

**From the Banking Regulation and Supervision Agency:**

**REGULATION ON PROCUREMENT OF SUPPORT SERVICES BY BANKS**

(Published in Official Gazette dated November 5, 2011 Nr. 28106)

**SECTION ONE**

**Objective and Scope, Basis and Definitions**

**Objective and scope**

**ARTICLE 1** - (1) The objective of this Regulation is to describe the procedures and principles regarding the purchase of support services by banks.

(2) The following services are not covered by this Regulation if they are outsourced by the Bank:

- a) Services procured in respect of matters such as catering, transportation and cleaning, and supply, maintenance, repair and training services of all kinds of technical equipment and fixtures that are owned or used by banks,
- b) Attorney services and legal counseling, consultancy and advertising activities,
- c) Procurement of services for personnel who are employed by another company but are to be hired temporarily or permanently at the bank for tasks listed in subparagraph (a).

**Basis**

**ARTICLE 2** - (1) This Regulation has been prepared on the basis of articles 35, 36 and 93 of the Banking Law dated 19/10/2005 and Number 5411.

**Definitions**

**ARTICLE 3** - (1) The following terms used in this Regulation shall have the meaning expressly designated to them below;

- a) Archive: Having information and documents stored in printed form or in electronic media,
- b) Bank: Bank defined in article 3 of the Law,
- c) Audit committee: Audit committee to be formed in accordance with Article 24 of the Law,
- ç) Support service organization: Support service organization defined in Article 3 of the Law,
- d) Law: The Banking Law dated 19/10/2005 and numbered 5411,
- e) Loan: Transactions considered as loans in accordance with the Article 48 of the Law,
- f) Board: Banking Regulation and Supervision Board,
- g) Agency: Banking Regulation and Supervision Agency,
- ğ) Qualified share: Qualified share defined in article 3 of the Law,
- h) Marketing: Services related to creating and collecting demand for products and services offered to customers, and delivering collected requests to the bank, except advertising,
- ı) Data entry: The process of scanning the bank documents and transferring them to the digital medium, the entry of information of current or potential customers or the updating of the changes therein.

## SECTION TWO Procuring Support Services

### **Limitations on support services**

**ARTICLE 4** - (1) The following activities of banks cannot be procured from support service organizations:

a) Activities to be performed exclusively by the bank's board of directors and by the units related to the internal systems of the bank,

b) Evaluation of loan requests of customers in terms of creditworthiness, guarantees, loan conditions and types, loan amounts in case of any kind of lending transactions, whether cash or non-cash and any transactions that are considered as loans for the purposes of the Law, and preparation of loan proposals, submission of proposals to the authorized committees or units, and decision-making about loans,

c) Accounting of banking transactions and issuing financial reports,

ç) Acceptance of deposits or participation funds, and marketing activities regarding acceptance of deposits or participation funds,

d) Monitoring and evaluating the credit risk by making efforts to monitor the conditions of use and the situation with respect to the bank and legislation and to determine the possible changes in the customer's creditworthiness, from the time of disbursement until the liquidation of the allocated loans, except for collecting intelligence;

e) Safe deposit box, custody and safekeeping services.

(2) The support service to be procured cannot prevent banks from fulfilling their legal obligations, complying with the relevant regulations and being actively audited. Where provisions are imposed by the relevant legislation concerning an activity subject to support service, it is obligatory that the obligation to be fulfilled by the support service organization is committed under a contract to be signed between the parties. This shall not relieve the relevant bank of its responsibility.

(3) Archival services may be provided in a setting owned or used by the bank, provided that the provision of Article 42 of the Law is taken into consideration. In the case of archives, it is possible to obtain support services by renting a certain separate section at the support service organization, provided that the separate section is only accessible by or under the supervision of the bank's own staff. Regarding the procurement of archival service, the procedures and principles contained in the related provisions of the legislation are reserved.

