

## **BANKS ACT**

*(As amended by the Act No. 4743\*)*

**Act No: 4389**

**Date of Ratification: 18.6.1999**

### **Purpose and Scope**

**ARTICLE 1-1.** The purpose of this Act is to lay down rules governing incorporation, management, operations, acquisition, merger, liquidation and supervision of banks in order to protect rights and interests of depositors and to ensure an efficient functioning of the credit system by also giving due consideration to confidence and stability on financial markets and requirements of economic development.

**2.** The banks incorporated or to be incorporated in Turkey and the branches in Turkey of the banks incorporated or to be incorporated abroad shall be governed by provisions of this Act. Provisions of this Act shall also apply to any bank incorporated by virtue of a special act other than provisions thereof. Any issue not clearly specified in this Act shall be subject to general provisions.

### **Definitions**

**ARTICLE 2 -** For the purposes of this Act:

"Minister" means the Prime Minister or a Minister of State to be commissioned by the Prime Minister;

"Agency" means the Banking Regulation and Supervision Agency;

"Board" means the Banking Regulation and Supervision Board;

"Chairman" means the Chairman of the Banking Regulation and Supervision Board;

"Central Bank" means the Central Bank of the Republic of Turkey;

"Fund" means the Saving Deposits Insurance Fund;

"Bank" means any entity incorporated in Turkey as a bank in accordance with this Act and any branch in Turkey of a bank established in a foreign country;

"Branch" means all local organizations of banks including, but not limited to, branches, agencies and stationary or mobile offices engaged in accepting deposits and carrying out other banking transactions except units solely composed of electronic transaction devices;

"Paid-up Capital"<sup>\*\*</sup> means any bank's actual paid-up capital or paid-up capital set aside for Turkey free of any collusion less its loss disclosed in the balance sheet not met from reserves;

"Reserves"<sup>\*\*</sup> means any reserve set aside by banks in accordance with provisions of the Turkish Commercial Code no. 6762 dated 29.6.1956 and other relevant acts and articles of association thereof less any balance sheet loss, if any;

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<sup>\*</sup> It was published in the Official Gazette dated January 31, 2002 and no.24657 (Supplementary Issue No.1)

<sup>\*\*</sup> As amended by the Act No.4672

"Own funds"\* means sum of paid-up capital and contributed capital, less, items to be deducted from capital, principles, elements and proportions of which are to be determined by the Board by taking into consideration the international standards,

“Consolidated own funds”\*\* means the sum of resources determined by the Board for the purpose of application of standard ratios and exposure limits on a consolidated basis.

## **Banking Regulation and Supervision Agency**

**ARTICLE 3-1.** A "Banking Regulation and Supervision Agency", with the status of a public legal entity with administrative and financial autonomy, is hereby established in order to ensure application of this Act and other relevant acts, and to supervise and conclude such application, and to ensure that savings are protected and to carry out other activities and to exercise its authority defined in this Act by also issuing regulations within limits of authority granted by this Act. The Agency is obliged and authorized to take and implement any decision and measures in order to prevent any transaction or action which could jeopardize rights of depositors and a regular and secure operation of banks and lead to substantial damages to the national economy and to ensure efficient functioning of the credit system. The Agency's Head Office shall be located in Ankara. The Agency may establish organisations at any place where it deems appropriate.

2. The Minister shall require annual accounts of the Agency including the Fund and transactions relating to its expenditures audited by a committee consisting of an auditor from the Supreme Court of Public Accounts, an inspector from the Prime Minister's office and an inspector from the Ministry of Finance and take necessary measures in respect of results of such audit. A report including results of the audit as well as actions and measures taken in respect thereof shall be submitted by the Minister to the Council of Ministers together with the Agency's annual report.

3. \*\*\* The decision-making body of the Agency is the Banking Regulation and Supervision Board consisting of seven members, including a chairman and a vice-chairman. The chairman of the Board is also the chairman of the Agency. Board members shall hold at least a bachelors degree in law, economics, finance, banking, business management, public administration, political sciences or equivalent fields or in any engineering field related to any of the foregoing. The Board members who have a bachelor's degree in any engineering field need to have a master's degree in any of the fields enumerated above. Board members, are appointed by the Council of Ministers upon the proposal of related Minister, among the candidates who has at least 10 years of experience and has worked as senior executive in finance area with at least 3 of them in banking sector, or has worked as a faculty member for at least 10 years in the fields enumerated above. The Council of Ministers will designate one of the appointed members as chairman, and another as the vice-chairman.

4. \*\*\*\* a) The Chairman and members of the Board shall hold office for six years. Any member may be re-elected upon expiry of his term. In case of any vacancy in the chairman or members positions for any reason, such vacancy shall be filled by an election and appointment within two months in accordance with procedures set forth herein above. Any chairman or member so appointed shall hold office until expiry of his predecessor's term. Where any member becomes unable to perform his functions temporarily due to illness, accident or any other event, he shall be deputized by a Deputy President of the Agency who has the longest length of service. If such inability to perform his functions lasts for more than three months then the respective member shall be dismissed and his successor shall be appointed within seven days.

b) The chairman or any member of the Board may not be discharged prior to expiry of his term in office. Provided, however, that any chairman or member of the Board, who is no longer able to

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\* As amended by the Act No.4672.

\*\* Added by Act No.4672.

\*\*\* As amended by the Act No.4491

\*\*\*\* See the third provisional article of Act No.4672

meet requirements for his appointment or found to have breached provisions of paragraph (5) or has been finally convicted by a court due to an offence he has committed in connection with his duties shall be discharged subject to the Prime Minister's approval prior to expiry of his term in office in which case a successor shall be appointed within two months. If any such dismissal is likely to lead to a difficulty in adopting resolutions, then a Deputy President of the Agency who has the longest length of service shall substitute for the member discharged.

c) The financial rights and positions of any Deputy President, who deputizes or substitutes for any member of the Board pursuant to this provision, or appointment, promotion and retirement thereof shall not be effected thereby.

**5.\* a)** Unless permitted by a special law, no member of the board may accept employment in another public or private entity, involve in commercial business, work as managers of societies, foundations, cooperatives and similar entities, perform his/her profession independently, give a lecture in consideration of a fee or assure a role in any examination or similar tasks or acquire shares of any partnership. Board members are obliged to transfer or sell any shares that they own in entities to non-related individuals who are more distant than 3<sup>rd</sup> degree blood relatives and 2<sup>nd</sup> degree non-blood in 30 days after their appointments. Members who do not abide by this rule will be considered as having resigned from their positions in the Board.

**b)\*\*** Board members may not take office in the establishments covered by this Law within the two-year period following their discharge, except for the banks whose management, supervision or shares have been transferred to the Fund. The professional principles that the Board members and personnel of the Agency abide by are determined by The Board.

**6.** All members of the Board shall take an oath before the First Presidential Board of the Supreme Court of Appeals that they will perform their duties with due diligence and integrity and that they will not infringe and not permit others to infringe provisions of the Act during their respective terms in office. Any application made for taking such an oath shall be accorded priority by the Supreme Court of Appeals. No member of the Board can assume his duties until he has taken an oath.

**7.** The Board shall meet with attendance of not less than five members under chairmanship of the chairman or, if the chairman is absent, the Vice Chairman. The quorum required for adopting a resolution shall consist of affirmative votes of minimum four members. Any resolution so adopted by the Board shall be deemed to be final. The chairman or any member may not participate in the discussions concerning their relatives specified in the third paragraph of Article 245 of the Code of Civil Procedures no. 1086 and may not cast votes. The Chairman is responsible for overall management and representation of the Agency and for execution of decisions taken by the Board. Where the Chairman is absent due to an annual leave, sickness, an assignment within or without Turkey, removal from the office or otherwise he shall be deputized by the Vice Chairman.

**8.\*\*\*** Board members and all employees of the Agency may not disclose any confidential information relating to any person concerned or third parties, which they may have access to during performance of their duties and supervision, to any person other than the authorities entitled by law or use such information for their own benefit. This obligation shall remain in full force and effect even after they have been discharged. All funds, documents and properties of the Agency shall be deemed to be state property. Members of the Board and the Agency's employees shall be treated as civil servants in respect of any offence they have committed during or in connection with performance of their respective duties or of any offence committed against them. Investigations related to their duties shall be initiated within the framework of general provisions, provided that permission of the Minister is

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\* As amended by the Act No.4491.

\*\* As amended by the Act No.4743

\*\*\* The last two sentences of this sub-paragraph is amended by the Act No.4491.

required for the Board members and permission of the Board is required for the personnel of the Agency.

**9.** The Agency may require from any ministry, public or private entity and person all kinds of documents and information including those classified as confidential in connection with any issue relating to its responsibilities and any such ministry, entity or person shall be obliged to respond to any such request and provide required means to representatives of the Agency. The Agency shall, upon demand or where deemed necessary, provide the Treasury Undersecretariat, the Undersecretariat of State Planning Organization and the Central Bank with opinions and information in respect of execution of policies relating to money, credit and banking.

**10.** Any authority, which has been duly authorized for supervision under laws of a foreign country, may audit accounts and books of any branch or partnership subject to this Act in Turkey of an entity engaged in financial markets of that country or require information therefrom only if it has obtained prior authorization from the Board. Any information requested by any such authority may be issued by the Agency provided that they are treated as confidential and not disclosed to any third party. The Board may cooperate and exchange information with any authority of a foreign country responsible for supervision within the framework of agreements it will enter into with such entities.

**11.** The Agency is authorized to issue regulations and official communiques in respect of application of this Act by the decision of the Board. The Board and the Agency shall exercise their respective powers by establishing regulations and taking special decisions. Any regulation or communique, which has been issued to regulate a transaction, shall be effective on the date when it is published in the Official Gazette. Any special decision shall be published in the Agency's weekly bulletin where deemed necessary.

#### **Head Office and Sub-divisions of the Agency**

**ARTICLE 4-1.** The Board shall appoint three deputy presidents in order to assist the Chairman in performance of his duties. A deputy president shall have at least a graduate degree in law, economy, finance, banking, business management, public administration, statistics or engineering and have minimum 10 years of experience in any field coming under the Agency's responsibilities.

**2. a)** The service units of the Agency consists of major service units structured in the form of department chief office in a number required by the duties and authorities of the Agency, the Board of Sworn Bank Auditors, the consultancy units and support services units.

The service units of the Agency and their respective duties and responsibilities shall be defined in a regulation to be issued by the Council of Ministers upon the Board's proposal.

**b)** Primary and permanent duties and services, which the Agency is required to carry out and provided pursuant to this Act, shall be carried out and provided through professional personnel consisting of sworn bank auditors and assistants thereof and banking experts and assistant experts and other personnel.

**c)** Sworn bank auditors and their assistants and banking experts and assistant banking experts, working for the Agency, shall be employed under a contract.

**d)** Assistant banking experts shall be employed from among candidates holding at least a graduate degree in their respective fields and has successfully passed an examination. Any person appointed an assistant banking expert shall be appointed as banking expert by a resolution adopted by the Board with affirmative votes of at least five members provided that a proficiency thesis which he has prepared in respect of his specific field has been accepted by the Board and he has successfully passed an examination after working minimum three years for the Agency without receiving any adverse assessment from his superiors. Working principles and procedures and the proficiency and

competition tests which banking experts and assistant experts are required to pass shall be laid down in a regulation.

### **Sworn Bank Auditors**

**ARTICLE 5-1.** The implementation of those provisions hereof, and of other laws, that concern banks, and all kinds of operations of banks shall be inspected, and the relations and balances between their assets, receivables, own funds, liabilities and profit and loss accounts and all other elements affecting their financial structures shall be determined and analysed on behalf of the Agency, by sworn bank auditors and their assistants, who constitute a board directly reporting to the Chairman.

2. Limited to their authority specified by this Act, sworn bank auditors and their assistants shall be authorized to perform tax audits and also have the authority defined in Supplementary Article 1 of Act no. 1567 of 20.2.1930 for the Protection of the Value of the Turkish Currency in respect of banks and their officers acting in breach of the provisions of the said Act and shall also have the authority to audit the implementation of the special laws under which banks have been established and of other legislation to which they are subject to.

3. Sworn bank auditors and their assistants shall have the authority to request all such information as they may consider necessary under the above-mentioned legal provisions from banks and their subsidiaries and affiliates as well as from all other natural and legal persons and to examine all their books, records and documents, and such entities and persons shall, upon receipt of a request, provide the information requested and make their books, records and documents available for audit.

4. Governmental agencies and departments, the Central Bank of the Republic of Turkey, similar institutions and the risk management centre must provide sworn bank auditors and their assistants with any information and documents requested by them in connection with their duties even if such information and documents are confidential.

5. Assistant sworn bank auditors shall be appointed from among candidates who have received a graduate degree in relevant fields and has successfully passed a competitive examination. Those who have worked as an assistant sworn bank auditor for at least three years shall be appointed a sworn bank auditor by virtue of a resolution adopted by the Board with affirmative votes of minimum five members after they have successfully passed the proficiency examination.

6. The Chairman of the Board of Sworn Bank Auditors shall also act as the Deputy President of the Agency and be qualified as a sworn bank auditor.

7. Sworn bank auditors and their assistants shall not carry out any audit unless they take an oath before the Basic Commercial Court in Ankara.

8. The working principles and procedures of sworn bank auditors shall be set forth by a regulation.

### **Employment and Financial Rights of the Employees of the Agency, Budget of the Agency**

**ARTICLE 6-1.a)** The Agency's employees and members of the Board shall be subject to provisions of the Law on Pension Fund no. 5434 and any supplement and amendment thereto. As to retirement rights the Board's Chairman shall be deemed to be equal to the Ministry's Undersecretary; the Board members shall be deemed to be equal to the Ministry's Deputy Undersecretary; Deputy Presidents of the Agency shall be deemed to be equal to a Director General of the Ministry; the Chairman of the Board of Sworn Bank Auditors shall be deemed to be equal to the Chairman of the Board of the Ministry; the Heads of Departments of the Agency in the first degree shall be deemed to be equal to Deputy Director General of the Ministry; a senior Sworn Bank Auditor who has received a

graduate degree from a four-year university or college and authorized to perform inspections, audits or examinations in Turkey shall be deemed to be equal to an inspector working for the Ministry; and a Banking Expert, who has received a graduate degree from four-year university or college and entitled to receive a salary at first grade, shall be deemed to be equal to a Treasury expert. Length of service in any of the foregoing positions shall entitle the holder of that office, receive office compensation.

\* Any person, who has been transferred from any other public agency or institution to the Agency, shall be appointed to a position commensurate with their position in their former place of employment upon their request. In that case, their length of service in the Agency shall be added to their total length of service. Without prejudice to requirements, which shall be satisfied to gain academic titles, these provisions shall also be applicable to any personnel transferred from a university.

**b)** Any person who has been appointed Chairman or a member of the Board, who has been affiliated with any other social security organization established by law prior to his appointment, shall maintain their affiliations with such organization and shall not be governed by provisions of sub-paragraph (a) above.

**c)** Any person who has been appointed Chairman or a member of the Board shall not work for their previous employers during their term of office in the Board. Provided, however, that upon expiry of his term in office any such person shall be appointed by the Minister to a position corresponding to his vested rights. The conditions for obtaining academic titles are reserved.

**2.a)** The salaries of the Board members shall be determined by the Council of Ministers.

**b)** Salaries and other pecuniary rights of the Agency's personnel shall be determined by the Board in accordance with guidelines to be set forth by the Council of Ministers.

**3.** The Agency's expenditures shall be authorized by an annual budget, which shall be put into effect by virtue of a resolution adopted by the Board. The Agency's budget year is a calendar year. The budget shall be drawn up within 30 days preceding the respective budget year and prior to the effective date of the budget expenses shall be met from funds to be paid by banks to the Agency depending on their balance sheet total for the preceding year. Any amount to be paid as a contribution to fund expenses shall not exceed three per ten thousand of any bank's balance sheet total. Any such contribution not paid within the specified period shall be collected in accordance with the Act no. 6183 on Procedures for the Collection of Public Receivables. The Council of Ministers shall ratify the Annual Financial Report and the Final Budget Account relating to results of application of budget.

