

# LAW ON PAYMENT AND SECURITIES SETTLEMENT SYSTEMS, PAYMENT SERVICES AND ELECTRONIC MONEY INSTITUTIONS

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## SECTION ONE Objective, Scope and Definitions

### Objective

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

### Scope

**ARTICLE 2-** (1) This Law shall apply to payment and securities settlement systems, payment services, payment institutions and electronic money institutions.

### Definitions

**ARTICLE 3-** (1) For the purposes of this Law, the following terms shall have the meanings indicated below:

- a) Payee: Natural or legal person who is the intended receiver of a fund which is the subject of a payment transaction,
- b) Bank: The Central Bank of the Republic of Turkey Joint Stock Company,
- c) Electronic communication operator: Operator defined within the Electronic Communications Law No. 5809, dated November 5, 2008.
- ç) Electronic money: Monetary value which is issued on the receipt of funds by an electronic money issuer, stored electronically, used to make payment transactions defined in this Law and accepted as a payment instrument also by natural and legal persons other than the electronic money issuer,
- d) Electronic money institution: Legal person who has been granted authorization to issue electronic money under this Law,
- e) Fund: Banknotes, coins, bank money or electronic money,
- f) Payer: Natural or legal person who gives a payment order either from his payment account or without having a payment account,
- g) 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,
- ğ) Personal security information: Information such as a password, expiration date, or security number that identifies the payment instrument and the identity of the payment instrument user and that can be used while carrying out a transaction with the payment instrument,
- h) 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 of 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 of agreements with other shareholders or of any other means although not owning the majority of capital,

- 1) Board: The Banking Regulation and Supervision Board,
- i) Agency: The Banking Regulation and Supervision Agency,
- j) 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,
- k) Central counterparty: The entity that guarantees finalizing transactions by acting as seller to every buyer and buyer to every seller between the parties of financial contracts traded in one or more markets,
- l) Settlement: Fulfillment of obligations arising from funds or securities transfers between two or more parties,
- m) 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,
- n) Settlement institution: The entity that holds a settlement account and can grant a loan to the participant for the purpose of settlement when necessary,
- o) 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,
- ö) Payment instrument: Card, cell phone, password and similar personal instruments determined between the payment service provider and user and used by the payment service user to initiate a payment order,
- p) Payment order: Instruction given by the payment service user to his payment service provider for the purpose of executing a payment transaction,
- r) Payment account: An account opened in the name of the payment service user and used for the execution of a payment transaction,
- s) Payment service: Services stated in Article 12 of this Law,
- ş) Payment service user: Natural or a legal person making use of a payment service as payer, payee or both,
- t) Payment service provider: Institutions stated in Article 13 of this Law,
- u) Payment transaction: Act of depositing, transferring or withdrawing funds upon the order of payer or payee,
- ü) Payment institution: Legal person authorized pursuant to this Law to provide and execute payment services,
- v) 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,
- y) Money remittance: Payment service in which the payer sends fund to the payee or to a payment service provider that acts on behalf of the payee, without any accounts opened in the name of the payer or payee,
- z) System: Payment system and securities settlement system,
- aa) System operator: Legal person responsible for the daily operations of the system and holds the required license for operating a system,
- bb) 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,

cc) Clearing house: Institution responsible for calculating the net liability or credit position of the participants,

çç) 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**

### **System**

#### **General provisions**

**ARTICLE 4-** (1) The system shall be operated by the system operator. No other persons except the Bank and those who received an operating license pursuant to Article 5 of this Law shall function as system operator.

(2) The rules and contracts regarding the operation of the system and participation in the system shall be determined by the system operator in accordance with the regulation to be issued by the Bank.

(3) The Bank has the right to make the necessary regulations to ensure smooth and uninterrupted operation of the systems.

#### **Operating license of the system operator**

**ARTICLE 5-** (1) The system operator may operate a system under the scope of this Law, only if it is granted an operating license from the Bank.

(2) The system operator is required to meet the following criteria:

a) To be established as a joint stock company.

b) To have at least five million Turkish Liras of paid-in capital which is cash and free of all kinds of collusions.

c) To employ a sufficient number of qualified staff and to have adequate technical equipment and management to operate the system.

ç) To have sufficient risk management and to take necessary measures regarding information security, information reliability and business continuity.

d) To ensure the compliance of the system, participants and operating rules with this Law and with the regulations to be issued pursuant to this Law.

e) To have its shares issued against cash and be fully registered in its name,

f) To have a transparent and open partnership structure and organizational chart that will not constitute an obstacle for the efficient oversight of the Bank.

g) To have its shareholders, who own ten percent or more shares in capital and who have the control, meet the bank founders' eligibility criteria laid down in the Banking Law No. 5411 dated October 19, 2005.

(3) The provisions of the second paragraph of this article shall not apply to the legal person that carries out cheque clearing activities with respect to the Cheque Law No. 5941 dated December 14, 2009.

