 6300.

⁵² As amended by the Decree-Law no. 2018/703.

replaced by an appointment within no later than one month thereafter. Furthermore, if and to the extent a case of temporary incapacity continues for more than three months, the membership is forfeited, and is replaced by an appointment within no later than one month thereafter.⁵³

The Board Chairman or members against whom a criminal action is brought forward due to the crimes described in subparagraph (5) of paragraph (A) of article 48 of the Civil Servants Law no. 657 and who are deemed inconvenient to remain in office may also be dismissed as a precaution by a decision of the President. The pertinent provisions of the Civil Servants Law are to be applied about the Board Chairman and members dismissed as above. To fill in the seats vacated temporarily as above, an appointment may be made by the President from among candidates eligible in terms of the conditions set forth in article 84, until the member dismissed as a precaution as above returns to his/her office and in any case, until the end of the term of office of the relevant member.⁵⁴

Prohibitions

Article 86- Excluding activities like scientific courses and conferences and the copyrights which do not constitute an obstacle for performing their primary duties, Board chairman or members cannot accept employment in another public or private entity except for their official duties within the body of the Agency; involve in commercial business; work as managers of societies, foundations, cooperatives and similar entities; perform his/her profession independently; acquire shares in an undertaking operating in the

⁵³ As amended by the Decree-Law no. 2018/703.

⁵⁴ As amended by the Decree-Law no. 2018/703.

sector or area which the Agency is authorized to regulate and supervise; or serve as a arbitrator or expert witness.

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

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

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

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

Working principles of the Board

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

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

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

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

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

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

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

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

After the registration of the Board's regulatory decisions, such decisions shall be sent to the relevant Ministry and to the for publication within seven working days, at the latest, and shall be published in the Official Gazette within seven days, at the latest, the⁵⁵. With the reservation of the provisions of this Law, supervisory decisions shall be publicized through appropriate means, primarily including the internet environment. The Board may decide not to publish the supervisory decisions that may endanger national economy and public order if published.

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

Duties and powers of the Board

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

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

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

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

⁵⁵ As amended by Decree Law No 2018/703.

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

SECTION THREE

Organization of the Chairman's Office

Chairman

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

The duties and powers of the chairman are as follows:

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

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

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

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

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

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

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

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

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

Vice chairmen

Article 90⁵⁶- Five vice chairmen shall be appointed by Board decision to assist the Chairman. One of the vice chairmen shall be responsible for the units that are charged with on-site and off-site supervision. Vice chairmen shall bear the qualifications laid down in Article 84.

⁵⁶ As amended by the Law no. 7222.

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

Service units of the Agency

Article 91 - The Authority may open local representation offices by a decision of the President up to maximum three in the provinces where its field of activity is rather intensive. If demanded so by a member, the Board may determine and designate as the permanent work place of that member⁵⁷ any one of the local representation offices other than the headquarters of the Authority.⁵⁸

Service units are determined and regulated by a regulation to be put into force by the President upon a proposal of the Authority in accordance with the fields of activity and the job duties and functions set down in this Law.⁵⁹

The Strategy Development Department shall be established as a main service unit. Chairman's advisors may be appointed in areas such as law, press and public relations, management and finance. The number of such advisors shall not be more than fifteen in total⁶⁰.

The Support Services Department shall be established to perform human resources and training, administrative, financial and similar activities. Maximum eight⁶¹ directorates may be established under this department, one of which will be used specifically for the office services of the Board.

⁵⁷ As amended by the Law No. 6493.

⁵⁸ As amended by Decree Law No 2018/703.

⁵⁹ As amended by Decree Law No 2018/703.

⁶⁰ As amended by the Law No. 5667.

⁶¹ As amended by the Law No. 6493.

The Authority may open local representation offices by a decision of the President up to maximum three in the provinces where its field of activity is rather intensive. If demanded so by a member, the Board may determine and designate as the permanent work place of that member any one of the local representation offices other than the headquarters of the Authority.⁶²

Agency personnel

Article 92- The permanent duties and services necessitated by duties and services assigned to the Agency by this Law shall be fulfilled by the professional personnel consisting of sworn bank auditors and assistant sworn bank auditors and banking specialists and assistant banking specialists, legal experts and assistant legal experts, information experts and assistant information experts as well as Banking Regulation and Supervision Agency⁶³ specialists and assistant specialists. It is compulsory that all personnel of the Agency are required not only to bear the qualifications listed in sub-paragraphs (a), (b) and (c) of the provision of the first paragraph of Article 84 of this Law, but also to satisfy meet other conditions regulated defined under the regulation. Those to be appointed as banking, law, information and Banking Regulation and Supervision Agency assistant specialists and as assistant sworn bank auditors are required to be graduates of law, political sciences, economics and administrative sciences, departments related to economics, business administration faculties providing at least four years of university education as well as banking, banking and finance, physics, mathematics, statistics, statistics and computer, computer engineering, electrical engineering, electronic engineering, electrical-electronic engineering,

⁶² As amended by Decree Law No 2018/703.

⁶³ As amended by the Law No. 6493.

electronic and communication engineering, industrial engineering, mathematical engineering departments in the country or those abroad having approved equivalencies by the Higher Education Council, or to have had postgraduate degrees in the above defined disciplines, and to have passed the entrance exam, and to satisfy all other conditions specified in the regulation. The Board is authorized to determine separately the faculties, and departments by staff titles and/or fields of specialization.⁶⁴ Professional staff whose titles defined above can not assume for at least two years any duty in a bank where they conducted on-site and off-site supervision process or practice during the past two years.⁶⁵

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

Without exceeding the total number of positions given in the Table no. (I) annexed to this Law, and solely for the existing positions or the positions given in tables annexed to Decree in the Power of Law No. 190 regarding General Staff Positions and Procedures changes in the procedures and principles relating to positions, classes, titles and degrees are determined by the Board.⁶⁶

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

⁶⁴ As amended by the Law No. 6495.

⁶⁵ As added by the Law No. 6300.

⁶⁶ As amended by the Decree Law No. 2011/662.

posals of the Chairman.⁶⁷ The number of the Agency personnel that have no manager, advisor and professional staff titles shall not exceed thirty percent of the total number of personnel indicated in the tables annexed to the Law.

The Agency may employ adequate number of experts that have minimum ten years of experience in the sector and have a PhD degree in the relevant disciplines, under service or procurement contracts, provided that the number of such experts shall not exceed ten percent of the number of the Agency's professional staff.⁶⁸

By decision of the Board, and with the consent of the person concerned, the Agency personnel may be temporarily appointed to other public entities and organizations.⁶⁹

Assistant banking, legal information and Banking Regulation and Supervision Agency⁷⁰ specialists and the assistant sworn bank auditors shall be recruited amongst those candidates who qualify in the central competition exams. The persons to be appointed as assistant specialists (except assistant Banking Regulation and Supervision Agency specialist⁷¹) and assistant sworn bank auditors shall take authorization exams at the end of the second year. The principles and procedures applicable to the authorization exam and the authorities of those who succeed in this exam shall be set by the Board. The persons who have been appointed as assistant specialists and assistant sworn bank auditors shall be recruited as banking, legal information and Banking Regulation and Supervision Agency⁷² specialists and sworn bank

⁶⁷ As repealed by the decision of the Constitutional Court (Official Gazette 15.12.2007, 26371).

⁶⁸ As repealed by the decision of the Constitutional Court (Official Gazette 15.12.2007, 26371).

⁶⁹ As amended by the Decree Law No. 2011/662.

⁷⁰ As amended by the Law No. 6493.

⁷¹ As amended by the Law No. 6493.

⁷² As amended by the Law No. 6493.

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

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

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

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

For jobs that require special expertise and temporary in nature, the contractual and payment conditions of which to be determined by the Board, services may be outsourced without being subject to the provisions of the Public Procurement Law No. 4734⁷³

⁷³ As added by the Law No. 6493.

SECTION FOUR

Duties, Powers and Responsibilities

Duties and powers of the Agency

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

a) To regulate, enforce and ensure the enforcement of, and monitor and supervise the enforcement of, foundation and business activities, management and organisational structure, merger, split-up, exchange of shares, and liquidation of banks and financial holding companies, and without prejudice to the pertinent provisions of other laws and the related regulations, of other institutions under audit and supervision of the Agency,⁷⁴

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

c) To fulfill other duties assigned by the Law,

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

⁷⁴ As amended by the Law no. 7292.

The Authority will, in all kinds of its activities, comply with the principles, strategies and policies set down in the development plans and programs, without prejudice to the powers arising out of its law of establishment.⁷⁵

The Agency shall use the powers assigned thereto in this Law and the applicable legislation through regulatory transactions to be made and specific decisions to be taken by the Board. The Agency shall be authorized to issue regulations and communiqués regarding the enforcement of this Law, through Board decisions⁷⁶.

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

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

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

⁷⁵ As amended by the Decree-Law no. 2018/703.

⁷⁶ As amended by the Law No. 5472.

Public entities and administrations are under obligation to provide the Agency with the required assistance in their fields of activity as determined by the Laws and the Presidential Decrees.⁷⁷

The Agency is liable for and authorized to prevent the use of banking services and transactions, bank debit cards and credit cards defined under the framework of Bank Cards and Credit Cards Law no. 5464 dated 23/2/2006 in commission of crimes cited in Article 5 of the Law on Organization of Games of Chance and Bet in Football and Other Sports Competitions no. 7258 dated 29/4/1959.⁷⁸

Development of the sector

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

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

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

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

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

⁷⁷ As amended by the Decree-Law no. 2018/703.

⁷⁸ As added by the Law No. 6495.

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

On-site and off-site supervision

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

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

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

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

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

For on-site supervision, the Chairman shall appoint an examination team consisting of eligible sworn bank auditors and assistant sworn bank auditors, banking experts and assistant banking experts, information experts and assistant information experts, legal experts and assistant legal experts who constitute the professional staff of the Agency. The professional staff of the Agency authorized for on-site supervision cannot perform on-site supervision before taking oath at the Istanbul Basic Commercial Court. The professional staff of the Agency authorized for on-site supervision shall have all the rights set out in this article pertaining to on-site supervision.⁷⁹

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

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

⁷⁹ As amended by the Law No. 6111.

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

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

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

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

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

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

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

Document and information requests

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

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

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

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

Transparency and accountability

Article 97- Yearly report about the activities of the Authority is presented to the Presidency by the end of May of the year immediately after the year of report and is disclosed to public together with final accounts of the Authority.⁸⁰

Yearly report about the activities of the Authority is presented to the Presidency by the end of May of the year immediately after the year of report and is disclosed to public together with final accounts of the Authority.⁸¹

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

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

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

Cooperation among institutions

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

⁸⁰ As amended by the Decree-Law no. 2018/703.

⁸¹ As amended by the Decree-Law no. 2018/703.

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

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

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

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

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

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

Financial Sector Commission

Article 99-⁸²

Coordination Committee

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

⁸² As repealed by the Law no. 7319

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

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

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

SECTION FIVE

Miscellaneous Provisions

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

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

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

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

Budget year of the Agency is a calendar year. Expenses of the Agency are paid out of the payments made by banks, financial leasing companies, factoring companies and financing companies, financing companies and savings financing companies to the Agency as contributions prior to the effective date of the budget. The amount to be collected as contributions for expenses cannot, however, exceed three per ten thousands of the total amount of balance sheets issued by said companies as of the end of the previous year. Contributions unpaid by the end of the period determined as above will be collected in accordance with the pertinent provisions of the Law no. 6183.⁸³

The internal audit of the Agency shall be performed within the framework of the principles and procedures to be set by the Board. The provisions of Public Financial Management and Control Law No. 5018 shall be applied in relation to the external audit of the Agency.⁸⁴

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

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

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

⁸³ As amended by the Law No.7292.

⁸⁴ As amended by the Law No. 5667.

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

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

Salaries, financial and other social rights

Article 102- The Board Chairman is paid a monthly wage in an amount equal to the amount of financial and social rights, including all kinds of payments, determined and applied for the highest echelon of civil servants. Items of wage paid to the highest echelon of civil servants, not subject to any taxes and other legal deductions, are not made subject to any taxes and other legal deductions under and as per this Law as well. Each of the Board members is paid a monthly wage in an amount equal to ninety-five percent of the total sum of payments made to the Board Chairman, in accordance with the same procedures and principles.⁸⁵

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

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

The Chairperson of the Board is paid a monthly wage equal to the total sum of financial and social rights and benefits, including all kinds of payments, determined for the highest level civil servants. Items of the payments made to the highest level civil servants which are not subject to tax or similar other

⁸⁵ As amended by the Decree-Law no. 2018/703.

legal deductions are not made subject to tax and similar other deductions as per this Law as well. The members of the Board are paid in an amount equal to ninety-five percent of the payments made to the Chairperson of the Board, under the same procedures and principles.

Chairperson and members of the Board, and personnel of the Agency are governed by the provisions of the Turkish Republic Retirement Fund Law no. 5434 and all of its exhibits and amendments. In terms of pension and other rights and benefits, Chairperson of the Board will be entitled for additional indicators and job position allowances as determined for the Presidency, Strategy and Budget Department Head, and members of the Board as determined for the ministerial general director, and vice presidents of the Agency as determined for the ministerial general director, and 1st degree department heads as determined for the ministerial assistant general director, and advisors to presidency of the Agency as determined for the ministerial advisors, and bank examiners and assistant bank examiners as determined for ministerial inspector and vice inspector corresponding to them in terms of monthly degrees of vested interests, and banking, legal and IT (information technologies) specialists as determined for Justice specialists corresponding to them in terms of monthly degrees of vested interests, and their assistants as determined for assistant justice specialists. Periods of service spent in these jobs are considered and treated to have been spent in jobs requiring payment of job position and fiduciary duty allowances. These provisions are also applicable about the Board Chairperson and members and the Agency personnel transferred from university academic staff positions, without prejudice to the conditions sought for academic job titles.⁸⁶

Any person who has been appointed as Chairman and Board member and is entitled to retirement, with retirement procedures

⁸⁶ As amended by the Decree-Law no. 2018/703.

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

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

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

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

Board members leaving office

Article 103- Any person who has been appointed Chairman or a member of the Board shall not work for their previous employers during their term of office in the Board. However, if persons who have been appointed as chairman or Board members when working as a public servant expire their terms of office or wish to leave office and apply to their previous institution within thirty days, then the institution authorized for appointment shall appoint such persons to positions that fit to their acquisitions

within one month. Until they are appointed, such persons shall continue receiving all their remunerations from the Agency. If any person who has been appointed as chairman or Board members when not working as a public servant leaves office as explained above, then such persons shall continue to receive all their remunerations from the Agency until they start any work or task. The payments to be made by the Agency to those persons who leave office as explained in this paragraph shall not be made for more than two years.⁸⁷

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

Penal and legal liabilities of Board members and Agency personnel

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

For the initiation of any investigation of offenses alleged to have been committed by chairman and Board members and Agency personnel in connection with their duties there must be

⁸⁷ As amended by the Law No. 6300.

a clear and solid evidence indicating that such members or personnel have acted for acquiring interests for themselves or third persons and for causing damages on the Agency or third persons and have acquired interests for themselves or third persons and caused damages as a result of their acts. If a permission for investigation has been issued, the relevant parties shall be notified thereof. For a decision regarding whether permission for investigation will be issued or not issued, an objection application may be filed with the Council of State regarding against decision, within fifteen days following the date of notification. Even though permission for investigation has been issued, the investigation shall not be initiated until the objection deadline expires or a judgment is made regarding the objection application filed with the Council of State.

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

Any legal action for compensation of damages, payment of receivables and executive proceedings taken and to be taken against chairman and Board members and Agency personnel due to the Agency's decisions, actions and transactions taken and carried out in connection with the duties of the Board or the Agency as set out in this Law, both during and after their terms of office, shall be deemed to have been taken against the Agency.

In such lawsuits, the Agency shall be set as the defendant. The provisions of the third paragraph pertaining to legal fees and attorney's fees shall apply to such lawsuits, too. In cases where as a result of the lawsuit a judgment has been issued and finalized against the Agency and the Agency has made payments on the grounds of such judgments, the Agency shall claim this amount from the relevant persons. In order for the Agency to be able to claim such payments from the related persons, there has to be a finalized court judgment indicating that such persons are guilty.

Right to appeal board and agency decisions

Article 105⁸⁸- Decisions on administrative sanctions may be brought before the competent administrative court. All kinds of lawsuits brought against decisions of the Board are considered a priority.

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

A separate hearing shall be carried out for request of stopping enforcement in the administrative lawsuits to be filed against Board decisions.

(...)⁸⁹

⁸⁸ As amended by the Law No. 6352.

