

**LAW ON PAYMENT AND SECURITY SETTLEMENT SYSTEMS,  
PAYMENT SERVICES AND ELECTRONIC MONEY INSTITUTIONS****Law No. 6493****Date of Enactment: 20/6/2013****SECTION ONE  
Objective, Scope and Definitions****Objective**

**ARTICLE 1** – (1) The objective of this Law is to regulate the procedures and principles of payment and security settlement systems, payment services, payment institutions and electronic money institutions.

**Scope**

**ARTICLE 2** – (1) This Law covers payment and security settlement systems, payment services, payment institutions and electronic money institutions.

**Definitions**

**ARTICLE 3** – (1) For the implementation of this Law, the following terms shall have the meanings indicated below;

a) Payee: Natural or legal person who is the intended recipient of the funds which have been the subject of a payment transaction,

b) Bank: Central Bank of the Republic of Turkey,

c) Electronic communication operator: Operator described pursuant to the Electronic Communication Law Nr. 5809, dated November 5, 2008,

ç) Electronic money: Monetary value issued on receipt of funds, stored electronically, used for the purpose of making payment transactions described in this Law and accepted as a payment instrument by natural and legal persons other than the electronic money issuer,

d) Electronic money institution: Legal person that has been granted authorization to issue electronic money under the scope of this Law,

e) Fund: Banknotes, coins, bank money or electronic money,

f) Payer: Natural or legal person who gives a payment order from his payment account or without having a payment account,

g) Participant: Legal person entitled to give transfer orders directly by participating to the system and obliged to obey the rules of the system,

ğ) Personal security information: Information identifying the payment instrument and user of the payment instrument while being used for transaction with the payment instrument, such as password, expiry date and security code,

h) Control: Direct or indirect possession by a legal person of the majority of capital regardless of the condition for possession of minimum fifty one percent thereof or possession of privileged shares although this majority is not owned or capability of assigning the majority of the members of the Executive Board, which is a basis for adoption of resolutions by having disposition of the majority of the voting rights pursuant to the agreements made with other shareholders or in any other manner or possession of powers for their dismissal,

ı) Board: Banking Regulation and Supervision Board,

i) Agency: Banking Regulation and Supervision Agency,

j) Security settlement system: Structure providing the infrastructure and common rules required for clearing and settlement transactions made for ensuring security transfers resulting from transfer orders between three or more number of participants,

k) Central counterparty: Institution acting as the seller before the buyer, buyer before the seller between the parties of financial contracts traded on one or more number of markets and guaranteeing completing the transactions,

l) Settlement: Fulfilling the liabilities arising from fund or security transfer between two or more number of parties,

m) Settlement account: Account opened at a bank, settlement institution or central

counterparty for protecting funds or securities and ensuring settlement of transactions between the participants of the system,

n) Settlement Institution: Institution offering settlement account and, if necessary, extending loans to the participant for settlement,

o) Netting: The setting off receivables and debts arising from the transfer orders sent or received by a participant into a one single receivable or debt,

ö) Payment instrument: Card, mobile telephone, password and similar personal instruments determined by the payment service provider and user and used by the payment service user for giving payment orders,

p) Payment order: Any instruction by the payment service user to his payment service provider requesting the execution of a payment transaction,

r) Payment account: An account held in the name of the payment service user which is used for the execution of payment transactions,

s) Payment service: Any business activity listed on Article 12 of this Law,

ş) Payment service user: A natural or legal person making use of a payment service in the capacity of either payer or payee, or both,

t) Payment service provider: Institutions listed on Article 13 of this Law,

u) Payment transaction: Placing, transferring or withdrawing funds upon the instruction of the payer or the payee,

ü) Payment institution: Legal person authorized pursuant to this Law for offering and executing payment service,

v) Payment system: Structure providing the infrastructure and common rules required for clearing and settlement transactions made for ensuring fund transfers resulting from transfer orders given by three or more number of participants,

y) Money remittance: Payment service where payer transfer funds to the payee or, to the payment service provider acting on behalf of the payee, without any payment accounts being created in the name of the payer or the payee,

z) System: Payment system and security settlement system,

aa) System operator: Legal person responsible for daily operations of the system and holds an official authorization required for operating the system,

bb) Clearing: Transactions for transferring the transfer orders sent to the system, mutually communicating these orders and mediating the process of getting provisions if provision is required for before the settlement and, in some cases, offsetting these orders,

cc) Clearing Room: Institution responsible for calculating net payable or receivable status of the participants,

çç) Transfer Order:

1) Participant's order transferring certain amount of funds to participants within the system,

2) Instruction pursuant to the system rules, which results in undertaking or fulfilling payment liability,

3) Participant's order for transferring rights on the securities and other capital market instruments on record or otherwise within the system.

## **SECTION TWO**

### **System**

#### **General Provisions**

**ARTICLE 4** – (1) The system operator shall operate the system. Except for the Bank and parties granted with an operating license pursuant to Article 5 of the Law, no other person may act as a system operator.

(2) The rules and contracts regarding operating the system and participating to the system shall be determined by the system operator pursuant to the regulation to be issued by the Bank.

(3) The Bank is authorized to make necessary arrangements to ensure systems operate unproblematic and uninterrupted.