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

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

(6) The provisions of this Article shall not apply to the systems operated by the Bank.

#### **Assessment of the application for an operating license**

**ARTICLE 6-** (1) In the case that the requirements, qualifications and competencies required by this Law are fulfilled, the information and documents requested by the Bank are fully submitted and it is decided by the Bank that the application is favourable, then license for functioning as a system operator pursuant to Article 5 of this Law shall be granted and the decision regarding granting of an operating license shall be published in the Official Gazette.

(2) The application made to the Bank pursuant to this Law to be a system operator shall be finalized by the Bank within six months following the delivery of all of the information and documents requested for the application without any deficiency. This decision, -if it is negative together with its reasons - shall be communicated to the relevant parties.

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

**ARTICLE 7-** (1) The operating license of the system operator terminates automatically,

a) On the date when the legal personality terminates, if the system operator's legal personality terminates as a result of a transaction which alters the legal status of the system operator such as a merger or disintegration,

b) On the date when the system operator ceases to exist pursuant to Articles 529, 530 and 531 of the Turkish Commercial Code No. 6102 dated January 13, 2011,

c) On the date when the period of six months expires, if the system operator does not operate for more than six months within one year following the date of commencement of its operations.

2) The Bank publishes the termination of the operation license in the Official Gazette, following the notification of the situations stated in the first paragraph to the Bank by the system operator pursuant to the third paragraph of Article 23 of this Law or detection of these situations.

#### **Oversight of the system**

**ARTICLE 8-** (1) The Bank is authorized to oversee the systems established or to be established in order to ensure their uninterrupted operation.

(2) Within the context of oversight, the system operator is obliged to submit all kinds of records, information and documents, even if they are confidential, to the Bank with respect to the procedures and principles to be determined by the Bank, and make the system ready for the oversight of the Bank.

(3) The procedures and principles regarding the oversight of the system shall be set in the regulation to be issued by the Bank.

**Incidents which require taking measures and measures to be taken**

**ARTICLE 9-(1)** The Bank takes the appropriate measures with respect to the operation of the system in case of detection of the following incidents:

- a) Acting beyond the scope of the operation license.
- b) Acting contrary to this Law and the regulations issued pursuant to this Law.
- c) Jeopardizing the security, soundness and stability of the system.
- ç) Detecting any situation in which the system operator no longer meets the requirements specified in Article 5 of this Law.
- d) The system operator ceasing to cooperate in the oversight of the system.
- e) Not beginning operations within one year after acquiring an operation license.
- f) The system operator notifying the Bank that the system operator clearly renounces its operation license or terminates system activities.
- g) Detecting any situation in which the operating license is obtained by misstatements and non-factual documents.
- ğ) Violating the third paragraph of Article 23 of this Law,
- h) The Bank deducing that the stability of the financial system could be endangered if the system operator continues to operate the system.

(2) If the Bank detects the incidents in the first paragraph, it will take the measures listed below according to the severity of the violation:

- a) Granting a reasonable period of time for the system operator to remove the violation.
- b) Requesting from the system operator to take necessary measures approved by the Bank in order to ensure the realization of settlement.
- c) Requesting from the system operator to dismiss the participants from the system who do not fulfill their obligations pursuant to this Law.
- ç) Withdrawing the operation license of the system operator or temporarily suspending the operation license granted to the system operator until the detected violation is removed.
- d) Temporarily taking over the management of the system operator with the purpose of avoiding systemic risks that could threaten the financial stability.

(3) The Bank will notify the relevant system operator of the measures to be taken pursuant to the second paragraph of this article with the reasons of these measures.

(4) In case the Bank takes the measures stated in subparagraphs (ç) and (d) of the second paragraph of this article, it shall publish this matter in the Official Gazette.

**SECTION THREE**

**Transfer Order, Netting, Collateral and Designation of the Systems**

**Transfer order, netting and collateral**

**ARTICLE 10-** (1) The moment when the transfer order becomes irrevocable shall be clearly determined in the system rules and the transfer order cannot be revoked by the participant or any third party thereafter.

(2) The moment of entry of a transfer order into the system is defined in the system rules.

(3) All kinds of measures and decisions that are regulated by Laws and preclude the participant or the system operator to make transactions with their funds or securities including the temporary suspension, imposition of restrictions or permanent suspension of a participant's or system operator's fund or securities transfers, apply only to the transfer orders which enter into the system after the notification regarding the aforementioned measures and decisions are made to the system operator.

(4) In case the system works according to the netting principle, the transfer orders, which have entered into the system before the measures and decisions stated in the third paragraph are conveyed to the system operator, shall be included in the netting process.

(5) The funds and securities, which are present in the settlement account of the participant on the day the measures and decisions defined in the third paragraph are notified to the system operator, shall primarily be used to fulfill the participant's obligations in the system.

(6) The measures and decisions defined in the third paragraph shall become effective in terms of the participant's or the system operator's rights and obligations within the system, only after these measures or decisions are notified to the system operator.