**4.** The Agency is not subject to the General Accounting Act no. 1050 of 26.5.1927, the Civil Servants Act no. 657 of 14.7.1965, the Act no. 3346 of 2.4.1987 on Procedures Governing Auditing by the Turkish Grand National Assembly of State-owned Enterprises and Funds, the Supreme Court of Public Accounts Act no. 832 of 21.2.1967, State Tenders Act no. 2886 of 8.9.1983 and the Reimbursement Act no. 6245 of 10.2.1954 as well as all additions and modifications thereto.

**5.** Members of the Board and all employees of the Agency shall have qualifications defined in sub-paragraphs (1), (4), (5), (6) and (7) of paragraph (A) of Article 48 of the Civil Servants Act no. 657 of 14.7.1965.

**6.** Provisions of the Collective Labor Agreements, Strikes and Lockouts Act no. 2822 relating to prohibitions on strikes and lockouts shall also apply to the Agency's employees and services.

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\* The paragraph was added by the Act No.4672.

## Conditions for Establishing a Bank and for Starting Operations

**ARTICLE 7-1.\*** Establishment of a bank in Turkey or opening of the first branch in Turkey, by a bank founded in a foreign country, is permitted by the Board, upon the affirmative votes of at least five of its members. Principles and procedures for the application for this permission and authorisation are determined by a regulation issued by the Board. Any authorisation issued for the foundation of a bank or for the opening of a branch office in Turkey shall become null and void in the event of failure to start operation within one year after the date of the permission.

**2.** Any bank to be founded in Turkey must:

**a)** be founded as a joint-stock company;

**b)** have founders who;

**ba)** have not been declared bankrupt or enter into a composition with creditors;

**bb)** do not hold, directly or indirectly, a share of ten percent or more in any banker, bank, insurance company or other institutions operating on money and capital markets which has been subjected to liquidation or any bank transferred to the Fund; and

**bc)\*** do not hold directly or indirectly, either a share equal to or more than 10 percent or a share less than this proportion but gives right to assign members of the board of directors or board of auditors of a bank against which legal action pursuant to Article 14 has been started,

**bd)\*\*** have not been sentenced to heavy imprisonment or to imprisonment for more than five years and, even if pardoned later on, except for negligent offences, or breach of provisions of Article 22 of this Act or convicted of infamous crime such as simple or qualified embezzlement, peculation, bribery, theft, swindling, forgery, breach of trust and fraudulent bankruptcy, or of smuggling, except for smuggling of personal consumption, sedition in official tenders and purchases, money laundering, disclosure of State secrets, tax evasion or attempted to tax evasion or participation to tax evasion,

**be)** have the financial capabilities and reputation which an incorporator or partner of a bank should be reasonably expected to have,

**c)** have all of its shares issued against cash and to name, and certify the identities of the natural persons who manage and control those of its founders that are legal persons, they being required to satisfy the requirements for being a founder;

**d)** have a capital, paid in cash and free of any collusion, which shall not be less than TL twenty trillion; and

**e)** have an articles of association in conformity with the provisions hereof.

**3.** Banks established abroad that will operate in Turkey by opening branches must:

**a)** have paid-up capital allocated to Turkey which shall not be less than the amount specified in sub-paragraph (d) of paragraph (2) hereof; and

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\* As amended by the Act No.4491

\*\* As amended by the Act No.4672

**b)** have not been prohibited or restricted from accepting deposits or engaging in other banking operations in the countries in which they are established or operating.

**4.** After receiving the permission to found a bank or to open a branch in Turkey, also a permission shall be required for accepting deposits or engaging in other banking operations. This permission shall be granted by the Board upon an application in the form of a statement. Authorizations issued shall be published in the Official Gazette. The Agency shall grant to those who do not meet the conditions specified herein or in regulations issued on the basis hereof an adequate period of time to make the necessary corrections and to eliminate the deficiencies. Those who re-apply within the specified period but who are not considered to be appropriate following an examination shall be notified of the result and the authorization shall be revoked. Principles and procedures related to applications and to the granting of permission shall be set forth in a regulation to be issued by the Agency. A bank permitted to be founded shall not start operation unless:

**a)** its capital has been paid in cash;

**b)** the founders have deposited into the Fund the contribution for joining the system in the amount of ten percent of the minimum capital indicated in sub-paragraph (d) of paragraph (2) hereof provided that five percent of the foregoing amount shall be deposited prior to commencement of operations and the remaining five percent within one year from the date of commencement of operations;

**c)** it possesses adequate management, personnel and technical equipment to carry out banking operations.

**5.** Provisions relating to foundation of banks, or to the opening of branches by banks established abroad, to engage exclusively in offshore banking operations in Turkey, their principles and areas of activity, their systems of accounts and records, the procedures for their supervision, and the temporary or permanent suspension of their activities, shall be determined by a decision of the Board. Banks engaged exclusively in offshore banking operations shall not be subject to articles hereof, save this paragraph, or to Article 40 of Act no. 1211 of 14.1.1970 on the Central Bank of the Republic of Turkey. Banking operations in free zones except off-shore banking shall be subject to the provisions hereof.

### **Amendments to Articles of Association and Assignments of Shareholders**

**ARTICLE 8-1.** Any amendment to the articles of association of a bank shall require an approval of the Agency. A proposed amendment not approved by the Agency shall not be debated in the general meeting of shareholders. The registrar shall not record an amendment to the articles of association in the Companies Register without the approval of the Agency. Any portion of the capital, which has been determined to have been increased in breach of applicable laws, shall not be taken into consideration in calculation of own funds.

**2. a)\*** Any acquisition of shares that result in the acquisition by one person directly or indirectly of shares representing ten percent or more of the capital of a bank or if shares held by one shareholder exceed ten percent, twenty percent, thirty-three percent or fifty percent of the capital as a result thereof, and assignments of shares that result in shares held by one shareholder falling below the percentages above, shall require the permission of the Board. Transactions resulting in the number of shareholders falling below five, and assignments of shares effected without permission, shall not be recorded in the book of shares. Any records made in the book of shares in breach of the foregoing provision shall be null and void. The provisions of this paragraph shall also apply to the acquisition of voting rights and pledging of shares. Assignment of preferential shares with the right of promoting a

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\* The last sentence of the sub-paragraph was amended by the Act No.4491.



member to the board of directors or auditors or shares which are granted a usufruct shall be subject to the Board's authorization irrespective of limits defined above.

**b) \*** Any shareholder, who, directly or indirectly, owns at least ten percent of the capital or, even if his interest in the capital is below the foregoing rate, owns shares, which entitle him to appoint directors or auditors, shall meet requirements which shall be satisfied by the founders.

**c) \*\*** Any shareholder, who no longer meets the requirements which shall be met by the founders or acquired a share without obtaining an authorization from the Board therefore, shall not be entitled to enjoy shareholder rights except dividend rights. In that case, other shareholder rights except dividend rights of those shareholders shall be exercised by the Fund. This provision shall not be applicable to any shareholder, who no longer meets requirements which the founders must satisfy, only because of his acquisition of an interest in a bank which is governed by provisions of subparagraphs (1) and (2) of Article 14.

**d) \*\*\*** The assignment of shares of legal entities directly or indirectly, who own 10 percent or more of the capital of the bank, under terms and conditions mentioned in paragraph (a) is subject to the permission of the Board. The permission might be given on condition that the person who acquires the shares bears the qualifications required for the founders. In case capital shares which determine the control and management of the legal entity is owned by another legal entity these provisions will be enforced until real person shareholders are determined.

**e) \*\*** In case of any authorization for assignment or acquisition of shares, which causes transfer of a bank's management and supervision to another group of companies, whether directly or indirectly, the bank's paid-in capital shall be raised to the amount specified in sub-paragraph (d) of paragraph (2) of Article 7 within one year from the date of the authorization.

## **Organisation and Organs of Banks**

**ARTICLE 9-1.a)** The board of directors of any bank shall have at least five members. The general manager of the bank and, in his absence, his deputy shall be a natural member of the board of directors. The qualifications required for the general manager in sub-paragraph (a) of paragraph (2) of this Article, except for the time criterion, shall also be required for majority of the board of directors. Managing directors shall satisfy the same conditions as the general manager. A three-member board of directors, including the manager of the main branch office and having the authority and responsibilities of a board of directors, shall be formed at the main branch office in Turkey of a bank established abroad and operating in Turkey through branches.

**b) \*\*\*\*** Members of the board of directors of any bank and the chairman and members of the board of directors of a branch in Turkey of any bank established in a foreign country shall take an oath before the local commercial court after their appointment or election. The foregoing persons and other officers of the bank as identified by the Board shall be subject to provisions of the Act no. 3628 of 19.4.1990 on Declaration of Personal Property and Elimination of Bribery and Embezzlement. Principles and procedures for taking an oath and declaration of property shall be set forth by the Board.

**c)** The board of directors shall be authorized to extend credits. The board of directors may delegate this authority to a credit committee or the head office in accordance with principles and procedures to be defined by the Board. Formation of a credit committee and its decision making principles shall be laid down by the Board.

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\* As amended by Act No.4672 changing the amendment by Act No.4491.

\*\* Added by the Act No.4672.

\*\*\* Paragraph (c) which was amended by the Act No.4491, is re-ordered as paragraph (d) by Act no.4672.

\*\*\*\* The first sentence was amended by the Act No.4672.

**2. a)** The general manager of a bank must have at least a graduate degree in one of the fields of law, economics, business management, finance, banking, public administration or an equivalent field or in an engineering field related to any of the foregoing and possess a minimum of ten years of professional experience in the field of banking or business management.

**b)** At least half of the assistant general managers of a bank must have at least a graduate degree in one of the fields indicated in paragraph (a) above, and possess a minimum of seven years of professional experience in the field of banking or business management. Other officers holding offices equivalent to or higher than the position of assistant general manager in terms of their authority and duties shall, even if employed under different job titles, be subject to provisions of this Act applicable to assistant general managers.

**3. a)** Those to be appointed to the position of general manager or assistant general manager must be notified to the Agency, enclosing documents which show that they satisfy the requirements stated in this Article. They may be appointed to such positions unless an adverse opinion together with reasons for it is notified by the Agency within seven working days after receipt of the notification.

**b)** General managers or assistant general managers who leave office for any reason shall be notified by the bank and themselves, to the Agency within seven days with a letter stating the reasons for leave.

**c)** In implementation of this Article, the manager of the main branch in Turkey of a bank established abroad, and the other members of its board of managers, shall be deemed, respectively, as the general manager and as assistant general managers.

**4.** Banks are obliged to set up an efficient internal audit system and a risk control and management system, the principles and procedures defined in a regulation to be issued by the Agency, compatible with the scope and structure of its operations in order to ensure monitoring and control of risks which they encounter due to their transactions. Banks shall employ an adequate number of auditors to verify conformity of their transactions to banking rules and regulations.

**5. \* a)** Any person, who has been sentenced to imprisonment or heavy fines due to an infringement of provisions of this Act, and those who do not meet requirements set out in paragraph (2) of Article 7 except sub-paragraph (be) of this Act may not be employed by any bank as its chairman of the board, member of the board, auditor, general manager, assistant general manager or as an officer with first degree signing authority. Signing authorities of such persons shall be promptly revoked by banks. This provision shall not be applicable to any shareholder, who no longer meets requirements which the founders must satisfy, only because of his acquisition of an interest in a bank which is governed by provisions of subparagraphs (1) and (2) of Article 14.

**b)** The signing authority of any bank employee, who, as a result of supervision, is found to have infringed provisions of this Act or other applicable laws and put the bank's safe operation into danger, shall be temporarily revoked upon the Board's request following institution of legal proceedings against that employee. Such persons may not be employed by any bank as an employee vested with signing powers.

**6. a)** Banks shall be free to open branches provided that they comply with the principles set by the Board and that they have achieved the standard ratios that put into force with this Act. If necessary, the Board may subject the opening of branches by banks to permission. For every branch, excluding the main branch, to be opened, it shall be required to allocate own funds in the amount of at least one percent of the amount of capital specified in sub-paragraph (d) of paragraph (2) of Article 7 hereof.

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\* As amended by Act No.4672.

b) Banks established in Turkey must receive permission from the Board to open a branch or a representative office abroad.

c) The permission of the Board shall be required for a bank established abroad to open a representative office in Turkey provided that it does not accept deposits and is not engaged in any other banking operations.

### **Provisions Related to Deposits**

**ARTICLE 10-1.** No natural or legal person, other than banks authorized by this Act and those authorized by their special laws, shall accept deposits as a principal or side operation. Nor shall they use any words or expressions in their business titles, public statements, and advertisements, that would imply that they accept deposits. For the purposes of the implementation of this Act, accepting money, by announcing to the public, verbally or in writing or in any manner, in return for or without a consideration or to be returned on a certain date of maturity or whenever it is called shall be considered accepting deposits. Issuance of participation certificates, receipts, promissory notes and similar certificates in return shall not prevent any money received against such certificates from being considered as deposits. In the context of this Act any money collected by funds established by any public or private institution and companies exclusively for the benefit of their employees only to provide social benefits, health care, reserves and savings shall not be considered as deposits. The provisions of this Article shall not apply to the issue of capital market instruments under the provisions of the Capital Markets Act no 2499 of 28.7.1981.

2. a) Banks shall separate savings deposits from other types of deposit accounts and classify deposit accounts according to terms and types thereof as determined by the Central Bank.

b) Savings deposits are accounts opened under this title by natural persons and not subject to commercial transactions. However, drawing cheques exclusively on demand savings deposit accounts shall not be considered as a commercial transaction.

c) In the event of bankruptcy of a bank, the holders of savings deposits for the part of their deposits which is not insured shall have a first degree privileged claim, which shall be subordinate to those of the Fund, in context of Article 206 of the Enforcement and Bankruptcy Act no. 2004.

3. Without prejudice to the provisions of the Civil Code (Act no. 743 of 17.2.1926) concerning encumbrances, and provisions of the Code of Obligations no. 818 of 22.4.1926 concerning the transfer and assignment of claims and the powers conferred and the obligations imposed by other laws, the rights of depositors to withdraw their deposits may not be limited in any manner. The conditions agreed upon by and between the depositor and the bank with regard to maturity and notice period are reserved.

4. Any deposit, bailed goods or claims of any kind with banks that have not been claimed for a period of ten years or more from the date of the last withdrawal or transaction or the date of the last written instruction given by the depositor shall be subject to prescription. Any deposit, bailed goods or claims, which have been subject to prescription, shall be appropriated by the Fund and related principles and procedures shall be defined by the Board.

### **General Exposure Limits, Credits Extended to Affiliates, Shareholders and Employees**

**ARTICLE 11-1.\*** For the purposes of this Act cash credits and non-cash credits such as guarantee letters, sureties, avals, endorsements and acceptances, etc., and bonds and similar capital

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\* As amended by the Act No.4672, which was amended by Act No.4491

market instruments it will purchase, and credits it will lend by depositing or otherwise, and receivables arising from futures sale of assets, and overdue cash credits, and amounts of non-cash credits converted into cash and futures and options contracts and other similar contracts and shareholding interests shall be deemed to constitute an exposure notwithstanding the account through which they are traced.

**2.a)\*** A bank, may not incur an exposure, including accepting their avals and suretyships, to a natural or legal person or group of connected clients, in excess of twenty-five percent of its own funds. Exposures to an ordinary partnership shall be considered as exposures to the partners in proportion to their liabilities.

**b)** Exposures to, including avals and suretyships accepted from, a natural or legal person or group of connected clients in excess of ten percent of the bank's own funds shall be considered as large exposures, and their total, excluding avals and suretyships accepted, can not exceed eight fold of its own funds.

**3.\*\*** For the implementation of this Act, definitions of group of connected clients, indirect subsidiaries, indirect shareholdings, the weighting of non-cash credits and the weightings, rules, and implementation principles regarding shareholding interests, forward, futures, options or similar contracts in calculation of exposure limits are determined by the Board.

**4.\*\*\*** The limits set out in this Article are also calculated and applied on a consolidated basis according to the methods and principles to be determined by the Board.

**5.\*\*\*\*** Any transaction carried out with any central administration, central bank and credit institution in a member state of the Organisation for Economic Cooperation and Development and any other country acceptable to the Board or any transaction carried out against a bond, bill or similar capital market instruments issued or guaranteed and other guarantees provided by those institutions shall be taken into consideration within limits set forth by the Board.