#### **Operating License of the System Operator**

**ARTICLE 5** – (1) The system operator, can operate the system under the scope of this Law provided that it obtains an operating license from the Bank.

(2) The system operator is subject to the following conditions of eligibility:

- a) It is required to be founded in the form of a joint-stock company,
- b) Its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than five million Turkish Liras,
- c) It is required to have adequate management, personnel and technical equipments to operate the system,
- ç) It is required to have sufficient risk management and take necessary precautions for information security and reliability as well as business continuity,
- d) It is required to ensure that the system, participants and operational rules are compatible with this Law and sub-regulations based on this Law,
- e) Its shares should be issued against cash and to name,
- f) It is required to have transparent and open partnership structure and organizational chart that will not constitute an obstacle for efficient supervision of the Bank,
- g) Shareholders owning ten percent or more of the capital and holding control are required to meet the bank founder qualifications laid down in the Banking Law Nr. 5411 dated October 19, 2005.

(3) The provisions of second paragraph of this Article shall not be applied to the legal person carrying on check clearing activities pursuant to the Check Law Nr. 5941 dated December 14, 2009 shall not be subject to the provisions listed on the second paragraph.

(4) The system operator granted with an operating license shall inform the Bank about commencement of its operations within ten days following the date of starting operations.

(5) The procedures and principles for implementation of this Article shall be set down with a regulation to be issued by the Bank.

(6) This Article is not applicable to the systems operated by the Bank.

#### **Evaluation of an application for operating license**

**ARTICLE 6** – (1) Operating license shall be granted pursuant to Article 5 of this Law for operating as a system operator provided that requirements, qualifications and competencies required under the scope of this Law are met, the information and documents to be required by the Bank are submitted and the application is regarded as affirmative by the Bank and the decision for granting an operating license shall be published in the Official Gazette.

(2) The application of operating license for being a system operator filed to the Bank pursuant to the provisions of this Law shall be reviewed and concluded by the Bank within a period of six months after the submission of all information and documents related to the application fully. If the decision is negative, the related party shall be informed of the decision with the reasons.

#### **Termination of operating license**

**ARTICLE 7** – (1) The operating license of the system operator shall be automatically terminated when;

a) The system operator loses its status as a legal person as a result of transactions altering the legal status of the system operator such as merger or disintegration, at the time the legal person status is annulled,

b) The system operator ceases to exist pursuant to Articles 529, 530 and 531 of the Turkish Commercial Code Nr. 6102 dated January 13,2011,

c) A six-month period is over if the system operator does not operate for a period of over six months within one year following the date of starting operations.

(2) The termination of the operating license shall be published in the Official Gazette once the circumstances mentioned on the first paragraph are notified to the Bank by the system operator as per the third paragraph of Article 23 of this Law or after the detection of those circumstances.

#### **System Oversight**

**ARTICLE 8** – (1) The Bank is authorized to oversee the current or future systems for ensuring uninterrupted operations.

(2) The system operator is obliged to submit to the Bank all records, information and documents, even if they are confidential, within the scope of oversight as per the

procedures and principles to be determined by the Bank and to make the system available for Bank's oversight.

(3) The procedures and principles related to the system oversight shall be set down with a regulation to be issued by the Bank.

**Circumstances requiring precautions and precautions to be taken**

**ARTICLE 9 –** (1) The Bank shall take necessary precautions regarding the operations of the system when the following incidents are detected;

a) The scope of operating license is breached,  
b) The Law and regulations based on this Law are violated,  
c) Security, reliability and stability of the system are endangered,  
ç) The system operator no longer meets the requirements given in Article 5 of this Law,

d) The system operator avoids cooperating for system oversight,  
e) Failure to commence exercising this authority within one year following the issuance of the operating license,  
f) The system operator notifies the Bank that it renounces its rights of operating systems or stops the system's operations,  
g) Detecting that the operating license is obtained by submitting non-factual declarations and documents,

ğ) Violating the third paragraph of Article 23 of this Law,  
h) The Bank concludes that the stability of financial system can be endangered if the system operator continues to operate the system.

(2) If the incidents listed on the first paragraph are detected, the Bank shall take the following precautions depending on the severity of the breach;

a) Granting a reasonable period of time to the system operator for eliminating the violation,

b) Requiring the system operator to take precautions considered to be necessary by the Bank for ensuring settlement,

c) Asking the system operator to dismiss the participants, who fail to fulfill their liabilities under the scope of this Law, from the system,

ç) Revoking the operating license of the system operator or temporarily suspending the operating license of the system operator until the violation detected is eliminated,

d) Temporarily taking over the management of the system operator for preventing any systematic risk that may threaten the financial stability.

(3) The Bank shall inform the system operator about the precautions to be taken under the scope of the first paragraph and the reasons of those precautions.

(4) If the precautions listed on paragraph two, sub paragraphs (ç) and (d) are taken; The Bank shall publish the case in the Official Gazette.

**SECTION THREE**

**Transfer Order, Netting and Guarantees and Determining the Systems**

**Transfer Order, netting and guarantees**

**Article 10-** (1) The moment when the transfer order becomes irrevocable is clearly determined in the system rules and the transfer order shall not be withdrawn by the participant or by the third parties thereafter.

(2) The moment of entry of the transfer order to the system is determined in the system rules.