⁸⁹ As repealed by the decision of the Constitutional Court (Official Gaz- zette, 10.01.2007, 26399)

PART ELEVEN

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

Revocation of operating permission decisions

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

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

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

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

In the event that a bankruptcy judgment is issued against a bank whose management and control have been transferred to the Fund, the Fund shall participate in the committee of bankruptcy as a privileged creditor, having priority over all privileged creditors specified in Article 206 of the Execution and Bankruptcy Law No. 2004, however, after deduction of the receivables of the State and social security organizations set forth in the Law No. 6183 and shall liquidate the bank having the duties and powers of the bankruptcy office and creditors' meeting and the bankruptcy administration described in the referred Law, excluding the rights and powers laid down in Article 166, 218, 219, 223, 234, 236, 249, 251 and 254 of the Execution and Bankruptcy Law No. 2004, as limited to the implementation of this Law.⁹⁰

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

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

⁹⁰ As amended by the Law No. 5472.

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

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

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

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

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

Provisions regarding the banks transferred to the Fund

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

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

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

a) request from the Board to transfer the assets, organization, personnel –unless they otherwise request- as well as the deposits and participation funds subject to insurance together with the interests accrued, provided that it does not exceed the average of interest rates applied by five banks with highest total deposits as of transfer date for deposit banks and the average of return rates applied by three banks with highest total contribution funds for contribution banks, and the provision items on the liabilities side, to a bank to be newly established or any of the existing banks, and/or to terminate the operating permission of the bank, whose assets and liabilities have been transferred partially or completely,⁹¹

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

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

⁹¹ As amended by the Law no. 7407

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

d) request the Board to revoke its operating permission.

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

In cases where the total of assets transferred does not recover the total of liabilities of a bank for which the provisions of sub-paragraph (a) of paragraph (2) of this article have been applied, the difference shall be paid by the Fund, provided that such payment does not exceed the amount of deposits and contribution funds covered by insurance. In this case and in cases where the operating permission of a bank for which the provisions of sub-paragraph (a) of paragraph (2) of this article have been applied has been revoked, the provisions of the second paragraph of Article 106 of this Law and the third paragraph of Article 109 of this Law shall not apply. In cases where bankruptcy offices have been established pursuant to Article 106 of this Law, the Fund shall participate in such as privileged creditor, with priority over all creditors mentioned in the third rank specified in Article 206 of the Execution and Bankruptcy Law No. 2004, however, after deduction of the receivables of the State and social security organizations set forth in the Law No. 6183, in proportion to the amount it has paid for such.⁹²

The Fund shall be authorized to;

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

⁹² As amended by the Law No. 5472.

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

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

1) to increase its capital,

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

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

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

5) overtake receivables or losses,

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

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

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

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

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

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

Misuse of bank resources

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Personal Liability

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

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

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

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

PART TWELVE

Provisions Regarding Savings Deposit Insurance Fund

SECTION ONE

Savings Deposits Insurance Fund

Establishment and independence of the Fund

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

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

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

The Fund is headquartered in Istanbul. The Fund may open local representation and collection units by a decision of the

President up to maximum three in the provinces where its field of activity is rather intensive.⁹³

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

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

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

SECTION TWO

Savings Deposits Insurance Fund Board

Savings Deposits Insurance Fund Board

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

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

⁹³ As amended by the Decree-Law no. 2018/703.

Appointment of Fund Board members

Article 113- The members of the Fund Board shall;

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

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

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

d) To have been graduated at least from university.⁹⁴

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

Chairperson and members are appointed by the President. The President appoints one of the members as second chairperson.⁹⁵

⁹⁴ As amended by the Decree-Law no. 2018/703.

⁹⁵ As amended by the Decree-Law no. 2018/703.

Terms of office of the Fund Board chairman and members

Article 114-⁹⁶ In the case of vacancy in chairmanship or membership of the Fund for any reason whatsoever, an appointment is to be made to the vacant seat within one month pursuant to the principles set forth in article 113. Any individual appointed as such will complete the term of office of his/her predecessor.⁹⁷

The Fund Board Chairman or members cannot be dismissed for any reason whatsoever before the end of their term of office. However, the Fund Board Chairman or members who are detected to have become functionless due to severe illness or disability⁹⁸ or to have lost their eligibility for appointment or to have breached the provisions of article 115, or who are convicted by a final verdict of conviction due to crimes committed in respect of their job duties are dismissed before the end of their terms of office with a prior approval of the President. They are replaced by an appointment within no later than one month thereafter. Furthermore, if and to the extent a case of temporary incapacity continues for more than three months, the membership is forfeited, and is replaced by an appointment within no later than one month thereafter.⁹⁹

Prohibitions for the Fund Board chairman and members

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

⁹⁶ As amended by the Decree-Law no. 2018/703.

⁹⁷ As amended by the Decree-Law no. 2018/703.

⁹⁸ As amended by the Law no. 6462.

⁹⁹ As amended by the Decree-Law no. 2018/703.

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

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

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

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

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

Working principles of the Fund Board

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

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

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

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

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

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

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

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

The regulatory decisions of the Fund Board are submitted to the related Ministry and submitted for publishing within no later than seven business days following the date they are taken, and are published in the Official Gazette within no later than seven days following the date they are submitted. Without prejudice to the provisions set forth in this Law, the Fund Board decisions are made public by appropriate means of publication, especially internet. However, the Fund Board may decide not to publish its decisions the disclosure of which may be inconvenient and objectionable in terms of the national economy and the public order.¹⁰⁰

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

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

Duties and powers of the Fund Board

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

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

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

¹⁰⁰ As amended by the Decree-Law no. 2018/703.

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

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

SECTION THREE

Organization of the Chairman's Office

Fund Chairman

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fund Vice Chairman

Article 119- The Fund Board shall appoint three vice chair- men to assist the Fund Chairman in his duties¹⁰¹ as the chairman. Fund Board vice chairman shall bear the qualifications laid down in Article 113.

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

Service units of the Fund

Article 120- Service units of the Fund shall consist of main service, advisory and ancillary service units organised in the form of departments and affiliated directorates. However, the number of departments shall not be more than twelve, and the number of affiliated directorates shall not be more than six.¹⁰²

¹⁰¹ As amended by the Law no. 7407

¹⁰² As amended by the Law no. 7407

Service units of the Fund shall consist of main service, advisory and ancillary service units organised in the form of departments and affiliated directorates. However, the number of departments shall not be more than twelve, and the number of affiliated directorates shall not be more than six.¹⁰³

A Strategy Development Department shall be established as a main service unit. Chairman's advisors may be appointed in areas such as law, press and public relations, management and finance. The number of such advisors shall not be more than fifteen in total.¹⁰⁴

(...)¹⁰⁵

Fund personnel

Article 121- The duties and services necessitated by duties and services assigned to the Fund by this Law shall be fulfilled by the professional personnel consisting of the Fund lawyers, Fund auditors and assistant auditors, Fund specialists and assistant specialists as well as other administrative personnel. All personnel of the Fund shall bear (...) ¹⁰⁶ the qualifications listed in all sub-paragraphs of the first paragraph of Article 113 of this Law, excluding sub-paragraph (d).¹⁰⁷

Vice chairmen, department heads, managers, chairman's advisors and the professional staff shall be employed under contracts signed for their positions. The Fund personnel employed under contracts signed for their positions, shall be

¹⁰³ As amended by the Decree-Law no. 2018/703.

¹⁰⁴ As amended by the Decree-Law No.7407.

¹⁰⁵ As repealed by the Law no. 7407.

¹⁰⁶ As added by the Law no. 7407

¹⁰⁷ As added by the Law no. 7407

subject to the Civil Servants Law No. 657 excluding their remunerations, financial and social rights.

Without exceeding the total number of positions given in the table no. (II) annexed to this Law, and solely for the existing positions or the positions given in tables annexed to Decree in the Power of Law No. 190 regarding General Staff Positions and Procedures changes in the procedures and principles relating to positions, classes, titles and degrees are determined by the Fund Board.¹⁰⁸

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

The Fund personnel to be employed for the positions indicated in the annexed Table III, other than those mentioned in the second paragraph of this article, shall be employed under administrative service contracts. The Fund Board shall be authorized to change the titles of staff positions, provided that the total number of positions indicated in the said table will not be exceeded.¹⁰⁹ The Fund personnel employed under administrative service contracts shall be subject to the Social Security Law No. 506 in terms of retirement and social security.

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

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

¹⁰⁸ As amended by the Decree Law No. 2011/662.

¹⁰⁹ As repealed by the decision of the Constitutional Court (Official Ga- zette 15.12.2007, 26371).

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

The principles and procedures applicable to the proficiency and competition tests of the Fund's professional and administrative staff, their qualifications and their working principles and procedures shall be set in a regulation to be issued by the Fund.¹¹⁰

SECTION FOUR

Duties, Powers and Responsibilities

Duties and powers of the Fund

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

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

¹¹⁰As repealed by the decision of the Constitutional Court (Official Gazette 15.12.2007, 26371).

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

d) fulfilling other duties assigned by the Law.

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

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

The Fund will, in all kinds of its activities, comply with the principles, strategies and policies set down in the development plans and programs, without prejudice to the powers arising out of its law of establishment.¹¹¹

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

All public administrations and entities are under obligation to provide the Fund with the required help and assistance within their fields of activity determined by the Laws and the Presidency Decrees.¹¹²

Power of the Fund to request information and documents

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

¹¹¹ As amended by the Decree-Law no. 2018/703.

¹¹² As amended by the Decree-Law no. 2018/703.

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

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

SECTION FIVE

Miscellaneous Provisions

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

Article 124¹¹³ - The internal audit of the Fund shall be performed within the framework of the principles and procedures to be set by the Fund. The external audit of the Fund shall be performed through examination of the annual revenues and expenditures of the Fund by the Turkish Court of Accounts.

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

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

¹¹³ *As amended by the Law No. 5667.*

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

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

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

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

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

Article 125- The Chairperson of the Fund Committee is paid a monthly wage equal to the total sum of financial and social rights and benefits, including all kinds of payments, determined for the highest level civil servants. Items of the payments made to the highest level civil servants which are not subject to tax or similar other legal deductions are not made subject to tax and similar other deductions as per this Law as well. The members of the Fund Committee are paid in an amount equal to ninety-five percent of the payments made to the Chairperson of the Fund Committee, under the same procedures and principles.¹¹⁴

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

¹¹⁴ As amended by the Decree-Law no. 2018/703.

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

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

Chairperson and members of the Fund Committee, and vice chairpersons, department heads, managers, advisors to presidency, and professional personnel of the Fund are governed by the provisions of the Turkish Republic Retirement Fund Law no. 5434 and all of its exhibits and amendments. In terms of pension and other rights and benefits, Chairperson of the Fund Committee will be entitled for additional indicators and job position allowances as determined for the Presidency, Strategy and Budget Department Head, and members of the Fund Committee as determined for the ministerial general director, and vice chairpersons of the Fund as determined for the ministerial general director, and 1st degree department heads as determined for the ministerial assistant general director, and advisors to presidency of the Fund as determined for the ministerial advisors, and Fund auditors and assistant Fund auditors as determined for ministerial inspector and vice inspector corresponding to them in terms of monthly degrees of vested interests, and Fund specialists and Fund lawyers as determined for Justice specialists corresponding to them in terms of monthly degrees of vested interests, and the assistant Fund specialists as determined for assistant justice specialists. Periods of service spent in these jobs are considered and treated to have been spent in jobs requiring payment of job position and fiduciary duty allowances. These provisions are also applicable about the Fund Committee members and the

Fund personnel transferred from university academic staff positions, without prejudice to the conditions sought for academic job titles.¹¹⁵

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

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

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

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

¹¹⁵ As amended by the Decree-Law no. 2018/703.

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

Fund Board members leaving office

Article 126- Any person who has been appointed Chairman or a member of the Fund Board shall not work for their previous employers during their term of office in the Fund Board. However, if persons who have been appointed as Fund Board chairman or members when working as a public servant expire their terms of office or wish to leave office and apply to their previous institution within thirty days, then the institution authorized for appointment shall appoint such persons to positions that fit to their acquisitions within one month. Until they are appointed, such persons shall continue receiving all their remunerations from the Fund. If any person who has been appointed as Fund Board chairman or members when not working as a public servant leaves office as explained above, then such persons shall continue to receive all their remunerations from the Fund until they start any work or task. The payments to be made by the Fund to those persons who leave office as explained in this paragraph shall not made for more than two years.¹¹⁶

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

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

¹¹⁶ As amended by the Law No. 6300.

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

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

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

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

bers and the personnel of the Fund due to the Fund Board's or Fund's decisions, actions and transactions taken and carried out in connection with their duties set out in this Law, both during and after their terms of office, shall be deemed to have been taken against the Fund. In such lawsuits, the Agency shall be set as the defendant. The provisions of the above paragraph pertaining to legal fees and attorney's fees shall apply to such lawsuits, too. In cases where as a result of the lawsuit a judgment, the Fund hereby reserves its right to claim such amounts from the related persons found faulty.¹¹⁷

(...)¹¹⁸

With regard to the banks subjected to prosecution pursuant to the provisions of Articles 64 and 65 of the repealed Banks Law No. 3182, Article 14 of the Banks Law No. 4389 repealed by this Law and Article 71 of this Law, the lawsuits commenced in respect of performance of duties against the members of the executive board and board of auditors appointed by the Minister, the Board or the Fund Board shall be deemed to have been brought forward against the Agency or Fund, whichever has made the appointment. In cases where as a result of the lawsuit a judgment has been issued and finalized against the related institution and a payment has been made as a result of the finalization of the judgment, the related institution hereby reserves its right to claim such amounts from the related persons found faulty.¹¹⁹

(...)¹²⁰

All kinds of actions for damages, debt and personal liability filed and to be filed against the members of the executive board, board of auditors, board of managers and liquidation officers appointed by the Fund as per the provisions of Article 134 of this Law and/or sub-paragraph (a) of paragraph (7) of Article 15 of the Banks Law No. 4389 repealed by this

¹¹⁷ As amended by the Law no. 7407.

¹¹⁸ As repealed by the Law no. 7407.

¹¹⁹ As amended by the Law no. 7407.

¹²⁰ As repealed by the Law no. 7407.

Law, and the members of executive board, board of auditors, board of managers who represent the bank at the subsidiaries of the banks whose management and control or shares have been transferred to the Fund, and/or the members of executive and audit boards and board of managers representing the Fund. as well as bankruptcy and liquidation personel assigned, appointed or nominated and elected as per this Law¹²¹ at the companies whose shares have been transferred to the Fund in connection with the performance of their duties, shall be deemed to have been filed against the Fund. The principles and procedures indicated in the fourth paragraph of this article shall be applicable to the recourse of the amounts paid by the Fund to the related persons. The executives appointed in this way shall not be held personally liable for non-payment of the present or future public debts and debts owed to the Social Security Agency, any labor receivables and other liabilities arising from other legislation by the companies to which they have been appointed or are working in.

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

¹²¹As amended by the Law no.7407.

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

Right to appeal Fund Board decisions

Article 128- Applications made against to the decisions of the Fund Board shall be accorded priority.¹²²

A separate hearing shall be carried out for request of stopping enforcement in the administrative lawsuits to be filed against Fund Board decisions. In this case, the thirty-day period specified in Article 17(5) of the Administrative Lawsuit Procedures Law No. 2577 shall not be applied. The applications for stopping enforcement shall not be concluded before hearing the defense of the Fund. The relevant parties shall present their defense within seven days following the notification of therequest for stopping enforcement thereto. Otherwise, the decision shall be made without waiting for the defense¹²³

¹²² As amended by the Law No. 6352.

¹²³ As repealed by the decision of the Constitutional Court (Official Gazette 10.01.2007, 26399).

The budget of the Fund

Article 129¹²⁴ - The expenditures of the Fund shall be funded by its revenues. The budget year of the Fund shall be the cal- endar year.

The Fund shall freely and independently use the resources allocated thereto within the framework of the principles and procedures laid down in this Law, in accordance with this Law and other applicable laws, and to the extent they are required for performance of its duties and for enforcement of its powers vested in it by the Presidency in respect of handling of international lawsuits started against the State.¹²⁵

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

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

Revenues of Fund

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

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

¹²⁴ As amended by the Law No. 5472.

¹²⁵ As amended by the Law no. 7407.

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

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

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

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

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

Powers of the Fund to borrow funds and receive advances

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

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

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

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

SECTION SIX

Prosecution and Collection Procedures

Powers and procedures regarding the prosecution and collection of Fund receivables

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The provisions of Article 22 of the Passport Law No. 5682 shall be applicable for the real persons and legal representatives of the legal entities that are indebted to the Fund, upon the application of the Fund.¹²⁶

The principles and procedures applicable to the enforcement of this article shall be set by the Fund through a regulation.

