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**REGULATION**

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

**REGULATION ON BANK'S PROCUREMENT OF SUPPORT SERVICES AND  
AUTHORIZATION OF SUCH SERVICE PROVIDERS**

**SECTION ONE**

**Objective and Scope, Basis and Definitions**

**Objective and Scope**

**ARTICLE 1 — (1)** The objective of this Regulation is to regulate the procedures and principles for the procedures and principles for support service providers providing services of a nature of an extension and completion of the main operations of banks and subjects for which support services may be procured.

(2) (Amended: *OG-1310212008-26786*) The scope of this Regulation does not cover services inclusive of maintenance and reparation of any hardware including consulting, marketing, security, catering, transportation and ATM and POS, scanning and transferring bank and credit card application documents and delivering the image and data to the related institution after entering data and delivering-in-hand the bank statements according to the implementation of the obligations of the Law concerning secrecy, cleaning services and legal counseling provided through execution of powers of attorney or fulfilling attorney agreement, which are not of a nature of extension of and completion of the banking operations although they are procured externally.

(3) (Annex paragraph: *OG-2410712007-26592*) Services provided by the banks such as;

- a) Call center,
- b) Maintaining information systems software services,
- c) ATM operation and POS operation,
- ç) Bank and credit card, cheques book and bank statement publication and electronic delivery of bank statement,
- d) Records on condition that provision of the Article 42 of the Law is taken into consideration,
- e) Collecting securely the valuable good such as any cash, valuable papers and precious metals that companies within the scope of the Law on Private Security Services dated June 26, 2004 and Nr. 5188 provide to banks, numbering, delivering and receiving, preserving when necessary, opening, closing and re-commissioning ATMs, delivery or receipt of closed sealed money bags and similar services are not subject to the articles excluding the Article 5(6) and Articles 10, 11 and 12(1) of this Regulation.

### **Definitions**

**ARTICLE 3** — (1) The following terms used in this Regulation shall have the meanings expressly designated to them below:

- a) Bank(s): Bank(s) which are defined by Article 3 of the Law,
- b) Support service providers: Providers providing services to banks, which are an extension or completion of main services, excluding those established by the Central Bank of the Republic of Turkey of operate within the body of the Central Bank of the Republic of Turkey and swap, custody and central registration service institutions,
- c) Supervisory Committee: Supervisory Committee to be set up as per Article 24 of the Law,
- ç) Financial organization(s): Financial organizations which are defined by Article 3 of the Law,
- d) Law: Banking Law Nr. 5411,
- e) Agency: Banking Regulatory and Supervisory Agency,
- f) Top level management: heads of departments in charge of support services.

## **SECTION TWO**

### **Procurement of Support Services**

#### **Limitations to support services**

**ARTICLE 4 — (1) (Amended: OG-1310212008-26786)** Any operations which must exclusively be executed by the board of directors of the bank or by the internal systems may not be procured from support service providers.

(2) Utilization of services procured by support service providers during the execution of the operations laid down by the first paragraph does not remove the responsibilities of the board of directors of the bank.

(3) Banks may not procure any support services, which would prevent them from meeting their statutory obligations, complying with the arrangements and achieving an effective supervision thereof or would make them suffer weakness.

### **Prerequisites**

**ARTICLE 5 — (1)** It is obligatory that the banks, which will procure support services, must establish a risk management system as regards:

- a) Identification of support services needed in respect of the areas of operation,
  - b) Evaluation of costs and benefits expected of procurement of support services,
  - c) Studies for necessary transformation, internal regulation, infrastructure and training at the stage of transition to support services,
  - ç) Coordination of responsibilities concerning the issues of supervision, measurement and evaluation, reporting and security in connection with support services
- d) Management of risks including an action plan to be implemented in case of any risks that may arise out of support services and any interruptions or delays in services in any manner

2) It is obligatory that prior to contract is signed with support service providers, banks must conduct examinations and evaluations if the structures of relevant service providers have technical equipment and infrastructure, financial capability, experience, knowledge and human resources at a level which would enable them to achieve such support services at a required quality. A technical adequacy report is drawn up by the top management as a result of such a study for submission to the supervisory committee and board of directors.

(3) As a result of evaluation of the technical adequacy report to be drawn up pursuant to the second paragraph and the comments of the supervisory committee on the subject, the board of directors of the bank makes a resolution to sign a support service contract with the support services provider it considers qualified.

(4) In the event that support service providers or sub-contractors are established abroad or that they will achieve their operations via their abroad branches or partnerships, it is obligatory that there are no obstacles for the Boar to obtain any information and documents as it may consider necessary with regard to the regulations and practices of the countries where such service providers operate and to conduct inspections in these service providers in connection with services procured from such service providers. In the event that support services are procured from service providers established abroad, banks have to consider country risks and make available action plans ready for implementation to ensure business continuity and local procurement of such services if necessary in case of interruption of services in any manner.