(7) The collateral given to the participant or the system operator with respect to the system and the collateral given to the Bank shall be used to fulfill the obligations of the collateral's owner to the system. The measures and decisions in the third paragraph shall apply to the remaining part of the collateral after the obligations of the collateral owner are fulfilled.

#### **Designation and announcement of the systems**

**ARTICLE 11** – (1) The Bank shall determine the systems which will be subject to the provisions of Article 10 of this Law and shall 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, payment services are defined as:

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

b) Execution of payment transactions, including transfer of funds on a payment account with the user's payment service provider, direct debits, including one-off direct debits, payment transactions through a payment card or a similar device, credit transfers including standing orders,

c) Issuing or acquiring 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 telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services,

e) Corresponding services enabling bill payments.

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

a) Payment transactions made in cash directly from the payer to the payee, without any intermediary intervention,

b) Payment transactions from the payer to the payee through a commercial agent authorized to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee,

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

ç) Services where cash is provided 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 through a payment for the purchase of goods or services,

d) Cash to cash foreign exchange operations, where the funds are not held on a payment account,

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

f) Payment transactions executed by the Bank, settlement institutions, central counterparties, clearing houses, payment service providers and other participants of the system on behalf and account of their own in the systems,

g) Payment transactions regarding capital markets activities under Capital Market Law No. 6362 dated 06.12.2012 performed by the legal persons and capital market institutions designated in subclause (f) of this paragraph,

ğ) Services provided by technical service providers, which support the provision of payment services, without their entering at any time into possession of the funds to be transferred, including processing and storing data, trust and privacy protection services, data and entity authentication, information technology (IT) and communication network provision, provision and maintenance of terminals and devices used for payment services,

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

ı) Payment transactions executed by means of any telecommunication and IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication and IT device, provided that the telecommunication and IT 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 on their behalf and on their own account,

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 (ATMs) 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 and services which do not conduct any of the payment services,

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

(3) The procedures and principles regarding payment services, information and conditions to be provided regarding payment services and the procedures and principles regarding the framework agreement, are determined by the regulations to be issued by the Agency after obtaining the opinion of the Financial Crimes Investigation Board and the Bank.

**Payment service provider**

**ARTICLE 13- (As amended by Decree Law No. 690 of April 29, 2017) (1)**

Pursuant to this Law, the payment service providers are:

- a) banks within the scope of the Law No. 5411,
- b) electronic money institutions,
- c) payment institutions,
- ç) Postal and Telegraph Corporation.

(2) Any legal person other than the banks and payment service providers listed in the first paragraph of this Article shall not provide payment services.

**Payment institution**

**ARTICLE 14- (1)** Any payment institution which intends to operate in the payment services area within the scope of this law shall be required to obtain authorization from the Board.

(2) For authorization as a payment institution, the following requirements must be fulfilled:

- a) it shall be established as a joint stock company,
- b) those having ten percent or more shares in a payment institution's capital and having control over the payment institution shall meet the bank founders eligibility criteria as set forth in the Law No. 5411,
- c) its shares shall be issued against cash and be fully registered in its name,
- ç) its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than one million Turkish Liras for the payment institutions which provide the services stated in paragraph (1) (e) of Article 12 of this Law and not be less than two million Turkish Liras for other payment institutions,
- d) it is required to have sound and prudent management, adequate personnel and technical equipment to perform the payment services business within the scope of this Law and establish necessary units for complaints and objections,
- e) it should take necessary precautions for the continuity of the activities to be conducted within the scope of this Law, and for the security and confidentiality of the payment service user's funds and information,
- f) it shall have a transparent and clear partnership structure and organization chart that will not prevent supervision of the Agency,

(3) While providing payment services, the payment institution may hold payment accounts on condition that they are used exclusively for payment transactions. Any funds received by the payment and electronic money institutions concerning payment services shall not be considered as a deposit or participation fund pursuant to Article 60 of the Law No. 5411, or electronic money within the scope of this Law.

(4) The payment institution shall not conduct the business of granting credit. Whether the activities carried out related to payment services regarded as the business of granting credit or not shall be determined in the regulation to be issued by the Agency.



(5) The Board shall be authorised to determine the activities which shall not be carried out by the payment institution.

(6) The procedures and principles regarding the implementation of this Article, information and documents to be requested concerning the establishment of the payment institution, operations, capital and own funds structure, use of branch, agent or outsourcing institution, corporate governance principles, internal systems, management of IT system management and other activities which are not covered under the scope of this Law are determined in the regulation to be issued by the Agency in consultation with the Financial Crimes Investigation Board and the Bank.

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

**ARTICLE 15-** (1) An operating license shall be granted pursuant to Article 14 of this Law to operate as a payment institution provided that the conditions, qualifications and competencies required under the scope of this Law are met, the information and documents to be requested by the Board are fully declared and the application is approved by the Board and the decision to grant an operating license shall be issued in the Official Gazette.

