

**REGULATION**

From: The Capital Markets Board

**REGULATION ON OPERATION, CONDUCT AND AUDIT  
PRINCIPLES OF TRADE REPOSITORY**

**PART ONE**

**Purpose, Scope, Reference, Definitions and Abbreviations**

**Purpose**

**ARTICLE 1 – (1)** The purpose of this Regulation is to establish the operating procedures and principles of Trade Repository Institutions authorized under Article 87 of Capital Markets Law No. 6362 dated December 6, 2012, regarding their obligations, how and where the information they receive must be kept, and their duties pursuant to the Law.

**Scope**

**ARTICLE 2 – (1)** This regulation covers the obligations, and the operation, conduct and audit principles of Trade Repository Institutions as per Article 87 of the Law No. 6362.

**Reference**

**ARTICLE 3 – (1)** This Regulation is issued based on Article 87 of Capital Markets Law No. 6362 dated December 6, 2012.

**Definitions and abbreviations**

**ARTICLE 4 – (1)** The terms used in this Regulation are given below:

- a) The Law: The Capital Markets Law No. 6362;
- b) The CMB: The Capital Markets Board;
- c) Central counterparty/CCP: The institution acting as seller toward the buyer and buyer toward the seller in capital market contracts;
- d) Trade repository operation: Collecting data and storing them centrally as stipulated in the Law and this Regulation;
- e) Trade Repository Institution/TR: The institution conducting trade repository operations and authorized by the CMB as per Article 87 of the Law;
- f) Ancillary services: Trade approval, trade matching, loan registry, portfolio validation, portfolio compression and other services related to trade repository operations;
- g) Investment institution: Brokerage houses and other capital market institutions and banks authorized to engage in investment services and activities under the establishment and operation principles set by the CMB;
- h) Executives: Chairman and board members, general managers and assistant general managers, and unit managers of the institution authorized as a TR by the CMB.

**PART TWO**

**Terms of**

**Operation Terms of establishment and operation of TRs**

**ARTICLE 5 – (1)** To obtain an establishment permit, TRs must

- a) Be established as a joint-stock corporation;
- b) Have all of their shares in the registered form;
- c) Have their shares issued for cash;
- d) Have paid capital at least equal to the amount determined by the CMB;
- e) Ensure that their founders or their shareholders who have significant influence, directly or indirectly, on the Excluding public corporations, the founding legal entities and the shareholders of legal entities founding legal entities, must meet the requirements listed in Article 44;
- f) Have their articles of association conform to the Law and applicable regulations, and;
- g) Have a transparent and clear ownership structure.

(2) Excluding public corporations founding legal entities and who have a significant influence, directly or indirectly, on the founding legal entities should submit their independently audited financial statements for the last three years. Foreign founders and shareholders must submit some information and documents to certify that they fulfill the conditions applying to Turkish natural and legal entities, as appropriate. All such documents must be validated by the authorities of their country of residence. They must present the notarized translations of such information, or ensure that the information is submitted in a manner approved by the law or international conventions.

(3) To be able to operate, a TR authorized by the CMB must

a) Have its articles of association conform to the Law and this Regulation;

b) Independently of other operations of the institution, if any, have its organizational structure established so as to exclusively conduct trade repository and reporting activities, have its responsibilities clearly determined, have its internal control, internal audit, and supervision and risk management systems established and ensure operability thereof;

c) To conduct TR services in an effective, reliable and uninterrupted manner, have the necessary data processing systems and technological infrastructure established, have the necessary systemic and administrative measures and procedures drawn up to ensure coherence, reliability and integrity as well as timely delivery of information.

(4) The CMB may stipulate supplementary terms in addition to the terms specified in this Article.

(5) If a TR falls out of compliance with any one of the terms of operation determined by this Regulation, it must report the non-compliant condition to the CMB as of the day of occurrence.

(6) In order for the CMB to approve ancillary services to be provided by the TR, such ancillary services must be operationally independent from the trade repository operations.

