

REGULATION ON OVERSIGHT OF PAYMENT AND SECURITIES SETTLEMENT SYSTEMS

Publication Date/No : 28.6.2014 / 29044

SECTION ONE

Objective, Scope, Legal Basis and Definitions

Objective

ARTICLE 1- (1) The objective of this Regulation is to regulate the procedures and principles regarding the oversight of payment and securities settlement systems.

Scope

ARTICLE 2- (1) This Regulation shall apply to procedures and principles regarding oversight activities, information and documents requested during oversight activities, oversight of information systems, self-assessment, independent auditing and other oversight issues of payment and securities settlement systems.

Legal basis

ARTICLE 3- (1) This regulation has been prepared with respect to the second paragraph of Article 43 of the Law on the Central Bank of the Republic of Turkey No. 1211 dated 14/01/1970, the third paragraph of Article 8 and the third paragraph of Article 26 of the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions No. 6493 dated 20/06/2013.

Definitions

ARTICLE 4- (1) The following terms used in this Regulation shall have the meanings indicated below:

- a) Bank: The Central Bank of the Republic of Turkey Joint Stock Company,
- b) Fund: Banknotes, coins, bank money or electronic money,
- c) Law: The Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions No.6493 dated 20/06/2013,
- ç) Participant: Legal person with the right to give a direct transfer order by participating in the system and obliged to comply with the system rules,
- d) Control: The power to appoint or dismiss the decision-making majority of the members of the board of directors through direct or indirect possession of the majority of a legal person's capital irrespective of the requirement owning a minimum fifty-one per cent of its capital, or by having control over the majority of the voting right as a consequence of holding privileged shares, or via agreements with other shareholders or via any other means although not owning the majority of capital,
- e) Securities settlement system: The structure that has common rules and provides the infrastructure required for the clearing and settlement transactions carried out in order to realize securities transfers arising from transfer orders among three or more participants,

f) Central counterparty: The entity that guarantees finalizing transactions by acting as seller against buyer and buyer against seller between the parties of financial contracts traded in one or more markets,

g) Settlement: Fulfillment of obligations arising from funds or securities transfers between two or more parties,

ğ) Settlement account: An account at the Bank, a settlement institution or a central counterparty used to hold funds or securities and to ensure the settlement of the transactions among the participants in a system,

h) Settlement institution: The entity that holds a settlement account and can grant a loan to the participant for the purpose of settlement when necessary,

ı) Netting: The process of obtaining a single credit or liability position for a participant by offsetting credits or liabilities arising from the transfer orders sent and received by this participant,

i) Payment system: The structure that has common rules and provides the infrastructure required for the clearing and settlement transactions carried out in order to realize fund transfers arising from transfer orders among three or more participants,

j) Self-assessment: An evaluation process during which a system operator assesses itself regarding its compliance level with certain rules and standards,

k) System: Payment system and securities settlement system,

l) System operator: Legal person responsible for the daily operations of the system and holds the required license for operating a system,

m) Clearing: Activities including transmitting the transfer orders sent to the system, mediating in the mutual reconciliation of these orders and in the provision process before settlement, in cases where such provision is required, and netting of these orders in some cases,

n) Transfer order:

1) Participant order regarding the transfer of a certain amount of funds among the participants in the system,

2) Instruction, appropriate to the system rules resulting in the assumption or fulfillment of a payment obligation,

3) Participant order for the transfer of the rights on securities and other capital market instruments by means of a book entry or otherwise within the system.

SECTION TWO

Oversight and Records, Information and Documents Requested During Oversight Activities

System oversight and scope of oversight

ARTICLE 5- (1) The Bank shall conduct oversight activities to ensure the uninterrupted, safe, effective and efficient functioning of systems. The Bank is authorized to conduct on-site inspections as part of the oversight activities.

(2) Activities to be conducted by the Bank pursuant to the first paragraph, shall cover all parties whose activities are closely related to the operations of the system such as the

system operator, system participants, settlement institution, inter-linked systems and outsourcing service providers.