(2) Before making a judgement for granting the operating license, the Bank's opinion shall be obtained by the Board.

(3) The Agency may require the establishment of a separate entity for the payment services business, in which the non-payment services activities of the payment institution impair or are likely to impair either the financial soundness of the payment institution or the ability of the Agency to monitor the payment institution's compliance with all obligations laid down by this Law and by the regulation to be issued based on this law.

(4) The application for the operating license submitted to the Agency within the scope of Article 14 of this Law shall be concluded by the Board within six months following the date of completion of all the required information and documents in relation to the application. In case the decision is negative, the relevant parties shall be informed about the decision together with the reasons.

(5) An institution to which an operating license is granted shall notify the Agency about commencement of operations within 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 a minimum of five members cast votes in favor of revocation:

a) the payment institution has failed to commence using this authorization within one year after obtaining the operating license,

b) the payment institution notifies the Agency to expressly renounce the authorization or to cease its operations,

c) it is detected that the operating license has been obtained with false statements and documents,

ç) it is determined that the payment institution no longer meets the qualifications specified in Article 14 of this Law,

d) it is detected that a payment institution violated the third paragraph of Article 23 of this Law,

e) a Board conclusion that by continuing its business, a payment institution would constitute a threat to the security of its payments,

(2) The Agency shall notify to the relevant payment institution and the Bank about the revocation of the operating license along with the reasons.

(3) The Agency shall publish the revocation of the operating license in the Official Gazette. Publication of the decision of revocation in the Official Gazette constitutes a notification to the relevant parties.

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

**ARTICLE 17-** (1) Except for the cases defined in the first paragraph of Article 16 of this law, the operating license is automatically terminated on the date when:

a) the legal personality of the payment institution terminated, in which cases such as merger or disintegration causes a change in the legal structure of the payment institution terminating the legal personality of the payment institution,

b) the legal personality of the payment institution is terminated pursuant to Article 529, Article 530 and Article 531 of the Law No. 6102,

c) the six months period is over, during which the payment institution has ceased to engage in business for more than six months within a year after commencing its activities,

(2) The Agency shall inform the Bank about the termination of the operating license and publish the information in the Official Gazette following the notification of the situations set out in the first paragraph to the Agency or identification of these situations in accordance with the third paragraph of Article 23 of this Law.

## **SECTION FIVE**

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

#### **Electronic money issuers**

**ARTICLE 18-** (As amended by Decree Law No. 690 of April 29, 2017) (1) It is prohibited to issue electronic money for those other than the banks operating pursuant to the Law No. 5411, Postal and Telegraph Corporation and the electronic money institutions granted permission to issue electronic money within the scope of this Law.

(2) An electronic money institution who intends to issue electronic money within the scope of this Law shall operate provided that it obtains permission from the Board.

(3) Requirements for the establishment of an electronic money institution are as follows:

a) it should be established as a joint stock company,

b) its shareholders for those having ten percent or more shares in an electronic money institution's capital and having the control, shall meet the bank founders' eligibility criteria as set forth in the Law No. 5411,

c) Its shares shall be issued against cash and registered to its name,

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

d) It is required to have sound and prudent management, adequate personnel and technical equipment, to perform the electronic money business defined within the scope of this Law, and to establish units for complaints and objections,

e) It is required to take necessary precautions for the continuity of the operations conducted under the scope of this Law and for the security and confidentiality of the electronic money user's funds and information,

f) It is required to have a transparent and clear partnership structure and organization chart that will not hamper the effective supervision of the Agency.

(4) The electronic money institutions execute their activities through the banks defined in the Law No. 5411.

(5) The pre-paid instruments that can be used only on the premises of the electronic money issuer or only to acquire a limited range of goods or services or within only a limited network of service providers under a commercial agreement with a professional issuer are out of the scope of this law.

(6) The procedures and principles regarding the implementation of this Article, information and documents to be requested regarding the establishment of an electronic money institution, operations, capital and own funds structure, using a branch, agency or 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 out in a regulation to be issued by the Agency through consultation with the Financial Crimes Investigation Board and the Bank.

#### **Miscellaneous provisions applied to the electronic money institution**

**ARTICLE 19-** (1) The provisions set out in Articles 15, 16 and 17 of this Law shall also be applied to electronic money institutions.

#### **Issuance of electronic money**

**ARTICLE 20-** (1) The electronic money institution shall issue electronic money at par value on the receipt of funds.

(2) The electronic money institution shall convert the funds deposited by the electronic money user into electronic money without any delay and make them ready for use.

(3) The electronic money institution is obliged to transfer the funds received from the public in exchange for electronic money to a separate account to be opened in a Bank as defined in the Law No. 5411 and to keep funds in that account during the term of use. Pursuant to this paragraph, the banks, which hold the funds, shall block the amount deposited by the electronic money institution at their accounts in the Bank for the term of use. The procedures and principles regarding the enforcement of this paragraph shall be determined by the Board.

(4) Electronic money institutions shall not grant credit.