(7) The TR must receive a permit from the CMB to be authorized to conduct trade repository operations abroad.

(8) Article 41 of the Law applies if the operation permit granted by the CMB is canceled.

(9) An establishment authorized as a central securities depository or a central clearing institution by the CMB may be authorized as a TR without the need to certify their compliance with the terms stipulated in this Article. In that case, the authorized institution does not establish further bodies for its operations as a TR other than its bodies established pursuant to the Turkish Commercial Code No. 6102 dated January 13, 2011; the bodies of such institution will replace the bodies of the TR. The authorized institutions must run their TR operations independently from other activities. Information system audits and financial audits by authorized institutions as per CMB regulations fall within the scope of audits specified in the second and third paragraphs of Article 21.

(10) The approval of the CMB is required for amendments to the articles of association of TRs.

(11) Whether directly or indirectly, the CMB must approve any share transfer of more than 5 percent or any share transfer causing a change of 5 percent or more in the shareholding structure, as well as any trade that directly or indirectly leads to a transfer of management control, even if it does not necessitate a share transfer. The CMB must also approve any transfer of privileged shares. Natural persons and legal entities and key shareholders of legal entities to whom the shares are transferred must possess the qualifications stipulated by Article 7. If an AoA amendment, or a share transfer, or a trade that leads to a transfer of management control is not approved by the CMB, it will be null and void. Share transfers in violation of this provision are not recorded in the share register and are considered null and void. Share transfers not exceeding 5 percent are notified to the CMB within 15 business days at the latest following completion of such transfer.

### **PART THREE**

#### **The Duties and Powers of TRs, and Operation Rules and Principles**

##### **The Duties and Powers of TRs**

**ARTICLE 6 – (1) The duties and powers of TRs are as follows:**

- a) Saving the received data of the trades specified by the CMB and storing them in an electronic environment within the borders of Turkey, pursuant to Article 87 of the Law,
- b) Monitoring the integrity of reporting by members, and in case of finding any inconsistencies or unlawful practices, requesting the member to remedy the problem and notifying the CMB if the problem persists. Taking precautions and implementing measures to ensure the reliable operation of the system,
- c) Developing the instruments required to analyze data in accordance with the principles in the Regulation regarding sharing of TR data,
- d) Ensuring the confidentiality of records within the framework stipulated by the legislation,
- e) Publicly disclosing the data according to the principles in the Regulation,
- f) Meeting data requests according to the principles in the Regulation,
- g) Performing other duties assigned by the CMB and performing the trades required by the procedures.

##### **Operation rules and principles**

**ARTICLE 7 – (1) TRs must comply with the following principles in their operations:**

- a) Ensuring the establishment of necessary infrastructure, equipment and organization to help their members perform trades in a reliable and stable manner,
- b) Taking necessary measures to ensure that their members abide by their business and trade rules;
- c) Storing the reported for ten years,
- d) Monitoring international regulations and practices, and presenting proposals to the CMB to comply with international practices,
- e) Ensuring an orderly flow of information between themselves, their members and the CMB, when requested,
- f) Being effectively organized to ensure the reliability and stability of their electronic environment,
- g) Ensuring fair pricing and operations,
- h) Collaborating and coordinating with the CMB and their stakeholders for their businesses and trades,
- i) Regularly disclosing to the public through its website the prices of trade repository services, the regulations and the principles regarding the provision of services.

### **Organization and staff**

**ARTICLE 8 –** (1) To fulfill the duties and exercise the powers given to the TR by the Law and this Regulation, the TR board of directors determines the trade repository unit's organization, job descriptions, powers and responsibilities, as well as the principles and procedures regarding the transfer of such powers and responsibilities. It also sets the working procedures and principles for employees and wages.