(3) All kinds of precautions and decisions forced by the laws preventing dispositions on the funds or securities, including suspending fund or security transfers by the participant or the system operator, restricting those or permanently stopping these transactions, shall be applied for the transfer orders to be entered to the system after the said precautions and decisions are notified to the system operator.

(4) In case the system works on the netting principle, the transfer orders entered to the system before notifying the system operator about the precautions and decisions mentioned on the third paragraph shall be included in the netting transaction.

(5) The fund and securities existing in the reconciliation account of the participant as of the day when the precautions and decisions mentioned on the third paragraph are notified to the system operator are used primarily to fulfill the participant's liabilities on

the system.

(6) In terms of the participant's or the system operator's rights and liabilities in the system, the precautions and decisions mentioned on the third paragraph is valid as from the moment when precautions and decisions in question are notified to the system operator.

(7) The guarantees given to the participant or the system operator in connection with the system and the guarantees given to the Bank are used for fulfilling the system related liabilities of the party providing the guarantee. The precautions and decisions on the third paragraph shall be applied for the unused guarantee amounts after fulfilling the liabilities of the party providing the guarantee.

#### **Determining and announcing the systems**

**Article 11** – (1) The Bank shall determine the systems which will be subject to the provisions in Article 10 of this Law and announce them to the public in the Official Gazette.

### **SECTION FOUR**

#### **Payment Services and Payment Institutions**

##### **Payment Service**

**ARTICLE 12** – (1) Pursuant to this Law, the payment services are;

a) All the operations required for operating a payment account including the services enabling cash to be placed on a payment account and cash withdrawals from a payment account,

b) Payment transactions including transfers of funds on a payment account of the payment service user before the payment service provider, direct debits, including one-off direct debits, execution of payment transactions through a payment card or a similar device, execution of money transfers, including regular standing orders,

c) Issuing or acquiring of payment instruments,

ç) Money remittance,

d) Execution of payment transaction where the consent of the payer to execute a payment transaction is given by means of any information technology or electronic telecommunication device and the payment is made to the information technology or electronic telecommunication operator, acting only as an intermediary between the payment service user and the supplier of the goods and services,

e) Services for mediating invoice payments.

(2) The following transactions and services shall not be considered as payment service under the scope of this Law:

a) Payment transaction made in cash directly to the payee, without any intermediary,

b) Payment transaction made through a commercial agent authorized to negotiate or sale-purchase of goods or services on behalf of the payer or payee,

c) Payment transactions consisting of cash collection and delivery of money within the framework of a non-profit or charitable activity;

ç) Services where cash is given by the payee to the payer as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction arising from the purchase of goods or services,

d) Foreign exchange buying and selling transactions in cash, without the use of a payment account,

e) Payment transactions based on valuable papers, foreign bank checks, traveler's checks and paper-based postal money orders under the scope of Law No. 6102,

f) Payment transactions carried out within the systems; between the Bank, settlement institution, central counterparty, clearing houses, payment service providers and other participants of the system in their own names and accounts,

g) Payment transactions of the legal persons mentioned under the scope of subparagraph (f) of this paragraph and capital market institutions related with capital market activities under the scope of Capital Markets Law Nr. 6362, dated December 6, 2013,

ğ) Services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including information technology related with processing and storage of

data, ensuring security, protecting confidentiality and verifying data, communication network and provision and maintenance of devices used for payment services,

h) Services based on instruments within the framework of a commercial agreement with the issuer, that can be used to acquire goods or services only in the premises used by the issuer or either for a limited variety of goods or services or within a limited network of service providers,

1) Payment transactions executed by means of any electronic telecommunication or information technology device, where the goods or services purchased are delivered to and are to be used through an information technology or electronic telecommunication device, provided that the electronic telecommunication or information technology operator does not act only as an intermediary between the payment service user and the supplier of the goods and services,

i) Payment transactions carried out between payment service providers, their agents or branches for their own names and accounts,

j) Payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group,

k) Services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer withdrawing money from a payment account, on condition that these providers do not conduct other payment services,

l) Other transactions and services to be determined by the Board.

(3) The procedures and principles for payment services, information and provisions concerning payment services and framework contract shall be set down with a regulation to be issued by the Agency through consultation with the Financial Crimes Investigation Board and the Bank.

#### **Payment Service Provider**

**Article 13** – (1) Pursuant to this Law;

- a) Banks under the scope of the Law Nr. 5411,
  - b) Electronic money institutions,
  - c) Payment institutions,
- are payment service providers.

(2) No other person, except the Bank and payment service providers, may provide payment service.

#### **Payment Institution**

**ARTICLE 14** – (1) The payment institution intending to operate in the field of payment services under the scope of this Law can operate upon obtaining permission from the Board.

(2) The payment institution is subject to the following conditions of eligibility;

- a) It is required to be founded in the form of a joint-stock company,
- b) Shareholders owning ten percent or more of the capital and holding control are required to meet the bank founder qualifications laid down in the Banking Law Nr. 5411,
- c) Its shares should be issued against cash and to name,
- ç) Its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than 1 million Turkish Liras for payment institutions providing the services listed in subparagraph (e) of the first paragraph of Article 12 and not be less than 2 million Turkish Liras for other payment institutions,

d) It is required to have management, adequate personnel and technical equipments required for performing the transactions under the scope of this Law and departments handling complaints and objections,

e) It is required to take precautions required for the continuity of the operations to be conducted under the scope of this Law and for preservation of security and confidentiality of the funds and information related to the payment service users,

f) It is required to have transparent and open partnership structure and organizational chart that will not constitute an obstacle for the efficient supervision of the Agency.

