Chapter 78
Emerging Legal Issues in Banking Operations

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ABSTRACT
This chapter deals with legal issues in banking activities, which have gained interest during the past decade. It determines the place of legal issues related to banking activities, such as consumer loans, credit cards, and electronic banking, which all have gained even more importance after the last global financial crisis. The chapter focuses on the comparative analysis of current legal issues in Turkey and in the European Union and the legal issues related to risks in the sphere of electronic banking and suggests potential strategies.

INTRODUCTION
While the development of electronic transaction in banking activities can offer a variety of benefits to society, there are multiple legal issues and security risks presented by this development. This work discusses several legal issues and risks in the banking activities.

The observation addresses three major issues. The first relates to the legislation which governs the banking activities. Particular emphasis is given to examining legislation in Turkey and comparison with the existing EU legislation. The second issue relates to the analysis of the benefits of electronic banking presented by the development of electronic technology. The third major issue of concern stems from the first and second: risks of electronic banking and possible legislative security issues.

The first section describes the legislation on the banking activities in Turkey. The analysis of the different types of banking activities is also given in the first section. The analysis of the legal banking issues in Turkey is given in the second section. The differences and similarities between the issues in European Union and Turkish Law are given in third section. The benefits of electronic banking, risks and further legal issues are analyzed in the fourth section, with a special emphasis on the development of electronic transactions.
BANKING ACTIVITIES

The Article 4 of the Turkish Banking Law No. 5411 has defined the activities which the banks can engage in. Based on this article, there are several activities and limitations for engaging in these activities. According to this article (Turkish Banking Law No. 5411):

Without prejudice to the provisions of other laws, banks may carry out the following activities:

1. Accepting deposits.
2. Accepting participation funds.
3. Granting any sort of loan, either cash or non-cash.
4. Carrying out any type of payment and collection transactions, including cash and deposit payment and fund transfer transactions, correspondent bank transactions, or use of check accounts.
5. Purchasing transactions of commercial bills.
6. Safe-keeping services.
7. Issuing payment instruments such as credit cards, bank cards and travel checks, and executing relevant activities.
8. Carrying out foreign exchange transactions, trading of money market instruments, trading of precious metals and stones and safekeeping such.
9. Trading and intermediation of forward, future and option contracts, simple or complex financial instruments which involve multiple derivative instruments, based on economic and financial indicators, capital market instruments, goods, precious metals and foreign exchange.
10. Purchase and sale of capital market instruments and repurchasing or re-sale commitments.
11. Intermediation for issuance or public offering of capital market instruments.
12. Transactions for trading previously issued capital market instruments for intermediation purposes.
13. Guarantee transactions like undertaking guarantees and other liabilities in favor of other persons.
15. Portfolio operation and management.
16. Primary market dealing for purchase-sales transactions within the framework of liabilities assumed by contracts signed with Treasury Undersecretariat and/or Central Bank and associations of institutions.
17. Factoring and forfeiting transactions.
18. Intermediating fund purchase-sale transactions in the inter-bank market.
19. Financial leasing services.
20. Insurance agency and individual private pension fund services.
21. Other activities to be determined by the Board.

Deposit banks shall not be engaged in activities cited in sub-paragraphs (b) and (t); participation banks shall not be engaged in activities cited in sub-paragraph (a) and development and investment banks shall not be engaged in activities cited in sub-paragraphs (a) and (b).

In an effort to present the banking activities in detail, we formed this section by reviewing the products and services provided by banks in general and regarding the Article 4 of the Banking Law No. 5411. Regarding the products and services offered by banks, banking activities can be divided into individual, corporate, SMEs, credits, credit cards, ATM (Automated Teller Machine) cards, smart cards, investment, and instantly banking activities.

Individual banking activities can include, deposit products, investment, credit, cards, insurance, retirement, payments (invoice, tax, loan, etc.), deposit box, money transfers, checks and bonds, etc.

Corporate banking activities include, credit, project financing, structured financing, derivatives, foreign-trade financing, cash management, investment, credit, cards, and insurance.