Exceptional powers pertaining to liability lawsuits

Article 133- In case the liquidation transactions of the banks whose operating permissions have been revoked have been

¹²⁶ As repealed by the decision of the Constitutional Court (Official Ga-zette 13.11.2008, 27053).

completed but the receivables of the bankruptcy and liquidation offices have not been collected, the Fund may file lawsuits, within five years following completion of liquidation, against the bank's partners, former executive board members and auditors found to be liable, with the request for cancellation of their acquittal, if any, and for compensation, in the name of the Fund, of the loss they have inflicted due to their actions.

In cases where the shares of Fund Banks are transferred to third persons, the lawsuits filed by the banks against its former partners, executive board members and auditors shall continue without any interruption, the Fund acting as the legal successor. The amounts payable as a result of these lawsuits and legal proceedings shall belong to the Fund. In the event that such banks are transferred to another bank, merged with another bank, their shares are transferred to third persons or they are decided to be liquidated; the Fund may file lawsuits, within five years following completion of these procedures, against the bank's former executive board members and auditors found to be liable, with the request for cancellation of their acquittal, if any, and for compensation, in the name of the Fund, of the loss they have inflicted due to their actions. The decision of the Fund Board for the initiation of the lawsuit shall serve as the general assembly resolution required for initiating a lawsuit.

Fixed attorney's fees shall be applied to the relevant party in lawsuits initiated or to be initiated under this Article and in lawsuits which are prosecuted with the title of legal successor.

Other powers regarding the collection of the Fund's receivables

Article 134- With respect to Fund banks';

- a) affiliates whose management and control are held,
- b) legal entity dominant partners,
- c) companies whose real person and legal entity partners are dominant partners,
- d) partners of companies acting on behalf of the above-listed persons and entities or acquiring funds or rights on their account

if deemed necessary and useful for collection of Fund's receivables, and irrespective of their being indebted to the Fund or not, the Fund shall be authorized (i) to take over their partnership rights, except for dividends, associated to all and/or some of their shares, and their management and control, and (ii) irrespective of the number of directors, managers and auditors of that bank as specified in its articles of association and whether they are appointed as representatives of privileged shares or not, to appoint all or any of the members of such boards through dismissing and/or increasing and/or decreasing the full number of members.

In cases where the number of shareholders in the banks or companies being directly or indirectly managed and audited by the Fund and/or in companies whose management and supervision it has taken over pursuant to this article and in the affiliates of the Fund falls below the compulsory number of shareholders as set out in the Turkish Commercial Code No. 6762 and in the specials laws, their legal entity status shall not be damaged.

The Fund or the members of the executive board, managers or board of auditors, appointed by the Fund, of the companies which are under management and control of the Fund and/or of banks whose management and control has been taken over by the Fund under this paragraph, and the company employees, such as general manager, deputy general managers and managers, authorized by these Fund-appointed executives to represent and bind the company, will, after appointment by the Fund, be authorized.

In order to ensure the collection of Fund receivables, the Fund Board shall be authorized to sell in a manner that will ensure commercial and economic entity by bringing together the assets attached pursuant to the provisions of the Law No. 6183 on the Procedures for the Collection of Public Receivables, the rights arising from licenses, permits and concession contracts, and all other rights and assets stemming from the contracts that are accessories or inseparable parts of these assets but do not have an economic value alone, as well as the financial leasing agreements pertinent thereto and the assets covered by said agreements, and to sell the attached properties also if they belong to¹²⁷ more than one debtor and/or more than one creditor has inflicted the attachment thereon, and to establish the payment method and currency of the tender value, the conditions required to be met by buyers, then payment date, other principles and procedures applicable to the tender as well as sale conditions irrespective of the provisions of the Law No. 6183, and to buy the commercial and economic entity put for sale on account of its receivables, and to deduct from the tender value or require the successful bidder to pay the past debts of the companies owning the assets put for sale and arising from the procurement of technical information, software, hardware, equipment, goods and services, provided that they are related to the goods, rights and/or assets covered by the commercial and economic entity, or are required for protection of value of the commercial and economic entity or are of a character increasing the value thereof, and that the parties come to mutual agreement in determination of the amount of debt, and that an application is filed to the Fund after this mutual agreement by the party whose assets are made subject to the sale of commercial and economic entity, and that the transactions are completed by no later than the date of approval of the award of tender by the Fund Board.¹²⁸ Applications which do not meet these conditions will not be

¹²⁷ As amended by the Law No.7407

¹²⁸ As amended by the Law No.7407

proceeded by the Fund.¹²⁹ The priority list to be taken as a basis in the distribution of the proceeds of sale shall be prepared by the Sales Committee and published in the Official Gazette.¹³⁰ The period of objection against the priority list is 15 days following the date the priority list is published in the Official Gazette.¹³¹ For two years following the date it is decided to establish a commercial and economic entity, assets constituting that commercial and economic entity, and movable and immovable assets and other rights, interests and receivables of the relevant commercial enterprises included therein, and cash assets, also including those held in the possession of third parties, cannot be claimed by third parties to be attached, safeguarded or sold, and owners of attached properties cannot be adjudged bankrupt, and financial leasing agreements cannot be claimed to be terminated, and the assets covered by the related agreements cannot be decided to be returned, and prescription and foreclosure times do not count with respect to the related encumbrances.¹³²

The transfer and registration procedures for concession contracts, licenses, permits, operating permissions, preliminary permissions, broadcasting permissions, temporary frequency and channel utilization permits covered by Provisional Article 6 of the Law No. 3984 that are given to companies whose management and control or shares have been taken over by the Fund in the telecommunication, energy, transportation, radio, audio and visual media and other sectors within the framework of the above provision, shall be completed by the relevant agencies, institutions, upper boards within one month, at the latest, following the completion of the necessary documents and information, without the requirement for any other transaction.

¹²⁹ As added by the Law no. 7407

¹³⁰ As amended by the Law No.7407

¹³¹ As added by the Law no. 7407

¹³² As amended by the Law No.7407

The other principles and procedures applicable to the sales to be carried out pursuant to this provision shall be set out in a regulation to be issued by the Fund.

Out of the proceeds of sale of the assets and properties of the natural or legal persons, as a part of a commercial and economic entity within the framework of the provisions of this article, after deduction of sales expenses, the debts secured by pledges, and the debts owed to the State due to ownership of assets included in the entity, and the past period outstanding debts referred to in fifth paragraph of this Article, and the outstanding debts owed by persons to the State and the social security organizations and covered by the Law on Procedures of Collection of Public Receivables No. 6183 dated 21/7/1953, and the outstanding debts of the share of the Treasury arising out of the GSM concession agreements, that have accrued by the date of sale, will be deducted and settled if so decided by the Fund Board, and the balance thereof will be used for settlement and repayment of the outstanding debts owed by persons to the other public institutions and enterprises and the upper regulatory boards, on a pro rata basis. The amount corresponding from the tender contract price according to the expertise survey reports of assets under financial leasing, or the outstanding debt amount under financial leasing agreement, whichever is lower, will be paid out of tender contract price to financial lessor with priority without waiting for issuance and finalisation of the priority list, and then the contract assets will be transferred to the successful bidder upon a notification of the Board. The balance remaining after completion of debt payments to these creditors will be paid to other creditors on a pro rata basis. Any outstanding debt after the pro rata distribution of the proceeds of sale according to this article shall not preclude or prevent the transfer and registration transactions to be carried out by the public agencies, institutions and the upper regulatory boards for the transfer to and operation by the new buyers of the licenses, permits, concession agreements, temporary frequency and channel utilization rights and similar other rights.¹³³

¹³³ As amended by the Law No. 7407.

The companies covered by this Article and paragraph (7) of Article 15 of the Banks Law No. 4389 repealed and superseded by this Law, and the companies more than 50% of capital shares of which are owned and held by the Fund, the Fund Bank or the subsidiary undertakings of the Fund, will be dissolved and liquidated by a Fund Board decision on the basis of their balance sheets to be issued following a call to be made by their board of directors to their creditors and debtors within the framework of principles to be determined by the Board, without being bound by and subject to the provisions of the Execution and Bankruptcy Code and the Turkish Commercial Code. A Fund Board decision for liquidation will stand for a decision for dissolution of the company, and such companies will be deleted from the relevant public registry upon a written notice of the Fund, without any further or separate transaction. The lawsuits that may be commenced by the relevant persons against a decision of liquidation will be in the jurisdiction in venue of the administration courts in the city of the head offices of the Fund. The companies decided to be liquidated by a Fund Board decision cannot be requested or claimed to be adjudged bankrupt or to be recovered. The receivables registered as a result of the said public call will be allocated and distributed to the creditors of the company decided to be liquidated, according to a list of creditors to be issued by the Fund in accordance with the provisions of this Law, the Law No. 6183 and Article 206 of the Execution and Bankruptcy Code. The pending legal actions of personal liability, actions for insolvency and bankruptcy and actions of debts, brought forward against the controlling shareholders and directors of a company decided to be dissolved and liquidated according to the provisions of this Article or against third persons, will be continued to be handled by the Fund as and in the capacity of a legal suc-

cessor, while the pending criminal actions will be continued to be handled by the Fund as and in the capacity of a legal intervening (joining) party. The collections, if any, made by a court judgment as a result of these legal actions will, without any further legal proceedings, be distributed according to the list of creditors issued as above. The creditors whose receivables are not fully paid through such distribution will, if they demand so, be given a certificate verifying that the debtor company is dissolved and liquidated and no proceeds of liquidation have remained for distribution. Such certificate will be usable pursuant to Article 105 of the Execution and Bankruptcy Code. Any balance of the proceeds of liquidation remaining after distribution to the creditors according to the list of creditors will be allocated and paid to the company shareholders pro rata their existing shares in the capital. Procedures and principles of liquidation will be dealt with in a regulation to be issued by the Fund Board.¹³⁴

With regard to the Fund receivables arising out of use of the resources of banks whose permission for banking transactions has been revoked or that have been transferred to the Fund pursuant to Article 71(1-e) of this Law and the banks that have been liquidated or started to be liquidated, all kinds of money, properties, rights and receivables acquired by the real persons or legal entities referred to in the first paragraph of this Article as well as their relatives by blood and marriage and/or acquired by third persons by way of the referred real persons or legal entities and/or other bank resources as above will be deemed to have been acquired by and/or through the referred real persons or legal entities through use of the bank resources. The Fund shall be authorized to implement the provisions of this paragraph on all kinds of money, properties, rights and receivables acquired as

¹³⁴ As added by the Law No. 5472.

above by the referred real persons or legal entities. The transactions such as sales, transfer and assignment, or establishment of limited rights in kind in favor of third persons, and all personal rights and rights in kind granted to and in favor of third persons, in respect of all kinds of money, properties, rights and receivables acquired and/or deemed to be acquired as above, after the date of use of the original loan and/or other bank resources shall not be valid for the Fund. The provisions of this Article will be applicable also on all kinds of money, properties, rights and receivables acquired by and/or through all and any persons, who are a party to the referred legal transactions, also including their total or universal successors, as a result of the aforementioned transactions.

The third persons, who are a party to the transactions mentioned above, cannot raise the plea of good faith for the transactions executed after the revocation of the bank's operating permission or the transfer of the management and control of the bank to the Fund, while the persons referred to in the first paragraph of this article cannot raise the plea of good faith for the transactions executed before and/or after the revocation of the bank's operating permission or the transfer of its management and control to the Fund. Third persons, who become a party to sales, rent, transfer and assignment or other transactions relating to establishment of personal rights or rights in kind before the revocation of the bank's operating permission or the transfer of the bank's management and control to the Fund, shall be under the obligation to prove that they have acted in good faith in such transactions.

The loans and/or bank resources which are extended to the companies where the persons, employed temporarily and/or permanently with or without an employment contract in the com-

panies and/or business enterprises under management and/or supervision of the real persons or legal entities referred to in paragraph (1) of this article are a founder, partner, executive, manager or auditor; or to persons who temporarily and/or permanently represent the aforementioned persons by proxy and/or as a trade representative and/or agent and/or in reliance upon any legal theory or relationship such as representation without a proxy or power of attorney, and to the natural and/or legal persons represented by them; or to any persons other than the persons mentioned in this paragraph and/ or to the companies founded by them, under terms and conditions in contradiction with the banking legislation and practices and/or without any guarantee and/ or with inadequate guarantees, as well as the loans and/or bank resources which are extended to the real persons or legal entities who later transfer the loans and/or bank resources to the real persons or legal entities listed in the preceding paragraphs or to the real persons or legal entities who directly and/or indirectly, alone and/or jointly, hold the control of management and control of the bank, and/or to the subsidiaries and/or direct and/or indirect affiliates of the referred persons and/or the bank, who generally use the same address as their place of activity and/or who make use of the loans and/ or bank resources by incorporating in the agreements some certain clauses such as the right of renunciation and/or the transfer of debts, shall be considered as the bank resources used directly by the bank shareholders who directly and/or indirectly, alone or jointly hold the control of management and control of the bank; and accordingly, the provisions of this article shall be applicable both on these persons and on all kinds of money, properties, rights and receivables acquired by them and/or acquired by third persons through them.

The agreements for establishment of all kinds of limited rights in kind, such as real estate mortgages, chattel mortgages, other mortgages, rights of construction, rights of usufruct and rights of habitation, and any disposition including contracts for transferring any personal right and/or ownership, whether or not recorded or inserted on its special register or book, and the ordinary rent contracts or the contracts of lease of proceeds and profits in respect of movable properties such as land, air and sea transportation means or immovable properties such as seaside mansions, villas, islands, apartments, farms and their annexes, and the financial lease agreements on real or personal properties, and the agreements on satellite and cable TV broadcast rights, and the agreements on transfer and use of publishing / broadcast rights, trademark and license of television channels and newspapers, and the powers of attorney for management and other services, and the life, individual pension, old age and medical insurance contracts and policies requiring payment of premiums above the standards of the European Union, and the credit card and ATM card agreements with or without limits, and the individual or back-to-back bank letters of guarantee, acceptance loans and avals/endorsements issued, and any share transfer contract signed by the dominant shareholders, or members of the executive board, members of audit board, general manager, deputy general managers and their spouse, children and foster children, and their other blood relatives and relatives by marriage, and the authorized signatories of a bank whose operating permission has been revoked or that has been transferred to the Fund pursuant to Article 71(1-e) of this Law, or between them and third persons, may be rendered invalid by a Fund decision. In the actions for damages that may be commenced by the counter-party for invalidation and nullity of these contracts and agreement, the burden of proof that the agreement is not simulated and the amount paid thereunder is the current market price without any simulation shall lie with the plaintiff therein.

The contracts of rent of a personal dwelling house by the debtor that fits to his position shall be out of scope of the preceding paragraph.

The Fund shall be authorized to obtain a cautionary attachment on the money, goods, rights or receivables cited in this article or to put them in custody and take over any such assets, at a value to be determined taking into consideration reports to be designated by the Fund and prepared by institutions, to be deducted from its receivables.

A default interest shall be paid for such receivables from the date of the unjust transaction, which has led to the loss and/or the receivable, at a rate specified in Article 51 of the Law No. 6183 on Procedures for Collection of Public Receivables.

No security shall be required by any court for issuing an injunction in any lawsuit which may be filed by the Fund in any administrative court against transactions defined in the provisions of this paragraph.

The provisions of the Turkish Commercial Code No. 6762 shall not apply to any action to be taken by the Fund in accordance with the provisions of this Law. Such transactions shall be exempted from any tax, duty and fee. The powers vested by this paragraph in the Fund Board shall be exercised by a decision issued by the Fund without any further action. Any action, which is subject to registration, shall be registered and promulgated, where deemed necessary, upon the Fund's request.

All kinds of registrable decisions taken and all and any directives, circulars and signature declarations issued by the Fund subsidiaries or by the companies the shareholding rights, other than dividend rights, and the management and supervision of which are acquired by the Fund, are ex officio registered and announced by the relevant trade registry directorates upon demand of the Fund without seeking for notarization thereof and without imposition of any taxes, duties and public fees thereon.¹³⁵

¹³⁵ As Amended by Decree Law No 2016/678.