**6.** The limitations in this Article shall not apply to the transactions listed below:

**a)** Transactions against cash;

**b)** Transactions made with the Treasury, the Privatisation Administration and the Social Housing Administration or against bonds and bills issued or guaranteed by these institutions;

**c)\*** Transactions among banks themselves, within the principles determined by the Board,

**d)** Transactions carried out with the Central Bank or on any market associated with the Central Bank;

**e)\*\*\*\*\*** Any increase in an exposure resulting from an increase in the value of the respective currency and interests accrued on overdue credits and other factors provided that exposures in a foreign currency shall be taken into consideration at the exchange rate applied on the date of utilization thereof for calculation of exposure limits in the event a new exposure is incurred to the same person.

**f)\*** Free dividend shares acquired and any increase in the value of an existing equity holding provided that no fund extended by the bank.

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\* As amended by the Act No.4491

\*\* The new form of the paragraph which was amended by the Act No. 4491, as amended by Act No.4672

\*\*\* Re-arranged by the Act No.4672

\*\*\*\* Added by Act No.4491

\*\*\*\*\* The sub-paragraphs (e) and (g) are extracted from the Article and the sub-paragraph (h) is re-ordered as sub-paragraph (e).

**g)**\* Transactions which are taken into account as deductibles in calculation of own funds.

**h)**\*\* ...

**7.**\*\*\* ...

**8.**\*\*\* ...

**9.** Banks can not in any manner whatsoever incur exposures to, accept the suretyships of, or purchase bonds or similar securities issued by:

**a)** the presidents and members of their boards of directors, their general managers and assistant general managers, their other officers who are authorized to extend credits, the spouses and minor children of these individuals, or companies in which these individuals hold separately or collectively twenty-five percent or more of the capital;

**b)** their employees, other than those referred to in sub-paragraph (a) above, and their spouses and minor children; and

**c)** funds, associations, unions or foundations established by or for the employees of the bank.

\*\*\*\*The provisions of sub-paragraph (a) above shall not apply to natural persons who are board members of the banks and own directly or indirectly 10 percent or more of the bank shares or are shareholders of legal entities. The fact that the individuals who are members of the board of directors or auditors of a subsidiaries or affiliates of a bank are also members of the bank shall not be an obstacle for that subsidiary or affiliate to carry out transactions with the bank in question. Cash credits to be extended to bank employees, credits to be made available for these persons through the issue of a credit card on terms and conditions set out in a regulation, and suretyships to be accepted for these persons, shall not be subject to the provisions of this paragraph, provided that they do not exceed five fold of the net monthly salary of the recipient.

**10.** Any exposure which has subsequently constituted a violation of paragraphs (8) and (9) of this Article must be liquidated within six months without prejudice to the date of maturity which was fixed in advance.

**11.** When incurring exposures or issuing suretyships or guarantees, banks must obtain from the applicants their latest statement of account in accordance with procedures to be defined by the Agency. If the total amount of exposures incurred to and suretyships or guarantees issued to customers other than institutions, partnerships and banks, in which general or annexed budget agencies, state economic enterprises, and organisations included within the scope of Act no. 3291 of 28.5.1986 hold more than half of the capital thereof, exceed the amount determined by the Agency, then conformity of the statements of account and the accompanying balance-sheet and profit/loss statements to be received to generally accepted accounting principles must be verified by professionals who have obtained a license and authorized to perform audits under Act no. 3568 of 1.6.1989 in accordance with provisions to be determined by the Agency.

**12.**\*\*\*\*\* Banks must set aside provisions for losses which have resulted or are expected to result from loans and other receivables thereof, and the total amount of which cannot be determined, as set out in regulations issued by the Board. All specific provisions, which any bank may set aside pursuant

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\* Re-arranged by the Act No.4672

\*\* Paragraph (h) was re-ordered as paragraph (e) by the Act No.4491

\*\*\* This sub-paragraph is extracted from the Article by the Act No.4491

\*\*\*\* The second sentence is as amended by the Act No.4491.

\*\*\*\*\* The last sentence which was amended by the Act No.4491 is amended again by the Act No.4672.

to this paragraph, shall be deemed as an expenditure for the purpose of calculation of corporate income tax base in the year when they were set aside.

### **Subsidiaries, Prohibition on Trading of Commodities and Real Estate Transactions**

**ARTICLE 12-1 a)\*** Without prejudice to provisions of Article 11, banks may acquire shares of companies, other than financial institutions which is mainly engaged in money and capital markets and insurance under an authorisation and a license issued in accordance with appropriate legislation, provided that the amount of the shares so acquired in that company shall not exceed fifteen percent of banks' own funds. The total amount of such shares shall not exceed sixty percent of the bank's own funds. Any shares acquired in a company, which is less than ten percent of that company's capital, and shares acquired free of charge and any increase in such shares, which do not require any transfer of funds, shall not be taken into account in calculation of the foregoing limits.

**b)** A bank and its subsidiaries in which it owns more than fifty percent of the capital can not acquire shares of companies in which any shareholder who controls more than ten percent of the bank's capital, the president and members of the bank's board of directors, or its general manager and assistant managers, separately or collectively, hold more than twenty-five percent of the capital.

**c)** Companies and establishments in which a bank participates can not purchase shares in the capital of that bank, or accept them as pledge, or provide advances against them.

**d)** The establishment by a bank of a company abroad or its participation in a company already established abroad shall require the permission of the Board.

**e)** Banks that fail to achieve the standard ratios introduced hereunder shall not be allowed to acquire new subsidiaries in any manner whatsoever, except bonus shares acquired from their existing subsidiaries.

**2.** Banks shall not engage in purchase and sale of real estate or commodities for commercial purposes, except gold in coin and bullion and other precious metals deemed appropriate by the Board; or participate in companies trading exclusively in real estate, except real estate investment partnerships, or extend credits to natural and legal persons engaged in such trade. The total book value of real estate acquired by a bank, net of depreciations, can not exceed fifty percent of the bank's own funds. In calculating this ratio, fifty percent of any amount added to the real estate account through revaluation shall be taken into consideration. The principles and procedures governing the disposal of commodities and real estate acquired by a bank on account of its receivables shall be set forth in a regulation to be issued by the Agency.

### **Accounting and Recording System**

**ARTICLE 13-1. a)** Banks shall keep, publish and present to relevant authorities their annual balance sheets and profit and loss statements in accordance with principles and procedures to be laid down by the Board in consultation with the Banks Association of Turkey. In order to keep application of this Act under review the Board is authorized to request from banks any statements, reports and financial statements conforming to formats and procedures to be set forth by the Board and to determine standard ratios relating to financial structures and utilization of resources thereof by taking into consideration international principles and standards as well as provisions governing publication of such ratios and financial statements, where deemed necessary in, consultation with the Banks Association of Turkey. Banks are obliged to submit the Agency the statements, reports and financial statements and to comply with ratios to be defined.

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\* Added by the Act No.4672 and paragraphs (a),(b),(c) and (d) are re-ordered as paragraphs (b),(c),(d) and (e).

b) Banks can not leave any of their transactions unrecorded, or record them in an account that does not conform to their true nature, nor can they close their year-end balance sheets before they reconcile their statutory and auxiliary books and records with the accounts of their branches and the accounts of their correspondents at home or abroad.

2. The annual balance sheet and profit and loss statement of a bank to be submitted to its general assembly shall be approved by an independent auditing firm. Provisions applicable to foundation of independent auditing firms and suspension of their operations provisionally or permanently shall be laid down by the Board in consultation with the Central Bank, the Union of Chambers of Turkish Independent Accountants and Certified Public Accountants. Any such independent auditing firm shall be liable for any loss or damage, which may be incurred by a third party as a result of an action it has taken under this Act.

3. If the Board determines that any balance sheet or profit and loss statement declared publicly is inaccurate or includes an inaccurate information, then the Board may take any action to prevent depositors from being misinformed including publication of such balance sheet or profit and loss statement together with a correction thereof in the same newspapers.

4.\* Within the scope and principles to be determined by the Board in consultation with the Banks Association of Turkey, banks shall consolidate the financial statements of their direct and indirect affiliates and of the partnerships, where they have full control and/or partners and of the financial and non-financial partnerships owned or controlled and managed directly or indirectly by these partners. The standard ratios regulated under this Act has to be calculated and implemented by banks also on a consolidated basis within the principles and procedures determined by the Board. The real and legal persons who are included within the coverage of these consolidated statements by the Board, are obliged to hand over all documents to the relevant banks and the Board wherever requested to do so by them.

5. Without prejudice to provisions of the Tax Procedures Code no. 213 banks shall duly keep the originals or, if it is not practicable, original letters they have received and a print out of their letters they have sent by allocating a number and date thereto. Such documents may be maintained in the form of a microfilm or microchip or in electronic, magnetic or similar media under the principles and procedures to be determined by the Board. Resolutions adopted by the board of directors of a bank and resolutions adopted by the board of managers of any branch in Turkey of a bank founded in a foreign country shall be entered into a separate book with consecutive pages certified in accordance with provisions of the Turkish Commercial Code no. 6762 of 29.6.1956 relating to keeping of books by allocating a date and number to each decision without leading to any doubt as to authenticity of the text provided that no space is left between each text and there is no addition between lines and each resolution shall be signed by directors. Banks with a large volume of business may use a loose-leaf book each sheet of which shall be certified by a notary public bearing consequential numbers subject to the Agency's approval provided that it is bound at the end of each year.

## **Measures to be Taken as a Result of Supervision**

**ARTICLE 14-1.** Without prejudice to the Agency's right to institute legal proceedings against persons liable, if supervision results reveal any transactions that are contrary to this Act or to decisions taken and legislation introduced under this Act or to the principles and customary practices of banking and that could jeopardize the secure operation of the bank in question, the Agency shall warn the bank to correct the transactions in question within a period of time specified by it and to take such measures as are necessary not to allow similar transactions in the future. The bank must, within the periods specified, take the measures required by the Agency and notify the consequences of actions it has taken. In the event that the required measures are not taken or that transactions jeopardizing the secure operation of the bank are repeated, the Board shall be authorized, depending on the nature and

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\*As amended by the Act No.4491.

significance of the transactions in question, to take and implement all such measures as are necessary for the secure operation of the bank and for the protection of depositors, including but not limited to the following:

**a)** to appoint new members to the Board by dismissing or replacing all or some of the members of the board of directors or by increasing the number of seats therein;

**b)** to restrict the operations of the bank in such manner as to cover its whole organisation or only those of its branches which will be considered necessary or its relations with correspondent banks,

**c)** to increase the deposits insurance premium payable by the bank or to require provisions at the rate of up to one hundred percent for deposits it accepts.

Remunerations of any member of board of directors to be appointed to a bank pursuant to this Article shall be determined by the Board and paid from the Fund.

**2\*.a)** If the Agency, in its sole discretion determines that the assets of a bank are insufficient, or are about to become insufficient, to cover its obligations in terms of maturity or the bank does not oblige to regulations related to liquidity, the Agency may ask the bank to remedy this failure in accordance with a plan of action approved by itself and may also for the purpose of strengthening the liquidity, grant an appropriate period of time to the bank and require it:

**aa)** not to invest in long-term or fixed assets;

**ab)** to dispose of fixed assets such as real estate and equity holdings;

and to take such other measures as it may be deemed to be appropriate.

**b)** If the Agency, in its sole discretion determines that a bank is about to fail or fails to meet any minimum level of capital required to be maintained by the bank pursuant to applicable regulations, the Agency might ask the bank to remedy this situation in accordance with a capital restoration plan approved by itself requiring the bank to increase its capital or to obtain funds that are qualified as capital. The Agency may also, for the purpose of strengthening the capital require it;

**ba)** not to pay dividends, to cease additional payments such as honorary payments, bonus, premiums, in kind or in cash social aids to the members of the Board of Directors, general manager and assistant general managers,

**bb)** to limit or end the operations which cause losses,

**bc)** to liquidate the assets which have low efficiency or are inefficient.

and to take such other measures as it may be deemed to be appropriate.

**3.\*** If the Agency in its sole discretion determines that,

**a)** a bank does not take the measures in part or in whole stated in paragraph (2) of this Article, the financial structure of the bank cannot be strengthened although the measures have been taken in part or in whole, or the financial structure has become so weak that it could not be strengthened even if those measures were taken, or,

**b)** a bank can not fulfill its obligations as they fall due or,

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\*As amended by the Act No.4491.



c) the value of the liabilities of the bank exceeds the value of the assets, in accordance with the valuation standards determined by the Board for the implementation of this Article or,

d) the continuation of its activities would threaten the rights of depositors and the security and the stability of the financial system,

The Board may transfer the management and control and privileges of shareholders except dividends, of a bank to the Fund or revoke the license of the bank to perform banking operations and/or to accept deposits, with an affirmative vote of at least five members of it.

**4.\*** If shareholders who directly or indirectly, individually or with other shareholders hold the bank's management and control, are found to have made use of the bank's resources for their own interests directly or indirectly in a manner jeopardizing a secure functioning of the bank or caused the bank to sustain a loss as a result of such misuse, then the Board with an affirmative vote of not less than five members may transfer the privileges of shareholders except dividends, and the bank's management and control to the Fund.

**5.\*a)** For the banks which Fund takes over management and control and privileges of shareholders except dividends based on provision of paragraph (3), by taking into consideration the balance sheet of bank as of date of transfer, the Fund is authorized;

**aa)** to transfer assets that are deemed appropriate, organization, personnel who agrees, and insured saving deposits including interests that might not exceed the average interest rate applied by the five largest banks according to their saving deposits by the time of transfer date, and the reserves in liabilities, to a bank that will be founded or a current one that is volunteer and/or to request the revocation of license of the bank to accept deposits and to carry out banking operations from the Board.

**ab)** to take over losses corresponding to capital of the bank not exceeding insured deposits on condition that it owns the bank's equity as a whole

**ac)\*\*** To take over its shares against payment of the share price (which will be determined on the basis of the capital to be calculated by deducting the loss from paid-up capital) to the bank shareholders within the period to be determined by the Board, in case of inability to own its whole shares as a result of the losses taken over.

Shares representing amounts corresponding to the payments to be made upon losses that have been taken over, shall be transferred to the Fund, without any further action.

In case, transferred assets of a bank, to which provisions of sub-paragraph (aa) of this paragraph is applied, are less than transferred liabilities, the difference shall be paid by the Fund. In this case and in case of revoking the license to accept deposits and perform banking operations of the bank to which provisions of sub-paragraph (aa) of this paragraph is applied, the provisions of paragraphs (2) and (3) of Article 16 shall not be applied. In case of the establishment of liquidation desks according to the provisions of Articles 16 and/or 17, the Fund shall participate desks as a privileged creditor in the amount it paid.

**b)** For the banks, which Fund takes over management and control and privileges of shareholders except dividends based on provision of paragraph (4), the Fund is authorized;

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\* As amended by the Act No.4491

\*\* As added by the Act No.4743

**ba)** by allowing a suitable period, to request the return or indemnification of resources used in the manner defined in the said paragraph or of losses incurred and to request the transfer of the shares to the real and legal persons that are found to be appropriate by the Board.

**bb)** to request from shareholders who directly or indirectly, individually or jointly control the bank's management and natural persons who own more than 10 percent of the capital of corporate bodies that are shareholders of the bank, to furnish the Fund with a statement of wealth including their spouses and children that are dependent, showing immovables and their interests and their movables, rights and receivables which are attachable and securities and all kinds of revenues and incomes as well as immovables, attachable movables, rights, receivables and securities which they have acquired or assigned with or without a gratuitous contract, over the past two years prior to the date of such declaration.

**bc)** to apply to the court to obtain any injunction including a preliminary injunction and preliminary attachment on properties of such shareholders who directly or indirectly, individually or jointly hold the bank's management and control as well as any other restraining order including prohibition of defendants from traveling abroad which may be deemed to be necessary to protect interests of creditors, without requiring deposition of a collateral.

Statement of wealth requested according to the provisions of this paragraph should be presented to the Fund within seven days. Such statement of wealth shall be subject to related provisions of the Enforcement of Bankruptcy Act no.2004. Any such injunction or restraining order so issued shall automatically become null and void unless no action or enforcement of bankruptcy proceedings are instituted within six months from the date of the order. no. certificate of insolvency shall be required in any suit for revocation which the Fund may file against persons concerned in accordance with provisions of Chapter 11 of the Enforcement and Bankruptcy Act no.2004.