(4) (**Amended: OG -4/3/2017-29997**) Services outsourced by the banks in respect of security, collection, counting, distribution and delivery of any kind of cash, negotiable instruments, precious metals and similar valuable goods as well as temporary storage of the same, opening, closing and re-activation of machinery such as automatic teller machines, delivery and receipt of sealed money bags can only be provided by the companies covered by Law on Private Security Services dated 10/6/2004 and number 5188. Services including the collection, counting, distribution and delivery of negotiable instruments can be provided by the companies covered by Law 5188 as well service providers authorized by the Information Technologies and Communications Authority in accordance with the Postal Services Law dated 9/5/2013 and Number 6475, and the relevant legislation.

(5) Call center services can be procured for reminder calls, technical support and help desk, overdue debt notifications, notification of customer account details, update of customers' personal information as well as delivery to the bank of customer requests regarding credit card cancellation, closing, activation, limit increase or decrease and banking transactions.

(6) (**Amended: OG-29/1/2013-28543**) Staff members employed within the structure of another company can temporarily or permanently hired by the bank for jobs listed in the 1<sup>st</sup> article, second paragraph, sub-paragraph (a) and in fields of service such as call center,

marketing including customer visits, data entry, filing, archives, executive assistantship, bank administration, information systems. Authorities to be granted to such staff members for system access, data access and viewing data should be limited so as to cover information only as is required by the task.

(7) **(Amended: OG-4/3/ 2017-29997)** Excluding those services performed through staff members who are employed under the structure of another company, but temporarily or permanently hired by the bank, the marketing activity to be procured from the support service organization except for acceptance of deposits or participation funds, shall be limited to the marketing of retail products and services, products and services classified as retail receivables as set out in the Regulation On Measurement and Assessment of Capital Adequacy of Banks published in the Official Gazette dated 23/10/2015 and number 29511, article 6, paragraph one, subparagraph (g), and the products and services for the purchase and sale of all kinds of real estate and vehicles, and the marketing of credit cards. Where banks receive support services for the marketing of any of their activities other than acceptance of deposits or participation funds, marketing activities may be carried out exclusively at auto showrooms except for used car showrooms, real estate offices, call centers, or by providing services within the branches, or through the internet, television, telephone and electronic service units, and other distribution channels as permitted by the legislation. Regarding the procurement of marketing service, the procedures and principles contained in the related legislation are reserved.

(8) Support services can be purchased for information systems on condition that the decision making power and responsibility with respect to functions such as management, content design, access control, auditing, updating, information / report taking in terms of banking activities and obligations required by banking legislation rest with the bank using them as a tool supporting the banking activities.

(9) The Board shall be authorized to determine the subjects for which banks can receive support services, or to limit, prohibit issues for which banks or groups of bank can receive support services, or to require liability insurances, or to make the receipt of such service contingent on its permission according to the nature of the support service.

### **Prerequisites**

**ARTICLE 5 - (1)** The banks that will receive support services have to prepare a risk management program regarding;

- a) What kind of support services they need in terms of their fields of activity,
- b) The transition, internal regulation, infrastructure and training activities in the transition phase to support services,
- c) Coordination of responsibilities in auditing, measurement and evaluation, reporting and security related to support services,
- ç) Risks likely to arise from procurement of support services, an action plan to be put into practice if services are in any way interrupted, and the management of such risks, and substitutability of the support services taken,
- d) The effect of the outsourced activities on the internal control, internal audit and risk management activities to be performed in relation to the relevant activities and procedures, and they have to present this program to the board of directors once a year.

(2) Banks shall prepare a written risk analysis report concerning risks likely to arise the support services they shall receive, and the management thereof, and evaluation of expected benefit and cost, to be submitted, when necessary, to the Agency. Before signing a contract with support service organizations, banks have to carry out examination and evaluation efforts, taking into consideration whether the relevant organization possesses technical equipment and infrastructure, financial power, experience, know-how and human resources to provide the

required quality of support service, and whether the organization that will provide the service satisfies the conditions set forth in article 6. As a result of this effort, a technical sufficiency report shall be prepared to be submitted to the Agency when necessary.

(3) It is the responsibility of the bank's board of directors to prepare a risk management program and a risk analysis and technical adequacy reports appropriately.

(4) After examination of the risk analysis and technical sufficiency reports to be prepared in accordance with the second paragraph and the opinion of the audit committee regarding the matter, a support service contract shall be signed with the support service organization which is considered sufficient.