(3) The payment institution may hold payment account while offering payment service provided that it is only used for payment transaction. The funds received by

payment and electronic money institutions for payment service shall not be considered as deposit or participation fund pursuant to Article 60 of the Law Nr. 5411 or as electronic money under the scope of this Law.

(4) The payment institution cannot grant loans. Whether activities related to the payment services are considered as granting loans or not are to be determined with the regulation to be issued by the Agency.

(5) The Board is authorized to determine the activities not to be performed by the payment institution.

(6) The procedures and principles for the enforcement of this article, information and documents to be required for establishing the payment institution, operations, capital and own funds structure, branch, agency or using outsourcing institution, corporate governance principles, internal systems, information systems management and other activities not covered under the scope of this Law shall be set down with a regulation to be issued by the Agency through consultation with the Financial Crimes Investigation Board and the Bank.

### **Evaluation of an application for operating license**

**Article 15** – (1) Operating license shall be granted pursuant to Article 14 of this Law for operating as a payment institution provided that requirements, qualifications and competencies required under the scope of this Law are met, the information and documents to be required by the Board are submitted and the application is regarded as affirmative by the Board and the decision for granting an operating license shall be published in the Official Gazette.

(2) Before granting the operating license, The Bank shall be consulted by the Board.

(3) The Agency can ask for the establishment of a separate institution for payment services provided that the payment institution operates in other fields apart from payment service and that such operations have or might have negative impact on the financial status of the payment institution or the process of monitoring the compliance of the payment institution to the provisions of this Law and the regulation to be issued on the basis of this Law by the Agency.

(4) The application of operating license under the scope of Article 14 of this Law filed to the Agency shall be reviewed and concluded by the Board within a period of six months after the submission of all information and documents related to the application fully. If the decision is negative, the related party shall be informed of the decision with the reasons.

(5) The institution granted with the operating license shall notify the Agency about commencement of operations within a period of ten days following the date of starting operations.

### **Revocation of operating license**

**Article 16** – (1) The Board may revoke the operating license granted to the payment institution under the following terms and conditions provided that minimum its five members cast votes in favor of termination:

a) Failure to commence exercising this authority within one year following the issuance of the operating license,

b) The payment institution notifies the Agency that it renounces this authorization or stops its operations,

c) It is detected that operating license is obtained by submitting non-factual declarations or documents,

ç) It is detected that the payment institution no longer meets the requirements given in Article 14 of this Law,

d) The third paragraph of Article 23 of this Law is violated,

e) The Board concludes that continued activities of the payment institution endanger the safety of payments.

(2) The Agency shall inform the relevant payment institution and the Bank about the reasons for the revocation of the operating license.

(3) The Agency shall publish the revocation of operating license in the Official Gazette. Publishing the decision of revocation in the Official Gazette constitutes a

notification to the related parties.

### **Termination of Operating License**

**ARTICLE 17** – (1) Except for the cases stated in the first paragraph of Article 16 of this Law, the operating license of the payment institution shall be automatically terminated when;

a) The payment institution loses its status as a legal person as a result of transactions altering the legal status of the payment institution such as merger or disintegration, at the time the legal person status is annulled,

b) The payment institution ceases to exist pursuant to Articles 529, 530 and 531 of the Law Nr. 6102,

c) A six-month period is over if the payment institution does not operate for a period of over six months within one year following the date of starting operations.

(2) The Agency shall inform the Bank about termination of operating license and publish it in the Official Gazette after the payment institution notifies the Agency about the incidents specified in the first paragraph pursuant to the third paragraph of Article 23 of this Law or after the detection of those circumstances.

## **SECTION FIVE**

### **Electronic Money Institutions and Issuance of Electronic Money**

#### **Institutions issuing electronic money**

**ARTICLE 18** – (1) It is forbidden to issue electronic money for those other than the banks operating pursuant to the Law Nr. 5411 and electronic money institutions granted with a permission to issue electronic money under the scope of this Law..

(2) An electronic money institution intending to issue electronic money under the scope of this Law can operate provided that it is granted permission by the Board.

(3) The electronic money institution is subject to the following conditions of eligibility;

a) It is required to be founded in the form of a joint-stock company,

b) Shareholders owning ten percent or more of the capital and holding control are required to meet the bank founder qualifications laid down in the Banking Law Nr. 5411,

c) Its shares should be issued against cash and to name,

ç) Its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than 5 million Turkish Liras,

d) It is required to have management, adequate personnel and technical equipments required for performing the transactions under the scope of this Law and departments handling complaints and objections,

e) It is required to take precautions required for the continuity of the operations to be conducted under the scope of this Law and for preservation of security and confidentiality of the funds and information related to the electronic money users,

f) It is required to have transparent and open partnership structure and organizational chart that will not constitute an obstacle for the efficient supervision of the Agency.

(4) The electronic money institutions carry out their operations via banks described in the Law Nr. 5411.

(5) The prepaid instruments used only on the store network of institution issuing electronic money, used for purchasing a certain group of goods or services or used only on a certain service network as a result of the agreement made are excluded from the scope of this Law.