If resources used in the manner defined in paragraph (4) of this Article or losses so incurred are not returned or indemnified within the period determined by the Fund or shares of such owners, and if it is determined that losses exceed own funds, even the resources used or losses incurred were returned or indemnified, all shares of the bank are transferred to the Fund without any further action.

**c)\*** If the Fund takes over the claims of and/or assumes the debts and/or commitments of the banks whose shareholding rights (excluding dividend) and management and supervision have been transferred to the Fund according to the provisions of this Law, of the bankruptcy trustees of the banks whose liquidation is carried out by the Fund, and of the Banks whose shares have been transferred wholly or partly to the Fund, then the transfer and assignment agreements related with the claims taken over and/or commitments and/or debts assumed by the Fund, establishment and lifting of all kinds of collaterals, cancellation of agreements, lawsuit and enforcement proceedings and all kinds of other transactions related with such debts and/or claims and/or commitments as well as the papers issued in connection with such transactions are exempt from all kinds of taxes, duties, fees and fund levies (excluding contribution for education) and from the provision of Article 1 of the Law no. 2548 on the Fees to be Collected for Construction of Prisons and Court Houses and Food Amounts Payable by Prisoners. The revolving capital fee arising from such transactions is not paid and other deductions are not made. Furthermore, if any movables or immovables are purchased by the Fund or by the banks whose management and supervision have been transferred to the Fund through consent or enforcement in return for any claims, then financial obligations such as tax, duty, fee (excluding contribution for education) and revolving capital fee payable by the parties in connection with such transactions are not sought. Any such bank or the bankruptcy office of any bank, which is being liquidated by the Fund, and the Fund itself may obtain a final court judgement and request for its notification without being required to ensure that the fee imposed on the other party has been paid or to deposit a security in connection with a request for obtaining any injunction or cautionary attachment. In any action relating

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\* As amended by Act No.4672 and Act No. 4743

to such receivables, provisions of the Code of Civil Procedures (Law no. 1086) on rapid trial procedures shall apply.

**d)\*** Any civil action, which may be instituted by such banks and the Fund and the bankruptcy offices of banks, shall be heard by commercial courts. If there is more than one commercial court in a locality, such actions shall be heard by the first commercial court.

Any civil action or bankruptcy proceeding which may be brought by such banks, the Fund or bankruptcy office of such banks, against any person whose registered office or abode is within the boundaries of Istanbul province shall be heard by Istanbul First Commercial Court of First Instance. If a bankruptcy proceeding has been instituted then the court referred to above shall notify the commercial court of first instance, located in the place wherein the debtor, against whom the bankruptcy proceedings have been instituted, has his registered office, that a bankruptcy proceeding has been instituted against the debtor.

**6\*\*.** For the banks which it holds their shares according to the provisions of paragraph (5), the Fund is authorized:

**a)** to transfer assets and liabilities, partially or wholly, to a bank that will be established or an existing one that is volunteer or to merge the bank with another bank that is volunteer, by providing technical and financial assistance if necessary,

**b)\*\*\*** in order to maintain confidence and stability in financial system and limited to the situations deemed appropriate by the Board, and in order to strengthen and rehabilitate its financial structure, and if necessary; to increase its capital, to postpone or reduce the legal reserve requirements and to cancel the penalty interest that would be imposed upon prior consultation with the Central Bank , to purchase its subsidiaries, real estates and other assets or to provide advance in return to these assets or to make deposits or take-over its receivables or its losses, or to sell these assets and shares to the third parties through discounting or similar means, to guarantee obligations of the bank that resulted or will result from real transactions depending on the records of the bank, to assign public or private banks or third parties for liquidation through agreements of all kind of receivables and assets on behalf and account of itself,

**c)\*\*\*\*** Besides the powers stated in sub-paragraphs (a) and (b), to take over its assets and liabilities and/or to carry out all kinds of transactions related with its assets and liabilities without being bound by the limitations stated in this paragraph, if it is not possible to transfer its shares to third persons,

And to take all other measures it deems necessary, or to apply measures mentioned in sub-paragraph (aa) of paragraph (5). In such transfers made based on provisions of this paragraph and paragraph (5), the consent of debtors and creditors are not required.

The Fund may use the authority mentioned above directly or by establishing a company which is owned totally by itself and has a status of public entity within the rights, benefits and exemptions as Fund, to which establishment provisions of Turkish Commercial Code no. 6762, shall not be applied and exempted from the Article 29 of Consumer Protection Law no. 4077, dated 23.02.1995.

\*\*\*\*The Fund is authorised to take all kinds of measures including provision of resource under the principles and procedures to be determined by the Board for the purpose of restructuring, including the capital increases to be effected without applying the provisions of the Turkish Commercial Code

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\* Added by the Act No.4672

\*\* Added by the Act No.4491.

\*\*\* As amended by the Act No.4672 and Act No.4743

\*\*\*\* Added by the Act No.4743

no. 6762 in connection with the subsidiaries (having an economic value) of the banks whose shares have been taken over by itself according to the provisions of this paragraph.

7.\* The Fund is authorized to take any measure and to ask for assistance from other public institutions in order to secure the assets and the books and records of the bank whose privileges of shareholders except dividends and management and control or shares have been transferred to itself. The Fund may also obtain this support from private institutions under contracts it enters into.

The provisions of Article 7, 10 and 11 of Consumer Protection Act no. 4054 provided that total asset size of the banks transferred or merged shall not exceed 20 percent of the total asset of the sector, Turkish Commercial Code no. 6762 dated 29.6.1956 and Article 7 of this Act and shall not be applied in the establishment of banks which will temporary license for performing banking operations and collecting deposits or in transferring and merging of banks under the provisions of this Article. The bank that is established will be registered in the Commercial Register, upon the request of the Agency following the publishment of its establishment in the Official Gazette. These operations shall be exempt from all taxes, fees and tolls. The bank established for the aim of hand over, shall be transferred to the third parties by the Fund according to rules and regulations determined by the Board within the time period of temporary license, based on provisions of Article 7 and 8 of this Act. In case the transfer operation is not realized within the period of license, the period may be extended by the Board. In case of hand over, the temporary license mentioned above shall become permanent. Shares transferred to the Fund according to provisions of paragraph (5), shall be transferred to the third parties by the Fund within the rules and regulations determined by the Board, based on provisions of Article 7 and 8 of this Act.

\*\*Where the shares of any bank, whose shares are owned by the Fund in whole or in part, are assigned or transferred to any third party, then any action or legal proceeding, which has been brought against that bank's former shareholders, officers and auditors by the bank before such transfer or assignment, shall be assumed by the Fund as the complainant in its capacity as the legal successor. Any amount which a court may require such persons to pay as a result of such action on proceeding shall belong to the Fund. In case these banks are transferred to or are merged with another bank, or their shares are transferred to third parties or if it is decided to liquidate them, the Fund may file lawsuits, within two years following completion of such transactions, on the basis of the provisions of the Turkish Commercial Law no. 6762, against the bank's former members of the board of directors and former auditors found to be liable, with the demand for cancellation of their acquittal, if any, and for compensation, in the name of the Fund, of the loss they have inflicted due to their actions.

In accordance with this Article, the Board's decision related to the revocation of license for performing banking activities and accepting deposits, or to transfer shares of a bank to the Fund, or to transfer rights of shareholders except dividends and management and control shall be published in the Official Gazette.

### **Savings Deposits Insurance Fund**

**ARTICLE 15-1.**\*\*\* Savings deposits at banks shall be insured by the "Savings Deposits Insurance Fund" which has been established as a legal entity. Fund is also responsible and authorized for restructuring and increasing financial soundness of the banks and to transfer the shares to third parties of the banks whose control and management and/or possession of the shares have been transferred to it according to the provisions of the Article 14.

2. The resources of the Fund shall consist of:

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\* As added by the Act No.4491

\*\* The paragraph added by the Act No.4672 and the last sentence added by the Act No.4743

\*\*\* The last sentence of the first paragraph is added by the Act No.4491

**a)** insurance premium;

**b)** deposits, custody accounts and claims which have been subjected to prescription pursuant to Article 10 hereof;

**c)** contributions deposited by the founders of a bank, which is granted permission for establishment, into the Fund in an amount equal to ten percent of the minimum capital required in sub-paragraph (d) of paragraph (2) of Article 7 hereof for entry to the system;

**d)** In the case of a permission for an assignment of shares under the provisions of the paragraph (2) of Article 8 hereof, an amount to be deposited into the Fund by the assignee at the rate of one percent of the nominal value or, if higher, of the market price of the shares assigned;

**e)** fifty percent of judicial and administrative fines on account of violations of the provisions hereof; and

**f)** revenues from the assets of the Fund, and other revenues.

\*The Fund may borrow in extraordinary situations upon an authorization from the Treasury Undersecretariat or it might borrow government securities from the Treasury, where it is deemed necessary. Principles and procedures regarding government securities including their interest rates and terms and conditions of repayments to the Treasury shall be determined together by the Treasury Undersecretariat and the Agency. Fund has all the rights to use this borrowing. The provisions concerning indebtedness contained in financial year budget laws are also valid for these securities. Debts arising from the government borrowing securities issued by the Treasury to provide loan to SDIF may be abolished by the decision of Council of Ministers.

**3.\*\*** The Fund shall be exempted from all taxes, duties and fees. Without prejudice to powers granted by sub-paragraph (b) of paragraph (6) of Article 14, provisions of the Law no. 6183 on Procedures for Recovery of Public Receivables shall apply to the Fund's resources and its all receivables and prosecution and recovery of receivables of from any shareholder of a bank, whose shares have been transferred to the Fund in whole or in part, who manages and controls the bank directly or indirectly, whether individually or together with others, and from any company or associated undertaking, which such shareholder manages and controls directly or indirectly, whether individually or together with others, and from directors and auditors, general manager and assistant general managers, the chairman and members of the credit committee and authorized signatories and spouses and children thereof, and receivables of any bank, whose shares have been transferred to the Fund, from any of the foregoing and receivables, which are owed to persons defined in sub-paragraph (b) of paragraph (7) and assigned to the Fund. The Fund shall institute legal proceedings to recover any accumulated receivables consisting of the sum of principal, all types of interest, fees and other expenditures as shown in the bank's books, records and documents as at the day when such receivables were taken over. Such receivables shall be deemed to constitute a public receivable as of the date they were taken over by the Fund and a default interest at a rate defined in Article 51 of the Law no. 6183 on Procedure for Recovery of Public Receivables shall be calculated for the accrued receivable. However, the Fund may, at its sole discretion, proceed with any legal proceedings, which have been instituted against the debtor in accordance with provisions of the Enforcement and Bankruptcy Act no. 2004 in connection with its any receivables and those it has taken over or waive proceeding with such legal proceedings and/or action and decide to prosecute and recover the receivables it has taken over in accordance with provisions of the Law No. 6183 on Procedures for Recovery of Public Receivables. The waiver referred to above shall not be construed as a waiver from any rights. The Fund may also apply provisions of the said Law for cashing in any security related to its receivables, which it may decide to prosecute in accordance with the Law No. 6183 on Procedures for

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\* As amended by Act No.4672, which was amended by the Act No.4491

\*\* As amended by the Act No.4672 and Act No. 4743

Recovery of Public Receivables. For the purposes of application of the Law No. 6183 on Procedures for Recovery of Public Receivables the Fund shall exercise authorities vested by the said Law in the Ministry of Finance, collection offices and other authorities and committees. Procedures and provisions governing exercising of these powers shall be set out in the Fund's Regulation. Where any person, who owes an amount to the Fund, is declared bankrupt, the Bankruptcy Office defined in Article 221 of the Enforcement and Bankruptcy Act No. 2004 shall be set up with participation of the Fund's representative. If required by the Fund one or two of the members shall be elected by the execution examination authority from among two candidates to be nominated by the Fund. If the Fund has nominated only one member then the execution examination authority shall elect another member from among two members to be nominated by the majority of the creditors. Where the Fund has nominated two members another member from among two members to be nominated by the majority of the creditors. In connection with its all kinds of claims stated in this Law, including the claims which it has taken over and which it will subject to lawsuit or enforcement proceedings under the assignment and power granted to it, the Fund is authorised to make all kinds of dispositions including discount, to enter into compromises, to take over movables and immovables and all kinds of rights and claims on account of its claim without being bound by any limitations, to enter into agreements with debtors including application of a new repayment plan for the claim, to apply or not to apply custody measure under the principles and procedures to be determined by the Board pursuant to articles 14 and 17 under the agreements it has made with the debtors, to file or not to file lawsuits and to ask the court to suspend the lawsuits already filed, during the validity period of the agreements made. Provisions of Article 22 of the Passport Law no. 5682 shall also apply to any person, who is owing an amount to the Fund, and legal representatives thereof upon the Fund's request. The Fund shall not be subject to the Public Accounting Law No. 1050, the State Tenders Act no. 2886 and the Council of State Law No. 832 as may be amended and supplemented from time to time.

**4. \*** The Fund shall be represented by the Agency in accordance with a Fund Regulation to be drawn up by the Board. The Fund's decision-making body is the Fund's Board of Directors, which shall consist of the Board's Chairman, Second Chairman and three members which the Board's members shall elect from among their number and the Fund's Vice President and the Agency's Vice President to be designated by the Board.

Three Fund Vice Presidents with the same statute and with the qualifications sought in the deputy presidents of the Agency may be appointed upon resolution of the Board, in order for them to assist the Board Chairman in carrying out the transactions of the Fund.

Provisions and procedures applicable to utilization of the Fund's funds and to exercising of powers vested by this Act in the Fund shall be laid down in the Fund's Regulation.

**5. a)** If the assets of the Fund are insufficient to meet the needs, then, advances may be received from banks in the amount of up to the total insurance premium paid by them in the previous year, to be deducted from their future premium obligations. Such advances, together with interest thereon at such rate as shall be determined by the Board, shall be deducted from future premium obligations.

**b) \*\*** Under extraordinary conditions that the resources of the Fund is insufficient, upon the demand of the Agency the Central Bank shall advance money to the Fund. Terms, amounts, repayment conditions, interest rates and other conditions of the advance shall be determined by the Central Bank upon the opinion of the Agency.

**6. a) \*\*** The scope and amount of savings deposits subject to the insurance, the tariff of the insurance premium, the time and method of collection of these premium, and other relevant matters, shall be determined by the Board. All banks that accept deposits must have their deposits insured in accordance with the scope and conditions indicated above.

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\* As amended by the Act No.4672 and the second paragraph added by the Act No.4743

\*\* As amended by the Act No.4491.

**b)** The savings deposits held in a bank by the shareholders who hold ten percent or more of that bank's capital, by the president and members of its board of directors or board of managers, by its general manager and assistant general managers, by its officers who are authorized to extend credit, by its internal auditors and by the parents, spouses and children of these individuals, shall not be covered by the insurance.

**c)** Premium paid by banks to the Fund shall be treated as expenditure in the determination of the corporation tax base.

**7. \* a)** Where the Fund deems it necessary for the purpose of recovery of its receivables it shall be authorized to take over management of any company, which is managed and controlled by a bank whose shares have been assigned to the Fund in whole or in part, and of any company, which is managed and controlled by the shareholders thereof, individually or collectively, together with shareholding rights with the exception of dividend and to discharge all or any director, auditor or officer thereof, irrespective of whether they have privileged shares, or to appoint new members to the board of directors or the board of auditors by increasing the number of seats therein. This provision shall apply in the event it has been established that shareholders who control management of that bank, directly or indirectly and together and jointly, use the bank's resources, directly or indirectly, in their favor in a manner putting the bank's safe operation at risk and thereby caused the bank to suffer a loss.

