



## **REGULATION ON PRINCIPLES FOR THE ACTIVITIES OF DIGITAL BANKS AND BANKING AS A SERVICE IS PUBLISHED BY THE BANKING REGULATION AND SUPERVISION AGENCY**

Regulation on Principles for the Activities of Digital Banks and Banking as a Service (“**Regulation**”) introduced by the Banking Regulation and Supervision Agency (“**BRSA**”) has been published in the Official Gazette dated 29 December 2021 and numbered 31704.

The provisions of the Regulation, aim to encourage financial innovation in the banking sector, to improve financial inclusion and to facilitate access to banking services.

In this memorandum (“**Memorandum**”), we have explained the details of the new legal situation with respect to (i) the digital bank, which is a branchless bank, and (ii) Banking as a Service (“**BaaS**”), which facilitates the use of banking services by the financial technology companies and other companies.

### **EXECUTIVE SUMMARY**

Principal innovations introduced under the Regulation may be summarized as follows:

- (i) The concept of digital bank has been introduced and the criteria to be qualified as a digital bank have been listed.
- (ii) It's stated that the minimum capital requirement for digital banks is 1 billion Turkish Lira.
- (iii) It has been regulated that digital banks can only offer services to financial consumers and small and medium-sized enterprises (“**SME**”), except in certain cases. Certain restrictions have been imposed on the activities of digital banks.
- (iv) The concept of BaaS has been introduced. With this model, interface providers use the infrastructure of the service bank via open banking services and offer new products and services to customers. In this way, the services of the service bank are delivered to customers through interface providers. In BaaS model, service bank decides whether to provide banking services to the customer.

## I –DIGITAL BANKING

A digital bank is defined in the Regulation as a credit institution (deposit bank or participation bank) that provides banking services through electronic banking services distribution channels instead of physical branches. The establishment conditions, limitations and other related issues of digital banks are given below.

### A) Permissions for the Establishment and the Operation

1. Digital banks are subject to all regulations stipulated under the Banking Law No. 5411 (“Law”) and related sub-regulations applicable to credit institutions in addition to the conditions stipulated under the Regulation to obtain permissions for the establishment and the operation.
2. Credit institutions currently operating in accordance with Article 3 of the Law do not need to obtain a permit in order to continue providing electronic banking services (mobile or internet banking). If these credit institutions wish to shut down all their physical branches and transform into an electronic-only digital bank, they will need to obtain permission from the BRSA.
3. Minimum capital requirement for obtaining operation permission is 1 billion Turkish Lira.
4. In the event that the minimum paid-in capital amount is 2.5 billion Turkish Lira or more at the time of application or later, upon the application of the digital bank, the BRSA can decide that the foregoing digital bank might be fully or partially exempt from the operating restrictions specified in the “B) Limitations” section of the Memorandum.
5. The personnel specified as the top-level manager responsible for information systems must be appointed at least at the level of deputy general manager. At least one of the members of the board of directors must have at least ten years of professional experience in the field of information systems management.
6. A business plan must be submitted to the BRSA during the license application. The business plan must also include the marketing strategy with respect to target audience (students, housemakers, youth under age of eighteen, SME’s etc.) and the products and services to be offered to the target audience.

### B) Limitations

There are some restrictions for digital banks in the Regulation.

1. **Customer Segment:** Digital banks can only offer services to financial consumers and SME’s, except for the exceptional cases specified in the Regulation. In the Regulation, it is stated that companies that exceed the size of SME’s can obtain foreign currency loans from digital banks. In the event that an SME customer reaches a size exceeding the SME size, the digital bank will only be able to extend foreign currency loans to such customer. In addition, it is also stated that digital banks can provide loans to other banks.
2. **Organization:** Digital banks cannot open physical branches. Likewise, they will not be able to organize in the form of correspondent, agency or representation office. However, they can set up their own ATMs. In addition, every digital bank is required to set up at least one physical office in order to receive its customers’ complaints.

3. **Lending Limits:** There is a limit on the total amount of unsecured cash consumer loans that can be extended to a customer. The total amount of cash consumer loans that can be extended to each customer cannot exceed 4 times the monthly average net income declared by the customer and confirmed by the digital bank. If the monthly average net income cannot be determined, it cannot exceed 10,000 Turkish Liras. Credit card expenditures, cash withdrawals and overdraft accounts are not subject to this limit.
4. **Service Continuity:** It has been stated that the service continuity level undertaken for internet banking and mobile banking distribution channels of digital banks cannot be lower than 99.8%.

## II –BANKING AS A SERVICE

The second concept, which is introduced by the regulation as a radical innovation in the financial system, is BaaS. In BaaS model, two main persons are service bank<sup>1</sup> and interface provider<sup>2</sup>.

Interface providers will be able to offer new products and services to the market by connecting to the banking infrastructure of service banks through open banking services. In this context, companies such as financial technology companies that can use technology very well and make fast transactions will have the opportunity to create new business models related to banking through BaaS.

The main principles regarding BaaS might be summarized as follows:

1. Service banks can give BaaS service only to interface providers established in Turkey.
2. In order for a service bank to give service to an interface provider, the service bank and the interface provider must sign a contract which must include the criteria stipulated in detail in the Regulation.
3. Banks are not allowed to be an interface provider. Interface providers cannot use words or phrases to give the impression that they are operating like a bank or payment institution and electronic money institution, or that they are collecting deposit and participation funds like a bank, or that they are collecting funds like a payment service provider.
4. In order for a service bank to offer service to the customer of the interface provider, a contractual relationship must be established between the customer and the service bank.
5. The final decision whether or not to give service to customer (i.e., decision to lend money) will be given by the service bank. The banking services to be provided to the customers are carried out on the balance sheet of the service bank.
6. The interface provider and the service bank are jointly responsible for the obligations regarding identity authentication and transaction security over the mobile application or internet-based interface.
7. In terms of mediating for (i) the establishment of the contractual relationship between the service bank and the customer and (ii) enabling the customer to use banking services, the

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<sup>1</sup> Service bank refers to the bank that provides the service model banking services

<sup>2</sup> Interface provider refers to companies established as limited liability companies that enable their customers to perform their banking transactions by accessing the banking services offered by the service bank via its mobile application or internet browser-based interface through the bank's open banking services.

interface provider has been considered as a support service provider providing services to the service bank within the scope of the Regulation on Procurement of Support Services by Banks.

8. Providing support services to a service bank as an interface provider is subject to the permission of the BRSA pursuant to the Regulation.
9. The systems used by the interface provider in carrying out its activities related to the support services that it may offer to the service bank and their backups are considered within the scope of the primary systems defined in the Regulation on Internal Systems and Internal Capital Adequacy Assessment Process of Banks. The foregoing systems and their backups, including the systems in which confidential data are processed by interface providers or the parties from which the interface provider receives service, must be maintained in Turkey.
10. Banks do not need to apply to the BRSA to expand their operation scope in order to be able to provide services to interface providers through BaaS.

### III –ENFORCEMENT

The Regulation enters into force as of January 1, 2022



This newsletter has been prepared as of January 2, 2022 for informative purposes regarding the Regulation on Operating Principles of Digital Banks And Banking as a Service published in the Official Gazette dated December 29, 2021 and numbered 31704.

Our assessments in this newsletter do not constitute legal recommendation or legal opinion and Aksu Çalışkan Beygo Attorney Partnership may not be hold responsible depending on these assessments. It is recommended to obtain legal opinion for your inquiries within the scope of this memorandum.

**Please contact us for detailed information.**

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