(6) The procedures and principles for the enforcement of this article, information and documents to be required for establishing electronic money institution, operations, capital and own funds structure, branch, agency or using outsourcing institution, corporate governance principles, internal systems, information systems management and other activities not covered under the scope of this Law, issuing and redeeming electronic money shall be set down with a regulation to be issued by the Agency through consultation with the Financial Crimes Investigation Board and the Bank.

#### **Other provisions binding on the electronic money institution**

**ARTICLE 19** – (1) The provisions given on Article 15, 16 and 17 of this Law shall be also applied for the electronic money institutions.



### **Issuing electronic money**

**ARTICLE 20** – (1) The institution issuing electronic money issues electronic money at par value on the receipt of funds.

(2) The institution issuing electronic money converts the funds deposited by the electronic money user into electronic money without any delay and makes them ready for use.

(3) The electronic money institution is obliged to transfer the funds collected in return for issuing electronic money to a separate account to be opened at the banks described on the Law Nr. 5411 and keep them on this account during the term of use. Pursuant to this paragraph, the banks holding the funds shall block the amount deposited by the electronic money institution at their accounts held at the Bank for the term of use. The procedures and principles for the enforcement of this paragraph shall be determined by the Board.

(4) The electronic money institution shall not extend loans.

(5) The institution issuing electronic money shall not offer interest or any other benefit depending on the period of holding electronic money to the owner of the electronic money.

(6) The Board is authorized to determine other business activities which should not be performed by the electronic money institution.

(7) The funds acquired by the electronic money institutions in return for issuing electronic money shall not be considered as deposit or participation fund pursuant to Article 60 of the Law Nr. 5411.

## **SECTION SIX Other Provisions**

### **Supervision**

**ARTICLE 21** – (1) The supervision of the payment institution and electronic money institution pursuant to this Law shall be performed by the Agency..

(2) The Agency is entitled to supervise the branches and agents of the institutions mentioned in the first paragraph or the entities to which activities are outsourced by these institutions.

(3) On-site supervision of the payment institution and electronic money institution shall be conducted by professional staff of the Agency authorized for on-site supervision. The payment institution and electronic money institution as well as other related natural and legal persons are obliged to provide all kinds of information and documents, submit all books and papers to be demanded by the professional staff of the Agency authorized for on-site supervision and to make such records available for supervision.

(4) The payment institution and electronic money institution are obliged to make the records available for Agency's supervision and to submit to the Agency all records, information and documents, even if they are confidential, under the scope of first paragraph, the submission based on the procedures and principles to be determined by the Agency.

(5) With the exception of 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, confidentiality of investigation and provisions of right of defend; the public institutions and establishments are obliged to present all kinds of information and documents to be demanded by the Agency restrictedly for the purpose of duties conferred under the scope of this Law even if they are confidential; such documents and information shall be duly, uninterruptedly or solely provided regardless of the prohibitive and restrictive provisions on the special laws.

(6) Payment and electronic money institutions are subject to independent audit. The independent financial audit of the payment and electronic money institutions shall be conducted pursuant to the Statutory Decree Nr. 660 dated September 26, 2011 on Organization and Duties of Public Oversight, Accounting and Auditing Standards Authority. The audit of information technologies systems of payment and electronic money institutions to be conducted by independent audit firms shall be performed pursuant to the procedures and principles determined by the Board. The independent audit reports issued shall be submitted to the Agency pursuant to the principles and

procedures set forth by the Board.

(7) The Board shall determine the additional conditions to be required for those offering independent audit pursuant to this Law among the independent audit firms authorized by the Public Oversight, Accounting and Auditing Standards Authority. The independent audit firms meeting these requirements shall be listed and announced to the public by the Board. The Board is entitled to remove the independent auditors from the list if quality control and supervision related to the independent audits under the scope of this Law conclude that the independent audit firm fails to meet the standards and regulations. The Board shall inform the Public Oversight, Accounting and Auditing Standards Authority about the outcomes of quality control and supervision processes.

(8) The Board is authorized to demand precautions from the payment institution and electronic money institution depending on the outcomes of the supervisions made by the Agency and of the supervisions conducted by independent auditors and to give a period of maximum six months for taking such precautions as well as temporarily suspending the operating license of the payment institution and electronic money institution until the necessary precautions are taken within this period of time and revoking the operating license if the precautions are not taken within due period of time.

(9) The other procedures and principles related to the supervision of the payment institution and electronic money institution shall be set down with the regulation to be issued by the Agency.

#### **Safeguarding funds and guarantee**

**ARTICLE 22** – (1) The funds received by the payment institution for the purpose of performing the payment service and the funds collected by the electronic money institution in return for the issuance of electronic money shall be protected pursuant to the procedures and principles to be determined on the basis of regulations to be issued by the Agency.

(2) The Board might require the payment and electronic money institutions under the scope of this Law to keep guarantees at the Bank pursuant to the procedures and principles to be determined by the Board.

(3) The funds accepted by the payment and electronic money institutions and accounts that these funds are held in shall be used for compensating the rights of fund holders and fulfilling the liabilities arising under this Law regardless of the priorities given under other laws, if the payment or electronic money institution goes into voluntary or compulsory liquidation or the operating license is cancelled. The payment and electronic money institutions are responsible for compensating the rights of fund holders.