**b)** Any receivable arising from the bank's funds and assets used for acquisition of monies, property and all kinds of rights and receivables which the shareholders or officers of any bank, whose shares have been assigned to the Fund in whole or in part, who control management of that bank directly or indirectly and individually or jointly, have acquired or caused others to acquire by pledging the bank's funds and assets directly or in favor of third parties, by using them as a guarantee, or lending loans to any person who has not a sound financial condition, or lending a loan with a view to borrow a loan in exchange, or opening custody accounts or any other accounts with local or international banks and financial institutions or using such accounts as a guarantee or otherwise or as a result of other fraudulent transactions. Such receivables shall be subject to the Law No. 6183 on Procedures for Recovery of Public Receivables. The Fund shall be authorized to obtain a cautionary attachment on such monies, goods, rights or receivables or to put them in custody and take over any such assets, whose values cannot be determined by the Fund, at a cost to be determined by valuation committees, set up in accordance with Article 72 of the Tax Procedures Code no. 213 by taking reports to be drawn up by any agency to be designated by the Fund into consideration and such assets so taken over shall be set off against the Fund's receivables and/or losses of such banks taken over by the Fund. A default interests shall be paid for such receivables from the date of the unjust transaction which has led to the loss and/or the receivable at a rate specified in Article 51 of the Law no. 6183 on Procedures for Recovery of Public Receivables.

The powers set out in paragraphs (a) and (b) may also be exercised after the bank's shares have been sold, transferred or assigned to any third party in whole or in part.

No security shall be required by any court for issuing an injunction in any lawsuit which may be filed by the Fund in any administrative court against transactions defined in the provisions of this paragraph.

Provisions of the Turkish Commercial Code no. 6762 shall not apply to any action to be taken by the Fund in accordance with the provisions of this Act. Such transactions shall be exempted from any tax, duty and fee. Powers vested by this paragraph in the Fund shall be exercised by a decision issued by the Fund without any further action. Any action, which is subject to registration, shall be registered and promulgated, where deemed necessary, upon the Fund's request.

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\* Added by the Act No.4672.

**8.\*** Without prejudice to provisions related to events which could result in commitment of a grave offence against the state's security and fundamental international interests and to professional secrets, secrecy of private life and right of defence, public agencies and institutions and natural persons and legal entities shall furnish the Fund with any information, within a reasonable period and in an appropriate medium and regularly or occasionally, and present any book and document which may be requested by the Fund even if such information and documents are confidential irrespective of prohibiting and restricting provisions of special laws provided that this obligation shall be limited to transactions coming under the scope of this article.

**9.\* a)** In case the Fund takes over the claims of or assumes the debts and commitments of a bank whose shares have been transferred partly or wholly to itself, the Fund acquires the capacity of intervenor, as the party suffering from offence, starting from the date when the claims has been taken over or when the debt, obligation has been assumed, in all kinds of criminal actions brought or to be brought in connection with such debts, commitments and claims, including the offences which arise from the Law no. 3167 on Regulation of Payments by Checks and Protection of Bearers of Checks and the Enforcement and Bankruptcy Act No. 2004, and the offences whose proceedings are subject to complaint. Even the personal rights related with such lawsuits belong to the Fund.

**b)** In case the Fund takes over the claims of or assumes the debts, commitments of a bank whose shares have been transferred wholly or partly to itself, if the enforcement proceedings to which the Fund is a party, and all kinds of lawsuits originating from the enforcement proceedings in connection with such debts, commitments and claims conclude against the Fund in whole or in part, the compensation and penalties stated in the Enforcement and Bankruptcy Act No. 2004 do not apply to the Fund.

**c)** In case the Fund takes over the claims of or assumes the debts, commitments of a bank whose shares have been transferred wholly or partly to itself, all kinds of time periods including the periods that cause extinguishment of rights and statutory prescription periods as stated in the laws stop running as far as the Fund is concerned, for a period of nine months from the date when the claim was taken over or when the debt, commitment was assumed, in the lawsuit and enforcement proceedings filed or to be filed in connection with such debts, commitments and claims.

**d)** For the implementation of this Act or to collect the receivables of the Fund, where the Fund submits a bid in response to an invitation for bids under the provisions of Enforcement and Bankruptcy Act no. 2004, it is not a necessity for the Fund to provide a security.

### **Consequences of the Revocation of a License to Carry Out Banking Transactions and to Accept Deposits**

**ARTICLE 16-1.** In the event that the license of a bank to perform banking operations and to accept deposits is revoked, its management and inspection shall be assumed by the Fund.

**2.\*\*** Any and all execution and bankruptcy proceedings against the bank, including preliminary injunctions ordered against it, shall be discontinued as from the date on which the decision of the Board to revoke its license is published in the Official Gazette.

**3.** The Fund shall take measures for the protection of the rights of depositors and other creditors of the bank whose management and inspection has been assumed by it. A preliminary injunction or preliminary attachment may be issued by a court upon the Fund's request in respect of properties, rights and receivables of officers of a bank, whose license to carry out banking transactions and to receive deposits has been revoked, as defined in Article 17 hereof without requiring a security deposit.

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<sup>\*</sup> Added by the Act No.4672 and the paragraphs (a), (b) and (c) are amended by the Act No. 4743

<sup>\*\*</sup> As amended by the Act No.4491.



Any such preliminary injunction or preliminary attachment so issued shall automatically become null and void unless no action or enforcement-bankruptcy proceedings are instituted within six months from the date of the order. Creditors of a bank may not assign their rights or take any action, which could lead, to assignment of their rights from the date of revocation of the bank's license to carry out banking transactions and to receive deposits. The Fund shall pay the insured deposits with the bank of whose management and inspection has been assumed by it directly or through another bank it may designate and institute bankruptcy proceedings in the name of the depositors against the bank. The Fund shall be exclusively authorized to take the foregoing actions. Provisions of the second paragraph of Article 178 of the Enforcement and Bankruptcy Act no. 2004 shall not apply to bankruptcy proceedings initiated in accordance with provisions hereof.

4. In the event that a bankruptcy judgement is issued, the Fund shall act as a privileged creditor and shall liquidate the bank under the provisions of the Enforcement and Bankruptcy Act no.2004, having the duties and powers of the bankruptcy office and creditors' meeting and the bankruptcy administration described in the said Act, as far as the implementation hereof is concerned.

5. If the cash available in the bankrupt bank's assets is sufficient, its obligations to the Fund shall be paid without waiting for the completion of the ranking list specified in Article 232 of the Enforcement and Bankruptcy Act no. 2004.

6. In cases where the bank is not declared bankrupt, provisions of paragraph (2) of Article 18 hereof shall apply.

7\*. In the event that the license of a foreign bank with branches in Turkey to perform banking operations and to accept deposits is revoked for any reason whatsoever or that its activities are stopped or that a decision is made for its bankruptcy or liquidation or that it enter into a composition with its creditors, then, the provisions of paragraph (3) of Article 14 and this Article shall be applied to its branches in Turkey. The principles concerning the transfer of the assets abroad and claims of these branches shall be determined by the Board.

8. The Fund is not subject to provisions of Article 9 and other related articles of the Enforcement and Bankruptcy Act no. 2004 in respect of maintenance and obtaining interest on money funds included in assets of a bankruptcy office as well as money funds it has collected in its capacity as a bankruptcy office. Provision of the first paragraph of Article 36 of the Official Fees Act no. 492 of 2.7.1964 shall not apply to such money funds.

9. While acting as a bankruptcy office and in order to protect interests of the bankruptcy office the Fund shall be authorized to refer any dispute to arbitration, to accept any amicable settlement, to acknowledge and to waive its rights in the context of any and all kinds of receivables. Provisions of the Enforcement and Bankruptcy Act no. 2004 and the State Tenders Act no. 2886 shall not apply to sale of any property owned by the bankrupt.

### **Personal Liability**

**ARTICLE 17-1.**\*\* If it is determined that the chairman and members of the board of directors and the credit committee of a bank, or its general manager and assistant general managers, or its authorized signatory officers have caused the bankruptcy of the bank through their decisions and actions which infringe applicable laws then, on the basis of a decision of the Board and upon the request of the Fund, such person shall be held personally liable to the extent of the damage they have caused to the bank and a court may declare any such person bankrupt. Where any such decision or act have been made or taken in order to provide benefits to any shareholder or a group of shareholders controlling the bank individually or jointly, whether directly or indirectly, the provisions of the first paragraph above shall also be applied to

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\* As amended by Act No.4491

\*\* The last sentence of the sub-paragraph (1) is extracted from the Article 17 by the Act No.4491.

such shareholder or group of shareholders to the extent of the benefits so obtained.

2.\* This Article shall also be applicable to any shareholders of the bank listed in paragraph (1) of this Article whose privileges of shareholders except dividends and management and control or shares have been transferred to the Fund according to paragraphs (3), (4) and (5) of Article 14 hereof or who has the responsibility for any action defined in paragraph (3) and (4) of this Article as well as bank officers listed in paragraph (1) of this Article without requiring the bank's bankruptcy.

3.\*\* The provisions about statement of wealth and restraining order in sub-paragraph (b) of paragraph 5 of Article 14 shall also be applied accordingly in this Article.

4. The Fund shall, acting as the creditor, institute legal proceedings against any person declared bankrupt by court.

5. The courts shall invoke the provisions of the Article 257 and the following articles of the Enforcement and Bankruptcy Act no. 2004 of 9.6.1932 when dealing with those whose bankruptcy is claimed under the provisions of this Article.

6. Provisions of Article 16 shall also apply to any person against whom personal bankruptcy proceedings have been initiated pursuant to this Article.

#### **Acquisition, Merger and Liquidation of Banks**

**ARTICLE 18-1.**\*\*\* The merger of a bank operating in Turkey with one or more such banks or transfer of all its liabilities, claims and deposits to another such bank shall require the permission of the Board. If, within three months after the date of permission, the competent bodies of the concerned banks fail to adopt the necessary decisions and to start the merger or acquisition process, then the permission granted shall become null and void. Upon a decision taken by the Board, the Central Bank may make refunds to the banks concerned from their reserve requirements, or postpone their obligations in this respect, during the merger or acquisition process. Provisions of Articles 7, 10 and 11 of the Law no. 4054 on Preservation of Fair Competition shall not be applicable to any merger or acquisition of banks in accordance with provisions of this Act provided that the ratio of total assets of such banks, which are to be acquired or merged, to aggregate assets in the sector does not exceed twenty percent. The principles and procedures concerning mergers and acquisitions shall be set out in a regulation to be issued under a decision of the Board. Following the completion of a merger or acquisition process, the rights and liabilities and the deposits of the bank shall be transferred to the other bank, and the former shall cease to exist as a legal entity, and its registration with the Trade Registry shall be annulled.

2. If a bank operating in Turkey wishes to terminate and liquidate its operations, it must publicise its intention in at least two newspapers printed and distributed across Turkey, notify the depositors and creditors and the individuals and establishments that can be considered a depositor or creditor, refund all the deposits it is holding, in cash or in kind, the balances of the custody and current accounts and its other liabilities within two months, regardless of their maturity, and transfer all deposits, custody accounts and claims, in cash or in kind, not claimed by the beneficiaries within that period to the Agency. The Agency shall keep the assets so transferred for a period of ten years as from the beginning of the year that follows and publicise them at the beginning of each year in accordance with the required procedure. Any such assets not called for within six months after the date of the last publication shall be appropriated by the Fund. The Agency shall be authorized to supervise liquidation process and require from any person all kinds of documents and information it may deem necessary.

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\* As amended by the Act No.4491.

\*\* Third paragraph of Article 17 is added by the Act No. 4491 and the following paragraphs are re-ordered.

\*\*\* As amended by Act No.4672, which was amended by Act No.4491 before.

## **Banks Association of Turkey**

**ARTICLE 19-1.** Banks, which are governed by this Act, are obliged to become members of the Banks Association of Turkey within one month of the date of receipt of their operating license. The aims of this Association, which is a legal entity with the status of a public institution, are:

- a) to ensure development of the banking profession;
- b) to ensure that banks function uniquely in a dignified and well-disciplined manner as required by the banking profession in order to meet requirements of the national economy;
- c) to adopt and implement all measures necessary for the purpose of preventing unfair competition among banks;
- d) to determine the principles and conditions which banks shall comply with in notices and advertisements in terms of their type, style, quality and quantity based on an approval of the Agency.

2. The Association shall monitor implementation of legislation on banking as well as implementation of decisions and measures it has adopted and take any action required by the Agency.

3. Within the context of the principles laid down by this Act, the election of organs of the association is carried out by secret ballot and under judicial supervision. At least fifteen days before a meeting of the general assembly whereat an election is to be carried out, three copies of a list including the names of member banks and their representatives who will take part in the election together with a document determining the agenda of the meeting, its place, date and time and matters relating to a second meeting to be held if no quorum is found shall be submitted to a judge acting as the chairman of the election committee to be appointed by the Higher Board of Election. The judge shall review and approve the list and other matters and appoints a balloting committee chairman, two balloting committee members and substitutes for each of the foregoing. Vote shall be taken according to a procedure covering a secret ballot and an open counting of votes. Results of the election are recorded in a minutes signed by the chairman and members of the balloting committee. Any objection which may be claimed in respect of the election within two days of the preparation of the minutes report shall be reviewed and accepted or rejected by the judge within the same day on which it was received.

4. The Association's organs, working procedures and scope of its activities shall be laid down in a Statute to be put into force by the Council of Ministers after obtaining the Association's opinion thereon. Banks shall comply with provisions of the Statute and any decision made or measures taken by the Association. Costs incurred by the Association shall be allocated among the banks depending on the number of votes determined in accordance with the Association's Statute. Banks shall deposit their corresponding shares in such costs within a period defined in the Statute. If such contributions to costs are not paid within the specified period, then such amounts shall be collected by the Association through legal proceedings. Decisions relating to payment of contributions to costs shall be deemed to constitute an official document as defined in Article 68 of the Enforcement and Bankruptcy Act no. 2004.

5. The Board of Directors of the Association may impose a fine up to TL 1 billion on any member, who has failed to comply fully and punctually with any general or specific decision and measure, which the Association has taken. The Association shall notify such fines to such member in default and to the Fund for crediting such amount to its accounts. Where any such fine is not paid within thirty days from the date of notification thereof the Fund shall pursue and collect the amount due in accordance with provisions of the Act no. 6183 of 21.7.1953 on Procedures for the Collection of Public Receivables.

## Miscellaneous

**ARTICLE 20-1.** The Council of Ministers has the authority to:

a) determine maximum interest rates which banks shall apply to credits and deposits and maximum quantity or rates of other interests they will acquire and to liberate such amounts and rates in whole or in part;

b)\* ...

The Council of Ministers may delegate its authority stated in paragraph (a) above to the Central Bank.

2.\*\* Any bank not authorized to accept deposits shall be subject to the provisions of this Act except paragraphs (2), (3) and (4) of Article 10 and paragraphs (1), (2), (3), (5), (6), (12) of Article 11, Article 12, paragraphs (5), (6) and (7) of Article 14, Article 15 (except for sub-paragraphs 2/c, d, e), and Articles 16 and 17. In case the Agency in its sole discretion determines that those banks fall under paragraph (3) of Article 14, their licenses shall be revoked with an affirmative vote of at least five members of the Board. The total amount of paid-up capital of any bank so incorporated shall not be less than two thirds of the amount defined in sub-paragraph (d) of paragraph (2) of Article 7. Amounts provided by such banks from other banks and from their own borrowers in accordance with general provisions shall not be regarded as deposit.

3. Without prejudice to provisions of Article 21, 22 and 23 any financial amount and limit specified in this Act may be increased by a decision of the Board provided that it does not exceed the amount and limit corresponding to two fold of the amount of wholesale price index issued by the State Statistics Institute. Fixed fines defined in Articles 21, 22 and 23 of this Act shall be increased in January in every year by the revaluation rate to be computed in accordance with Supplementary Article 298 of the Tax Procedures Code no. 213.

4. Banks may not receive deposit from, extend credit to or open an account for or enter into a contract with or provide remittance and foreign exchange services and other banking and financial services to any customer who can not prove his identity and tax registration number. Provisions relating to application of this paragraph shall be laid down by the Ministry of Finance after obtaining the Agency's opinion. Application of provision of Article 5 of the Act no. 4358 of 2.4.1998 to any person who has failed to comply with the provision of this paragraph and any regulation set forth by the Ministry of Finance shall not be subject to the procedures for initiation of an investigation as defined in Article 24 of this Act.

5.\*\*\* Any administrative action that may be brought against the Board's decisions shall be heard by the Council of State as the court of first degree.