(5) The electronic money institutions shall not grant interest or any other benefit related to the length of time during which the electronic money holder holds electronic money.

(6) The Board is authorized to determine the other activities which cannot be carried out by the electronic money institution.

(7) The funds received from the electronic money users in exchange for issuing electronic money shall not be considered as deposit or participation fund pursuant to Article 60 of the Law No. 5411.

### **SECTION SIX Other Provisions**

#### **Supervision**

**ARTICLE 21- (As amended by Decree Law No. 690 of April 29, 2017)** (1) Supervision of the payment institution, the electronic money institution and Postal and Telegraph Corporation under the scope of this Law shall be carried out by the Agency.

(2) The Agency shall be authorized also to supervise the branches, the agents of the institutions described under 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 the professional staff of the Agency authorized for on-site supervision. The payment institution and electronic money institution as well as other relevant natural and legal persons shall be obliged to provide all kinds of information and documents requested by the professional staff of the Agency responsible for on-site supervision, submit all their ledgers, records and documents, and keep them ready for examination.

(4) Under the scope of the first paragraph, the payment institution and the electronic money institution shall be obliged to submit all kinds of records, information and documents, even if they are confidential, to the Agency in accordance with the procedures and principles set by the Board and make them ready for examination by the Agency.

(5) Without prejudice to the provisions pertaining to cases that could give rise to heavy consequences for the security and basic international interest of the state as well as professional discretion, privacy of family life, confidentiality of investigation and right of defense, public institutions and agencies shall be obliged to provide all kinds of information and documents, including those are classified as confidential, in proper time and place, continuously or separately to be requested by the Agency in connection with its duties to be granted under the scope of this Law regardless of the prohibitive and restrictive provisions of 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 carried out within the scope of the Statutory Decree No. 660 on the Organization and Duties of the Public Oversight, Accounting and Auditing Standards Authority dated 26/9/2011. However, the audit of the payment and electronic money institutions with respect to information systems shall be conducted by the independent audit institutions within the ambit of the procedures and principles determined by the Board. Independent audit reports to be prepared by the audit firms are sent to the Agency under the scope of the procedures and principles determined by the Board.

(7) Additional conditions to be required for those offering independent audit pursuant to this Law among the independent audit institutions authorized by the Public Oversight, Accounting and Auditing Standards Authority shall be determined by the Board and the list regarding the entitled independent audit institutions which satisfy these requirements shall be made public. The Board shall be empowered to remove the independent audit institutions from the list in case any violations of the regulations and standards are detected by the Board as a result of its quality control and supervision with regard to the independent audit conducted within the scope of this law.

(8) The Board shall be authorized to ask for the necessary precautions to be taken about the matters which are detected as a result of supervisions carried out by the Agency of the payment institutions and electronic money institutions including independent audits, to give a reasonable period of maximum six months to take necessary measures, to temporarily suspend the operating permission of the payment institution and electronic money institution

until necessary measures shall be taken within the period determined, and to revoke the operating permission if the measures are not taken within the period of time.

(9) Other procedures and principles regarding the supervision of the payment institution and electronic money institution shall be determined by the regulation to be published by the Agency.

#### **Safeguarding funds and collateral**

**ARTICLE 22-** (1) The funds received by the payment institution for the execution of payment services and the funds collected by the electronic money institution in Exchange for issuing electronic money shall be safeguarded pursuant to the procedures and principles to be determined in the regulation issued by the Agency.

(2) The Board may require the payment and electronic money institutions which are within the scope of this Law to maintain collateral in the Bank in accordance with the procedures and principles set forth by the Board.

(3) The funds received by payment and electronic money institutions and the accounts at which these funds are held shall be used to compensate the fundholders for any losses incurred and to fulfil the liabilities arising from this law regardless of the priorities given under the other laws, in the event of voluntary or compulsory liquidation of payment or electronic money institution and cancellation of their operating permission. Payment and electronic money institutions are responsible for reimbursing the claims of fundholders.

(4) The Bank may require the system operators within the scope of this law to keep collateral in accordance with the procedures and principals to be determined by the Bank.

#### **Keeping records and documents, protection of personal information, notification of changes**

**ARTICLE 23- (As amended by Law No. 6637 of March 27, 2015)** (1) The system operator, payment institution and electronic money institution shall be required to keep all the documents and records related to the matters within the scope of this Law for at least ten years in the country, in a secure and accessible manner. The system operators shall be required to keep information systems and their substitutes which are used to carry out its activities in the country. The procedures and principles regarding the information systems which are used by payment institution and electronic money institution to carry out their activities shall be determined by the Board.

(2) When this is necessary to safeguard the prevention, investigation and detection of payment fraud, payment systems and payment service providers shall use personal data by taking necessary precautions regarding the protection of personal information.

(3) In the case that any change occurs that shall affect the validity of the information and documents requested by the competent authority, the system operator will promptly inform the Bank; the payment institution and electronic money institution will inform the Agency on this issue.