### **Confidentiality obligation**

**ARTICLE 9 –** (1) All TR executives and staff must ensure the confidentiality of reported data, and not disclose such data to anyone except under the conditions stipulated in this Regulation, and not use such data to the advantage or detriment of themselves or third parties. This obligation continues after the officials leave their jobs at the TR.

### **Prohibitions**

#### **ARTICLE 10 –**

- (1) TR executives, staff and their spouses and children are not allowed to trade or secure a position in the markets related to the trades reported to the TR.
- (2) All TR executives and staff must sell or transfer all the securities and positions they acquired by trading in the markets related to the trades reported to the TR, within 30 days of starting their job at the TR.
- (3) If a TR board member is found to be violating this Article, the CMB will call, within thirty days at the latest, an Extraordinary General Assembly to convene with the agenda of dismissing the board member in question. All other TR executives and staff are considered as resigned immediately upon the discovery of the said breach

## **PART FOUR**

### **Membership Principles**

#### **Members**

**ARTICLE 11 –** (1) The TR members are as follows: the legal entities who are counterparties, the investment institutions brokering the trades, the establishments providing central counterparty services, the establishments providing reporting services to counterparties and other institutions approved by the CMB.

#### **Membership types**

**ARTICLE 12 –** (1) General TR members are the institutions authorized to provide reporting services for the trades to which they are a party or the trades they broker. These members also include the institutions who offer reporting services on behalf of third parties, independently of such trades. An institution providing central counterparty services is also a general TR member.

(2) Direct TR members are the institutions that fulfill their reporting responsibilities regarding the trades to which they are a party or the trades they broker, on behalf of themselves and/or their customers who are parties to such trades.

(3) Procedures and principles on membership type changes are determined by the TR board of directors.

#### **Membership terms and approval**

**ARTICLE 13 –** (1) To be admitted as a member, the applicants must

- a) Have the necessary technical equipment and security systems that meet the minimum requirements determined by the TR to conduct reporting activities,
- b) Employ a sufficient number of employees qualified to undertake reporting and tracking,
- c) Pay the entrance fee,
- d) Have a Legal Entity Identifier Code,
- e) Meet other eligibility requirements set by the TR board.

(2) If the TR determines that the applicant satisfies the requirements, the applicant will be admitted as a member by the board of directors. The applicant will be notified in writing about the final decision of the TR. Membership relationship is established by agreement. With this agreement, the counterparties also adopt the procedures of conduct.

(3) The institutions providing central clearing services are exempt from the entrance fee specified in paragraph one.

#### **Temporary suspension or cancellation of membership**

**ARTICLE 14 –** (1) Procedures and principles about temporary suspension or cancellation of membership are determined by the TR's board of directors.

#### **Member responsibilities and operating principles**

**ARTICLE 15** – (1) The TR members are responsible for all the trades they have performed in the TR and the activities of their employees within the framework of their duties. The responsibilities of members cannot be removed or delimited by provisions included in contracts drawn up between TR members and their customers.

(2) In addition to obeying the principles and rules stipulated by the applicable legislation, TR members must also ensure the following:

- a) Comply with the principles and rules set by the TR;
- b) Conduct fair reporting in agreement with counterparties;
- c) Act in good faith and with integrity;
- d) Ensure the confidentiality and security of reported information;
- e) Store reported information for ten years;
- f) Notify the TR about any and all changes in membership terms.

## **PART FIVE**

### **Sharing the Data Stored by TRs**

#### **Confidentiality**

**ARTICLE 16** – (1) TR records are confidential. However, providing information in accordance with the principles stipulated in this Regulation does not constitute a breach of confidentiality.

(2) TRs must comply with the Law on Protection of Personal Data No. 6698 dated March 24, 2016, when sharing the information they store with the third parties, including public corporations.

#### **Direct access to the data stored by TRs**

**ARTICLE 17** – (1) The CMB has the right to access all information stored by TRs.

(2) The following institutions have the right to access the information stored by TRs when they need it in relation to their duties, powers and responsibilities pursuant to the legislation:

- a) The Ministry of Treasury and Finance of the Republic of Turkey,
- b) Banking Regulation and Supervision Agency
- c) Central Bank of the Republic of Turkey,
- d) Savings Deposit Insurance Fund,
- e) Investor Compensation Center,
- f) Other public institutions approved by the CMB.