6.\*\*\*\* a) The Articles of this Act, other than Paragraphs (2) and (3) of Article 10, Paragraphs (5), (6) and (7) of Article 14, Articles 15, 16, 17, and 19 as well as Paragraph (2) of Article 20, shall also apply to special finance institutions, which are not authorized to accept deposits but accept funds through special current accounts and accounts giving right to profit and loss sharing, and which provide financing for economic activities through supplying or leasing equipment or merchandise or through joint investments. Restrictions and limits in Paragraph (2) of Article 12 of this Act shall not apply to those activities of special finance institutions aimed at funding third parties. The Agency is hereby authorized to introduce any regulation in accordance with the provisions of this Act, taking into consideration also the characteristics of the accounts that give right to profit and loss sharing.

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\* Annulled by the Act No.4684 that made amendments in a number of Acts and Decrees.

\*\* As amended by the Act No.4491

\*\*\* As amended by the Act No.4672.

\*\*\*\* The paragraph added by the Act No. 4491, as amended by the Act No.4672.

However, in case the Agency determines existence of any of the conditions specified in Paragraphs (3) and (4) of the Article 14 of this Act, operating license of that special finance institution shall be revoked with the affirmative vote of at least five members of the Board.

All kinds of financing activities carried out by special financial institutions through financial leasing of movable or immovables or through profit and loss sharing and similar methods shall also be deemed to constitute an exposure for the purposes of this Act.

Penal provisions specified in Articles 21, 22 and 23 of this Act shall also apply to special finance institutions and their personnel and to any person who commits the offences specified in paragraphs (3), (6), (7), (8) and (9) of Article 22 against any special finance institution. Paragraph (1) of Article 22 shall also apply to those natural persons and personnel of those legal persons that, without securing permits or licenses required under this Act, engage in transactions limited exclusively to special finance institutions; or accept funds through special current accounts or accounts that give right to profit and loss sharing; or use the title of special finance institution in their company name, in their documents, in their public announcements and advertisements; or use terms and expressions that would create the impression that they accept funds through special current accounts and accounts giving right to profit and loss sharing and that they are engaged in transactions limited exclusively to special finance institutions. The first sentence of paragraph (2) of Article 22 shall also apply to any personnel or relevant staff of a special finance institution who deliberately prevent any holder of a special current account from withdrawing his or her savings, or prevent holders of accounts giving right to profit and loss sharing, from receiving any amount they become entitled to receive on the basis of the account opened.

**b)** Association of Special Finance Institutions as a professional organisation having the status of a public legal entity has been established in order to ensure that special finance institutions operate in accordance with this Act and other relevant legislation in ways appropriate to their intended activities, contribute to development of the profession, operate in line with the needs of the economy in dignity, discipline and solidarity as required of financial institutions, take and implement any action aimed at preventing unfair competition between special finance institutions, and to set out principles and requirements, to be met by special finance institutions in respect of the type, form, quality and quantity of their notices and advertisements, after taking the Agency's consent and carry out other works entrusted by this Act. Any special finance institution is obliged to become a member of the Association within one month from the date of acquisition of their operating license.

The Association shall monitor implementation of legislation governing special finance institutions along with implementation of decisions and measures it adopts, and takes, measures required by the Agency.

Organs, operating principles and scope of activities of the Association shall be set out in the Association's Statute to be put into force by the Council of Ministers upon recommendation of the Board after consulting with the Association. Special finance institutions are obliged to comply with the Association's Statute and any decision or measure taken by the Association. Expenses incurred by the Association shall be distributed among special finance institutions on the basis of the number of votes determined in accordance with the Association's Statute. Special finance institutions shall pay their share of such expenses within the period specified in the Statute. If such shares of expenses have not been paid within the specified period, then the Association shall recover such amounts through executive proceedings. Decisions on payment of expense shares constitute a public deed as defined in Article 68 of the Enforcement and Bankruptcy Act no. 2004.

The organs of the Association shall be elected by secret ballot under judicial heed in accordance with the principles stipulated in this Act. At least fifteen days prior to the meeting of the general assembly, to be held for holding elections, a list including the names of member institutions and representatives thereof who will participate in the election shall be submitted in three copies, together with a letter stating the agenda, place, day, time and procedures relating to a second meeting

to be held in case required quorum cannot be achieved, to the judge to be appointed by the Higher Board of Election to chair the election committee. The judge shall conduct the necessary review and approve the list and other particulars and appoint a chairman and two directors of the election committee as well as their substitutes. The voting shall be carried out according to secret ballot and open counting method. Results of the election shall be certified by a report, which shall be signed by the chairman and members of the election board. The judge shall examine and pass conclusive ruling on any objection to the election results that should be made within two days after the date of the report.

The Association's Board of Directors may impose fines up to one billion Turkish Lira on members who has failed to comply with general or specific decisions and precautions of the Association wholly and punctually. The Association shall notify any such fine to the party concerned and fines collected shall be credited to the account of the Assurance Fund. The fixed fine specified in this paragraph shall be increased by a revaluation rate to be determined in accordance with Supplementary Article 298 of the Tax Procedures Law no. 213 and such increase shall take effect from January every year.

The Association is assigned to and authorized with establishing an “Assurance Fund” in order to provide security for savings of natural persons, who have special current accounts and accounts for sharing profits and losses with special finance institutions.

c) The Assurance Fund, established within the Association in order to provide assurance for savings of natural persons holding special current accounts and profit and loss participation accounts at special finance institutions, shall be managed by the Association in accordance with the Assurance Fund Regulation to be drafted and put into effect by the Association. Principles and procedures relating to management of the Assurance Fund and the coverage and the amount of savings in special current accounts and profit and loss participation accounts, which will be subject to guarantee, tariff for guarantee premiums and time and method of payment thereof and other related issues shall be laid down in the Assurance Fund Regulation. Special finance institutions are obliged to insure savings in their special current accounts and profit and loss participation accounts under the terms of conditions specified thereof. The Agency has the authority to exercise any kind of supervision on the Assurance Fund.

Resources of the Assurance Fund shall consist of assurance premiums; funds in accounts, trust accounts and receivables with special finance institutions which have been subjected to statute of limitation pursuant to Article 10, fees for entry to system to be deposited to the Assurance Fund by the founders of the special finance institution that obtained license for establishment at an amount equal to ten percent of the minimum capital defined in sub-paragraph (d) of paragraph (2) of Article 7, in permissions of share acquisition granted on the acquirer, an amount, which shall be equal to the higher of one percent of the par value or of their value on the stock exchange of the acquired shares; to be paid by the shareholders who acquires the capital shares representing the capital of a special finance institution to be deposited the Assurance Fund, in scope of the measures defined in paragraph (2) of Article 8, judicial fines to be imposed on personnel or related staff of special finance institutions because of their infringement of provisions of this Act and on any third party due to an offense committed against a special finance institution, along with fifty percent of administrative fines on special finance institutions, and revenues obtained from the Assurance Fund's assets and other revenues.

The savings in the special current accounts and profit and loss participation accounts of the shareholders who own ten percent or more of the capital of a special finance institution, of the chairman or members of its board of directors, general manager, assistant general manager, officials authorized for extending credit, auditors, or of parents, spouses or children of these, shall not be covered by assurance.

Premiums paid by special finance institutions to the Assurance Fund shall be deemed expenditure for the purposes of determination of corporate income tax base.

**d)** Management and supervision of any special finance institution, whose license has been revoked pursuant to paragraph (3) of Article 14 of this Act, shall be transferred to a Liquidation Committee consisting of five members to be appointed by the Association. All enforcement and bankruptcy proceedings, including preliminary injunctions about a special finance institution shall be suspended on the date of publication of the Board's decision on revocation of the license in the Official Gazette. The creditors of any special finance institution shall not assign their claims or take any action which could lead to the same result after the date of revocation of the license. The Liquidation Committee shall liquidate the special finance institution in accordance with general provisions. Provisions of the Enforcement and Bankruptcy Act no. 2004 shall not apply to liquidation of a special finance institution.

In the case it is determined that chairman or any of the members of board of directors or credit committee, or general manager, any assistant general manager of a special finance institution, or any personnel whose signatures are binding for the said institution, have caused, through their illegitimate decisions or actions, application of the provisions of paragraphs (3) and (4) of the Article 14 of this Act against their institution, they might be held personally liable to the extent of the losses they have caused the special finance institution to incur, and the courts may rule their personal bankruptcy upon the request of the Liquidation Board. Where such decisions and actions have been made for the purpose of providing benefits in favour of shareholders, who, directly or indirectly and individually or together control management and supervision of that special finance institution, the shareholders who have gained such benefits shall also be subject to the same provision in respect of the benefits they gained. In that case, provisions of sub-paragraph (b) of paragraph (5) of Article 14 hereof related to declaration of personal wealth and conservation measures shall be applied respectively. The Liquidation Board shall conduct legal proceedings against those declared bankrupt by the court. Provisions of Article 257 et seq. of the Enforcement and Bankruptcy Act no. 2004 shall be applied by the court to those against whom bankruptcy proceedings have been filed according to this sub-paragraph.

In the case the license of a special finance institution has been revoked, the Association shall, with the approval of the Liquidation Committee appointed according to the first paragraph of this Article, pay the portion of the amounts held in special current accounts and profit and loss sharing accounts, covered by the assurance, from the resources of the Assurance Fund directly or through a special finance institution to be designated by the Liquidation Committee, and participate in the liquidation process on behalf of the Assurance Fund as preferential creditor. Completion of the liquidation shall not be necessary for payments to the account of the Assurance Fund in respect of any claims occurring in this way.

In the case the resources of the Assurance Fund are inadequate to meet payments, advance payments may be collected from the special finance institutions deductible from their future premium obligations and up to the total assurance premium they had paid in the previous year, or, if this amount also proves to be inadequate, up to the amount sufficient to cover the balance to be collected in proportion to total amount of special current accounts and profit and loss participation accounts of each special finance institution. This advance shall be credited against future premium obligations together with the amount to be calculated by the Association by taking into consideration the average rate of profit share distributed in the previous period to the funds collected in special current accounts and profit and loss sharing accounts by the five special finance institutions with the largest total amount of special current accounts and profit and loss sharing accounts.

**e)** Special finance institutions shall be treated as banks, for the purposes of application of provisions related to checks and guarantee letters of State Tenders Act no. 2886, Turkish Commercial Code no. 6762, Code of Civil Procedures no. 1086, Enforcement and Bankruptcy Act no. 2004, Act no. 6183 on Procedures for Collection of Public Receivables and the Act no. 3167 on Regulation of

Payments by Checks and Protection of Bearers of Checks and of other regulations, along with provisions of the repeated Article 298 of the Act no. 213 on Tax Procedures.

### **Administrative Offences and Punishments**

**ARTICLE 21-1.** The following administrative fines may be imposed on any bank pursuant to a resolution adopted by the Board, which shall specify reasons therefore:

- a)\*** TL two billion in the event of contradiction with provisions of paragraph (2) of Article 8,
- b)** TL five billion in the event any person is appointed in breach of paragraphs (2) and (3) of Article 9 or any person identified in paragraph (5) thereof has been appointed to a prohibited position and if such default has not been rectified within ten business days from the date of receipt of a notice to that effect, then an amount corresponding to ten percent of the fine for each day elapsing after expiry of the foregoing period;
- c)** TL ten billion in the event a branch or representative office has been opened in breach of paragraph (6) of Article 9 hereof;
- d)** TL one billion in the event failing to fulfil the obligation defined in paragraph (2) of Article 10;
- e)** one percent of any amount which exceeds and thus constitutes a violation of the exposure limits set forth in paragraphs (2), (3), (7) and (8) of Article 11 hereof provided that it shall not be less than TL two billion and an amount equal to five percent of exposure incurred if it violates prohibitions specified in paragraph (9) thereof;
- f)** TL one billion in the event paragraph (11) of Article 11 has been infringed;
- g)** two per thousand of any provisions required to be set aside pursuant to paragraph (12) of Article 11 in the event such provisions have not been set aside provided that such amount is not less than TL five hundred million; and an amount equal to three percent of the provisions not established if such default has not been remedied within a period to be granted by the Agency provided that such period shall not be less than three months;
- h)** five percent of any amount which constitutes a default in the event any restriction or prohibition specified in paragraph (1) of Article 12 provided that it shall not be less than TL two billion and if such default has remained unremedied within one year from the date of receipt of a notice to that effect an amount equal to one percent of the fine imposed for each day elapsing from the date of expiry of such one-year period until the date when it was rectified;
- i)** ten percent of any amount which is subject to a restriction or prohibition of any amount defined in paragraph (2) of Article 12 hereof in the event of any breach of any such prohibition or restriction provided that the fine shall not be less than TL two billion and, if such default has not been remedied within one year from the date of receipt of a notice to that effect, an amount equal to one percent of the fine imposed for each day elapsing from the date of expiry of the foregoing period until the date when the default is remedied save any breach resulting from utilization of a credit;
- j)** TL three billion in breach of sub-paragraph (a) of paragraph (1) and paragraphs (2) and (4) of Article 13 hereof;

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\* As amended by Act No.4672



k) an amount equal to any benefit obtained by receiving or paying an interest or otherwise in breach of any decision made and regulations put into effect in accordance with paragraph (1) of Article 20 hereof provided that such fine shall not be less than TL one billion;

l) TL one billion in breach of any decision taken, regulations and communiqués issued and other arrangements put into effect by the Council of Ministers and the Agency in accordance with related articles hereof.\*

Prior to imposition of any administrative fine the offending bank shall be permitted to submit a defence. If no such defence has been submitted within one month from the date of receipt of a notice requiring the bank to file a defence, then the bank shall be deemed to have waived its right to defend itself. Upon recurrence of any breach, which requires imposition of an administrative fine, the fine, save those, which are subject to a specific period of time or are proportional, shall be doubled or, in the event of a second and subsequent recurrence thereof, tripled. If the same breach which requires imposition of an administrative fine has not been repeated within two years from the date when it was imposed, then previous fines shall not be taken into consideration in determining recurrence thereof. Any fine so imposed shall be notified to the bank concerned and to the Fund for collection and appropriation thereof.

2. The right to impose a fine pursuant to this Article shall be subject to a prescription of five years from the date when the related infringement occurred.

3.\*\* Although legal proceedings shall be instituted against any person which has committed any of the offences defined in paragraph (1) of Article 22 hereof, the place of business of such person may be temporarily closed and their notices and advertisements shall be suspended or seized by the Governorship upon the Agency's request based on a resolution adopted by the Board where it is deemed necessary to avoid a delay. Sub-paragraph (c) of paragraph (1) of this Article shall also be applied to any branch or representative office opened within country in breach of provisions of paragraph (6) of Article 9 hereof, according to the demand of the Agency, these shall be closed permanently or temporarily by governors.

### **Judicial Offences and Punishments.**

**ARTICLE 22-1.** Any natural person or officers of a legal entity, who has carried out banking operations or accepted deposits without obtaining authorization required to be obtained pursuant to this Act or used the business title in their notices and advertisements or public statements and used words and expressions which could create an impression that he was accepting deposits and carrying out banking transactions shall be sentenced to imprisonment from three to five years and a heavy fine from TL three billion to TL five billion depending on their degree of liability in such offence. In addition to this, places of business of any person who has committed such an offence may be closed permanently or temporarily for a period not exceeding one year and his notices and advertisements may be suspended or seized by virtue of a judgement issued by a court upon the Board's request.

2. Without prejudice to provision of paragraph (3) of Article 10 hereof any officer or employee of a bank who has deliberately prevented depositors from drawing their deposits shall be punished to imprisonment from ranging from six months to two years and a fine up to TL one billion.

Any employee of a bank, which has infringed provisions of Article 14 hereof, who actually carries out transactions of the bank, shall be sentenced to imprisonment from two to four years in addition to a heavy fine from TL two billion to TL five billion depending on their titles and responsibility and the degree of their participation in the transaction leading to the infringement. Provided further that if such action has been taken to provide a benefit for any shareholder, who

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\* As amended by the Act No.4672

\*\* As amended by the Act No.4491

jointly or individually controls the bank's management and control directly or indirectly, or their subsidiaries or affiliates, then the punishments referred to above may be increased up to five times provided that the heavy fine is not less than TL five billion.