#### **Exemptions and exceptions**

**ARTICLE 24 – (As amended by Decree Law No. 690 of April 29, 2017)** (1) The provisions of this law shall not be applied to the matters related to bank cards and credit cards which are under the scope of the Law No. 5464 dated 23 February 2006 on bank cards and credit cards and the regulations issued in accordance with that Law.

(2) The payment systems regarding the bank and credit cards are not within the scope of the first paragraph.

(3) The authority of the Capital Markets Board and the Board stemming from other regulations regarding the system shall be reserved.

(4) Postal and Telegraph Corporation is not subject to provisions of the first and second paragraphs of Article 14 and second and third paragraphs of Article 18 of this Law. The procedures and principles regarding the enforcement of other articles of this Law to Postal and Telegraph Corporation shall be determined by the Board. The Board may temporarily or indefinitely suspend the operating permission of the Postal and Telegraph Corporation for providing payment service or issuing electronic money within the scope of this Law as a result of the supervision conducted by the Agency under the scope of this Law.

#### **Acquisition and transfer of shares and notification of changes**

**ARTICLE 25-** (1) Any acquisition of shares that results in the acquisition directly or indirectly of shares representing ten percent or more of the capital of a bank or results in a situation in which shares held directly or indirectly by one shareholder exceed ten percent, twenty percent, thirty-three percent or fifty percent of the capital, and transfers of shares that result in shares held by one shareholder falling below these percentages, shall require the permission of the Bank for system operators, and of the Board for payment institutions and electronic money institutions. Establishment and termination of usufructory rights that includes voting rights shall be considered as acquisition and transfer within the ratios stated in this paragraph.

(2) Assignment and transfer of preferential shares with the right to promote a member to the board of directors or audit committee or to issue new preferential shares shall be subject to the Bank's permission for system operators and to the Board's permission for payment institutions and electronic money institutions irrespective of ratio thresholds stated in the first paragraph.

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

(4) The person who acquires the shares during the share transfers subject to permission shall meet the qualifications required for bank founders pursuant to the Law No. 5411.

(5) The share transfers which are subject to permission but performed without any permission shall not be recorded in the book of shares. Records recorded in the book of shares in contravention of this provision shall be considered as null and void.

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

#### **Cooperation among institutions**

**ARTICLE 26-** (1) The Agency and the Bank shall share their views or exchange information regarding issues relevant to enforcement of provisions on payment and electronic money institutions under this Law.

(2) The Agency and the Bank shall share mutually agreed upon information in their databases to fulfill the duties stated in this Law regarding the payment and electronic money institutions within the scope of confidentiality.

(3) The procedures and principals regarding cooperation with competent domestic and foreign authorities on supervision, information sharing and other issues shall be set by the Bank for system operators, by the Board for payment and electronic money institutions by taking the views of the relevant parties.

## **SECTION SEVEN**

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

#### **Violation of regulations and decisions**

**ARTICLE 27-** (1) For the legal persons who violate the provisions within this Law, and the regulations and decisions issued pursuant to this Law and which are not subject to a separate criminal sanction in this Section, an administrative fine from twenty thousand Turkish Liras to five hundred thousand Turkish Liras shall be imposed by the Board if they function as a payment service provider or by the Bank if they function as a system operator. However, if a benefit is gained as a result of this violation, the administrative fine cannot be less than double this benefit. If this violation is committed more than once until the administrative sanction is imposed, only one administrative fine shall be imposed and the fine shall be increased by two times. However in case a benefit is gained or loss is caused by committing this violation, the administrative fine cannot be less than three times this benefit or harm.

(2) The decisions taken pursuant to the first paragraph shall be communicated to the relevant institution with its reasons.

(3) The decision regarding the administrative fine shall be made only after the defense of the relevant party is taken. If the defense is not submitted within one month from the date of receipt of the notification for the defense request, the relevant party shall be deemed to waive its right of defense.

(4) The administrative fines imposed pursuant to this Law shall be paid within one month after notification.

#### **Operating without license**

**ARTICLE 28-** (1) Natural persons and officers of legal persons who act as system operators, payment institutions or electronic money institutions without having licenses which should 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) Natural persons or officers of legal persons, who use words and expressions which could create an impression that they are acting as system operators, payment institutions or electronic money institutions, in their business titles, all kinds of documents, notices and advertisements or public statements without having the license which should be obtained pursuant to this Law, shall be sentenced to imprisonment from one year to three years and a judicial fine of up to five thousand days.

(3) In cases where the offenses defined in the first and second paragraphs are committed within the body of a business place, such business places may be closed from two months to six months and permanently if such acts are repeated.

(4) Provisions of this article shall be enforced in cases in which a system operator, payment institution or electronic money institution whose operating license granted pursuant to this Law has been withdrawn, continues its activity.

**Preventing supervision and oversight activities and nondisclosure of the requested information**

**ARTICLE 29-** (1) The person who prevents the fulfillment of supervision and oversight duties of the Bank and the Agency within the context of this Law shall be sentenced to imprisonment from one year to three years.