Prosecution and collection provisions applicable in case the insured amount of deposits and contribution funds has been notified less than the actual amount

Article 135- In case there is a difference between the amount of the savings deposit and contribution funds subject to insurance that is declared to the competent authorities by the bank pursuant to the Law No. 1211 on the Turkish Central Bank and this Law and the amount of the savings deposit and contribution funds determined by the Fund, upon demand of the Fund, the judge of the criminal court of peace having jurisdiction in the city of the headquarters of the relevant bank, or in the course of trials, the relevant court shall decide to freeze, up to the referred difference, all of the rights and receivables, including the contents of the safe deposit boxes, and all of the bank accounts, including, but not limited to, foreign currency deposit accounts, and credit card and ATM card accounts with or without limits, held with the banks and the non-bank financial institutions and other real persons or legal entities, and owned by the members of executive board and credit committee, and general directors, assistant general directors, authorized signatories and branch managers of the bank, and the bank shareholders directly or indirectly, alone or jointly holding the control of management and control of the bank, and their spouse and children, and to withdraw their rights of disposal in full or in part on all kinds of real and personal properties, including the land, air and sea transportation means and other securities such as domestic and overseas Treasury bills, State bonds, share certificates, investment fund participation certificates and independent commercial enterprises, factories and plants, and trademark and license rights for operation of such plants, and licenses and operation rights for foundation and operation of television channel, power stations

and similar other plants arising out of the public concession and licensing agreements, and share certificates and other rights in respect of companies operating such plants with or without a license, permit and operating rights and to seize all and any of the properties, cash funds, negotiable instruments, securities and other assets mentioned above and/or to restrict them by injunctions and encumbrances registered in the official registers, and to deposit them to a trustee and to restrict the proceeds, rights and receivables in relation therewith by other injunctions, and to take such precautionary measures also on proceeds of all kinds of real and personal properties, rights and receivables, negotiable instruments, cash funds and securities and trademark and license rights for foundation and operation of plants, and certificates of shares of the companies operating such plants with or without a license.

The Fund may decide to prosecute and collect the aforementioned difference in accordance with the provisions of this Law. These provisions shall also be applicable on the persons who act on behalf of the persons mentioned above or the persons who acquire money, properties or rights on such persons' account, but in their own name.

The demands for injunctions shall be finalized by the judge or the court immediately and in any case within twenty-four hours as a result of a review on the documents. The Chief Public Prosecutors may also decide to freeze the referred rights and receivables in cases where a delay is considered to be harmful. The Chief Public Prosecutors shall notify this decision to the judge of the criminal court of peace within twenty-four hours, the latest. The judge shall decide to approve or refuse this decision within twenty-four hours, the latest. The decisions not approved by the judge shall become null and void.

The decisions taken by the judge of the criminal court of peace shall be executed by the execution office in charge in the location of the court taking the injunction decision. The injunctions ordered by the judge of the criminal court of peace shall be terminated if the Fund does not make a denunciation of offence within one year following the date of the injunction decision revoking the bank's permission for banking operations and for accepting deposits and contribution funds and/or if the procedures for collection of the receivable is not commenced as per the provisions of Law No. 6183 and/or there is no lawsuit filed for collection of the receivable in civil courts. In case any of such actions is taken, the injunctions will remain in force until the ordered amounts are fully paid. The court shall order the responsible persons to reimburse directly to the Fund the amount of money paid and/or to be paid by the Fund according to the provisions of this Law. In this case, the injunctions will remain in force until ordered amount will be received from the money, properties, receivables, rights and other belongings of the responsible persons enjoined pursuant to this paragraph.

The provisions of this article may also be applicable also for all kinds of properties, limited rights in kind or limited personal rights and receivables which are subject to the provisions of the preceding paragraphs and which have previously been transferred to the possession of the divorced or widow spouse or other blood relatives or relatives by marriage of the responsible persons or third persons. In all of the lawsuits commenced or to be commenced in respect of all of these properties, rights and receivables, these persons will not be entitled to the presumption of good faith vested by Article 3 of the Turkish Civil Code or the presumption of ownership and the principle of good faith trust in all official registers vested by article 985 of the same Code. If and

to the extent they prove to have acquired these properties in good faith and the amount paid by them is the current market value of these properties without any simulation, the court will judge and order refund of such payment to these persons out of the properties and other assets of the responsible persons.

Persons who request payment to be made to themselves or other persons by submitting fraudulently prepared documents or by knowing that such documents have been fraudulently prepared, although they do not have deposit or contribution fund accounts at a bank whose permission for carrying out banking operations or admitting deposits and contribution funds shall be sentenced to penalties required by general provisions for embezzlement or swindling and forgery of documents, non-recording of transactions and non-factual accounting or prevention or disruption of information systems, deletion or modification of data.

The provisions of this article shall be applicable on all assets, rights and receivables of persons having caused or causing the Fund to make payments due to actions before the enforcement of this Law, and of their spouses and children.

Legal guarantees for Fund receivables

Article 136¹³⁶ - In order to ensure the collection of the Fund receivables; all money, properties, rights and receivables over which a precautionary attachment or an injunction is placed pursuant to the precautionary attachment or injunction orders taken in the course of the lawsuits brought forward and/or to be brought forward by the Fund in accordance with the provisions of this Law shall constitute a legal security for all receivables, that are the subject matter of such lawsuits, and shall remain so until the court

¹³⁶ As amended by the Law No. 5472.

judgments becomes final therein until the finalization of the judgment or the prosecution for the collection of such receivables. The receivables and claims ordered to be paid by a final judgment of the court shall be recovered and collected from the proceeds of the money, properties, rights and receivables subjected to injunction, in the first order as privileged receivables and claims, however, after deduction of the receivables of the State and social security organizations set forth in the Law No. 6183.

Burden of Proof

Article 137 – The burden of proof shall be on the part of defendants in lawsuits filed or to be filed by the Fund pursuant to Articles 108 and 110 of this Law.

Exceptions regarding prosecution and collection of Fund receivables

Article 138– In case any kind of lawsuit and executive proceeding, to which the Fund is a signatory, is concluded against the Fund in whole or in part, the compensation and penalties stated in the Execution and Bankruptcy Law No. 2004 shall not be applicable for the Fund.

In case the Fund takes over the claims of or assumes the debts, liabilities of a bank pursuant to Article 107 of this Law, all kinds of time periods, including the periods that cause extinguishment of rights and time-limitation periods as stated in the laws, shall stop running as far as the Fund is concerned, for a period of nine months from the date when the claim was taken over or when the debt, liability has been assumed, for the lawsuit and execution proceedings filed or to be filed in connection with such debts, liabilities and claims.

In tenders where the Fund submits a bid for the enforcement of this Law, the Fund shall not be obligated to provide bid bonds.

In proceedings carried out under the Execution and Bankruptcy Law No. 2004, where the Fund is the creditor, the objections made by debtors shall not stop the transactions of proceedings excluding sales.

The notification of the valuations in the files in which the Fund is a creditor, and sale announcements to persons other than debtors, shall be made to the latest known addresses, provided that the deadline given in the announcement is valid, or such disposal shall otherwise be made public through announcement.

In the execution proceedings where the Fund is the creditor, the proceeds of sale which become payable to the Fund, shall be paid promptly before the date of finalization of the list of loans without any security.

Powers of the Fund pertaining to its affiliates

Article 139– The Fund shall be authorized to take all kinds of measures including provision of resources under the principles and procedures to be determined by the Fund Board for the purposes of protecting and evaluating the properties, rights and receivables of the below-mentioned companies as well as restructuring them including the capital increases to be effected without applying the provisions of the Turkish Commercial Code No. 6762 in connection with the subsidiaries (those having economic value) of the Fund and of the banks whose operating permissions have been revoked or that have been transferred to the Fund and with the companies whose management and control have been transferred thereto under Article 134 of this Law and Article 15(7) of the Banks Law No. 4389 which is annulled by this Law.

Financial exceptions regarding the Fund and the banks whose operating permissions have been revoked

Article 140- The Fund shall be exempted from all taxes, charges and duties.

If the Fund takes over the claims of and/or assumes the debts and/or liabilities of the banks whose operating permissions have been revoked or the bankruptcy and liquidation trustees of banks whose liquidation is carried out by the Fund, then the transfer and assignment agreements regarding the claims taken over and/or liabilities and/or debts assumed by the Fund, establishment and lifting of all kinds of collaterals, cancellation of agreements, lawsuit and execution proceedings and all kinds of transactions related with such debts and/or claims and/or liabilities as well as the papers issued in connection with such transactions shall be exempt from all kinds of taxes, duties, fees and fund levies and from the provision of Article 1 of the Law No. 2548 on the Fees to be Collected for Construction of Prisons and Court Houses and Food Amounts Payable by Prisoners.

All kinds of taxes, duties, fees and fund levies, also including the fees of collections, which are due and payable by the debtor, cannot be deducted from such receivable. The revolving capital fees arising from such transactions shall not be paid and other deductions shall not be made.

If any movables or immovable are purchased by the Fund or by the banks whose management and control have been transferred to the Fund through either consent or enforcement, in return for any Fund receivable, then financial obligations such as tax, duty, fee and revolving capital fee payable by the parties in connection with such transactions shall not be applicable.

The Fund, Fund banks and the bankruptcy and liquidation office of any bank, which is being liquidated by the Fund, may obtain a final court judgment and request for its notification without being required to ensure that the fee imposed on the other party has been paid or to deposit a security in connection with a request for obtaining any injunction or cautionary attachment or postponement of execution.

In any legal action relating to Fund receivables, provisions of the Code of Civil Procedures (Law No. 1086) on rapid trial procedures shall be applicable.

The agreements, contracts, documents and certificates issued with regard to the transactions between the Fund, Fund banks and the bankruptcy and liquidation trustees of the banks whose liquidation is carried out by the Fund, and/or between them and other real persons or legal entities, as well all kinds of documents and/or certificates issued in respect of amendment, renewal, extension, assignment or transfer of them, or making a new redemption schedule, or collateralization of receivables, or taking over of collaterals or settlement and/or discharge of the parties thereto, and/or any other transaction in connection therewith under any name whatsoever shall be exempt from all kinds of taxes, duties, fees and all other financial liabilities imposed by private laws pertaining thereto. This provision shall be applicable on third parties if and to the extent they are a party to the bankruptcy and/or liquidation trustees' transactions for collection of receivables of the Fund and/or a bank that is transferred to the Fund and/or the bankrupt banks whose liquidation is carried out by the Fund.

Any borrowing or advance transaction to be carried out by the Fund pursuant to Article 131 of this Law shall be exempted from any tax, duty and charge.

Any transaction, lawsuit and debt collection procedure to be carried out for the purposes of collecting the receivables of the Fund banks and the bankruptcy and liquidation offices of banks whose operating permission have been revoked and are being liquidated by the Fund shall be exempted from any tax, charge or fund, and from the provisions of Article 1 of the Law No. 2548 on the Charges to be Collected for the Construction of Prisons and Court Buildings and on the Food Charges to be Collected from Prisoners.

In case of the transfer of the funds of the banks whose operating permissions have been revoked or the Fund banks to the Social Securities Agency, the actual and technical deficits determined by actuaries shall not be revoked to the banks whose operating permissions have been revoked, to the Fund and/or to the Fund banks.

Time limitation

Article 141- The lawsuits and prosecutions pertaining to the Fund receivables covered by this Law shall be subject to a time limitation of twenty years.

Authorized and competent courts

Article 142- Any civil action, which may be instituted by the Fund, the Fund banks and the bankruptcy and liquidation offices of the banks whose operating permission has been revoked, shall be heard by commercial courts. If there is more than one commercial court in a locality, such actions shall be heard by the first and second commercial courts of first instance.

Any civil action or bankruptcy proceeding which may be brought by the Fund, the Fund banks and the bankruptcy and liquidation offices of the banks whose operating permission has been revoked, against any person whose registered office or abode is located within the boundaries of Istanbul province, shall be heard by Istanbul Commercial Courts of First and Second Instance. If a bankruptcy proceeding has been instituted, then the court referred to above shall notify the commercial court of first instance, located in the place wherein the debtor, against whom the bankruptcy proceedings have been instituted, has his registered office, that a bankruptcy proceeding has been instituted against the debtor.

All types of lawsuits initiated or to be initiated pursuant to the provisions of this Law shall be continued during the judicial holiday, and in these lawsuits, experts will be appointed among the officers of the public administrations and entities, and the hearings may not be adjourned for a period longer than thirty days.

Asset Management Company

Article 143- Asset management companies may be established for the purposes of purchasing, collecting, restructuring and selling the receivables and other assets of banks and other financial institutions including the Fund. The principles applicable to the establishment and operation of asset management companies shall be set by the Board. Asset management companies shall be authorized to perform any activity, including the provisional of additional financing for debtors or participation in their shares, for the purposes of operating, leasing and investing in the immovable properties or other rights and assets acquired for the collection of its receivables and/or restructuring of other assets.

The Board is authorized to determine the procedures and principles to be applied in sales to asset management companies of the outstanding receivables of banks more than half of capital shares of which is directly or indirectly owned or controlled by the public.¹³⁷

¹³⁷ As added by the Law No. 7074

The Fund shall be authorized to become founding partner or shareholder of the asset management companies to be established, by providing capital.

Assets Management Companies, of which the Fund owns minimum twenty percent shares, shall use the rights and powers assigned to the Fund by Articles 132(8) and 138(5) of this Law regarding the receivables taken over from the Fund.

Asset Management Companies shall reserve provisions in order to recover the unknown amounts of damages that have arisen or are likely to arise in connection with such transactions. The characteristics of the receivables for which provisions will be reserved and the principles and procedures applicable to provisions shall be set by the Board. The whole amount of the provisions reserved by Asset Management Companies pursuant to this paragraph shall be considered as expenditure in the calculation of the Corporate Tax base in the year they are reserved.

The transactions of the asset management companies established under this Law and by the asset management companies established under the regulation issued pursuant to Article 3(7) (which is repealed by this Law) of the Law No. 4743 regarding the Restructuring of Debts to Financial Sector and the Amendment of Some Laws, as well as the documents prepared for such transactions, including the establishment transactions, shall be exempted from the stamp taxes required to be paid under the

Transactions of asset management companies established within the scope of this Law and asset management companies established within the scope of the regulation issued by the Board pursuant to the seventh paragraph of article 3 of the Law No. 4743 regarding the Restructuring of Debts to the Financial Sector and Amending Some Laws and the papers issued in this regard, (...) is exempt from the stamp tax to be paid in accordance with the Stamp Duty Law No. 488, the fees to be paid according to the Fees Law No. 492, the deductions to be made to the (...) resource utilization support fund, and the provision of Article 39 of the Law No. 4054 on the Protection of Competition.¹³⁸

¹³⁸ As amended by the Law No. 7338.

In cases where the asset management company undertakes these debts and commitments or take over receivables and assets, the asset management company shall automatically become an intervening party, as the sufferer from the offense, to any criminal lawsuit initiated or to be initiated in connection with such debts, commitments, receivables and assets, as from the date when the receivable is taken over or the debt and commitment is undertaken.

The asset management companies established before the publication date of this Law shall continue their operation as subject to the provisions of this Law.

PART THIRTEEN

Other Provisions

Interest rates and other benefits

Article 144- The Central Bank is authorized to determine the maximum interest rates to be applied on money lending business and on acceptance of deposits by banks, and the profit and loss participation rates in participation account, and the nature and maximum amounts or rates of fees, charges, commissions and other benefits to be charged by them on all kinds of transactions, also including special current accounts, and to release them fully or partially.¹³⁹

Monetary amounts

Article 145- Except for the provisions applicable to fines, any financial amount and limit specified in this Law may be increased by a decision of the Board provided that it does not exceed the amount and limit corresponding to increase rate in the annual producer prices index announced by the State Institute of Statistics.