(4) The Bank might require the system operators under the scope of this Law to make available guarantee pursuant to the procedures and principles to be determined.

#### **Keeping documents and records, protecting personal information and notifying changes**

**ARTICLE 23** – (1) The system operator, payment institution and electronic money institution shall keep the documents and records related to the issues mentioned on this Law for a period of minimum ten years at a safe place offering access anytime desired in the country. The system operator, payment institution and electronic money institution shall keep the information systems used for conducting the activities and their backups within the country.

(2) In order to prevent, investigate and reveal payment irregularities, the system operator and payment service provider shall use the personal information by taking the necessary precautions for protecting personal data.

(3) If there are any changes having an impact on the validity of information and documents required by the related authority, the system operator shall immediately inform the Bank and the payment institution and electronic money institution shall immediately inform the Agency.

#### **Releases and exemptions**

**ARTICLE 24** – (1) The provisions of this Law shall not be applied to bank and credit card related matters regulated under the Bank Cards and Credit Cards Law Nr. 5464 dated February 23, 2006 and the regulations issued pursuant to the Law Nr. 5464.

(2) Payment systems related to the bank and credit cards are excluded from the

scope of the first paragraph.

(3) The authorities of the Capital Market Board and the Board pursuant to other regulations regarding the systems are reserved.

(4) The Post and Telegraph Organization A.S. is not subject to the first and second paragraphs of Article 14 of this Law. The Board is entitled to suspend the payment services offered by the Post and Telegraph Organization A.S. under the scope of this Law temporarily or permanently as a result of the supervision to be made by the Agency under the scope of this Law.

#### **Acquisition and Transfer of Shares, Notifying the Changes**

**ARTICLE 25** – (1) Any acquisition of shares representing ten percent or more of the capital by direct or indirect share ownership or share acquisitions resulting with a shareholder directly or indirectly holding over ten percent, twenty percent, thirty three percent or fifty percent of the capital and share transfers resulting with a shareholder having shares under these ratios shall require permission of the Bank for the system operator and permission of the Board for the payment institution and electronic money institution. Establishing and terminating of usufructory rights including voting rights, shall be considered as acquisition and transfer within the ratios mentioned on this paragraph.

(2) 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 permission of the Bank for the system operator and permission of the Board for the payment institution and electronic money institution, regardless of the ratio thresholds given on the first paragraph.

(3) The transfer of shares resulting with change of control of legal persons having ten or more percent of the institution's capital shall be subject to the permission of the Bank for the system operator and permission of the Board for the payment institution and electronic money institution.

(4) The person who acquires the shares in the share transfers subject to permission shall meet the qualifications required for bank founders pursuant to the Law Nr. 5411.

(5) The share transfers subject to permission but made 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.

(6) The procedures and principles for the enforcement of this article shall be determined by the regulation to be issued by the Bank for the system operators and by the regulation to be issued by the Agency for payment and electronic money institutions.

#### **Cooperation among institutions**

**ARTICLE 26** – (1) The Agency and the Bank shall exchange views and information regarding the enforcement of the provisions of this Law related with the payment and electronic money institutions.

(2) The Agency and Bank shall share the mutually agreed information included in the databases for fulfilling the duties enlisted in this Law related with the payment and electronic money institutions within the framework of the principles of confidentiality.

(3) The procedures and principles applicable to cooperation to be made with domestic and foreign competent authorities for information sharing and other particulars shall be determined by the Bank for the system operators and by the Board for the payment and electronic money institutions through consultation with the related parties.

### **SECTION SEVEN**

#### **Sanctions, Investigations and Legal Proceedings**

##### **Violations of regulations and decisions**

**ARTICLE 27** – (1) For violating this Law and regulations to be issued on the basis of this Law and issues included on the decisions made, which are not subject to any other sanctions pursuant to this Chapter, an administrative fine from twenty thousand Turkish Liras to five hundred thousand Turkish Liras shall be imposed on legal persons acting as payment service providers by the Board and on the legal persons acting as a system operator by the Bank. However, in case any benefit is gained by the violation, the amount of administrative fine to be imposed shall not be less than two times of the benefit gained. If one of these wrongful acts is done more than once until the decision of administrative fine one administrative fine shall be imposed on the related party and the

amount of fine shall be doubled. However, if any benefit is gained or damage is caused by doing the wrongful act, the amount of administrative fine shall not be less than three times of the benefit or the damage.

(2) The related institution shall be informed about the decisions made pursuant to the first paragraph together with the reasons.

(3) The decisions as to whether the administrative fine shall be implemented or not shall be taken after receiving the 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.

(4) The administrative fines imposed pursuant to this Law shall be paid within a period of one month following the date of notification of the decision.

#### **Operating without license**

**ARTICLE 28** – (1) Real persons and officers of legal persons who act as a system operator, payment institution or electronic money institution without having the operating license required to be obtained pursuant to this Law shall be sentenced to imprisonment from one year to three years and judicial fine up to five thousand days.

(2) Real persons and officers of legal persons using expressions and words, which give the impression that they are acting as a system operator, payment institution or electronic money institution, on their business names, all kinds of documents, announcements and advertisements or public announcements without having the operating license required to be obtained pursuant to this Law shall be sentenced to imprisonment from one year up to three years and judicial fine up to five thousand days.