(5) The procured support services can be subcontracted only if the subcontractor satisfies the qualifications specified in article 6, and the bank gives permission. The same conditions shall be sought in the event that the support services procured are transferred to another company by the subcontractor. Prior to the transfer of the service, a risk analysis report and a technical adequacy report for the subcontractor have to be prepared.

(6) In the event the support service organization or subcontractor is residing abroad or runs its operations via the branches or partnerships established abroad, there must be no impediment in the regulations and practices of the countries where such organization run their operations for the Board to obtain documents and information as required completely, correctly and in a timely fashion and to conduct audits with regards to such organizations. In the event banks procure the support services from a company running its operations abroad, the banks must take into consideration country risk and prepare an action plan that will assure continuity of business in case of outage or disruption of the service and ensure that such service is acquired from domestic or foreign suppliers.

(7) The procurement of support service does not relive banks of the obligation to maintain and keep all accounts, records and information related to all transactions in their own structures. All information and documents regarding all accounts, records and transactions to be formed during the provision of the service and the electronic, magnetic and similar media in which such information are the property of the bank, provided that intellectual property rights related to software are reserved.

(8) It is obligatory for banks to take necessary precautions to ensure the security of bank and customer secrets in all kinds of service procurements including support services. In cases where information is exchanged and the service provider has access to information, the authority to access the system, to access data and review data shall be limited to the information as is required by the task. Methods used to guarantee data security include, inter alia, encoding, masking, ciphering, encryption of customer names and other important personal information according to the nature of the service taken, data entry without system access authority and transfer of these data to its own system by the bank, restriction of access to data, access at the lowest level as required by the task, prevention of customer data from being stored in the support service organization. It is the responsibility of the bank that procures the support service to ensure that the support service organizations take the necessary measures to protect the secrets of the bank and its customers.

### **Requirements for support service organizations**

**ARTICLE 6 -** (1) The organizations that will provide support services to banks under this Regulation must;

a) have been incorporated as a capital company and have a transparent and clear shareholding structure;

b) Possess a management structure, sufficient number of competent personnel, required technical equipment, document and recording organization, business continuity plan to render support service and if it will render the service under the contract within its own structure, take

required precautions against contingencies such as possible security risks, fire and natural disasters; and the fact that such requirements have been met must have been established by the bank on site;

c) where requested and required by the banks they provide services or by the Board; make a commitment that they will procure liability policies in order to meet damages that may result from its service;

ç) not have been prohibited or restricted by competent authorities abroad or in Turkey in respect of their authorities in their fields of activity.

d) Not to be covered by subparagraph (a) of the first paragraph of Article 8 of the Law,

e) Have qualified shareholders, the chairman and members of board of directors and the company managers authorized to represent the company who

1) have the qualifications listed in subparagraphs (a), (b), (c) and (d) of the first paragraph of Article 8 of the Law,

2) have the financial strength and reputation as required by the business;

3) serve as a partner, board chairman, board member or auditor or manager in the authorized service organizations whose authorization in relation to its area of operation has been cancelled or restricted by the competent authorities abroad or in Turkey.

(2) **(Added: OG-4/3/2017-29997)** The conditions of sub-paragraph (a) of this Article shall not be sought in terms of organizations that provide marketing, information, document collection, contract signing and delivery services to banks.

### **Elements of the agreement**

**ARTICLE 7 - (1)** In the agreements to be signed between banks and the support services organizations;

a) The subject, scope and duration of the support , service, the fee to be paid in return for the service and the responsibilities of the parties should be in such a way as to be clear, understandable and avoid any hesitation;

b) It should be stated that support service organizations are subject to the supervision of the Agency regarding the activities performed by them and are obliged to provide any information and document required by the Agency in a timely and accurate manner and ensure that all records kept in electronic, magnetic and similar media relating thereto and all systems and passwords that are necessary to access and make such records readable are in place and available for inspection;

c) It should be stated that the Bank's internal systems units and the independent external auditor are entitled to request any all kinds of information and documents from the support services provider regarding the support service;