¹³⁹ *As amended by the Law no.7222.*

PART FOURTEEN Provisions Pertaining to Sanctions, Investigations and Legal Proceedings

SECTION ONE Administrative Fines

Administrative fines for institutions

Article 146- The amounts of administrative fines to be inflicted on the relevant companies covered by this Law by a decision of the Board and with reference to the reason thereof are as listed below:

a) In case of opening of branches and representation offices in breach of Articles 13 and 14 of the Law, the amount of fine to be imposed is between one hundred thousand Turkish Liras and two hundred thousand Turkish Liras, and

b) In case of breach of second and fourth paragraphs of Article 18 of the Law, the amount of fine to be imposed is between one hundred thousand Turkish Liras and two hundred thousand Turkish Liras, and

c) In case of appointment in breach of Article 25 of the Law or in case of employment of banned individuals in the prohibited job positions as set forth in Article 26, the amount of fine to be imposed is between one hundred thousand Turkish Liras and five hundred thousand Turkish Liras, and

d) In case of breach of Article 28 of the Law, the amount of fine to be imposed is between fifty thousand Turkish Liras and one hundred thousand Turkish Liras, and

e) In case of breach of Articles 33 or 34, or first paragraph of Article 37, or Articles 38, 39 or 42 of the Law, the amount of fine to be imposed is between fifty thousand Turkish Liras and one hundred thousand Turkish Liras, and

f) In case of failure in making the notifications stipulated in Article 43 of the Law, the amount of fine to be imposed is between fifty thousand Turkish Liras and one hundred thousand Turkish Liras, and

g) In case of breach of the crediting bans stipulated in Article 50 of the Law, the amount of fine to be imposed is equal to an amount up to five percent of the credit facility made available, not being less than fifty thousand Turkish Liras, and

h) In case of breach of Article 52 of the Law, the amount of fine to be imposed is between fifty thousand Turkish Liras and one hundred thousand Turkish Liras, and

i) In case of failure in setting aside the reserves and provisions required to be set aside as per Article 53 of the Law, the amount of fine to be imposed is equal to an amount up to five percent of the amount of reserves or provisions required to be set aside, not being less than five hundred thousand Turkish Liras, and

j) In case of failure in compliance with the credit limitations stipulated in Article 54 of the Law, the amount of fine to be imposed is equal to an amount up to five percent of the amount of breach, not being less than five hundred thousand Turkish Liras, and

k) In case of acquisition of company capital shares in breach of Article 56 of the Law, the amount of fine to be imposed is equal to an amount up to five percent of the amount of breach, not being less than five hundred thousand Turkish Liras, and

l) In case of breach of prohibitions and limitations stipulated in Article 57 of the Law, the amount of fine to be imposed is equal to an amount up to five percent of the amount of prohibition or limitation, not being less than five hundred thousand Turkish Liras, and

m) In case of breach of Article 58 of the Law, the amount of fine to be imposed is equal to an amount up to the amount of breach, not being less than five hundred thousand Turkish Liras, and in case of failure in compliance with the limitation stipulated in Article 59 of the Law, the amount of fine to be imposed is equal to an amount up to the amount of breach, not being less than five hundred thousand Turkish Liras, and

n) In case of failure in compliance with fifth and seventh paragraphs of Article 60 of the Law, the amount of fine to be imposed is between five hundred thousand Turkish Liras and one million Turkish Liras, and

o) In case of breach of Article 61 and Article 76 of the Law, the amount of fine to be imposed is between five hundred thousand Turkish Liras and one million Turkish Liras, and

p) In case of failure in disclosure of information requested by the Agency from the companies covered by this Law as stipulated in Articles 95 and 96 of this Law, the amount of fine to be imposed is between fifty thousand Turkish Liras and five hundred thousand Turkish Liras, and in case of delay in disclosure, the amount of fine to be imposed is between fifty thousand Turkish Liras and five hundred thousand Turkish Liras, and in case of disclosure of incomplete information, or information containing control mistakes, or control mistakes becoming continuous, the amount of fine to be imposed is between fifty thousand Turkish Liras and five hundred thousand Turkish Liras, and

r) In case of failure in compliance with the decisions taken and the regulations issued pursuant to Article 144 of this Law, the amount of fine to be imposed is equal to five hundred thousand Turkish Liras, and in addition, where the amounts or rates are determined by the Central Bank, the amount of fine to be imposed is equal to an amount up to ten times the amount of breach of said amounts and rates, and

s) In case of transactions and applications accepted and considered as manipulation and deceptive transactions in financial markets as stipulated in Article 76/A of this Law, the amount of fine to be imposed is equal to an amount up to five percent of total sum of interests, profit shares and dividends, fees and commissions, and banking service income shown in the financial statements issued as of the end of the previous year, not being less than the amount of benefits, if derived out of such transactions.

The Board will be authorized to increase the amounts of fines listed in this article by twice thereof by considering the repetition of breach by more than once until a decision of sanction is taken, or the repetition of the same breach within a period of two years following the date of imposition of administrative fine.

The Board will further be authorized to reduce the amounts of fines to be imposed pursuant to this Article down to fifty percent thereof for the banks to which Articles 68, 69 and 70 of this Law are applied, and down to one hundred percent thereof for the banks to which Article 71 of this Law is applied.¹⁴⁰

Administrative fines applicable to relevant persons

Article 147- The amounts of administrative fines to be inflicted on the related natural persons and legal entities by a decision of the Board and with reference to the reason thereof are as listed below:

a) In case of breach of first, second and fourth paragraphs of Article 18 of the Law, the amount of fine to be imposed is between one hundred thousand Turkish Liras and two hundred thousand Turkish Liras, and

b) In case of breach of Article 36 of the Law, the amount of fine to be imposed is between one hundred thousand Turkish Liras and two hundred thousand Turkish Liras, and

¹⁴⁰ As amended by the Law no.7222.

c) In case of breach of Article 38 of the Law, the amount of fine to be imposed is between fifty thousand Turkish Liras and two hundred thousand Turkish Liras.¹⁴¹

Administrative fines for violation of restrictions, decisions and regulations

Article 148- The amounts of administrative fines to be inflicted on the companies covered by this Law and their related natural persons and legal entities by a decision of the Board and with reference to the reason thereof are as listed below:

a) In case of failure in compliance with the limitations stipulated in this Law or in the regulations enacted in reliance upon this Law, the amount of fine to be imposed is equal to an amount up to five percent of the amount of breach, not being less than five hundred thousand Turkish Liras, and

b) In case of failure in compliance with the decisions taken and the instructions given and the regulations, communiqués or other legislative instruments issued by the Board or the Agency in reliance upon this Law, the amount of fine to be imposed is between fifty thousand Turkish Liras and five hundred thousand Turkish Liras.

The Board will be authorized to increase the amounts of fines listed in this article by twice thereof by considering the repetition of breach by more than once until a decision of sanction is taken, or the repetition of the same breach within a period of two years following the date of imposition of administrative fine.¹⁴²

Right to defense and decisions for closure

Article 149- The decisions as to whether the administrative fines shall be implemented or not shall be taken after receiving the

¹⁴¹ As amended by the Law no.7222.

¹⁴² As amended by the Law no.7222.

defense of the related party. If no such defense has been submitted within one month from the date of receipt of a notice requiring the relevant party to file a defense, then the relevant party shall be deemed to have waived its right to defend him.

While the provisions of Article 146(1a) of this Law shall be applied to any branch or representative office opened in Turkey in breach of the provisions of Article 13 of this Law, these can be closed down permanently or temporarily by governors, upon demand of the Agency.

SECTION TWO

Offences

Operating without receiving related permissions

Article 150- The real persons or officers of a legal persons, without having permission required to be obtained pursuant to this Law, who use the business title of a bank in their notices and advertisements or public statements and use words and expressions which could create an impression that they were accepting deposits or participation funds or acting as a bank, shall be sentenced to imprisonment from one to three years and a judicial fine of up to 5,000 days. In addition to this, such business places may be closed from one month to one year, or permanently if such acts are repeated.

In cases of the violations cited in the above paragraphs, upon the application of the Agency to the Chief Public Prosecutor's Office by the criminal law judge, if a lawsuit is initiated then the relevant court shall temporarily suspend the activities of the work place and as well as the advertisements thereof and issue an order for the collection of announcements. These measures endure until they are lifted by magisterial decree. These decisions may be appealed.

In case of breach of the paragraphs hereinabove, upon demand and application of the Agency to the concerned Chief Public Prosecutor's Office, the relevant judge of the court of peace, or if a legal action has already been commenced, the

relevant court hearing the case temporarily suspends and stops the business activities and advertisements of the place of business, and recalls its advertisements from the market, and in case of detection of the commission of breaches via internet, if the content and hosting service providers thereof are resident at home, access to their internet sites is prevented. These precautions remain in force until they are duly removed by a decision of the concerned judge. These decisions are open to appeal.¹⁴³

If and when the breaches referred to in first and second paragraphs hereof are committed via internet sites hosted abroad, then and in this case, the access to those internet sites is prevented by the Information Technologies and Communication Agency upon demand and application of the Agency.¹⁴⁴

Preventing the rights of the owners of deposits and participation funds

Article 151- The persons who violate the provisions of Article 61 of this Law shall be sentenced to an imprisonment from six months to two years and a judicial fine up to 500 days.

Failure to take corrective, rehabilitating and restrictive measures

Article 152- The responsible employees of the banks failing to take the measures required by the Board or the Agency as per the provisions of Articles 68, 69 and 70 of this Law and Article 14 of the Banks Law No. 4389 which is repealed by this Law,

¹⁴³ As amended by the Law no.7222

¹⁴⁴ As added by the Law no.7222

shall be sentenced to imprisonment from two to four years and a judicial fine from 1,000 days up to 5,000 days.

If it is determined that such failure has been caused to provide a benefit for any partner, who hold qualified shares, or their associations and institutions, then such persons shall be sentenced to imprisonment from four to six years and a judicial fine up to 10,000 days.

Failure to submit the data and documents required by authorized agencies and auditors and preventing their actions

Article 153- The persons who fail to provide information and documents requested within the scope of article 38 of this Law by the authorized agencies and auditors cited in this Law for the preparation of consolidated financial statements shall be sentenced to imprisonment from one year to three years and a judicial fine from 500 days up to 1,500 days.

Any person who prevents the audit staff authorized by this Law from performing their duties shall be sentenced to imprisonment from two to five years.

Failure to comply with the obligation to keep records

Article 154- The persons who do not abide by the obligation of keeping documents specified in Article 42 of this Law shall be sentenced to imprisonment from one to three years and a judicial fine from 500 days up to 1,500 days.

False statement

Article 155- The persons who sign the documents of the institutions that are subject to this Law and have made a false state-

ment in such documents or who sign the documents forming the basis of such non-factual documents submitted to any authority or auditor specified in this Law and to courts or documents published, shall be sentenced to imprisonment from one year to three years and a judicial fine which shall not be less than 1,500 days.

Non-recording transactions, non-factual accounting

Article 156- Any person who has caused any transaction of institutions covered by this Law not recorded or accounted for in a manner not conforming to their nature or has caused any annual balance sheet thereof closed without ensuring its conformity with the ledger and the subsidiary ledger, branches, correspondent banks in Turkey and abroad and who has signed any document which has been used for taking any of the foregoing actions shall be sentenced to imprisonment between one year and three years and a judicial fine which shall not be less than 1,500 days. The officials of independent audit firms who approve such documents although they know that they have been prepared non-factually shall be sentenced to the same penalties.

Impairing and preventing the functioning of the system; disposing or changing data

Article 157- The institutions subject to this Law shall be regarded as bank or credit institution in the context of the offenses of preventing or disrupting system, and deleting or modifying data, as defined in Article 244 of the Turkish Penal Code No. 5237.

Actions damaging reputation

Article 158- Any person who violates the provisions of Article 74 of this Law shall be sentenced to imprisonment from

one year to three years and a judicial fine from 1,000 days up to 2,000 days.

If a private or public loss has incurred as a result of the offenses defined in the above paragraph, the penalties shall be increased by one sixth.

Disclosing confidential information and documents

Article 159- The persons who do not fulfill the requirements laid down in the first and third paragraphs of Article 73 of this Law shall be sentenced to imprisonment from one year to three years and a judicial fine from 1,000 days up to 2,000 days. The same punishments shall also be applied to third persons who disclose the confidential information or documents of the clients of banks.

In cases where the persons defined in the above paragraph disclosed confidential information and documents with a view to acquiring benefits for themselves or for others, the penalties shall be increased by one sixth. Furthermore, depending on the importance of the offense, the responsible persons shall be prohibited from working at the institutions subject to this Law temporarily for a period that is not less than two years or permanently.

Embezzlement

Article 160- If any member of board of directors or employee of a bank embezzles any money, valuable document, securities or other assets, which have been entrusted to them in connection with their duties or put under custody and supervision thereof, in his own or others' favor, he shall be sentenced to imprisonment from six years to twelve years and a judicial fine up to 5,000 days, and shall compensate for the losses incurred by the bank.

Where the offence has been committed by fraudulent acts which would ensure that the offence will not be discovered, then the perpetrator of such act shall be sentenced to imprisonment for minimum twelve years and a judicial fine up to 20,000 days; however the amount of judicial fine shall not be less than three times the loss suffered by the bank. Furthermore, in the event that the loss caused is not compensated, the court shall issue a judgment for the collection of the damage *ex officio*.

In the event that the real person shareholders who *de jure* or *de facto* have held the control the management and supervision of a bank whose permission for banking transactions has been revoked or that has been transferred to the Fund, are proven to have used the credit institution's resources directly or indirectly in their own interests or in the interests of third persons so as to endanger the soundness of the credit institution, thereby causing loss to the credit institution in any manner whatsoever, their such acts shall be considered embezzlement. Those who commit such offence shall be sentenced to imprisonment from ten years to twenty years and a judicial fine up to 20,000 days; however the amount of judicial fine shall not be less than three times the loss suffered by the bank. In addition, the losses incurred shall jointly be indemnified.

Transactions of making credit facilities available, and extending the term of these credit facilities, or making additional credit facilities available, and subdivision of credit repayments into instalments, and collateralization of them, or restructuring of them by other methods in strict compliance with the banking laws and regulations or the banking procedures and principles do not constitute an offence of embezzlement.¹⁴⁵

Where any embezzled money, money substitute valuable document or security as well as other assets has been fully returned or the loss has been compensated prior to the initiation of investigation, the punishment shall be reduced by two thirds.

¹⁴⁵ As added by the Law no.7076

Where any embezzled money, money substitute valuable document or security as well as other assets has been fully returned or the loss has been compensated prior to the initiation of legal proceedings, the punishment shall be reduced by half. If such case takes place prior to the issue of judgment, the punishment shall be reduced by one third.

In cases where the value of the embezzled money, valuable document or security as well as other assets is low, then the punishment shall be reduced up to half from one third.

Violation of other laws

Article 161- In case the actions that constitute offense under this Law require penalty pursuant to other laws as well, the article of law that imposes the heaviest penalty on the offender shall be applied. The provisions of the Turkish Commercial Code No. 6762 that requires liability shall be reserved.

SECTION THREE

Procedure for Legal Proceedings

Written application and intervention

Article 162- The initiation of investigation and prosecution for the offenses mentioned in this Law shall be subject to a written application of the Agency or the Fund to the Office of Chief Public Prosecutor. Such application shall be accepted as trial clause. However, the investigation and prosecution of the offenses mentioned in the third paragraph of Article 160 shall be initiated upon the written notice of the Agency or the Fund, or in emergency cases, automatically by the Office of Chief Public Prosecutor, and the Agency and Fund shall be notified thereof. In public lawsuits initiated as a result of the investigations performed pursuant to the provisions of this article, the Agency or the Fund shall take intervening party status upon their application, at the date of application.

The litigation right of the related persons with regard to the offenses of damaging reputation, disclosing confidential information or documents and embezzlement and the provisions of the Criminal Procedures Code No. 5271 dated 4/12/2004 shall be reserved.

Objection and notification

Article 163- If it is decided that it is not required to be prosecuted as a result of the legal proceedings initiated pursuant to Article 162 of this Law, such decisions shall be notified to the Agency or Fund, depending on its relevance, and to the relevant bank. The Agency, the Fund and the relevant bank may object to such decisions in accordance with the Criminal Procedures Code No. 5271.

In case of public lawsuits, a copy of the indictment shall be notified to the Agency or the Fund, whichever applicable.

Special duty

Article 164- The lawsuits for the offenses of failure to take corrective, rehabilitating and restricting measures; non-registering transactions and fraudulent accounting, embezzlement; preventing or disrupting systems and deleting or modifying data; disclosing the confidential information and documents about banks and customers; swindling in banking transactions; setting up, managing or participating in organizations to commit such offenses; and associated crimes that fall under the duty area of high criminal courts shall be trialed in the high criminal court no. (1) of the city where the act is committed. If deemed necessary, upon a proposal of the Ministry of Justice, the Higher Board of Judges and Public Prosecutors may assign other high

criminal court or may form a new ones in that city for trial of such types of offences.

Expert examination

Article 165- For the purposes of the implementation of this Law, in any criminal action instituted in respect of offences defined in this Law and other applicable laws, the court expert shall submit his report to the court within three months from the date the case was referred to him. This period may be extended up to two months by the judge. If the report has not been submitted during this extension period, the court expert shall be discharged without paying a fee and a new court expert shall be appointed. The experts discharged as such shall not be appointed as experts in any lawsuit covered by this Law for a period of one year. Such person shall also be condemned to indemnify any costs caused by the delay in submission of the reports and a judicial fine up to 500 days. The period of prescription shall be suspended and it shall resume to run on the date when the court expert submits his report to the court.

If a court expert examination is considered necessary in respect of a civil lawsuit instituted by Agency, the Fund, Fund banks and the bankruptcy administrations of the banks, the court expert shall submit his report to the court within three months from the date the case was referred to him. This period may be extended up to two months by the judge. If the report has not been submitted during the extension period the expert witness shall be discharged without paying a fee and a new expert witness shall be appointed. Any expert witness so discharged shall not be appointed as an expert witness in any legal proceedings under this Law for a period of one year. Such person shall also be condemned to indemnify any costs

caused by the delay in submission of the reports as well as a judicial fine up to 500 days.