(3) In case the criminal offences explained on the first and second paragraphs are committed at place of business, the place can be closed for a period from two months to six months and, if the offense is repeated, permanently.

(4) This article shall be applied in case the system operator, payment institution or electronic money institution continues to operate after the revocation of the operating license granted under the scope of this Law.

#### **Preventing supervision and oversight activities and failure to provide information required**

**ARTICLE 29** – (1) Any person who prevents supervision and oversight conducted by the Bank and the Agency pursuant to this Law shall be sentenced to imprisonment from one year to three years.

(2) The person who fails to provide information and documents requested within the scope of supervision and oversight activities conducted by the Bank and Agency pursuant to this Law shall be sentenced to imprisonment from three months to one year and judicial fine up to one thousand five hundred days.

#### **False Statement**

**ARTICLE 30** – (1) In case the system operator, payment institution and electronic money institution makes false statements in the documents submitted to the authorities listed under this Law, officers conducting supervision and oversight and courts or documents published, the person or persons signing these documents shall be sentenced to imprisonment from one year to three years and judicial fine up to two thousand days.

#### **Failure to comply with the obligation to keep documents and information security**

**ARTICLE 31** – (1) The parties who do not abide by the obligation specified in the first paragraph of Article 23 of this Law shall be sentenced to imprisonment from one year to three years and judicial fine from five hundred days to one thousand five hundred days.

(2) Without prejudice to the payment service user's liabilities regarding the payment instrument, employees of institutions failing to take necessary precautions for preventing access to the personal security information related to the payment instrument by third parties, excluding the parties entitled to use the payment instrument, and to safely provide the payment instrument and the personal security information regarding the payment instrument to the payment service user and those making the related transactions shall be sentenced to imprisonment from one year to three years and judicial

fine up to one thousand days.

(3) In case the criminal offence mentioned in the second paragraph of this Article is caused by carelessness or negligence or professional inadequacy, the employees of the related institutions and those making the transaction shall be sentenced judicial fine up to one thousand days.

#### **Disclosing confidential information**

**ARTICLE 32** – (1) The shareholders, members of the board of directors, employees of the system operator, payment institution and electronic money institution under the scope of this Law, and also the parties and their employees acting on behalf of these institutions shall be sentenced to imprisonment from one year to three years and a judicial fine up to one thousand days, even if they left their office, in case they disclose the confidential information of these institutions and their clients that they acquire as part of their titles and duties, to any party, apart from the parties authorized under this Law.

(2) The employees of the outsourcing institutions and third parties who disclose the confidential information of the institutions listed on the first paragraph and their clients shall be subject to the provisions given on the first paragraph.

#### **Actions damaging reputation**

**ARTICLE 33** – (1) The parties who intentionally damage the prestige, reputation or assets of the system operator, payment institution and electronic money institution under the scope of this Law or disseminate inaccurate news by the channels listed in the Press Law Nr. 5187, dated February 9, 2004 or by radio, television, video, internet, cable broadcasting or electronic information communication tools or similar broadcast media shall be sentenced to imprisonment from one year to three years and a judicial fine from one thousand to two thousand days.

#### **Criminal penal liability of the employees and the relevant persons of the electronic money institutions**

**ARTICLE 34** – (1) The employees and the relevant persons of the electronic money institution who violate the fourth paragraph of Article 18, and Article 20 of this Law shall be sentenced to imprisonment from one year to three years and a judicial fine up to five thousand days.

#### **Non-recording transactions, nonfactual accounting**

**ARTICLE 35** – (1) Because of the transactions of the payment institution and electronic money institution under the scope of this Law not recorded or accounted in a manner not conforming to their nature, the person or persons signing these documents shall be sentenced to imprisonment from one year to three years and judicial fine up to two thousand days.

#### **Embezzlement**

**ARTICLE 36** – (1) If the shareholders or the chairman or members of the board of directors or the employees of the system operator, payment institution and electronic money institution or the parties or employees of those acting on behalf of them 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 their own or others' favor, they shall be sentenced to imprisonment from six years to twelve years and a judicial fine up to five thousand days, and shall compensate for the losses incurred by these institutions .

(2) 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 twenty thousand days; however the amount of judicial fine shall not be less than three times of the loss suffered by the institution. 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*.

(3) Where the 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. Where the embezzled money, money substitute valuable document or security as well as other assets has been fully returned or the loss has been compensated by will 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.

(4) 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.

#### **Investigation and prosecution procedure**

**ARTICLE 37** – (1) The initiation of investigation and prosecution for the offenses listed on Articles 28, 29 and 31 of this Law, shall be subject to a written application of the Bank for the system operators and the Agency for the payment and electronic money institutions to the Office of Chief Public Prosecutor. Such application shall be accepted as trial clause.

(2) In case the related parties apply to the Chief Public Prosecutor's Office due to a criminal offense mentioned on Article 31 of this Law, the requirement of filling a written application shall not be applied.

(3) Investigating and prosecuting the Bank personnel due to activities related to performance of duties mentioned on this Law and regulations issued on the basis of this Law shall be subject to the Bank's written application to the Chief Public Prosecutor's Office.

**ARTICLE 38** – (1) Item (f) of the sub paragraph (I) of the third paragraph of Article 4 of the Republic of Turkey Central Bank Law Nr. 1211, dated January 14, 1970 is amended as follows.