**3.** If any bank's chairman of the board and directors and other officers embezzle any money or other assets owned by the bank, which have been delivered to them in connection with their duties or put under custody, supervision or control thereof, then they shall be sentenced to a heavy imprisonment ranging from six years to twelve years and indemnify the loss or damage incurred by the bank. Where the offence defined in this paragraph has been committed by conducting all kinds of fraudulent acts which would deceive the bank and ensure that the offence is not discovered, then the offender shall be sentenced to a heavy imprisonment not less than twelve years and a heavy fine equal to three times the amount of the loss or damage incurred. Provided further that if the loss or damage incurred has not been indemnified the court shall sua sponte render a judgement for ensuring that such amount is paid. Where any such loss or damage has been fully paid to institution prior to any legal proceedings the fine shall be reduced by half or, if the payment has been made prior to the judgement, a third thereof.

**4.** Any natural person or officers and employees of any legal entity who has failed to provide information and documents required by any competent authority or supervisors identified herein or prevented any supervisor from performing his duties shall be sentenced to imprisonment from one year to three years and a heavy fine from TL one billion to TL three billion. Punishments and fines defined in this paragraph shall also apply to any responsible officer or employee of a bank which has failed to comply with the obligation defined in paragraph (5) of Article 13 hereof.

**5.** Any officer or employee of a bank who has made a false statement in any document he has issued to any authority or supervisor or court or any other public office; or caused any transaction not recorded or accounted for in a manner not conforming to their nature or has caused any balance sheet thereof closed without ensuring its conformity with the ledger and the subsidiary ledger, branches, correspondent banks in Turkey and abroad and who has signed any document which has been used for taking any of the foregoing actions shall be sentenced to imprisonment ranging from one year to three years and a heavy fine which shall not be less than TL three billion.

**6.** Any person who has deliberately taken an action which could damage a bank's reputation or its assets or disseminated inaccurate information to that effect shall be sentenced to imprisonment from one year to two years and a heavy fine ranging from TL one billion to TL two billion. Where such act has been taken by using any means of communication defined in the Press Code no. 5680 of 15.7.1950 or radio, television, video, internet, cable TV or electronic data communication devices and similar tools the offender shall be sentenced to imprisonment from one year to three years and a heavy fine from TL two billion to TL four billion. Any person who has disseminated inaccurate information which could have an adverse effect on banks' financial structures by creating doubts in respect of reliability of banks, even if they are named, in the eyes of the general public by using any of the means of communication referred to above shall be sentenced to a heavy fine from TL two billion to TL four billion.

**7.** Any person who is responsible for application of this Act and supervision thereof shall not disclose any confidential information relating to banks and their subsidiaries, affiliates and customers, which they may receive in connection with performance of their duties, to any person other than those authorized by this Act and specific acts thereof or use such confidential information for their own benefits. Provision of this paragraph shall survive termination of employment contract of any such person. Any person who has failed to comply with the foregoing provision shall be sentenced to a heavy imprisonment ranging from one year to three years and a heavy fine not less than TL two billion.

**8.\*** Officers and other employees of banks may not disclose in confidential information relating to any bank or clients thereof which they have received in connection with their positions and duties to any authority other than those which has been expressly authorized by law. Provision of this Article shall survive termination of employment contracts of any such officer or employee of a bank. Any person, who has been found to have infringed provision of this Article, shall be sentenced to a heavy imprisonment term from one year to three years and a heavy fine which shall not be less than TL one billion, which shall also be applicable to any third party who has disclosed confidential information relating to a bank's clients. For the purposes of tracking and controlling credits this provision shall not apply to exchange of information between financial institutions, which are mainly engaged on money and capital markets and insurance industry under a license and authorization obtained in accordance with their respective special laws and other institutions determined by the Agency, in respect of their clients directly or through companies to be incorporated by minimum ten institutions.

**9.** Any person defined in paragraphs (7) and (8) discloses any confidential information in order to obtain benefits for himself or others shall be sentenced to a heavy imprisonment term from three years to five years and a heavy fine which shall not be less than TL three billion and shall also be prohibited temporarily or permanently from being employed by any institution in context of this Act depending on importance of the breach.

**10.** Without prejudice to provisions of the Turkish Commercial Code no. 6762, which define liabilities, if any act, which constitutes an offence hereunder, also requires imposition of a fine pursuant to any other law the provision, which stipulates the heaviest fine, shall be applied.

#### **Infringement of Other Laws**

**ARTICLE 23-1.** Officers of any bank or institution which has failed to comply with provisions of Article 52 and sub-paragraph (d) of paragraph (II) of Article 4 of the Act no. 1211 dated 14.1.1970 on the Central Bank of the Republic of Turkey or has failed to establish all or any part of ratios determined for general liquidity and reserve requirements pursuant to sub-paragraph (a) of paragraph (II) of Article 40 or has failed to comply with adjustment decisions taken by the Central Bank pursuant to sub-paragraph (c) shall be sentenced to a fine ranging from TL five hundred million to TL one billion.

**2.** Where any requirement or obligation defined in Articles 43 and 44 of the Act no. 1211 on the Central Bank of the Republic of Turkey has not been met or discharged any person responsible for such default shall be subject to provisions of paragraphs (4) and (5) of Article 22 hereof.

**3.** Institution of legal proceedings pursuant to provisions of paragraphs (1) and (2) of this Article shall be subject to a notice to be given by the Central Bank to the Agency in the event any breach has been determined by the former or, in all other circumstances, to a petition filed by the Agency to the Public Prosecutor's Office after consulting the Central Bank.

**4.** Any person who has infringed Article 35 of the Act no. 1211 on the Central Bank of the Republic of Turkey shall be punished in accordance with paragraphs (7) and (9) of Article 22 hereof.

**5.** Any reference made by other acts to the Act no. 3182 shall be deemed to refer to related articles of this Act.

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\* As amended by the Act No.4491.

## Procedure for Legal Proceedings and Collection of Fines

**ARTICLE 24-1.** Institution of legal proceedings by reason of any offence relating to punishments defined herein shall be subject to a petition filed by the Agency to the public prosecutor's office in its capacity as the intervener.

2. If the public prosecutor decides that there is no need to institute legal proceedings, then the Agency shall be authorized to make an objection against any such decision which may be notified to it pursuant to the Criminal Procedures Act no. 1412 of 4.4.1929.

3.\* Any institution concerned shall reserve its right to file a suit by reason of any offence defined in paragraphs (3), (6), (8) and (9) of Article 22.

4. Any legal proceeding which may be instituted under this Article shall be conducted by courts in a jurisdiction where the head office of the bank is located in accordance with provisions of the Act no. 3005 of 8.6.1936 on Trial Procedures for Flagrante Delicto.

5. Fines defined in this Act shall be collected by tax offices in accordance with provisions of the Act no. 6183 of 21.7.1953 on Procedures for the Collection of Public Receivables. Liability of any legal entity in respect of a fine shall be determined in accordance with Article 65 of the Turkish Commercial Code no. 6762 of 29.6.1956.

6.\*\* Suits against members of board of directors or board of auditors of banks appointed by the Minister, Fund or Agency according to the Articles 64 and 65 of the Banks Act no. 3182 which is superseded by this Act and Article 14 of this Act, shall be deemed as suits filed against the Fund. Those who are determined as responsible from misconduct of their business shall be re-coursed by the Fund. Prosecutions for offences mentioned in this Act are subject to the procedure stated in this Article.

\*\*\* Provision of this paragraph shall also apply to any lawsuits, which have been brought or might be brought against the members of the Board and Fund Executive Committee, and against personnel of the Agency and the Fund, because of the decisions, operations and duties of the Board, Agency, Fund's Board of Directors and the Fund stated in this Act, resulting in third parties to undergo losses.

\*\*\*\* All kinds of actions for damages and debt, filed and to be filed against the members of the board of directors and board of auditors appointed by the Fund upon sub-paragraph (a) of paragraph (7) of Article 15 and against the members of board of directors and board of auditors who represent the bank at the subsidiaries of the banks whose management and supervision or shares have been transferred to the Fund, due to performance of their duties are deemed to have been filed against the Fund. If a court decides that the said persons have abused their duties, then the case is resorted to those people. Personal liability may not be imposed on the managers appointed in this manner due to the public debts of such subsidiaries.

7.\*\*\* a) For the purposes of application of this Act in any criminal actions instituted in respect of offences defined in this Act and other applicable laws the expert witness, if appointed, shall submit his report to the court within three months from the date the case was referred to him. The period referred to above may be extended up to two months by the judge. If the report has not been submitted during this extension period, the expert witness shall be discharged without paying a fee and a new expert witness shall be appointed. Any expert witness so discharged shall not be appointed as an

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\* As amended by the Act No.4491.

\*\* Added by the Act No.4491.

\*\*\* Added by the Act No.4672.

\*\*\*\* Added by the Act No.4743.

expert witness in any legal proceedings under this Act for a period of one year. Such person shall also be condemned to indemnify any costs caused by the delay in submission of the reports and a light fine ranging from TL 500 million to TL 1.5 billion. Upon referral of the case to an expert witness the lapse of time applicable to the trial shall be suspended and it shall resume to run on the date when the expert witness submitted his report to the court.

b) If an expert witness examination is considered necessary in respect of a civil lawsuit instituted by Agency, the Fund, the banks whose partnership rights other than dividends and whose management and control or whose shares belong to the Fund, or the bankruptcy administration of banks being liquidated through the Fund, the expert witness shall submit his report to the court within three months from the date the case was referred to him. The period referred to above may be extended up to two months by the judge. If the report has not been submitted during the extension period the expert witness shall be discharged without paying a fee and a new expert witness shall be appointed. Any expert witness so discharged shall not be appointed as an expert witness in any legal proceedings under this Act for a period of one year. Such person shall also be condemned to indemnify any costs caused by the delay in submission of the reports and a light fine ranging from TL 500 million to TL 1.5 billion.

### **Repealed or Amended Provisions**

**ARTICLE 25-1.**\* The Banking Act no. 3182 dated 25.4.1985 and all its supplements and amendments are hereby repealed.

2. The provisions of the Act no. 4059 of 9.12.1994 on Organization and Responsibilities of the Treasury Undersecretariat and the Foreign Trade Undersecretariat relating to responsibilities and authorities governed by this Act are repealed.

3.\*\* Sub-paragraph I/j of Article 4 of the Act no. 1211 of 14.1.1970 on the Central Bank of Republic of Turkey and paragraph (14) of Article 22 and paragraphs (3) and (4) of Article 43 thereof have been hereby repealed and sub-paragraph (III/c) of Article 4 and Article 44 have been amended as follows:

"The bank's opinion shall be sought before taking any decision in respect of issuing an authorization for incorporation of any financial institution other than a bank and liquidation of any such financial institution in respect of which the Government has been authorized to take an action in respect of liquidation thereof".

Article 44 - The Bank shall establish a Risk Centre in order to accumulate risk status of clients of banks, special finance institutions, financial leasing companies, factoring companies, financing companies and similar financial institutions which may be deemed appropriate by the Bank.

The institutions referred to above shall furnish the Bank with all information in respect of their risk status, which the Bank has required from them within a period designated by the Bank in accordance with standards.

All transactions and records of the Risk Centre shall be treated as confidential information and the Bank may only provide the institutions referred to above with information in respect of risk status

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\* The previous Banks Act and the Acts and decrees making amendments in the Act and the numbers and dates of the Official Gazette they were published are as follows:

No	Date and No	No	Date and No
3182	02.05.1985-18742	3222	15.06.1985-18785
3291	03.06.1986-19126	3332	31.03.1987-19417
3494	25.11.1988-20000	3794	13.05.1992-21227
512 dec.	16.09.1993-21700	538 dec.	22.06.1994-21968

\*\* See Act No.1211 on Central Bank as amended by the Act No.4651.

of their clients or credit applicants. Procedures to be followed in receiving and providing information shall be set forth in a regulation.

Protests drawn up by banks shall be accumulated in the Bank. Provisions relating to accumulation and promulgation of such protests shall be determined by the Bank in consultation with the Banks Association of Turkey.

**PROVISIONAL ARTICLE 1-a)\*** The Board shall be assigned by 31.3.2000. Two of the members so appointed, other than the chairman, to be selected by drawing lots at the end of the second year and two members to be selected by drawing lots at the end of the fourth year shall be replaced by their successors to be appointed in accordance with provisions hereof.

**b)\*** The Agency shall start its operations by 31.8.2000. Until the date when the Agency shall start to carry out its functions the Board and the Treasury Undersecretariat shall jointly complete preparations and arrangements relating to the Agency's organizations, activities and application of this Act. The Board shall also carry out consultations with competent authorities in respect of specific issues including submission of opinions and recommendations pertaining to issues coming under the scope of its responsibilities. During this period secretarial services shall be provided by the Fund.

**c)** Until such time as the Agency shall start to perform its operations, duties and authorities granted by this Act to the Agency or the Board shall be continued to be exercised by the Council of Ministers, the Minister, Treasury Undersecretariat and sworn bank auditors and their assistants and the Central Bank and Savings Deposits Insurance Fund as defined in the Banks Act no. 3182 which is repealed by this Act. Any power not specified in the Banks Act no. 3182 and related to the system created by this Act shall be exercised by the Minister until the Agency starts to carry out its duties.

**d)\*\*** The Board shall, in conjunction with the Treasury Undersecretariat, draw up an incorporation budget. In order to finance the incorporation budget banks shall pay their respective contributions thereto, based on their balance sheet totals as of the end of 1999, within 15 days of the date of receipt of a notice in accordance with provisions of Article 6 hereof. The Council of Ministers is authorized to increase the rate defined in paragraph (3) of Article 6 hereof up to two fold thereof for the first four years. The budget shall be implemented by the Board. Remunerations, benefits and other expenses of the Board's members shall be paid by the Fund until the incorporation budget comes into effect.

**e)** The chairman of the Board of Sworn Bank Auditors of Treasury Undersecretariat and sworn bank auditors, assistant auditors and other employees of the Board of Sworn Bank Auditors shall be deemed to have been transferred to the Agency on the date when the Agency starts to carry out its functions. Employees of the Treasury Undersecretariat and the Central Bank who are in charge of application of this Act on the effective date hereof shall be appointed to the Agency subject to their consent. Any employee of the Undersecretariat and the Central Bank who are in charge of application of this Act on the effective date hereof and currently assigned to overseas organizations of the foregoing institutions or working for an international organization or attending a foreign university to receive a graduate degree or on leave without receiving a salary due to military service or otherwise shall reserve his right to be transferred to the Agency provided that any such right shall be forfeited unless it has been exercised within one year from the effective date of this Act. Any employee who does not consent to his transfer may be temporarily transferred to the Agency until an adequate number of personnel are employed by the Agency, but in any case for a maximum period of two years without being bound by provisions of supplementary articles 8 and 9 of the Civil Servants Act no. 657.

**f)** Any personnel, with a minimum 3-year length of service, to be transferred from the Treasury Undersecretariat and the Central Bank shall be appointed a bank expert provided that he meets age

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\* As amended by the Act No.4491

\*\* As amended by Act No.4672 which was amended by Act No.4491.

requirements and qualified under a regulation to be drawn up and those with a length of service less than 3 years shall be appointed assistant bank experts. Their term of employment with their former employers shall be added to their length of service as a bank expert and assistant expert. The total period during which any person, who is deemed to have been transferred and directly appointed and has an obligation to work for a specific period for his former employer, has worked for the Agency shall be taken into consideration in fulfilment of such obligation.

**g)** Positions of any person who is deemed to have been transferred from the Treasury Undersecretariat to the Agency pursuant to provision of paragraph (e) of this Article as well as positions of any person appointed through a transfer shall be cancelled without further action and shall be deemed to have been excluded from the a part of the schedule, attached to the Decree no. 190, relating to the Treasury Undersecretariat.

**PROVISIONAL ARTICLE 2- a)** Any legislation, which has been put into force, based on repealed provisions and currently in effect shall remain in full force and effect until decrees, regulations and communiques to be put into effect in accordance with this Act provided that they are not in conflict herewith.

**b)** Banks shall align their articles of association with this Act within one year from the effective date hereof.

**c)** \* ...

**d)** Provision of paragraph (1) of Article 9 relating to managing directors shall not be applied to any person, who was employed on the effective date of this Act, so long as he holds this office.