ç) it should further be stated that the information and documents belonging to the banks and to their customers, which are obtained by the support service organization in the course its services are not allowed to be used for any purpose other than those stipulated hereunder, nor be disclosed to third persons as per article 73 of the Law, and the support service organization is obliged to pay utmost attention for the preservation of the aforementioned information and documents, that bank will become entitled to unilaterally terminate the agreement upon failure in doing so, and the bank or the Agency will further be entitled to file a written application to the Public Prosecutor's Office against those who are responsible for the responsible parties;

d) It should be stated that it is obligatory to assure security of information and documents belonging to the banks and customers learned in the course of the service provided by the support service organization,

e) There should be a provision that in cases when the support service organization is entitled to terminate the agreement early as well as when the agreement is terminated by the

bank, the support service organization shall continue to provide the service for a period of time that will permit to procure the service from another support service organization or to perform the service by the bank itself,

f) In cases when it is possible to transfer the services supplied by support service organizations to subcontractors partially or completely, it should be undertaken by the support service organization that the issues specified in sub-clauses (a), (b), (c), (ç), (d) and (e) shall also be included in the agreements to be signed with subcontractors,

g) There shall be a provision enabling the bank to perform audits in the support service company, if necessary, in relation to banking activities and processes limited only to the subject of the support service,

ğ) As a result of the evaluation to be performed by the Bank's board of directors on the report in accordance with the second item of the 9<sup>th</sup> article, if it is concluded that there are issues that prevent the audit or give rise to risks, or the receipt of support services is restricted or prohibited by the Board, there should be provisions that allow the Bank's board of directors to terminate the agreement by deciding to end the procurement of services from the support service organization before the term of the agreement expires.

### **SECTION THREE** **Miscellaneous and Final Provisions**

#### **Notification obligation**

**ARTICLE 8 -** (1) Support services procurements and support service organizations shall be reported to the Agency annually by the banks and until the end of the third month of the following year.

#### **Supervision of support service organizations**

**ARTICLE 9 -** (1) The Agency is authorized to request all the information it deems relevant under the Law and the provisions of this Regulation and to examine all the books, records and documents, whether secret or not, from the support service organizations, and the support service organizations are obliged to provide the requested information, have systems, processes, records and documents ready for examination and to provide access to all data processing systems for the professional personnel conducting on-site audits in accordance with the objectives of the audit, and to guarantee safety of data and to submit and operate records in electronic, magnetic and similar media of any and all books, documents and reports they must maintain and all systems and passwords required to access such records and render records readable.

(2) (**Amended: OG 29/1/2013-28543**) The audit committee shall prepare a report, for submission to the board of directors no less than once a year, showing whether any issues that prevent operation of the bank's internal systems in an effective and sufficient fashion, or execution of internal control or internal audit activities during the procurement of support services or any event giving rise to risks has occurred or not, and whether qualified shareholders of the support service organization and its managers that are authorized to represent the company continue to satisfy the conditions laid down in article 6.

(3) If requested by the Bank or required from the Bank by the Board, liability insurance shall be purchased by the related support service organization.

**Repealed regulation**

**ARTICLE 10** - (1) The Regulation on Procurement of Support Services by Banks and Authorization of Organizations Rendering such Services, which was published in the Official Gazette dated 1/11/2006 and number 26333, has been repealed.

**Orientation period**

**PROVISIONAL ARTICLE 1** - (1) Banks that receive support services for matters in the scope of this Regulation and support service organizations have adapted the agreements they have signed and their positions to the provisions of this Regulation within 1 year at the latest from the date of publication of this Regulation.

**Entry into force**

**ARTICLE 11** – (1) This Regulation shall become effective as of the date of its promulgation.

**Enforcement**

**ARTICLE 12** – (1) The provisions of this Regulation are enforced by the President of the Banking Regulation and Supervision Agency.

<b>Official Gazette in which the Regulation was Published</b>		
	<b>Date</b>	<b>Number</b>
	5/11/2011	28106
<b>Official Gazette Showing the Regulations Amending the Regulation</b>		
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1	29/1/2013	28543
2	4/3/2020	29997