(5) Procurement of support services do not remove the obligation of banks to maintain and store all the accounts and records as well as all kinds of information regarding all kinds of transactions within their bodies. Ownership of all kinds of information and documents relating to all the accounts, records and transactions which will take place during provision of services as well as of any cartridges, disks, diskettes, magnetic tapes, microfilms, microfiches and all kinds of similar media on which such information is maintained rests with the bank save for the intellectual property rights of software. Support service providers may not have any dispositions regarding them.

(6) It is of the responsibility of the bank to make sure necessary measures for protection of any secrets concerning the bank and its customers by support service providers are taken.

### **Conditions to be demanded from support services providers**

**ARTICLE 6** — (1) It is obligatory that any support service providers which will provide support services to banks must:

- a) be established as incorporated companies with a transparent and open shareholding structure
- b) have a managerial structure, an adequate number of staff with required qualifications, necessary technical equipment and documentation and registration systems capable of achieving support services
- c) submit a letter of commitment to take out and maintain professional liability insurance for the purpose of covering any damages that may arise out of services to be provided
- ç) not have suffered any cancellation or limitation of their authorization related to their areas of operation by competent authorities abroad or in Turkey

d) be within the scope of the Article 8 (1a) of the Law

e) ensure that their shareholders, chairman and members of board of directors and auditors and managers;

1) meet the qualifications laid down by the Article 8 (a), (b), (c) and (d)

2) have not served as shareholders, chairman and members of board of directors or auditors or managers in those providers of support services, the authorization of which has been cancelled as per to the Article 14(2) due to operations and implementations in violation of the provisions of the Law and this Regulation or have not had any responsibilities found out in any operations leading to cancellation of their employment contracts as employees

3) have not served as shareholders, chairman and members of board of directors or auditors or managers in any providers of support services, the authorization of which has been canceled or limited by competent authorities abroad or in Turkey in connection with their fields of operation or have not had any responsibilities found out in any operations leading to cancellation or limitation of authorization as employees

### **Authorization**

**ARTICLE 7 - (1)** It is obligatory that as part of applications to be made to the Board, the following must be submitted by the banks: a notarized copy of the contract containing the minimum elements covered by Article 9 or draft contract if the contract is yet signed on condition that a notarized copy of the contract must be forwarded following signature, a risk management program to be prepared as per the first, second and Article 5 (1), (2) and (3), technical qualification report and minutes of the resolution of the board of directors; relevant providers of support services must submit the documents laid down by the Article 8 (1).

(2) The provider of support service in connection with approval to be issued as a result of evaluation to be made by the Board is deemed to have been authorized to provide support services in respect of the applicant bank only. The contract for procurement of support services enters into force, if signed, upon the notification of the Board resolution to the bank and support service provider. In cases where there is still no contract signed, the contract must be signed within maximum fifteen days from the receipt of permission.

(3) Any banks intending to procure services from a support service provider, which has earlier been authorized to give support services to another bank and relevant support service providers must obtain approval from the Board submitting the documents laid down by the paragraph one no matter if it relates to the same subject of service.

(4) The board is entitled to ask the relevant bank and support service provider for amendment of the contract in case it finds out any aspects therein contrary to the provisions of the Law, other relevant legislation and this Regulation.

(5) In the event that services extended by support service providers are entirely or partially transferred to sub-contractors, it is obligatory that copies of contracts signed with these entities must be submitted to the board within fifteen days following signature thereof. The fourth paragraph of the present article also applies for these contracts.

(6) In case of amendment made to the contract upon mutual agreement between the bank and support service providers excluding the essential elements of the contract laid down by Article 9, any amendments made thereto must be notified to the Board no later than seven days thereafter.

(7) (**Amended: OG-1310212008-26786**) The provisions of the first and second paragraphs governing authorization are not applicable for support services received by banks of parent shareholding subject to limitations and rates on a consolidated basis as per the of the Article 43(1) of the Law from their domestic and abroad affiliates or jointly controlled partnerships and for support services received from providers of support services established through direct partnership of minimum three banks. The notarized copies of the contracts to be signed in this scope including the risk management program and technical qualification report are sent by the relevant bank to the Board.

(8) (**Abolished: OG-1310212008-26786**) Provisions of paragraph 1 and 2 concerning authorization does not apply for the support services which abroad branches of banks procure exclusively. The related bank shall inform the Agency on the support service procured accordingly following one month the support service contract is signed.