Specific legal proceedings and prosecutions

Article 166- The following provisions shall be applicable for the legal proceedings and prosecutions regarding the offences indicated in the third paragraph of Article 160:

a) The investigation will be conducted directly and personally by the Chief Public Prosecutors or the Public Prosecutors to be delegated, according to their relevant responsibilities. These offences and crimes will be directly prosecuted by the Public Prosecutors, even if they are committed during or due to performance of duties.

b) In investigation and prosecution of these offences, the provisions between Article 135 and 138 of the Penal Procedures Law No. 5271 shall also be applicable.

c) In the course of investigations and prosecutions of these offences, the police forces shall be obliged to have the suspects, accused persons, witnesses, experts and injured persons ready at the date, time and place ordered by the Public Prosecutor or the regent judge or the rogatory judge for the purposes of investigation and prosecution. This order empowers the police to use force on the persons who are invited to appear in the court as in bench warrants.

d) If deemed necessary in investigation of these offences, the Chief Public Prosecutors may temporarily demand to make use of the buildings, vehicles, equipment and personnel of the general or annexed budget public administrations or authorities, and all public agencies or institutions, municipalities, and banks within or outside their jurisdiction. Such demands will be fulfilled by the

related entities and authorities without delay. The responsible persons who fail to fulfill such demands without any excuse shall be sentenced to imprisonment from three months to six months.

e) If it is deemed necessary during the course of investigation, an on-site investigation will be held at the location of offence or at the location of evidences.

f) In cases where a delay in the decision of the judge may have unfavorable effects, all kinds of properties, receivables, money and other goods of the perpetrators will be seized upon a written order of the Public Prosecutor until the end of the criminal investigation. All kinds of properties, receivables or other things acquired as a result of transfer of all and any unfair enrichment acts by the perpetrators and accomplices in crime and held in possession of their blood relatives or relatives in law by marriage or other third persons will also be seized by a written order of the Public Prosecutor.

g) The order of seizure shall be presented to the approval of the authorized and competent judge of the criminal court of peace within twenty-four hours. The judge shall declare his judgment within forty-eight hours. Otherwise, the order of seizure shall become null and void.

Execution of penalties

Article 167- The provisions of conditional release shall not be applicable for the persons who are sentenced due to the offenses mentioned in Article 160 unless they pay the debts and compensations they owe to the Fund or the Treasury, or these debts and compensations are collected from their possessions.

PART FIFTEEN

Final Provisions

Provisions repealed and amended

Article 168- A) Excluding the provisions in the provisional articles of this Law, the Banks Law No. 4389 dated 18/6/1999 and its annexes and amendments have been hereby repealed.

B) The provisions of the Law No. 4059 and dated 9/12/1994 on Organization and Responsibilities of the Treasury Undersecretariat and the Foreign Trade Undersecretariat regarding the activities of financial leasing and lending, that do not pertain to lending have been repealed.

C) The following amendments have been made in the Financial Leasing Law No. 3226 and dated 10/6/1985:

a) the phrase "Council of Ministers" has been replaced with the phrase "Banking Regulation and Supervision Board" in Articles other than 30 and 34,

b) The phrase "the Ministry in charge of the Treasury and Foreign Trade Undersecretariat reports" has been replaced with the phrase "Banking Regulation and Supervision Agency",

c) Sub-paragraph (b) of Article 32 has been changed as follows "the regulation mentioned in Article 10 shall be issued by the Banking Regulation and Supervision Board".

D) The following amendments have been made in the Decree in the Power of Law No. 90 and dated 30/9/1983 regarding Lending Activities:

a) The phrase "Undersecretariat" in Articles 12 and 13 has been replaced with "Banking Regulation and Supervision Board",

b) The first paragraph of Article 14 has been changed as follows “the financing companies and factoring companies subject to this Decree in the Power of Law shall be supervised by the Banking Regulation and Supervision Agency and the activities of lending institutions by the Undersecretariat.”,

c) The fourth paragraph of Article 14 has been amended to read as: “The Banking Regulation and Supervision Agency may request any information from financing companies and factoring companies, and the Treasury Undersecretariat from the lending institutions.”

E) The phrase “upon consulting the Central Bank of the Republic of Turkey” in the first and second paragraphs of Article 13 of the Decree in the Power of Law No. 90 and the phrase “upon consulting the Central Bank of the Republic of Turkey as well” in the fifth paragraphs have been deleted.

F) Paragraph (I-b) of Article 40 of the Law No. 1211 and dated 14/01/1970 on Central Bank of the Republic of Turkey has been repealed and paragraph II of Article 40 and Article 44 of the said Law have been amended as follows, respectively:

“II- Banks and other financial institutions to be deemed appropriate by the Bank including those that issue electronic payment instruments shall maintain reserve requirements in cash, in proportion to their liabilities in accounts opened at the Bank. The Bank shall set the implementation principles and procedures to be applicable to the scope of liabilities subject to reserve requirements, the ratio and establishment period of reserve requirements, the interest rate to be applied to the said requirements when necessary, and the transactions to be carried out in the case of extraordinary withdrawals from deposit and participation funds, mergers, acquisition and disintegrations.

The Bank shall determine the quality and the ratio of the general liquidity requirement to be maintained by the above-mentioned institutions against their undertakings when necessary.

If the regulation to be issued by the Bank requires the blocking of the reserve requirements in the accounts within the Bank, then the reserve requirements held in the blocked accounts shall not be utilized to finance any purpose or issue, and shall not be assigned or distrained.

The Bank shall be authorized to require the keeping of non-interest deposits in the accounts within the Bank or to accrue default interest on institutions which fail to deposit their reserve requirements and liquidity requirement when due or establish them deficiently, over the deficient portion in accordance with the procedures and conditions to be determined thereof. The accrued default interest claims shall be collected in accordance with Law No. 6183 on the Procedures for the Collection of Public Receivables. The default interest so collected shall be registered as revenue to the Savings Deposit Insurance Fund.”

“Article 44- The Bank shall establish a Risk Center in order to collect information about the risk status of the clients of the deposit banks, participation banks, development and investment banks, financial holding companies, financial leasing companies, factoring companies, financing companies operating in Turkey and other financial institutions to be considered appropriate by the Bank and the Banking Regulation and Supervision Board, and to share such information with the Banking Regulation and Supervision Agency and other relevant institutions.

These institutions shall provide any information to be requested in connection with the risk status of their clients, including the pro-

tests notice of lodged by banks. All transactions and records of the Risk Center shall be confidential.

The principles and procedures applicable to the format and contents of the information to be provided by the Risk Center as well as the compilation and sharing of such information shall be set by the Bank upon the approval of the Banking Regulation and Supervision Board.”

G) The following sentence has been added to the first sub-paragraph of paragraph (A) of Article 14 of the Passport Law No. 5682 of 15/07/1950:

“The condition for association with the Pension Fund of the Republic of Turkey and the deduction of pension deductions at these degrees shall not be applicable for the members of the Banking Regulation and Supervision Board and the Savings Deposit Insurance Fund Board.”

H) The seventh paragraph of Article 3 of the Law No. 4743 dated 30/01/2002 has been repealed.

I) The repealed Article 24 of the Municipalities Bank Law No. 4759 dated 13.6.1945 has been amended to read as follows:

“Article 24- The requirement of loan loss provisioning shall not be applicable to the Bank as from 24.4.2003.”

J) The phrase “Banking Specialists, Legal Specialists and Informatics Specialists as well as their assistants working for the Banking Regulation and Supervision Agency” has been added to the end of the phrase “Sworn Bank Auditors and Assistant Auditors” in sub-paragraph (b) of Article 33 of the Allowances Law No. 6245 dated 10.2.1954.

K) Article 6 and the first and second paragraphs of Article 15 of the Law No. 6219 and dated 11.1.1954 regarding Türkiye

Vakıflar Bankası Türk Anonim Ortaklığı have been amended to read as follows:

“Article 6- Shares shall be categorized as (A), (B), (C) and (D) and shall be issued to name.

The Board of Directors of the Bank shall consist of a total of 9 members including the General Manager. The Bank’s articles of association shall indicate the number of members to be held by each group in the Board of Directors.

One of the members of group (A) shall be selected by Prime Minister to represent the General Directorate for Foundations, and the other members of group (A) and the members of groups (B), (C) and (D) shall be selected by the general assembly.”

References to repealed laws

Article 169- All references made to repealed Law No. 3182 and the Law No. 4389 repealed by this Law shall be deemed to have been made to the relevant articles of this Law.

All references made to the special finance institutions in other laws and in the repealed Law No. 3182 and the Law No. 4389 repealed by this Law shall be deemed to have been made to participation banks.

Risk Center

Supplementary Article 1¹⁴⁶- A Risk Center is hereby established within the Banks Association of Turkey for the purpose of collecting the risk data and information of clients of credit institutions and other financial institutions to be deemed eligible by the Board and ensuring that such information is shared with such institutions or with the relevant persons or entities them-

¹⁴⁶ Added by the Law No. 6111.

selves or with real persons and¹⁴⁷ private law legal entities if approved or consented so.

Credit institutions and other financial institutions to be deemed eligible by the Board are under obligation to be a member of the Risk Center. Member institutions are liable to give and disclose all kinds of data and information relating to their clients if and when demanded so by the Risk Center. The Risk Center will be authorized to suspend the flow of information to any member who fails to abide by such obligation.

The Risk Center will be managed by a management committee of nine members, including also one member to be appointed by each of the Agency and the Central Bank from among their own staff members. Members of the management committee of the Risk Center will take office for a term of three years.

In accordance with the initial basic objectives of the Risk Center, the management committee of the Risk Center is authorized to request information from private law legal entities and public administrations and entities and professional associations or organizations classified as a public entity and their supreme institutions and to enter into contracts for exchange of information with such entities or organizations with a prior consent or approval of the Board. All and any private law legal entities and public administrations and entities and professional associations or organizations classified as a public entity and their supreme institutions are under obligation to disclose or provide all information demanded by the management committee of the Risk Center. Subject to prior consent of clients of credit institutions and other financial institutions to be deemed eligible by the Board, the risk data and information belonging to clients and held in possession of such institutions, which may at any time be disclosed or oth-

¹⁴⁷ *As amended by the Law No. 6456.*

erwise given to private law legal entities and public administrations and entities and professional associations or organizations classified as a public entity and their top level institutions which have entered into a contract of exchange of information with the Risk Center shall be considered under the forth paragraph of Article 73 of the Law.

The procedures and principles pertaining to establishment, operations and modus operandi of the Risk Center, and composition of management of the Risk Center, and meeting or decision making processes of management committee, and scope, format and contents of information disclosed to the Risk Center, and their sharing and the scope and content of information to be shared, and pricing thereof, and determination of subscriptions payable by the members shall be determined by the Banks Association of Turkey and published in the Official Gazette in due consultation with the Participation Banks Association of Turkey and other professional associations of financial institutions deemed eligible by the Board and with prior consent of the Board and the Central Bank.

Subscriptions and commissions not paid by the members in due time shall be collected by the Banks Association of Turkey through legal proceedings.

The Agency shall, if deemed necessary, audit the Risk Center, and the procedures and principles of audit shall also be determined by the Agency.

The Risk Center is under obligation to provide all of the collected information to the Agency and the Central Bank in the requested format and within the determined time. Provided, however, that if and when real or legal persons or entities make or file a written demand for disclosure of risk information to them or

it is proven that they have shown consent to disclosure of such information to a real person or private law legal entity¹⁴⁸ other than credit institutions and other financial institutions to be deemed eligible by the Board, then and in this case, such information will be provided in return for a particular fee to be paid by the demanding person or entity.

All kinds of transactions and records of the Risk Center are confidential. Risk information are disclosed to any person designated by the owner of relevant confidential information only in case of explicit consent of the owner for disclosure of risk information. The procedures and principles pertaining to disclosure of risk information in reliance upon prior consent of the owner thereof shall be determined by the Banks Association of Turkey and published in the Official Gazette in due consultation with the Participation Banks Association of Turkey and other associations or organizations to be designated by the Board and with prior consent of the Board and the Central Bank.

The provisions of Article 159 hereof shall be applicable on any person who discloses any confidential information in the possession of the Risk Center to any persons or entities other than the authorities expressly authorized by laws, or disseminates, discloses, transfers, acquires and uses this information unlawfully in his own favor or in favor of others. Should any one of the crimes described in this paragraph be committed as a part or as a requirement of operations of a legal entity, the relevant legal entity shall be subject to certain security precautions for legal entities as referred to in the Turkish Penal Code.

The Risk Center may further handle the exchange of all kinds of information through companies to be founded by at least five banks pursuant to forth paragraph of Article 73 and within the framework of contracts to be signed with such companies.”

¹⁴⁸ *As amended by the Law No. 6456.*

Provisional Article 1- Any legislation, which has been put into force, based on repealed provisions and the provisions shall remain in force and effect until decrees, regulations and communiqués to be put into effect in accordance with this Law take effect, that are not in conflict herewith.

The regulations set forth in this Law shall be put in force within one year.

Provisional Article 2- The provision of Provisional Article 2/a of the Law No. 4672 dated 12.5.2001 shall be reserved.

Provisional Article 3- All banks that have received operating permission from the Agency as of the effective date of this Law shall carry on with their activities in the areas they were legally operating pursuant to other laws before the effective date of this Law. Within two months following the effective date of this Law, banks shall submit to the Agency a letter of declaration indicating the fields they have been operating in. Agency permission shall be required for banks to extend their areas of activity under Article 4 of this Law.

Banks and financial holding companies are obliged to harmonize themselves with the provisions of this Law within one year.

Special finance institutions currently in operation shall change their commercial titles including “participation bank” within one year and shall conform their existing positions with the provisions of the Law pertaining to financial reporting. The Association of Special Finance Institutions shall mean The Participation Banks Association of Turkey and shall be subject to the provisions of this Law. The association shall conform its position to the provisions of this Law within three months.

Provisional Article 4- Independent audit institutions authorized by the Agency shall harmonize their positions with the provisions of Article 36 by 31/12/2006.

Provisional Article 5- The ratio of twenty-five percent indicated in paragraph one of Article 54 of this Law, for the loans to be extended to a certain risk group, shall be implemented as thirty-five percent until 31.12.2005 and as twenty-five percent from 1/1/2006 ; while the ratio of twenty percent in the same paragraph shall be implemented as thirty-five percent until 31.12.2005, as twenty-five percent between 1/1/2006 and 31/12/2006, and as twenty percent from 1/1/2007.

In the calculations to be made for the loan limitations indicated in Article 54 of this Law; partnership shares shall be taken into account as forty percent in 2005, fifty percent in 2006, sixty percent in 2007, seventy five percent in 2008, ninety percent in 2009 and a hundred percent as from 1/1/2010.

Provisional Article 6- The credit institutions whose rate of shares in undertakings are below the rates provided in the first paragraph of Article 56 shall under no condition exceed the rates indicated in this Article. The institutions whose shares in undertakings exceed any of the rates provided in the Law as of the effective date of the Law shall eliminate such excesses by redeeming twenty percent of such excess by 31/12/2005, forty percent by 31/12/2006, sixty percent by 31/12/2007, eighty percent by 31/12/2008 and a hundred percent by 31/12/2009.

Provisional Article 7- The banks which have funds and foundations under Provisional Article 20 of the Social Security Law No. 506 shall conform their positions to the provisions of Article 58 by 31/12/2007.

Provisional Article 8- The Agency assistant lawyer specialists (Agency assistant specialists) who have been recruited upon passing an competitive examination before the publication of this Law shall be appointed as banking assistant specialists. The lawyer Agency specialists who have been recruited upon passing the proficiency exam of the Agency shall be appointed as banking specialists. Their length of service for the Agency shall be deemed as service as assistant banking specialists and banking specialists.

The personnel working for the Banking Regulation and Supervision Agency as Agency specialists as of the publication date of this Law who had been recruited as specialists, inspectors and for similar positions having passed professional competition exams and proficiency exams and who have PhD degrees at minimum, shall be appointed as banking specialists. Their length of service in their previous institutions as specialists, inspectors or with similar titles and in the Banking Regulation and Supervision Agency shall be deemed service as banking specialist. The terms of office of the sworn bank auditors and their assistants who have been transferred from other institutions before the publication date of this Law, in their previous institutions, shall be deemed as terms of office at the Agency.

The Agency specialists and lawyers other than those mentioned in the first and second paragraphs of this article shall preserve their positions. No new appointments shall be made to such positions. Such persons shall benefit from the salary, financial, social and retirement rights of banking specialists as long as they remain in their positions.

Provisional Article 9- The employees of the Treasury Undersecretariat, who are in charge of implementation of the provisions of the Financial Leasing Law No. 3226 and the provisions of the

Decree in the Power of Law No. 90 on Lending Activities other than those pertaining to providing loans, on the effective date of this Law, shall be appointed to the Agency subject to their consent, provided that they request so by 1.1.2006. Any employee of the Treasury Undersecretariat, who are in charge of implementation of this Law on the effective date and currently assigned to overseas organizations of the foregoing institutions, or who are working for an international organization or attending a foreign university to receive a graduate degree or on leave without receiving a salary due to military service or otherwise, shall reserve his right to be transferred to the Agency provided that any such right shall be forfeited unless it has been exercised within due course.