(3) As part of the oversight activities, the Bank is authorized to classify systems according to their significance levels and to set different standards and principles for systems in different categories.

(4) In case of classifying systems pursuant to the third paragraph, the Bank shall release to the public which system is under which category, as well as the standards and principles to be considered during the oversight activities for each category.

(5) The Bank shall set the objectives to be reached with oversight activities and policies to be followed during oversight activities and release them to the public.

(6) The Bank shall especially consider the following issues about the systems during its oversight activities:

a) The system operator shall not be in breach of the Law and other relevant legislations,

b) The system operator shall not go beyond the scope of the operation license,

c) The system operator shall not carry out any activities that may endanger the system's security, soundness and stability,

ç) The operation of the system shall not lead to a situation that will jeopardize the stability of the financial system,

d) The system operator shall have an efficient risk management framework,

e) There shall be no misstatements in the reportings made to the Bank,

f) There shall be sufficient collateral, credit and guarantee mechanisms,

g) The credit, liquidity, market and legal risks of assets provided by participants to the system pursuant to Article 23 of the Regulation on Operations of Payment and Securities Settlement Systems shall be low,

ğ) The system operator shall take no actions in conflict with system rules,

h) Tests regarding appropriateness and applicability of business continuity plans and their implementation shall be carried out regularly,

ı) The information systems and technological infrastructure shall be adequate and secure,

i) System operator's financial structure shall be sustainable.

(7) The Bank is authorized to consider other issues which it regards as necessary during its oversight activities.

Records, information and documents requested during oversight activities

ARTICLE 6- (1) The Bank is authorized to request all types of records, information and documents from relevant persons, institutions and organizations during its oversight activities.

(2) The system operator is obliged to present all types of information and documents requested by the Bank pursuant to Article 8 of the Law including information and documents concerning persons listed in the second paragraph of Article 5 and shareholders, subsidiaries, affiliates and jointly controlled partnerships of the system operator. Sharing information and documents with the Bank pursuant to this paragraph shall not constitute a violation to secrecy rules and confidentiality obligations within the Law and other regulations.

(3) The methods and frequency of the delivery of information and documents requested during oversight activities to the Bank shall be determined by the Bank.

SECTION THREE

Oversight of Information Systems, Self Assessment and Independent Audits

Oversight of information systems

ARTICLE 7- (1) Oversight activities regarding information systems of the system operator are an integral part of the Bank's oversight activities.

(2) The Bank may require that information systems of the system operator are audited by the independent auditing firms in addition to the Bank's own oversight activities, if deemed necessary.

(3) Auditing activities of information systems of the system operator performed pursuant to the second paragraph of this Article, shall be conducted by the independent audit institutions stated in the list of "Independent Audit Institutions Authorized to Conduct Audits of Information Systems in Banks" published by the Banking Regulation and Supervision Agency. The Bank is authorized to decide whether independent audit services are not taken pursuant to this Article by the independent audit institution stated in the list or that an independent audit institution, which is not listed, can conduct an audit of information systems of the system operator, if it is deemed necessary by the Bank.

(4) The independent audit institution shall share the reports which are prepared as a result of its audit activities conducted pursuant to the second paragraph of this Article with the system operator and the Bank at the same time. The Bank, if necessary, may request additional clarification regarding the issues about external auditing from the independent audit institution or the system operator.

(5) The Bank is authorized to issue communiqués, circulars and mandates, when necessary, to determine procedures and principles regarding independent external auditing of the information systems.

Self-assessment

ARTICLE 8- (1) The system operator shall execute a self-assessment related to the system at least once a year and share the self-assessment report with the Bank.

(2) Self-assessment activities that are performed pursuant to the first paragraph of this Article shall be conducted so as to measure the system operator's observance level to policy, rules, principles, standards and such considerations declared by the Bank with regard to the systems.