### **Information and documents required during application**

**ARTICLE 8 — (1)** The following concerning support service providers are annexed to applications to be made to the Board as per Article 7:

- a) Articles of association and originals of the Turkish Journal of Trade Registrations incorporating any amendments made to the articles of association, if any
- b) A copy of company registration certificate to be received from the relevant professional chamber, if any
- c) Addresses of their head offices and branches, if any
- ç) Latest balance-sheet as of the date of application,

d) Copies of contracts concluded with relevant abroad institution as certified by the authorized officers of abroad institution in case of establishment of a legal relationship with any institution established abroad

e) **(Additional sub-paragraph: OG-2410712007-26592)** Information concerning the title of the banks and financial institutions to which support services are procured, which services are given for which period,

f) Concerning their shareholders, chairman and member of board of directors and auditors and managers:

1) **(Amended: OG-2410712007-26592)** Detailed CV's covering professional experience to be drawn up in detail as per the model in Annex 1 for submission to the Board as well as copies of diplomas and ID cards, copies of professional licenses if any, certificates of legal domicile and copy of signatures (circulars of signature),

2) Documents received from the Commercial Court of First Instance in the province of legal domicile that they are not bankrupt, that there are no applications by them which are approved for restructuring through reconciliation and that no ruling has been given for postponement of bankruptcy about them as well as documents received from the Executive Examination Courts that they have not declared any debt rescheduling

3) Documents to be obtained from the Savings Deposit Insurance Fund with a petition to be drawn up according to the model in Annex 2 that they have not held or controlled any qualified shares in the banks for which Article 71 of the Law were applicable and in the banks transferred to the Savings Deposit Insurance Fund before entry into force of the law

4) Documents to be obtained from the Savings Deposit Insurance Fund upon submission of the petition to be drawn up as per the model under Annex 3, certifying that they have not held any qualified shares in or control of brokerage houses forced into liquidation and financial institutions forced into liquidation other than voluntary liquidation, development and investment banks the operating authorization of which have been discontinued, credit organizations for which partnership rights other than dividends and management and control have been transferred to the Savings Accounts Insurance Fund or for which powers and permissions to operate banking transactions and receive deposits and participation funds have been discontinued before taken over by the Savings Accounts Insurance Fund or lifting of powers and permissions to operate banking transactions and receive deposits and participation funds,

5) Criminal records containing archive records which have been received in the last six months

6) Written declarations to be prepared as per the model in Annex 4 that they are not partner, chairman or member of the board of directors or auditors in support service institutions of which authorization has been cancelled or limited by the competent authorities abroad or in Turkey or that they have not served as the chairman and member of the board of directors or auditors or specialists engaged in any operations causing termination or limitation of authorization are included.

(2) The Agency requests additional information and documents during evaluation of applications. Any omissions detected by the Board or any additional information and documents requested are notified to the valuation organizations applying for authorization in writing. Required information and documents are submitted to the Agency within thirty days from the date of receipt of the letter regarding the request for submission of such information and documents. Failure to send any required information and documents is treated as the waiver of an application for authorization.

(3) In the event that documents requested from natural persons and legal entities of a foreign nationality cannot be obtained due to the lack of an authority or system in the countries where such persons are based, where such records are maintained, this situation must be certified to the Agency with a document to be received from the competent authorities in such countries.

(4) It is essential that any documents to be obtained from abroad in connection with applications covered by this Regulation are certified the competent authorities in the relevant countries and by the Turkish consulates in such countries or as per the provisions of the Convention on the Lifting of the Requirement of Certification of Foreign Official Documents prepared in the framework of the Hague Conference on States Particular Law and that notarized translation of the documents are annexed to applications.

### **Elements of the contract**

**ARTICLE 9 — (1)** It is obligatory that the contracts to be signed between the banks and of support service providers:

a) must clearly state issues such as the subject matter, scope and term of support services, fees to be paid in return for services to be received and responsibilities of the parties in a clear and understandable manner avoiding hesitancy

- b) must stipulate that providers of support services are subject to audits by the Agency in connection with operations realized and that they are obligated to make available any kinds of information and documents requested by the Agency correctly on a timely basis and keep ready for inspection and operate records on any microfiches, microfilms, magnetic tapes, diskettes and similar media and all the necessary systems and passwords for access to such records and their decryption
- c) must stipulate that it is strictly prohibited to use any information and documents belonging to the banks and their customers which are learnt on ground of services extended by providers of support services for purposes other those laid down by the contract and disclose them to third parties, that of support service providers are required to pay due care for protection of such information and documents and that the contract shall be unilaterally terminated by the banks in case of violation of this clause
- ç) must incorporate a clause that in case support service providers are granted a right to terminate the contract earlier than its term, support services providers must continue providing services for a period of such a duration allowing services to be provided by another support service provider or by the bank itself
- d) must stipulate that there must be a commitment for taking out and maintaining professional liability insurance for the purpose of meeting damages that may arise out of services to be extended by support service providers
- e) must stipulate that in case it is possible to services extended by support service providers to be sub-contracted, support service providers must provide a pledge that the considerations laid down by paragraphs (a), (b), (c), (ç) and (d) shall also be incorporated by contracts to be concluded with sub-contractors

