

Amendments Made In the Non-Cash Payment Regulation: A Brief Outline

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I Introduction

In Turkey, principles and details as to the authorization and operations of payment institutions and electronic money institutions are covered by the Regulation on Payment Services and Electronic Money Issuance and Payment Institutions (“Regulation”) introduced by the Banking Regulation and Supervision Agency (“BRSA”).

On December 26th 2015, the Regulation Amending the Regulation on Payment Services and Electronic Money Issuance and Payment Organizations and Electronic Money Organizations (“Amendment Regulation”) has been published on the Official Gazette. The Amendment Regulation has amended a total of 12 articles in the Regulation, most of which pertain to one-off payment transactions and frame contracts.

II Amendments

- The definition of “invoice payment” in Article 3 of the Regulation has been amended. With the amendment made in Article 3, taxes, fees, social security support contributions and penalties due to these payments are removed from the definition of “invoice payment”.

- A sub clause has been inserted to Article 5 of the Regulation titled “payment services”, specifying that sub clause 6 of Article 5¹ will not be applied in cases where institutions outsourcing from banks for provision of invoice payment services are clearly authorized through an agreement between the bank and the invoicing authority, for collecting payments on behalf of such invoicing authority.

- Article 8 (2) of the Regulation, listing the documents required for license application to be made by companies having banks or financial institutions established abroad as shareholders directly or indirectly holding more than 10 % of the shares and as managing shareholders, has been amended.

In this respect, the companies fulfilling the foregoing qualifications will no longer be obliged to submit (i) activity schedule and business plan prepared in accordance with Article 8 (1) (b), (ii) power of attorney copies for shareholder representatives, if any and (iii) information listed in Article 18, related to the board members and the general manager.

- Board of Director’s authority to determine the conditions for deputy general manager’s attendance to board meetings in the absence of general manager, is removed from Article 16 (1) of the Regulation. Same as before, the board will have to be constituted of at least 3 members and the general manager is a natural member of the BoD.

¹ In services for invoice payment mediations, Article 5 (6) of the Regulation obliges payment and electronic money institutions to execute contracts with invoicing companies.

- Article 5 of the Amendment Regulation amends Article 24 (2) of the Regulation, on the calculation of shareholders equity for companies holding shares in banks or financial institutions.
- With the amendment made in Article 29 of the Regulation, the requirement as to the form of contracts² to be executed for one-off payment transactions has been removed and a wording allowing one-off payment transactions to be conducted through a receipt or similar documents instead of contracts, has been added. Also, through the amendment, the contracts for one-off transactions will have to include the customer's consent and a copy of the text including the consent of the user is sought for one-off payment transactions made remotely.
- Article 30 of the Regulation governing the pre-information requirement of users by payment service providers, has also been amended. Accordingly, payment service providers are obliged to publish in their workplaces, in a visible manner, maximum period for the transaction to be completed, total service fees and if any, exchange rates to be implemented.
- Certain cosmetic changes have been made on Article 31 governing the information to be placed on contracts, receipts or similar documents to be issued for one-off payment transactions, in a manner to be consistent with the changes made in Article 30.
- With the amendment made in Article 57, in frame contracts between payment service users which are consumers and the payment service providers, parties will be allowed to decide on not implementing the rule under sub clause (g) of Article 35 (9)³ or on implementing such rule in a different form.
- Lastly, provision excluding one-off payment transactions from the obligation to execute a contract in case the payment transaction falls under TL 300 or limit of the payment instrument is or under TL 500 or the fund amount of the payment instrument at any time do not exceed TL 500, has been removed from Article 58.

III Last Note

According to Article 13, the Amendment Regulation has entered into force on the publication date. Therefore all of the foregoing amendments became effective as of December 26th 2015.

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² e.g. requirement as to the font size of at least 12.

³ i.e. inclusion of breakdown of the service fee into the frame contract.