(2) The person who does not disclose the information and documents requested within the scope of the supervision and oversight activities carried out by the Bank and the Agency within the context of this Law shall be sentenced to imprisonment from three months to one year and a judicial fine of up to one thousand five hundred days.

**False statement**

**ARTICLE 30-** (1) The person or persons signing false statements in the documents that a system operator, payment institution and electronic money institution within the scope of this Law published or submitted to the authorities specified in this Law and to the officers conducting supervision and oversight activities and to the courts, shall be sentenced to imprisonment from one year to three years and a judicial fine up to two thousand days.

**Acting against the obligation of safekeeping of the documents and information security**

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

(2) Without prejudice to the payment service user's liabilities regarding the payment instrument, the officers of the institutions which do not take the precautions required to prevent the access of third parties other than the persons authorized to use the payment instrument, to the personal security information regarding the payment instrument and which do not ensure the safe arrival of the payment instrument and the personal security information regarding the payment instrument to the payment service user and the parties making the related transactions shall be sentenced to imprisonment from one year to three years and a judicial fine up to one thousand days.

(3) In the case where the offense defined in the second paragraph of this Article is committed due to carelessness or negligence or insufficiency in profession, the officers of the relevant institutions and the persons who perform the transaction shall be sentenced to a judicial fine of up to one thousand days.

**Disclosure of confidential information**

**ARTICLE 32-** (1) In the case where the shareholders, board members, employees, parties acting on behalf and officers of a system operator, payment institution and electronic money institution within the scope of this Law, disclose any confidential information about these institutions and their customers, which they acquire as a result of their positions and duties to anybody other than those who are clearly authorized by Law, they shall be



sentenced to imprisonment from one year to three years and a judicial fine of up to one thousand days even if they are dismissed from their duties.

(2) The provisions of the first paragraph shall be enforced for the employees of the outsourcing institutions and third parties who disclose confidential information of the institutions listed in the first paragraph and their customers.

#### **Damage of reputation**

**ARTICLE 33-** (1) Those who intentionally cause a matter that may damage the reputation or prestige or assets of a system operator, payment institution and electronic money institution within the scope of this Law through the instruments stated in the Press Law No. 5187 dated June 9, 2004 or radio, television, video, internet, wire broadcast or electronic data communication devices and similar broadcast tools or those who disseminate inaccurate news through this way shall be sentenced to imprisonment from one year to three years and a judicial fine from one thousand days to two thousand days.

#### **Criminal liability of officers and relevant parties of the electronic money institutions**

**ARTICLE 34-** (1) The officers and relevant parties of the electronic money institution that violates the provisions in the fourth paragraph of Article 18 and in Article 20 of this Law shall be sentenced to imprisonment from one year to three years and a judicial fine of up to five thousand days.

#### **Leaving the transactions unrecorded, nonfactual accounting**

**ARTICLE 35-** (1) The person or persons who have signed documents leaving the transactions of a payment institution and electronic money institution within the scope of this Law unrecorded and accounting these transactions in a manner not conforming to their nature, shall be sentenced to imprisonment from one year to three years and a judicial fine of up to two thousand days.

#### **Embezzlement**

**ARTICLE 36-** (1) The partners, chairman or members of the board, employees, parties acting on behalf and officers of the system operator, payment institution and electronic money institution within the scope of this Law, who embezzle any money and money substitutes as precious documents or notes as well as other assets which have been entrusted to them in connection with their duties or put under custody and supervision thereof, in their own or another's favor shall be sentenced to imprisonment from six years to twelve years and a judicial fine of up to five thousand days and to compensate for the losses incurred by the relevant institution as well.

(2) In the case that the offense has been committed by fraudulent behaviors such that the embezzlement will not be discovered, the offender shall be sentenced to imprisonment no less than twelve years and a judicial fine up to twenty thousand days; however, the amount of the judicial fine shall not be less than three times the loss suffered by the relevant institution. Furthermore, in case that the loss caused is not compensated, the court shall issue a judgment for the collection of the loss *ex officio*.

(3) In the case that the embezzled money, money substitute precious documents or notes as well as other assets have been fully returned or the loss suffered is fully compensated prior to the initiation of investigation, the punishment shall be reduced by two thirds. In the case that the embezzled money and money substitutes as precious documents or notes as well

as other assets have been voluntarily returned fully or the loss suffered is fully compensated prior to the initiation of legal proceedings, the punishment shall be reduced by half. If such case takes place prior to the verdict, the punishment shall be reduced by one third.

(4) In case the value of the money and money substitutes as precious documents or notes or as well as other assets that compose the subject of the embezzlement crime is low, the punishment shall be reduced from one third up to one half.

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

**ARTICLE 37-** (1) Investigating and prosecuting the offenses stated in Articles 28, 29 and 31 of this Law shall be subject to a written application to the Chief Public Prosecutor's Office by the Bank for system operators and by the Agency for payment and electronic money institutions. Such application shall be accepted as trial clause.