**e)** Any bank which exist on the effective date of this Act shall not open a new branch unless its own funds are raised to the amount as required under paragraph (6) of Article 9.

**f)** \*\* Banks are obliged to conform their credits extended before the effective date of this Law, to the provisions of this Law within four years.

**g)** \*\*\* ...

**h)** \*\*\*\* Banks and special finance institutions shall ensure that amounts of their respective subsidiaries are aligned with provisions of this Act until 31.12.2009, in accordance with the periods and proportions to be decided by the Board.

**i)** Balances in the "Provisions for Contingent Losses" account which has been set aside pursuant to provision of paragraph (1) of Article 32 of the Banks Act no. 3182 shall be transferred to "Voluntary Reserves Account".

**j)** \*\*\*\*\* Without prejudice to any completed liquidation of any bank, which has been declared bankrupt prior to the date of promulgation hereof, liquidation of which shall be carried out by a bankruptcy office in accordance with provisions of this Act. For the purposes of implementation of this Article bankruptcy offices shall exercise authorities granted to Fund under paragraphs (4), (8) and (9) of Article 16 hereof , provided that the provisions of Articles 2, 23 and 29 of the Public Charges Act no. 492 and Article 1 of the Act on Charges for Establishment of Prisons and Court Buildings and Food Charges Paid by Prisoners shall not be applied to legal proceedings or filed suits which may be instituted by a bankruptcy office and no security deposit and no fee payment in getting and

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\* Extracted from the article by the Act No.4672

\*\* As amended by the Act No.4743.

\*\*\* Extracted from the article by Act No.4491

\*\*\*\* As amended by the Act No.4672.

\*\*\*\*\* The paragraph amended by the Act No 4491 as amended by the Act No. 4672.

announcing court decree by the bankruptcy administrations which must be paid by the other party and notification thereof shall be required in respect of any request for a preliminary injunction or preliminary attachment. The provisions of paragraph 3 of Article 64 of the Act no. 3182 dated 25.4.1985 superseded by the Statutory Decree no. 512 of 23.8.1993 shall continue to be implemented for any action taken in accordance with it.

k) Proportional fines defined in Article 21 of this Act shall be reduced by fifty percent until the end of 2000.

l) Provisions of Article 14 shall apply to banks, the management and shares of which has been transferred to the Board prior to the date of publication of this Act. The Board shall be authorized to take any action including, but not limited to, those defined in Article 14 hereof, in order to improve their financial conditions and to restructure them.

**PROVISIONAL ARTICLE 3** - A portion up to TL 1 billion of total savings deposits in Turkish Lira or foreign exchange accounts classified as a savings account of any natural person with bankrupt Turkish Tourism, Investment and Foreign Trade Bank, and Marmara Bank and Turkish Import and Export Bank, which are currently in the process of liquidation, as of the dates when their licenses to carry out banking operations and to receive deposits were revoked less any payments effected by the Fund under an insurance policy shall be converted into US Dollar at the buying rates applied by the Central Bank when their license to carry out banking operations and to receive deposits were revoked and TL equivalent of such amounts, calculated at US Dollar buying rate applied by the Central Bank on the date of publication hereof, shall be paid by the Fund to holders of such accounts.

TL equivalent of any foreign exchange account classified as a savings deposits up to a total amount of TL 1 billion as referred to above shall be calculated at foreign currency buying rates applied by the Central Bank on the date when the banks' license to carry out banking operations and to receive deposits were revoked.

Other provisions and procedures relating to payments shall be determined by the Fund.

The Fund shall participate in any bankruptcy office in its capacity as a privileged creditor in connection with any payment it will effect in accordance with provisions given above.

#### **PROVISIONAL ARTICLE 4** \* -

1. The Board assigns the contracted independent auditing firm of each bank to carry out an audit at the bank, in order to prepare the financial statements reflecting the financial positions of the privately owned banks established in Turkey, authorised to accept deposits, by determining their losses originating from the provisions that must be set aside for loans and other claims, from changes in exchange rates, or from their other operations, with a view to maintain the confidence in and stability of the banking system and to eliminate the negative effects of the economic crisis on the capitals of banks, without prejudice to the provisions of the other articles of this Law.

The Board determines and announces the coverage of the special audit to be carried out by independent auditing firm on the basis of the financial statements issued as of the balance sheet date of 31 December 2001, by considering the factors that may affect the financial statements after the balance sheet date, and the principles and procedures to be applied in such audit.

2. The report and financial statements drawn up by the independent audit firms are examined by a second independent audit firm to be designated by the Agency, from the standpoint of compliance with the principles and basis of the audit.

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\* As added by the Act No.4743



3. The report and financial statements drawn up by independent audit firms are evaluated by the Agency from the standpoint of their compliance with the principles and procedures, and whether they fully reflect the financial position of the bank concerned, in comparison with the findings of the Agency for each bank as a result of its supervision and audit, by also taking into consideration opinions of the bank concerned.

4. The financial statements of the banks, which have been audited according to the above procedure and which have been found adequate as a result of the evaluation made by the Agency and the report of the independent auditing firm concerning the financial statements, the standard capital adequacy ratio arrived at as a result of the above-mentioned findings, worked out pursuant to article 13 of the Law, the amount of capital required to attain eight percent if the said ratio is below eight percent, and measures required for capital increase or obtainment of subordinated funds and the measures that must be taken are notified by the Agency to the boards of directors of the banks.

5. In order to eliminate the losses that cannot be covered by their reserves, Banks shall, within fifteen days following the notice served by the Agency on the basis of paragraph (4), invite their general assemblies to extraordinary meeting, by issuing related announcement in at least one newspaper published country-wide, to ensure that their paid-up capitals are reduced by such loss and that the capital increase required for bringing the standard capital adequacy ratio to eight percent is provided by having it fully paid-up. It is not necessary for the resolution of the general assembly to be approved by the general assembly of preferred shareholders.

Attendance of the shareholders having half of the voting rights is sufficient for general assembly meeting. Resolutions are adopted by majority of those present.

6. Amendments to the articles of incorporation, as decided upon by the general assembly of the bank according to paragraph (5), and the matters concerning exercise of pre-emptive rights are published by trade register offices within three days following the general assembly, upon application of the bank. The shareholders wishing to participate in capital increase exercise their pre-emptive rights within fifteen days following such publication.

7. If the capital increase is not realised, the Board is authorised to take all kinds of measures to be deemed necessary for each bank, only for once, by allocating resources under the principles stated in this article, in order to ensure that capitals of banks are increased under the bank restructuring program, without prejudice to the provisions of article 14.

Those banks wishing to participate in the restructuring program must establish the procedures stated in paragraph (5) and apply to the Agency within a period to be determined by the Authority, which shall not exceed six months from such procedures.

8. Within the framework of the evaluations it will make, the Board is authorised to carry out operations in banks that applied upon article (7), separately or collectively, in order to ensure:

a) that the Fund participates in the capital increase of those banks whose standard capital adequacy ratio is less than five percent but bigger than zero and whose share in the sector in terms of balance sheet magnitudes on 30 September 2001 is at least one percent, in order to bring the said ratio to five percent, provided that the amount of such participation does not exceed the amount paid-up by the shareholders and by those participating in the capital increase,

b) that the Fund provides subordinated loan with seven-year term to those banks whose standard capital adequacy ratios are five percent and above, at an amount that will be sufficient to bring their standard capital adequacy ratios to nine percent, against bonds convertible into shares.

That portion paid in cash by the shareholders in the year 2001, corresponding to the positive part of the standard capital adequacy ratio is taken into consideration in application of the provisions of paragraph

(a).

Those payments which are made by participating in capital increase or by exercising pre-emptive rights according to paragraph (6) and which do not reach capital increase are converted into capital.

In order to provide collateral for the Fund's capital contribution to the bank, the shares belonging to the shareholders who hold the management and supervision of the bank directly or indirectly are pledged to the Fund. When it becomes necessary to have recourse to the pledge, ownership of the pledged share certificates passes to the Fund without the need to take any other actions. Such pledged shares to be kept by the Fund may not be attached by third persons, cautionary attachment and cautionary judgment may not be imposed on them, nor may they be offered as collateral to third parties.

The amount corresponding to minimum sixty percent of the Fund's capital contribution to the bank shall be made available by banks as loans until 30 June 2003 within the framework of the banking principles and practices, excepting the real and legal persons in the same risk group with themselves, and banks and other financial establishments.

9. The privately owned banks authorised to accept deposits, whose share in the sector in terms of balance sheet magnitude is below one percent may also benefit from the measures stated in item (a) of paragraph (8), if they raise their share in the sector to minimum one percent through transfers or mergers with other banks, and if they apply to the Agency under the provisions of paragraph (7).

10. The amounts extended by the Fund to the bank as capital or subordinated loan are met by Government Domestic Borrowing Securities to be issued by the Undersecretariat of Treasury under the provisions of paragraph (2) of Article 15 in order to be lent to the Fund.

11. The demands for cautionary judgments and the lawsuits to be filed against the resolutions adopted by the banks' general assemblies in order to ensure that the measures to be taken according to this article are implemented are dealt with by the basic commercial court at the place where the head office of the bank concerned is located. In case there are several basic commercial courts at such place, then the authorised court is the basic commercial court numbered (1).

In the lawsuits to be filed, courts may not issue cautionary judgment without seeking collateral. The court concerned determines the amount of collateral, by safeguarding public interest and by holding trial.

12. The Board determines the principles and procedures concerning the transactions related with the general assembly meeting to be held pursuant to this article, capital increase and decrease, registration of capital, periods of transfer of the shares subject to capital increase, issue of bonds convertible into share certificates and conversion of such bonds into share certificates. Provisions of the Turkish Commercial Code and the Capital Market Law do not apply to mentioned operations. The Board is authorised to change the periods which are determined by this Law, the Turkish Commercial Code, the Capital Market Law and the legislation related to the said laws and which are related with issue of financial statements of banks and holding annual ordinary general assembly meetings of banks.

13. The legal and optional reserves pursuant to this article and the losses covered by capital decrease are deducted as expense from the tax base when determining the profits of banks under the principles stated in paragraph 7 of Article 14 of the Corporate Tax Law dated 3.6.1949, numbered 5422.

14. The Board is authorised to determine the principles and procedures concerning application of this article and sale and transfer of bank shares acquired by the Fund as a result of application of the measures stated in this article, conversion of subordinated loans into capital, and to make arrangements under this scope.

## **Effective Date**

**ARTICLE 26** - Provisions of Article 14 and paragraph (1) of Provisional Article 2 hereof shall come into effect on 11.6.1999 and other provisions on the date it was published in the Official Gazette.

## **Execution**

**ARTICLE 27** - Provisions of this Act shall be executed by the Council of Ministers.

## **THE ARTICLES OF THE ACT NO. 4491 RELATED TO OTHER REGULATIONS AND ITS PROVISIONAL ARTICLES.**

**ARTICLE 16-** Article 40/II-d of Act No.1211 on Central Bank of Republic of Turkey has been amended as follows.

“The Bank may, within the framework of sub-paragraph (b) of Article 36 of this Act, extend credits in an amount that will meet fund withdrawals to banks within the scope of Article 14 of the Banks Act and to those that are the subject of uncertainty and lack of confidence due to the acceleration of the fund withdrawals or because of uncertainty and lack of confidence in the banking system, provided that conditions are set by the Central Bank.”

If the license of performing banking activities and collecting deposits of the bank is revoked, then Central Bank shall apply to the liquidation desk as a privileged creditor for the credits extended to the bank according to this Article.

**ARTICLE 17-** Council of Ministers Decree no. 83/7506 dated 16.12.1983 on Principles and Procedures for Establishment of Special Finance Institutions, Their Activities and Liquidation and all regulations issued on the basis of the mentioned Decree are removed from effect.

**PROVISIONAL ARTICLE 1-** The percentage related to connected lending as defined in Paragraph 2 (a) of Article 11 of the Banks Act no:4389 shall be seventy-five percent until 2001 from the effective date hereof, seventy percent until 2002, sixty-five percent until 2003, fifty-five percent until 2004, forty-five percent until 2005, thirty-five percent until 2006.

**PROVISIONAL ARTICLE 2-** Until the Agency shall start operations, the Council of Ministers is authorized to take actions about the banks in the context of Article 14 of Banks Act as amended by this Act, including to make Fund to inject capital or subordinated loans or take over losses or other assets, not exceeding the amount injected by the new shareholders in case those banks under Article 14 are transferred or merged or sold to new shareholders, provided that the existing shareholders shall sell all their shares and the new shareholders shall inject capital or subordinated loans to the bank. Those decisions shall be executed by the Minister.

**PROVISIONAL ARTICLE 3- a)** Special finance institutions active on the effective date of this Act shall align their existing situations to the Articles of Banks Act no. 4389 to which they are subject to within two years. Special finance institutions which do not align to the provisions of Articles 7 and 9 of Banks Act no. 4389 within this period shall be liquidated in accordance with general provisions.

**b)** Until regulations concerning special finance institutions under the provisions of Banks Act no.4389 are brought into effect, the provisions of those regulations removed from effect which are not in conflict with the Banks Act no. 4389 shall be applied.

## **Effective Date**

**ARTICLE 18-** Sub-paragraph (aa) of paragraph (a) of paragraph (5) of Article 14 of Banks Act no. 4389 as amended by this Act shall be in effect on the date when the Agency shall start its operations and other provisions on the date of it is published.

## **Execution**

**ARTICLE 19-** Provisions of this Act shall be executed by the Council of Ministers.

## **THE ARTICLES OF THE ACT NO. 4672 RELATED TO OTHER REGULATIONS AND ITS PROVISIONAL ARTICLES.**

**PROVISIONAL ARTICLE 1-** The provisions that are changed in or added to the Banks Act No. 4389 with Article 8 and under Article 9 of this Act, except the provisions of sub-paragraph (d) of paragraph (5) added to the Article 14, also applies to; banks whose management and control and shareholder rights except dividends, or shares in part or in total, have been taken over by the Fund before the date these provisions come into force, subsidiaries in which these banks holds management or control, shareholders, who individually or together, hold management or control of these banks directly or indirectly, and companies that these shareholders, individually or together with other parties, hold, directly or indirectly, the management or control , president and members of board of directors or board of auditors, general manager and assistant general managers, president and the members of the credit committee, personnel of the bank whose signature represents bank, and spouses and children of these individuals, persons stated in the sub-paragraph (b) of paragraph (7) of the Article 15 of the Banks Act No. 4389, added with the Article 9 of this Act, whose debts have been taken over by the Fund, debts of these persons to the other banks whose shares have been transferred to the Fund and to cash, property, all kinds of rights or receivables acquired through directly or indirectly using the resources of the said banks. Such that, the provision of sub-paragraph (a) of paragraph (7) of the Article 15 of the Banks Act No. 4389 applies for those shareholders, holding individually or together and directly or indirectly management or control of the bank, who are determined to use sources of the bank directly or indirectly for their own interest distorting safe operation of the bank or caused the bank suffer from losses in this way.

**PROVISIONAL ARTICLE 2-** a) Provisions of this Act pertaining to liquidation of special finance institutions shall not be applied to any special finance institution whose license has been revoked prior to date of promulgation of this Act.

b) Any special finance institution, which is subject to the Banking Act no. 4389, shall become a member of the Association within thirty days from the date when the Association of Special Finance Institutions was established.

**PROVISIONAL ARTICLE 3-** On the date this Act becomes effective, duties of the Board members, except Chairman, ends. New members will be appointed by the Council of Ministers within fifteen days from the effective date of this Act, and during this time existing members will continue to carry out their duties. Among the members appointed in this way, two of the members to be selected by drawing lots at the end of the second year, and two of the remaining members to be selected by drawing lots at the end of the fourth year, shall be replaced by their successors to be appointed in accordance with the provisions set forth in this Act.

**ARTICLE 16-** This Act shall be in effect on the date it's published.

**ARTICLE 17-** Provisions of this Act shall be executed by the Council of Ministers.

## **THE ARTICLES OF THE ACT NO. 4743 RELATED TO OTHER REGULATIONS**

### **Effective Date**

**ARTICLE 8-** This Act shall be in effect on the date it is published.

### **Execution**

**ARTICLE 9-** Provisions of this Act shall be executed by the Council of Ministers.

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