(3) The procedures and principles regarding the electronic systems to be established in collaboration with the institutions authorized to access the information stored by the TR and other access methods, are determined by the TR's board of directors. Prior to sharing information, these institutions and the TR will sign a protocol.

#### **Data access by reporting counterparties**

**ARTICLE 18** – (1) The counterparties of the trades reported to the TR, and the investment institutions providing reporting services to the Central Counterparty or to the counterparties have the right to access TR data. However, this right only applies to the trades to which they are a party and/or the trades they report.

#### **Other data requests**

**ARTICLE 19** – (1) In addition to the institutions listed in Article 18 having direct access authority, the TR meets the data requests of the persons authorized by the Law or by a legislative provision authorized clearly by the Law.

(2) The TR may respond to the data requests for statistical purposes, but it only provides delayed data, and keeps confidential the names of investment institutions which conduct or broker the relevant trades as well as the names of beneficiaries, pursuant to the Law on Protection of Personal Data.

(3) Data sharing requests by foreign authorities from TRs are subject to CMB approval. The CMB evaluates said requests by considering;

- a) The existence of a bilateral or multilateral cooperation agreement based on reciprocity between two countries about data sharing, or a Memorandum of Understanding between the relevant authorities;
- b) The presence of legislative provisions in the relevant country equivalent to the confidentiality principles in this Regulation regarding the usage of shared data.

## **PART SIX**

### **Financial provisions**

#### **Revenues, fees and commissions**

**ARTICLE 20** – (1) The TR board will set the fees and commission rates and the terms of payment (timing and type) for its trade repository services, and then submit this information to the CMB for its approval.

(2) The fees for other services which the members are not obliged to receive from the TR, and the services provided to the members under the TR's own responsibility, are set by the TR's board of directors.

(3) The institutions providing central clearing services are exempt from the fees and commissions specified in paragraph one.

**PART SEVEN**  
**Other Provisions**

**TR's audit**

**ARTICLE 21** – (1) The CMB is the regulatory, oversight and audit authority of the TR regarding its operations under the Law. The CMB is authorized to conduct any kind of inspection and audit regarding the TR's operations within the scope of the Law, whenever it deems necessary.

(2) TR information systems are audited pursuant to CMB regulations.

(3) Financial audit of TRs is conducted by one of the approved independent audit firms named on the list provided by the CMB.

The completed audit report will be submitted to the TR and the CMB simultaneously. The CMB may ask for an independent audit on any issue it deems necessary.

**Outsourcing of TRs**

**ARTICLE 22** – (1) If the TR receives outsourcing services for its technological infrastructure, it must

a) Apply confidentiality procedures of both itself and the service provider;

b) Sign a "Confidentiality Agreement" with the service provider;

c) Determine the work flow, take necessary measures for information security and establish procedures for outsourcing.

(2) The TR cannot store the data reported to itself within the scope of Article 87 of the Law by using outsourced cloud computing services.

**Disciplinary provisions**

**ARTICLE 23** – (1) Members who disturb the order and impair the institution's integrity, who cheat and undermine the orderly, honest and transparent flow of business, who violate applicable legislation and rulings, are reported to the CMB by the TR. The CMB then takes the necessary actions.

**Code of practice**

**ARTICLE 24** – (1) In matters that are not included in this Regulation or that lack clarity, the CMB is authorized to take decisions and give guidance by taking into consideration the general provisions and international principles and regulations regarding trade repository services.

**Entry into Force**

**ARTICLE 25** – (1) This Regulation enters into force at the time of its publishing.

**Enforcement**

**ARTICLE 26** – (1) The Capital Markets Board is responsible for enforcing this Regulation.