

Proposed amendments on pending ‘Draft Turkish Banking Law’: Is it constituting a hindrance for new comers to the market?

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The Banking Regulation and Supervision Agency (a.k.a. BDDK) is planning to introduce new amendments on the draft banking law in order to keep and strengthen its consolidated framework, which has passed its test in the recent recession whereas its former structure suffered severely from the early economic crisis in 2001 and resulted in closures and bankruptcies in the Turkish financial sector.

Current Banking Law came into force in late 2005 and has proven a solid composition where Turkish Banks gained value as they announced high profits since then. Nevertheless, BDDK is committed to toughen the regulations in order to maintain the current positive atmosphere. This is in consequence of past experience which strengthens the watchdog’s hand in introducing even stricter measures. In other words, for new comers who wish to enter the Turkish financial market should not harm the present climate.

Current Banking Law numbered 5411:

Establishment conditions

Article 7- Any bank to be established in Turkey shall fulfill the following requirements:

f.) Its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than 30 million New Turkish Liras,

For development and investment banks, their paid-up capital shall not be less than two- thirds of the amount provided in sub-paragraph (f) of the first paragraph.

Draft Banking Law:

Paragraph (f) of the first clause of the Article 7 of the Law numbered 5411 has been amended as follows:

Its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than **60 million** New Turkish Liras,

Proposed amendments on the Draft Banking Law for the article above:

Its paid-up capital, consisting of cash and free of all kinds of fictitious transactions, should not be less than **500 million** Turkish Liras,

As far as the banking authorities are concerned, however, expected adjustment is found “too much.” In addition, according to a bank official’s statement, an investor must have at least 1 billion Turkish Liras in order to establish and operate a bank in Turkey under these conditions. “Only a few banks in Turkey have this capital power.”

Syria could be illustrated as an example with regards to the establishment of a new bank, as recently increased the average capital to \$200 million. This revision might affect some of Turkey’s largest banks’ decision that had lunched feasibility studies earlier to establish and run banks in Syria. Representatives, on the other hand, could be opened in Syria without that certain amount of capital. However, opening such representative offices is not adequate for practicing key banking operations.

One of the other core ideas in connection with these precautions as opposed to those established banks, which do not have any physical presence in any country also called as shell banks, is to combat against all means of money laundering operations that Turkey suffered from in the past. Regulations of Financial Action Task Force (FATF) regarding money laundering and financing of terrorism are also taken into consideration as a legal ground throughout the amendment process.

Current Banking Law numbered 5411:

Operating permission

Article 10-

b.) "Minimum one fourth of the system entrance fee, equivalent to ten percent of the minimum capital requirements indicated in Article 7 of this Law, should have been paid to the account of the Fund and the related document submitted to the Agency by the founders",

Draft Banking Law for the article above:

"Paragraph (b) of the second clause of the Article 10 of the Law numbered 5411 has been amended as follows":

Operating permission

Article 10-

b.) "Minimum one fourth of the system entrance fee, equivalent to **twenty percent** of the minimum capital requirements indicated in Article 7 of this Law, should have been paid to the account of the Fund and the related document submitted to the Agency by the founders,"

In connection with the system entry fee, minimum capital requirements have been doubled ten to twenty percent as a precaution against the recent credit crunch.

Current Banking Law numbered 5411:

Revenues of Fund

Article 130- "The resources of the Fund shall consist of the following:

c) contributions deposited by the founders of a bank, which is granted permission for establishment, into the Fund within one year following the commencement of their activities, at an amount equal to ten percent of the minimum capital required in Article 7 of this Law for entry to the system"

Draft Banking Law for the article above:

"Paragraph (c) of the first clause of the Article 130 of the Law numbered 5411 has been amended as follows":

Revenues of Fund

Article 130- "The resources of the Fund shall consist of the following":

c) “contributions deposited by the founders of a bank, which is granted permission for establishment, into the Fund within one year following the commencement of their activities, at an amount equal to **twenty percent** of the minimum capital required in Article 7 of this Law for entry to the system”

Draft Banking Law

“Following articles have been added to the Law numbered 5411”

Transition to paid-up capital

Provisional Article 28:

“Banks must align their conditions with paragraph (f) of the first clause of the Article 7 amended by this Law within six weeks following the publication date of this Article.”

With this additional provisional article, an appropriate time period is given to banks in order to comply with the revisions.

Taking into account the draft and the proposed amendments on pending Turkish Banking Law, it would not be wrong to state that a more consolidated structure is desired in order to maintain today’s financial atmosphere and to add even stricter measures to avoid such bad experiences Turkey had faced in the past.

Secondly, the recent recession which affected the world severely has been evaluated deeply and necessary steps are proposed to be taken with these amendments to deal with such crises which may occur again in the near future.

Thirdly, for those banks, also referred as shell banks which do not have any physical presence in any country and apparently have neither part-time nor full-time employees, strict measures are needed to be adopted to prevent their facilities such as money laundering etc.

Therefore, it can be seen on the draft banking law that the intension of BDDK is clearly reflected upon these amendments and it envisages a picture where BDDK is happy with the number of the banks in the financial market at he moment but in case of any fresh applications new comers are not really welcomed unless they have a strong background with a consolidated assets and management efficiencies.