Any personnel, meets the requirements except age and has a minimum 3-year length of service according to the principles and procedures to be set by the Board, to be transferred from the Treasury Undersecretariat shall be appointed as banking specialists and those with a length of service less than 3 years shall be appointed banking specialist assistant. Their term of employment with their former employers shall be added to their length of service as a banking specialist and banking specialist assistant. The total period during which any person, who is deemed to have been transferred and has an obligation to work for a certain period of time for the Undersecretariat, has worked for the Agency, shall be taken into consideration in fulfillment of such obligation.

The position of any person, who is deemed to have been transferred from the Treasury Undersecretariat to the Agency pursuant to provision of first paragraph of this Article shall be cancelled without further action and shall be deemed to have been

excluded from the part of the schedule, attached to the Decree No. 190, relating to the Treasury Undersecretariat.

Any Agency or Fund personnel who has been appointed to the Fund or Agency for temporary service shall be considered to have been appointed to appropriate positions in the Fund or Agency in case they are not returned to their original positions within three months following the publication date of this Law. Provisions of the second paragraph of Provisional Article 20 shall be applicable to differential salary to be paid to such personnel.

Provisional Article 10- With regard to the personnel working for the Fund as of the publication date of this Law, the staff to in charge of the primary and permanent duties and other services assigned to the Fund by the Law shall be appointed to the positions indicated in the annexed Tables (II) and (III), taking into consideration their educational status, periods of service and other matters to be specified by the Fund Board.

Provisional Article 11- Articles 14, 15, 15/a, 16, 17, 17/a and 18, Additional Articles 1, 2, 3 4, 5 and 6 and Provisional Article 4 of the Law No. 4389, which is repealed by this Law, shall remain to be applicable until the collection of Fund receivables and the finalization of procedures initiated against banks whose shareholder rights, excluding dividends, as well as management and control have been transferred to the Fund and/or whose permission for performing banking transactions and accepting deposits have been revoked by the relevant Minister, Council of Minister or the Board and whose liquidation have been executed or initiated by the Fund, before the publication of this Law until 26/12/2003.

With respect to the persons who are obligated to declare wealth pursuant to the Law No. 4389, which is repealed by this Law, any of their movable or immovable properties, rights, re-

ceivables, incomes and expenses which they have not declared or have declared non-factually shall be subject to the provisions of unfair acquisition of property. This provision shall not be applicable to those persons who have proven that such properties have not been unfairly acquired.

Paragraphs 5 and 6 of Article 14 of the Banks Law No. 4389, which is repealed by this Law, shall continue to apply for the banks that have, been subjected to Articles 64 and 65 of the Banks Law No. 3182 repealed prior to the publication of this Law, and Article 14 of the Banks Law No. 4389, which is repealed by this Law, and for the banks that have been subjected to liquidation or for which liquidation procedures have been initiated.

Provisional Article 12- The provisions of Article 2(a6) of the Law No 4208 dated 13/11/1996 shall be applicable (i) to banks whose operating permissions have been revoked or that have been transferred to the Fund pursuant to paragraphs nine, ten, eleven, twelve and thirteen of Article 134 of this Law, Articles 136, 137 of this Law, second paragraph of Article 138 of this Law, the second paragraph of Provisional Article 10 of this Law and the sub-paragraph (e) of the first paragraph of Article 71 of this Law; and (ii) to banks whose shareholder rights, excluding dividends, as well as management and control have been transferred to the Fund and/or whose permission for performing banking transactions and accepting deposits have been revoked by the relevant Minister, Council of Ministers or the Board and whose liquidation have been executed or initiated by the Fund before 26/12/2003.

Provisional Article 13- The provisions of Articles 123, 134, 136, 137, 138, 140, 142 and 165 of this Law regarding the receivables of Fund receivables, including the right not to require a certificate of insolvency in lawsuits of the cancellation of rights

and the prohibition of the legal representatives and other officials of legal persons from leaving the country, shall be enforced by the banks where the public entities and organizations hold more than half of the capital or where such institutions hold the control of management and representation on majority of shares and banks founded by virtue of private laws, on all contractual rights arising out of the individual or back-to-back bank letters of guarantee, acceptance loans and avals/endorsements and contracts relating to real estate mortgages, chattel mortgages and other mortgages, rights of construction, rights of usufruct and rights of habitation and similar other rights in kind, of the borrowers who have borrowed loan facilities, secured in accordance with the banking practices and/or secured by inadequate guarantees, prior to 26/12/2003, from the banks where the public entities and organizations hold more than half of the capital or where such institutions hold the control of management and representation on majority of shares and banks founded by virtue of private laws (including Emlak Bankası A.Ş. in liquidation process), and whose debts arising out of such loans have not been paid on due dates thereof, or who are not granted any time extension, or whose debts are not restructured, or who have breached the restructuring conditions.

Provisional Article 14- The Public Prosecutors and judges dealing with the criminal and legal cases mentioned in sub-paragraphs (6), (7) and (8) of Article 2(a) of the Law No. 4208 dated 13/11/1996 and in Articles 15/a and 22(4) of the Law No. 4389 which is repealed by this Law shall execute these cases immediately, and shall not be appointed to any other place or position for the period of three years, as long as they have no excuse and requests excluding disciplinary causes. Those Public

Prosecutors and judges who complete their terms of office may be appointed again.

Provisional Article 15- The liquidation of banks that have been declared bankrupt before the publication of this Law shall be executed by bankruptcy offices pursuant to the provisions of this Law, with the reservation of the matured transactions and the table of orders prepared. For the purposes of the implementation of this article, bankruptcy offices shall bear the powers assigned to the Fund by Articles 106 and 140 of this Law.

Provisional Article 16- The provisions imposed by this Law in favour of the Fund in other issues due to being deemed useful for the sake of recovery and collection of the receivables of the Fund are retrospective.¹⁴⁹

Provisional Article 17- Excluding the Board Chairman and the Fund Board Chairman, one third of the members appointed as Board and Fund Board members for the first time shall be renewed every two years. The members whose membership expire through drawing lots at the end of the second year, may be appointed again only for one more term.

Provisional Article 18- Within one month following the effective date of this Law, the assets of the Assurance Fund established under the repealed Law No. 4389 shall be transferred to the Fund.

Provisional Article 19- The memorandum of understanding required to be signed between the Agency and the Fund pursuant to the last paragraph of Article 100 of this Law shall be signed within three months.

Provisional Article 20- The personnel of the Agency whose position titles do not change following the new arrangements introduced by this Law shall be deemed to have appointed to

¹⁴⁹ Amended by the Judgment of the Constitutional Court of 04.06.2014, no. 2014/103 in case file 2014/85.

their positions with the same title. If the total net value of the payments made to such personnel at the date of their appointment in their previous positions including their salaries (excluding over-time work payments), bonus payments and other similar payments is more than the total net value of payments made to such personnel in their new positions (excluding over-time work payments and performance-based rewards), the difference shall continue to be paid as compensation payment every month as long as they remain their position, without being subject to any tax or deduction. The difference compensation payments shall be ceased upon voluntary change of position title or voluntary transfer to other institutions.

The personnel whose position titles are changed or removed shall be appointed to a new appropriate position in the Agency within one year following the effective date of this Law. They may be assigned duty in the necessary units of the Agency until the completion of appointment procedures. Until their appointment, such personnel shall be receive the salaries (excluding over-time work payments), bonus payments and other similar payments applicable to their previous position titles. The provisions of the first paragraph shall be applicable to any difference in the salary and other financial and social rights of the appointed personnel.

The Board chairman and members in charge of the effectiveness date of this Law shall complete their terms of office. The provisions of the first paragraph shall be applicable to any difference to occur in the salaries and all other financial and social rights of the Board chairman and members because of the arrangements to be introduced by this Law, during their remaining terms of office.

The provisions set out above shall be applicable also to the Fund Board chairman and members as well as the personnel to be appointed to the positions in the annexed Table (II).

Former personnel of public institutions and enterprises and the Central Bank who have been working for the Agency or the Fund shall be appointed to an appropriate position in their original institutions if they so request within one year following the effectiveness date of this Law. In this case, their period of service at the Agency or the Fund shall be added to their period of service pursuant to the provisions of the law to which they are subject.

Provisional Article 21.- The periods of service, in the Agency or the Fund, of the Agency or Fund personnel who are subject to the Civil Servants Law No. 657 pursuant to this Law, shall be taken into account in the determination of their acquired right salary degrees and levels on the basis of the additional provisional articles 1, 2 and 3 of the Law No. 657 and the provisions of the Law No. 5289 dated 2.2.2005, on condition that the maximum degree they can be promoted to considering their educational status will not be exceeded.

The past periods of service of the personnel subject to the Law No. 5434, which cannot be taken into account in the acquired right salary degrees as such shall be taken into account in salaries taken as a basis for pension deductions.

No compensation shall be paid to such personnel pursuant to the labor legislation. The periods of service of such personnel which ensure entitlement for severance pays, excluding the periods for which severance pays have been paid earlier, shall be taken into account in the calculation of the retirement pays pursuant to the Law No. 5434 on the Pension Fund of the Republic of Turkey.

Provisional Article 22- Those members of the Board or Fund Board who have retired from the social security institutions other than the Pension Fund and have been appointed as Board or Fund Board members before the publication date of this Law and

who want to be affiliated with the Pension Fund, shall be affiliated with the Pension Fund as from the beginning of the month following the month in which they started service. The pension deductions and provisions for such period shall be paid to the Pension Fund on the basis of general provisions.

Provisional Article 23-¹⁵⁰

Provisional Article 24-¹⁵¹ The portion, payable to the Fund as a result of the pro rata distribution to be effected pursuant to eighth paragraph of Article 134 of this Law, of the proceeds of sale of the assets and properties through forced execution proceedings pursuant to the provisions of this Law for recovery and collection of the debts owed to the Fund by the persons, entities and banks (also including those adjudged bankrupt) against whom legal proceedings are started by the Fund prior to the date of promulgation of this article because of a difference found between the amount of insurable deposits declared by the Bank to the official authorities and the amount of deposits calculated by the Fund, will be collected in a bank account for repayment of the outstanding debts owed by the said persons, entities and banks against whom legal proceedings are started by the Fund for the above cited reason, to the State and the social security organizations and covered by the Law No. 6183. The amount remaining after repayment of the outstanding debts owed by the said persons, entities and banks to the State and the social security organizations and covered by the Law 6183 will be set off from the outstanding debts owed to the Fund. The provisions of this article will be applicable also for the sales effected prior to the effective date of this Article.

¹⁵⁰ As repealed by the Law No. 5754.

¹⁵¹ As added by the Law No. 5472.

Provisional Article 25¹⁵² - For the deliveries of properties being the subject of the sales which have been advertised and completed by the Fund prior to, but upon which the proceeds of sale have not yet been distributed to the creditors as of the effective date of this article, and the sales which will be advertised until 31.12.2006, the portion of proceeds of sale to be eligible for tax exemption pursuant to sub-paragraph (m) of paragraph (4) of article 17 of the Value Added Tax Law No. 3065 will be calculated and determined over the amount of debt required to be repaid to the Fund in accordance with the provisions of the Banking Law No. 5411 which were in force prior to the effective date of this article.

Provisional Article 26¹⁵³ - The provisions of Article 35 of the Law No. 6183 are not applicable against the Fund in the companies taken over by the Fund, and the provisions of repeated article 35 of the Law No. 6183 are not applicable against the Fund or Fund personnel in the companies to which the Fund or any Fund personnel is appointed as a trustee or receiver, or against the persons assigned and appointed by the Minister, the Board or the Fund Board in the banks and companies in the scope of this Law and the previous repealed banks laws.

As for the banks whose shareholding rights, except for dividends, and whose management and supervision are taken over by the Fund and/or whose banking operations and deposit collection license or certificate is withdrawn and removed by a decision of the related Minister, the Council of Ministers or the Board and who are in the process of liquidation by the Fund or through the Fund, until the already initiated liquidation processes are completed and all of the debts owed by them to the Fund are recov-

¹⁵² As added by the Law No. 5472.

¹⁵³ As added by the Law No. 5766.

ered and collected, in the implementation of the provisions of article 35 and repeated article 35 of the Law No. 6183 about and on the ex-directors and ex-managers of the banks and companies whose management and supervision are taken over by the Fund, out of the persons who are authorized to represent such bank or company pursuant to the relevant laws and regulations or by the articles of association thereof or out of the persons who are authorized to represent the bank or company by a decision of the authorized bodies of that legal entity, or out of the persons who manage and direct such unincorporated enterprise, those who hold the legal representative status shall be deemed as its legal representative:

a) for the period from the date the bank funds are used / made available to the date the debt is settled and terminated, in the case of debts owed to the Fund by the Fund banks, or by their subsidiaries which are under management and supervision of them, or by the legal entities which are their controlling partner or shareholder, or by the companies whose controlling partner is the controlling partner natural persons or legal entities of the Fund banks, or by the persons or companies who act for and on behalf of them or who acquire money, rights, interests and properties in the name of them; or

b) for the period from the date the loan facility is made available to the date the debt is settled and terminated, in the case of debts owed to the Fund in respect of corporate credits and loans of the Fund banks; or

c) for the period from the date the debt owed to the Fund is notified to the relevant entity to the date the debt is settled and terminated, in the case of debts owed to the Fund in respect of the Fund income and revenues.”

Provisional Article 27¹⁵⁴- If and to the extent the real properties which have passed to the ownership of the Fund or are sold by the Fund and registered in the name of the buyer in accordance with the pertinent provisions of this Law and the previous repealed banks laws are occupied by the debtor or by third parties, then an eviction order is notified to these persons requesting them to evict the real property within fifteen (15) days. If the real property is not evicted by the end of this period of notice, then, with the help of the security forces if and to the extent required, the debtor or third persons are evicted from the real property, and thus the real property is evacuated by the Fund. The costs of eviction or evacuation will be borne and paid by the new owner of the real property.

In the case of sales which are carried out or have been carried out by the Fund in accordance with the provisions of this Law and the previous repealed banking laws, the provisions of first paragraph of this article shall be applied also if and when the eviction obligation is not fulfilled within the period of time stated in the sales specifications or its exhibits. In this case, the period of 15 days starts as of the end of the period of time stated in the sales specifications or its exhibits with regard to eviction of the real property. The Fund, however, reserves its rights of claim against the buyer due to and on the ground of breach of obligations.”

Provisional Article 28¹⁵⁵: The working procedures and principles of the Risk Center shall be determined by the Banks Association of Turkey at the latest within one year following the date of publishing of this article with specific reference to the procedures described in fifth and ninth paragraphs of Supplementary Article 1.

¹⁵⁴ As added by the Law No. 5766.

¹⁵⁵ As added by the Law No. 6111.

Until a Risk Center duly established by this Law becomes operational, the existing Risk Center within the Central Bank will continue its operations pursuant to the provisions of repealed Article 44 of the Law on Turkish Central Bank No. 1211 dated 14/01/1970.

Thereupon, information in the possession of the Risk Center of the Central Bank shall be transferred to the Risk Center established pursuant to this Law.

Provisional Article 29¹⁵⁶: Until the process for moving the headquarters of the Agency to Istanbul is completed, the Agency's headquarters shall remain in Ankara. The moving of headquarters shall be completed within two years. The Council of Ministers is authorized to extend this period of time.

“Provisional Article 30¹⁵⁷: Memberships of the Board and the Fund Board Chairmen and members in office as of effective date of this Article will continue until the end of their term of office.

The tenure of the members of the Board and the Fund Board appointed to fulfill the remaining in membership periods and of those whose appointment to membership terminated through draw as a result of the regulatory framework shall be void as the term in office with regard to the implementation of the Articles 85 and 114.

Amendments made by this Law to the Articles 126 and 103 are applicable to the Board chairman and members, and to Fund Board Chairman and members whose term in office end before entry into force of the law. However, those Board chairman and members and the Fund Board chairman and members paid for a

¹⁵⁶ As added by the Law No. 6111.

¹⁵⁷ As added by the Law No. 6300.

year in accordance with the provisions effective prior to entry into force of the changes cannot benefit from this practice.

Provisional Article 31¹⁵⁸: With respect to implementation of the banking laws and regulations, in the case of a mutual amicable settlement reached upon an application filed to the European Court of Human Rights or under a verdict of the European Court of Human Rights, upon receipt by the relevant Public Prosecutor's Office or the relevant competent court of a statement of the relevant public authority relating to withdrawal of complaint or written application or to quitting from intervention, in the pending investigation or prosecution pertaining to the acts within the scope of amicable settlement, either a decision of non-prosecution or a decision of dismissal is taken about suspects or defendants.