“f) to regulate the volume and circulation of the Turkish Lira, to establish payment and securities transfer and settlement systems, to ensure the uninterrupted operation and oversight of the systems established and to be established and to make the necessary regulations, to determine the methods and instruments including electronic environment that shall be used for payments,”

**ARTICLE 39** – (1) The words “oversight and audit” written in the first subparagraph (e) of Article 22, of the Law Nr. 1211 is amended as “oversight”.

**ARTICLE 40** – (1) The word “three” in the first paragraph of Article 90 of the Law Nr. 5411 is amended as “five”.

(2) The statement “half of this number” written in the first paragraph of Article 91 of the Law Nr. 5411 is amended as “the number ... twenty in total” and the word “four” in the fourth paragraph is amended as “eight” and the following sentence is added to the last paragraph of the same Article.

“If requested by the members, the Board is entitled to determine its national representation offices apart from the Agency's headquarters as the permanent work place of the members. .”

(3) “Legal experts and assistants and information” expressions written in the first sentence of the first paragraph of Article 92 of the Law Nr. 5411 are amended as “legal experts and assistants, information experts and assistants and Banking Regulation and Supervision Agency”; “legal and information” expressions written in the third sentence are amended as “legal, information and Banking Regulation and Supervision Agency”; “legal and information” expressions written in the first sentence of the seventh paragraph are amended as “legal, information and Banking Regulation and Supervision Agency”; “assistant expert” in the second sentence is amended as “assistant expert (excluding assistant Banking Regulation and Supervision Agency expert)” and “legal and information” expressions in the fourth sentence are amended as “legal, information and Banking Regulatory and Supervision Agency”, and the following paragraphs are added to the same Article.

Information personnel can be employed in the Agency pursuant to the procedure and principles listed on Supplemental Article 6 of the Statutory Decree Nr. 375, dated June 27, 1989. However, the Agency is not subject to the requirements given in the subparagraphs (a) and (b) of the third paragraph of the Article mentioned herein.

Contracted lawyers can be hired by issuing power of attorney pursuant to the general terms and conditions for prosecuting the lawsuits and debt enforcement formalities involving the Agency provided that the number of lawyers shall not be more

than ten.

In case of jobs requiring special expertise and temporary jobs, service can be procured without being subject to the provisions of Public Procurement Law Nr. 4734 provided that the payments and contract terms are determined by the Agency.

(4) The positions in the attached Table is created and enclosed to the Schedule Number (I) of the Law Nr. 5411.

**ARTICLE 41** – (1) The third paragraph of Article 101 of the Law Nr. 5411 is amended as follows.

“The budget year of the Agency is a calendar year. The expenses of the Agency shall be financed from contribution to be paid to the Agency before the budget takes effect by banks, leasing, factoring, finance institutions, payment institutions and electronic money institutions. The amount to be collected as contribution to fund expenses shall not exceed three per ten thousand of the balance sheet total of the previous year of such institutions. Any such contribution not paid within the specified period of time shall be collected pursuant to the provisions of the Law No. 6183 on the Procedures for the Collection of Public Receivables.

## **SECTION EIGHT**

### **Provisional and Final Clauses**

#### **Regulation**

**PROVISIONAL ARTICLE 1** – (1) The regulations mentioned on this Law shall be prepared and entered into force within a period of one year following the date of publication of this Law.

#### **Transition Provisions**

**PROVISIONAL ARTICLE 2** – (1) The system operators active as of the date at which this Law takes effect are obliged to adapt their systems to this Law within a period of one year following the publication of the related regulation by the Bank under the scope of this Law and to apply to the Bank for obtaining necessary permissions.

(2) The institutions already providing payment services on the date at which this Law takes effect and to be categorized as a payment institution under the scope of this Law are obliged to apply to the Agency for obtaining necessary permissions within a period of one year starting from the date of publication of the regulations issued by the Agency under the scope of this Law.

(3) The institutions already issuing electronic money on the date at which this Law takes effect and to be categorized as an electronic money institution under the scope of this Law are obliged to apply to the Agency for obtaining necessary permissions within a period of one year starting from the date of publication of the regulations issued by the Agency under the scope of this Law.

(4) The institutions obliged to get permission from the Agency under the scope of the second and third paragraphs and other payment service providers are obliged to adapt to this Law and provisions on the regulations based on this Law within a period of one year starting from the date at which the related regulations to be issued by the Agency under the scope of this Law take effect.

(5) The institutions obliged to obtain an operating license within the periods mentioned on the first, second and third paragraphs of this Article shall not operate under the scope of this Law in case they are not granted with the operating license mentioned herein.

#### **Effectiveness**

**ARTICLE 42** – (1) This Law shall take effect as of the publication date.

#### **Enforcement**

**ARTICLE 43** – (1) The provisions of this Law shall be enforced by the Council of Ministers.

26/6/2013

**TABLE**

**AGENCY : BANKING REGULATION AND SUPERVISION AGENCY**

**POSITIONS CREATED**

<b>CLASS</b>	<b>TITLE</b>	<b>DEGREE</b>	<b>NUMBER</b>
G1H	Vice President	1	2
G1H	Manager	1	4
G1H	Banking Regulation and Supervision Agency Assistant Expert	9	10
<b>TOTAL</b>			<b>16</b>