(2) If the relevant parties apply to the Chief Public Prosecutor's Office due to the offense stated in Article 31 of this Law, a written application clause shall not be required.

(3) Investigating and prosecuting the Bank personnel due to their actions during performance of their duties stated in this Law and the regulations to be issued pursuant to this Law, shall be subject to written application of the Bank to Chief Public Prosecutor's Office.

**ARTICLE 38-** (1) Sub-section (f) of sub-paragraph (I) of the third paragraph of Article 4 of the Central Bank of the Republic of Turkey Law No. 1211 dated January 14, 1970 is amended as follows:

“f) To regulate the volume and circulation of the Turkish Lira, to establish payment, 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 phrase “oversight and supervision” within sub-paragraph (e) of the first paragraph of Article 22 of the Law No. 1211 is amended as “oversight”.

**ARTICLE 40-** (1) The phrase “three” within the first paragraph of Article 90 of the Law No. 5411 is amended as “five”.

(2) The phrase “half of this number” in the first paragraph of Article 91 of the Law No. 5411 is amended as “twenty in total”, the phrase “four” in the fourth paragraph is amended as “eight” and the following sentence is added to the last paragraph of the same article.

“Upon the request from the members, the Board is entitled to determine its domestic representation offices apart from the Agency's headquarters as the permanent working place of the members.”

(3) The phrase “legal experts and assistants and information” within the first sentence of the first paragraph of Article 92 of the Law No. 5411 is amended as “legal experts and assistants, information experts and assistants and Banking Regulation and Supervision Agency”; the “legal and information” phrase within the third sentence is amended as “legal, information and Banking Regulation and Supervision Agency”; the “legal and information” phrase within the first sentence of the seventh paragraph is amended as “legal, information and Banking Regulation and Supervision Agency”; the “assistant expert” phrase within the second sentence is amended as “assistant expert (except Banking Regulation and Supervision

Agency assistant expert); the “legal and information” phrase within the fourth sentence is amended as “legal, information and Banking Regulation and Supervision Agency” and the following paragraphs are added to the same article.

“Information personnel can be employed in the Agency pursuant to the procedures and principles stated in Supplementary Article 6 of Statutory Decree No. 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 presented herein.

Contracted lawyers, at most ten, can be hired by the issuing power of attorney pursuant to the general terms and conditions, in order to prosecute the lawsuits and debt enforcement formalities to which the Agency becomes a party.

Services can be acquired for transactions which require special expertise and have a temporary structure without being subject to the provisions of the Public Procurement Law No. 4734, as long as the payments and contract terms are determined by the Board.

(4) The positions within the attached table are created and added to the Table Number (I) of the Law No. 5411.

**ARTICLE 41-** (1) The third paragraph of Article 101 of the Law No. 5411 has been amended as follows:

“The budget year of the Agency is the calendar year. The expenses of the Agency shall be covered by the payments paid by banks, leasing institutions, factoring institutions, financing institutions, payment institutions and electronic money institutions to the Agency under the name of the contribution share before the budget comes into effect. The amount to be collected as the contribution share of expenses shall not exceed three per ten thousand of the previous year’s balance sheet totals of these institutions. Any contribution share not paid within the specified period of time shall be collected pursuant to the provisions of the Law No. 6183.”

## **SECTION EIGHT Provisional and Final Clauses**

### **Regulation**

**PROVISIONAL ARTICLE 1 -** (1) The regulations set forth in this law shall be put in force within one year as of the effective date of this law.

### **Transitional provisions**

**PROVISIONAL ARTICLE 2-** (1) The system operators operating as of the effective date of this law, are obliged to harmonize their systems with this law within one year as of the date of publication of the relevant regulations to be issued by the Bank within the scope of this law, and to obtain required permissions by applying to the Bank.

(2) The institutions already providing payment services as of the effective date of this Law and that may be included within the category of payment institution which was developed within the scope of this Law, shall obtain required permissions by applying to the Agency within one year following the relevant regulations to be issued by the Agency under the scope of this Law.

(3) The institutions already issuing electronic money as of the effective date of this law and that may be included within the category of electronic money institutions developed within the scope of this law shall obtain required permissions by applying to the Agency within one year as of the publication date of the relevant regulations to be issued by the Agency.

(4) The institutions that have liability to obtain a license from the Agency in accordance with the provisions of the second and third paragraphs of this article and other payment service providers apart from them are obliged to adapt their operations to this Law and the provisions of the secondary regulations issued based on this Law within one year as of the date of publication of the relevant regulations to be issued by the Agency within the scope of this Law.

(5) The institutions required to obtain an operating license within the periods stated in the first, second and third paragraphs of this article shall not execute their activities under the scope of this Law without obtaining this license.

#### **Entry into force**

**ARTICLE 42-** (1) This Law shall enter into force on the day of its publication.

#### **Enforcement**

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