This provision of the preceding paragraph is applicable to the pending investigations or prosecutions as of effective date of this article.

Provisional Article 32¹⁵⁹: Borrowers which are in credit relations with banks, financial leasing companies, factoring companies and financing companies and other financial institutions defined in this article, actively operating in Turkey, and which are identified in the Frame Agreements drafted according to the regulation issued by the Agency may, as a part of measures and precautions to be taken with respect to credit facilities made available by these companies, be subject to full or partial restructuring together with other borrowers in their risk group, with a view to enabling them to perform and fulfill their repayment obligations and to continue contributing to creation of employment opportunities. The procedures and principles relating to financial restructurings to be conducted under this Article are regulated and determined by the Frame

¹⁵⁸ As added by the Law No. 6487.

¹⁵⁹ As added by the Law no. 7186

Agreements drafted according to the regulation issued by the Agency. The provisions of this Article are applicable for two years following the date this Article is published. The President is authorized to extend this period of time by two years more.

For the purposes and in the context of this Article:

a) “Creditor institutions” refers to and stands for banks referred to in Article 3 of this Law, and companies referred to in Article 3 of the Financial Leasing, Factoring and Financing Companies Law no. 6361 dated 21/11/2012, and banks and financial institutions resident abroad which have directly made credit facilities available to the borrowers, and multilateral banks and financial institutions making direct investments in Turkey, and special purpose vehicles and companies that may be founded by these creditors for collection and recovery of their receivables, and investment funds that may be founded for the same purpose in accordance with the Capital Markets Law no. 6362 dated 6/12/2012; and

b) “Independent Audit Firm” refers to and stands for any firms duly founded and actively operating in accordance with the principles set forth in the Independent Audit Regulation promulgated in the Official Gazette edition 28509 on 26/12/2012, and duly registered in the Independent Audit Firms Official Registry; and

c) “Union” stands for the Banks Association of Turkey; and

ç) “Borrower” refers to and stands for companies founded in Turkey, other than the corporations subject to and governed by this Law, the Insurance Law no. 5684 dated 3/6/2007, and the Law no. 6361, and the Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions Law no. 6493 dated 20/6/2013, and article 35 of the Law no. 6362, except for investment partnerships; and

d) “Frame Agreements” refers to the Financial Restructuring Frame Agreements drafted by the Union pursuant to the regulation issued by the Agency and entered into and signed by the creditor institutions; and

e) "Agreement" refers to financial restructuring agreements entered into and signed by and between borrowers and creditor institutions pursuant to and under the Financial Restructuring Frame Agreements.

It is essential to determine the financial situation of borrowers to be included in the scope of financial restructuring, and accordingly, to come to the opinion that if their debts are restructured, they will regain their solvency. This means to say that borrowers who are not believed to be capable of regaining their solvency are not ever included in the scope of financial restructuring.

Determination of the financial situation of borrowers to be included in the scope of financial restructuring, and assessment as to applicability or feasibility of financial restructuring are outsourced to independent audit firms, or to firms having adequate knowledge and expertise as will be determined under the Frame Agreements, or if accepted by the borrower, to the relevant creditor institutions.

In the case of financial restructurings covered by this article, such measures and precautions as extension of terms of outstanding credits, or renewal of credit facilities, or making additional credit facilities available without prejudice to the provisions of subparagraph (b) of first paragraph of article 9 of the Law no. 6361, or reduction of principal sum, interests, default interests, delay interests or penalties, profit shares, and all kinds of other receivables arising out of the credit relations, or renunciation of said receivables in full or in part, or reduction of guarantees and collaterals, or conversion of principal, interest or profit share receivables fully or partially into capital shares, or transfer or assignment of said receivables to special purpose vehicles or companies or to investment funds founded as per the Law no. 6362 against a non-cash or cash consideration or a consideration subject to the condition of collection, or settlement, sales or deletion from balance sheet of the aforesaid receivables in full or in part against properties

owned by the borrower or by third parties, or signature of protocols by acting jointly with other creditor institutions and creditors, as and when deemed appropriate. For the properties subject to financial leasing agreements, the provisions of Article 307 of the Execution and Bankruptcy Code no. 2004 are applied by analogy.

Fair value measurement and appraisal of guarantees or collaterals of credits, or of assets and liabilities of borrowers to be acquired by creditor institutions as subsidiaries will, upon demand of either party, be conducted by the institutions or firms authorized for appraisal by the Capital Markets Board. However, the provisions of appraisal contained in the capital markets laws and regulations as for the mutual (investment) funds founded as per the Law no. 6362 are reserved.

Pursuant to the principles identified in the Frame Agreements entered into according to this article and in the agreements executed in reliance upon the Frame Agreements:

a) the transactions to be executed are exempted from prisons fee, and from public fees and duties levied according to the Public Fees and Duties Law no. 492 dated 2/7/1964 (also including the court fees), and the papers and documents to be issued therefor (also including the Frame Agreements and the associated agreements) are exempted from stamp tax levied according to the Stamp Tax Law no. 488 dated 1/7/1964; and

b) the amounts to be collected by creditor institutions under any name whatsoever are exempted from the bank and insurance transactions tax due and payable as per the Expenditure Taxes Law no. 6802 dated 13/7/1956; and

c) the credit facilities made or to be made available are exempted from the resource utilization support fund.

The exceptions and exemptions listed in this paragraph are not applicable if and when the creditor institutions dispose of the assets and collaterals directly or indirectly acquired by them in connection with their transactions conducted under the

Frame Agreements or the agreements executed in reliance upon the Frame Agreements, except for transfer of the same among the creditor institutions or to the borrower.

The provisions of exemption set down in subparagraph (f) of first paragraph of article 5 of the Corporate Tax Law no. 5520 dated 13/6/2006 are applicable and enforceable also over the profits earned by the entities transferring their relevant assets to the creditor institutions under the Frame Agreements or the agreements executed in reliance upon the Frame Agreements, and over the proceeds of sale of these assets by said creditor institutions which acquire such assets as cited above.

The provisions of exemption set down in subparagraph (r) of paragraph (4) of article 17 of the Value Added Tax Law no. 3065 dated 25/10/1984 are applicable and enforceable also on transfer and delivery of the relevant assets to the creditor institutions under the Frame Agreements or the agreements executed in reliance upon the Frame Agreements, and on transfer and delivery of these assets by creditor institutions which acquire such assets as cited above.

The amounts of receivables renounced pursuant to the pertinent provisions of the agreement are taken into consideration as worthless receivable for the creditor, and as waived receivables for the borrower pursuant to the provisions of the Law no. 213 pertaining thereto. The provisions of this paragraph are, however, inapplicable in the case of restructuring transactions effected by creditor institutions with borrowers included in the same risk group with them.

Terms of certificates of investment incentives received by borrowers whose debts are restructured according to agreements, and export commitment periods thereof, and periods of validity of guarantees and sureties given by credit guarantee institutions, also including the sureties provided within the frame of temporary article 20 of the Law on Arrangement of Public Finance and Debt Management no.

4749 dated 28/3/2002 will be deemed to have been extended by the periods of time determined by the agreements.

In the event that the outstanding debts of a borrower included in the scope of financial restructuring pursuant to the provisions of this article are made again subject to financial restructuring within two years following the beginning of the year immediately

after the date of signature of the Agreement, the tax exceptions and incentives defined in this article are not applicable.

Even if the transactions implemented under the agreements are not realized, the tax, fund and duty exceptions and exemptions already applied on them are not taken back.

Tax exceptions and incentives granted to the Frame Agreements signed as per this article and to the associated agreements entered into under those Agreements are applied on the transactions to be effected in reliance upon agreements entered into under this article, without being limited by the period of time mentioned in first paragraph hereof.

Restructuring of credit through reduction of collateral, or waiver from and write-down of principal and other receivables, or similar other transactions to be effected pursuant to and under this article does not constitute the offence of embezzlement regulated by article 160 of this Law.

Provisional Article 33¹⁶⁰: The provisions, which do not contradict with this Law, of all and any legislative arrangements issued in reliance upon the provisions repealed and superseded by the Law containing this article shall be continued to be enforced and applied until the effective date of the legislative arrangements to be issued according to the revised and amended provisions of this Law.

Banks will remedy and settle within the periods to be determined by the Board all and any excesses that may occur as of the effective dates of the provisions of this Law revised and amended by the Law containing this article.

Temporary Article 34:¹⁶¹ In the banks liquidated through the Fund, also including the banks adjudged bankrupt before the effective date of this Article, if a balance remains from the proceeds of liquidation after performance of all legal liabilities, in distribution of this balance to the bank shareholders, the controlling shareholders and executives, members of board of directors, members of audit board, general manager and deputy general managers of the bank adjudged bankrupt, and the bank's subsidiaries under its management and supervision, and its

¹⁶⁰ As added by the Law no.7222

¹⁶¹ As added by the Law no. 7407

controlling shareholder legal entities, and companies controlled by their controlling shareholder real persons and legal entities, and the blood relatives and relatives by marriage of these real persons, and third parties acquiring capital shares of these persons through endorsement, transfer or assignment, and those holding shares giving the privilege to nominate members to or control the boards of directors even if they directly or indirectly remain ten percent of capital of the company, and those who cause bankruptcy of the bank, and those decided to be punished due to their membership in or cohesion or relation with terrorist organisations or gangs, groups or organisations determined to pose a threat for national security, and those decided to be punished by seizure of property thereinfor are not eligible to have a share in such distribution. Their shares are paid to the National Treasury.

The proceeds of liquidation payable to persons subject to a pending investigation or prosecution under first paragraph are not paid to them and are kept in the Fund's accounts until a decision of non-prosecution, a sentence of acquittal, a decision of non-punishment, or a judgment of dismissal or non-suit in connection therewith is finalized.

Effectiveness

Article 170- Articles 90 and 91 of this Law shall take effect within two months following the publication date of this Law; para- graphs (B), (C), (D) and (E) of Article 168 of this Law shall take effect on 1.1.2006; and the other articles shall take effect as of the publication date of this Law.

Enforcement

Article 171- The provisions of this Law shall be enforced by the Council of Ministers.

TABLE (I)
BANKING REGULATION AND
SUPERVISION AGENCY

Category	Title	Maturity Degree	Number
GAS	Vice Chairman	1	3
GAS	Chairman's Advisor	1	5
GAS	Department Head	1	10
GAS	Senior Certified Banks Chief		
	Auditor	1	30
GAS	Senior Banking Chief Specialist	1	20
GAS	Sworn Bank Chief Auditor	1	9
GAS	Banking Chief Specialist	1	4
GAS	Chief Specialist	1	8
GAS	Agency Specialist	1	4
GAS	Director	1	2
LS	Lawyer	1	1
HS	Doctor	1	1
GAS	Specialist	1	5
GAS	Chief	1	3
GAS	Lawsuit Proceedings Official	1	1
GAS	Secretary	1	1
GAS	Sworn Bank Chief Auditor	2	8
GAS	Chief Banking Specialist	2	4
GAS	Chief Specialist	2	4
GAS	Agency Specialist	2	8
GAS	Director	2	2
GAS	Specialist	2	2
GAS	Defense Specialist	2	1
GAS	Chief	2	2
GAS	Civil Servant	2	2
GAS	Secretary	2	1
GAS	Driver	2	2

Category	Title	Maturity Degree	Number
GAS	Sworn Bank Chief Auditor	3	13
GAS	Chief Banking Specialist	3	12
GAS	Sworn Bank Auditor	3	20
GAS	Banking Specialist	3	10
GAS	Chief Specialist	3	4
GAS	Agency Specialist	3	4
GAS	Specialist	3	5
GAS	Chief	3	1
GAS	Civil Servant	3	2
GAS	Secretary	3	3
GAS	Sworn Bank Auditor	4	30
GAS	Banking Specialist	4	10
GAS	Agency Specialist	4	7
GAS	Lawyer (Agency Specialist)	4	1
LS	Lawyer	4	1
TS	Engineer	4	1
GAS	Specialist	4	3
GAS	Chief	4	3
GAS	Civil Servant	4	7
GAS	Secretary	4	2
GAS	Driver	4	4
AS	Janitor	4	1
GAS	Sworn Bank Auditor	5	30
GAS	Banking Specialist	5	15
GAS	Assistant Banking Specialist	5	2
GAS	Agency Specialist	5	4
GAS	Specialist	5	5
GAS	Chief	5	1
GAS	Phone Operator	5	1
GAS	Civil Servant	5	1
GAS	Secretary	5	1
GAS	Driver	5	4
AS	Courier	5	1
GAS	Sworn Bank Auditor	6	45

Category	Title	Maturity Degree	Number
GAS	Banking Specialist	6	40
GAS	Legal Specialist	6	10
GAS	Informatics Specialist	6	15
GAS	Assistant Banking Specialist	6	5
GAS	Agency Specialist	6	4
LS	Lawyer	6	1
TS	Architect	6	1
GAS	Translator-Interpreter	6	2
GAS	Chief	6	3
GAS	Librarian	6	1
GAS	Secretary	6	2
TS	Technician	6	2
GAS	Driver	6	2
AS	Courier	6	1
GAS	Sworn Bank Auditor	7	45
GAS	Banking Specialist	7	30
GAS	Legal Specialist	7	10
GAS	Informatics Specialist	7	15
GAS	Assistant Sworn Bank Auditor	7	10
GAS	Assistant Banking Specialist	7	5
GAS	Agency Specialist	7	1
LS	Lawyer	7	1
GAS	Translator-Interpreter	7	4
HS	Doctor	7	1
GAS	Chief	7	2
GAS	Librarian	7	1
GAS	Civil Servant	7	1
GAS	Secretary	7	10
TS	Technician	7	2
GAS	Driver	7	3
GAS	Assistant Sworn Bank Auditor	8	30
GAS	Assistant Banking Specialist	8	23
TS	Engineer	8	4
GAS	Civil Servant	8	3

Category	Title	Maturity Degree	Number
GAS	Secretary	8	9
TS	Technician	8	3
GAS	Driver	8	1
GAS	Assistant Sworn Bank Auditor	9	45
GAS	Assistant Banking Specialist	9	20
GAS	Assistant Legal Specialist	9	15
GAS	Assistant Informatics Specialist	9	30
LS	Lawyer	9	3
GAS	Translator-Interpreter	9	4
GAS	Lawsuit Proceedings Official	9	2
GAS	Civil Servant	9	5
GAS	Driver	9	2
GAS	Phone Operator	10	1
HS	Nurse	10	1
GAS	Driver	10	1
GAS	Security Staff	10	1
TS	Technician	12	3
HS	Nurse	12	1
AS	Courier	12	2
GAS	Security Staff	12	4
GAS	Phone Operator	13	2
GAS	Civil Servant	13	2
AS	Courier	13	3
AS	Janitor	13	4
GAS	Vice Chairman ^[1]	1	2
GAS	Director ^[1]	1	4
GAS	Agency Assistant Specialist ^[1]	9	10
GRAND TOTAL			867

GAS: General Administrative Services, LS: Legal Services, HS: Health Services, TS: Technical Services, AS: Ancillary Services

^[1] As added by the Law No. 6493.

TABLE (II)
SAVINGS DEPOSIT INSURANCE FUND

<u>Category</u>	<u>Title</u>	<u>Maturity Degree</u>	<u>Number</u>
GAS	Vice Chairman	1	2
GAS	Department Head	1	10
GAS	Chairman's Advisor	1	5
GAS	Director	1	2
GAS	Director	3	1
GAS	Director	4	1
GAS	Auditor	1	2
GAS	Auditor	2	2
GAS	Auditor	3	1
GAS	Auditor	4	1
GAS	Auditor	5	1
GAS	Auditor	6	3
GAS	Auditor	7	5
GAS	Assistant Auditor	7	1
GAS	Assistant Auditor	8	4
GAS	Assistant Auditor	9	5
LS	Lawyer	1	3
LS	Lawyer	2	2
LS	Lawyer	3	3
LS	Lawyer	4	5
LS	Lawyer	5	17
LS	Lawyer	6	14
LS	Lawyer	7	30
LS	Lawyer	8	32
LS	Lawyer	9	24
GAS	Specialist	1	15
GAS	Specialist	2	15
GAS	Specialist	3	16
GAS	Specialist	4	30
GAS	Specialist	5	30

<u>Category</u>	<u>Title</u>	Maturity	
		<u>Degree</u>	<u>Number</u>
GAS	Specialist	6	40
GAS	Specialist	7	40
GAS	Assistant Specialist	8	40
GAS	Assistant Specialist	9	13
TOTAL			415

TABLE (III)
SAVINGS DEPOSIT INSURANCE FUND

<u>Position Title</u>	<u>Number</u>
Administrative Staff	120
Support Staff	35
TOTAL	415