(3) A self-assessment that is carried out by the system operator constitutes inputs to oversight activities that are conducted by the Bank, but it is not binding for the assessments the Bank related to the system.

(4) The Bank is authorized to set out the principles and procedures related to self-assessment activities that are conducted by the system operator.

Independent audit

ARTICLE 9- (1) The financial audit of the system operator shall be performed by the independent audit institutions stated in the list of “Institutions Authorized to Conduct Independent Financial Audits in Banks” issued by the Banking Regulation and Supervision Agency and the financial audit is reported at least once a year. If it deems necessary, the Bank is authorized to decide that the system operators do not obtain independent audit services from the authorized independent audit institutions posted in this list.

(2) The independent audit institution shall share the reports prepared at the end of the auditing activities with the system operator and with the Bank simultaneously. The Bank, if it deems necessary, may request additional clarification from the independent audit institution or the system operator about the issues related to independent audit activity.

(3) The system operator, subject to independent audit within the scope of the Private Law under which the system operator is regulated, shall be assumed to have met the independent audit obligation within the scope of this Article.

(4) In order to assume that the obligations regarding the independent audit in the third paragraph of this Article have been fulfilled within the scope of this Regulation, the reports prepared after the independent audit shall be shared simultaneously with the Bank, the system operator and other authorities.

(5) In case the Bank decides the independent audit activities executed pursuant to the third paragraph of this Article are not sufficient, it may request that additional independent audit activities on the matters that the Bank deemed necessary be performed.

(6) In case the Independent Audit Institutions and, if available, people responsible for the internal audit, detect any matter that may jeopardize the existence of the system or evidence indicating that managers have severely violated the Law and the provisions of this Regulation or articles of association, they shall promptly notify the Bank thereof.

(7) The provisions of this article shall not be applied to the systems defined in the third and the sixth paragraphs of Article 5 of the Law.

SECTION FOUR

Cooperation in Oversight Activities

Cooperation in oversight activities

ARTICLE 10- (1) Officers and staff of the entities stated in the second paragraph of Article 6, are obliged to provide necessary support to the Bank’s personnel, including assigning a task to their staff, giving answers to the Bank’s verbal and written questions within a prescribed period and in a required format, and cooperating with the Bank within the scope of oversight activities in order to contribute to these activities upon the request of the Bank,

(2) In case the Bank conducts an on-site inspection as part of oversight activities carried out pursuant to Article 5, the institution which is subject to the on-site inspection shall provide the Bank’s officials with an appropriate work environment.

The situations that need taking measures and the measures to be taken

ARTICLE 11- (1) In case the Bank detects any evidence that may adversely affect the smooth operation of the system, it is authorized to determine the measures that the system operator shall take and to require from the system operator to take the determined precautionary measures within a time period set by the Bank. The Bank may extend the term of limitation prescribed upon the request of the system operator.

(2) If the Bank detects the matters stated in the first paragraph of Article 9 of the Law within the scope of its oversight activities, it shall implement one or several of the measures stated in the second paragraph of Article 9 of the Law depending on the severity of the violation.

(3) The Bank shall implement the provisions of Article 27 of the Law for the system operator if it detects the system operator acting contrary to the provisions in the Law, in the regulations issued based on the Law and in the decisions related to the Law, and to the matters on which no penal sanction is imposed by the Law.

SECTION FIVE

Miscellaneous and Final Provisions

Implementation principles

ARTICLE 12- (1) The Bank is empowered to interpret the provisions of this Regulation, to make decisions on the issues that do not exist or are not clear in this Regulation by taking into consideration the general provisions, to issue communiqués, circulars and mandates so as to arrange and direct the implementation related to oversight activities.

Enforcement

ARTICLE 13- (1) This regulation shall enter into force on the day of its publication.

Execution

ARTICLE 14- (1) The provisions of this Regulation shall be enforced by the Governor of the Central Bank of the Republic of Turkey.