### **SECTION THREE**

#### **Miscellaneous and Final Provisions**

##### **Professional liability insurance**

**ARTICLE 10** — (1) Support service providers have to take out and maintain professional liability insurance subject to general conditions as laid down by the Turkish

Treasury for each support service contract to be signed by them for the purpose of covering damages that may arise out of services to be provided by support service providers.

(2) The coverage as a basis for professional liability insurance may not be less than two times the sum of service fees to be paid to support service providers.

(3) It is obligatory that professional liability insurance must be taken out within maximum fifteen days from the date of notification to be served as per the Article 7(2); it must be taken out within maximum seven days from the date of signature of contract in the case of contracts to be signed under the Article 7(7). A copy of professional liability insurance policy is sent by providers of support services to the supervisory committee of the bank and Board for submission to the board of directors of the bank.

(4) (**Amended: OG-2410712007-26592**) It is obligatory to take out professional liability insurance for the services within the scope of the Article 1(3) in fifteen days at the latest following the contracts concerning the said services are signed.

#### **Indemnification of professional liability insurance**

**ARTICLE 11** — (1) In case any damages arise in connection with services received depending on faults of support service providers, the injured parties request the relevant insurance companies for indemnification under professional liability insurance subject to the procedures and principles laid down by Article 10.

#### **Supervision**

**ARTICLE 12** — (1) The Agency is entitled to request any information it may deem relevant to the provisions of the Law and this Regulation from support service providers regardless of their confidentiality and examine all the books, records and documents and support service providers are obligated to provide any information requested, make available their books, records and documents for inspection, to allow the professional staff of the Agency conducting local inspections to have access to the entire data processing system in line with the objectives of such an inspection, ensure security of data and submit and operate for permission any records on microfiches, microfilms, magnetic tapes, diskettes and similar media concerning information they have to provide including all the necessary systems and passwords to have access to such records or decrypt them.

(2) The top management prepares for submission to the supervisory committees and board of directors an evaluation report minimum once a year, indicating if there have been any factors over procurement of support services, which may prevent an effective and adequate operation of the bank's internal systems or lead to risks and if the support service providers, their shareholders and managers maintain compliance with the conditions laid down by Article 6.

#### **Termination of contracts**

**ARTICLE 13** — (1) In the event that the board of directors takes a resolution as a result of the report drawn up as per the Article 12(2) that there are factors preventing inspection or leading to risks, it may decide to discontinue purchase of services from the support service providers before expiry of the term of the contract. It is essential that the Agency is informed accordingly within fifteen days from the date of adoption of this decision.

(2) It is obligatory that support service providers inform the Agency of any intention of terminating a contract signed with a bank prior to actual termination during its term along with justification thereof.

#### **Cancellation of authorization**

**ARTICLE 14** — (1) In case it is established that the support service provider authorized pursuant to Article 7:

a) has made actions and practices in violation of the provisions of the Law or this Regulation or does not meet the conditions laid down by Article 6

has failed to take out and maintain professional liability insurance pursuant to Article 10, the Board is entitled to ask the relevant bank and provider of support services to terminate the support services contract immediately or after a period to be considered appropriate.

(2) Request for termination of the support services contract signed by the support service provider with a bank pursuant to paragraph (a) of the first sub-clause is deemed the cancellation of authorization issued as per Article 7. In the event that it is also authorized to provide support services to another bank, the relevant bank banks are also requested to terminate contracts immediately or after a period to be considered appropriate.

(3) Request of termination of the contract as per paragraph (b) of the first sub-clause is deemed the cancellation of authorization of the support service provider to conclude a contract with the relevant bank and in case it is authorized to provide support services to another company as per Article 7, this bank or banks are also informed by the Board accordingly.

### **Period of adaptation**

**PROVISIONAL ARTICLE 1** – (1) Banks receiving support services for the subjects covered by this Regulation prior to the entry into force of this Regulation and relevant support service providers have to adapt the contracts signed and their positions to the provisions of this Regulation within one year.

(2) Banks and providers of support services send information required as per the Article 7(1) to the Board within the prescribed time limit to get approval by the Board.

### **Entry Into Force**

**ARTICLE 15** — (1) This Regulation enters into force on the date of publication

### **Enforcement**

**ARTICLE 16** — (1) The provisions of this Regulation are enforced by the Chairman of the Banking Regulation and Supervision Agency.