

THE REGULATION ON THE PRINCIPLES AND PROCEDURES REGARDING THE ARBITRAL TRIBUNAL FOR PRIVATE CUSTOMER OF PAYMENT AND ELECTRONIC MONEY INSTITUTIONS ASSOCIATION OF TÜRKİYE

Purpose and Scope

ARTICLE 1 - (1) Without prejudice to the provisions of the Law on the Protection of the Consumer numbered 6502 and dated 7/11/2013 and application rights set out under other laws, the purpose of this Regulation is to regulate the principles and procedures regarding the establishment of the Arbitral Tribunal for Private Customer in order to ensure the settlement of disputes between members of Payment and Electronic Money Institutions Association of Türkiye and private customers and such Tribunal's competence, jurisdiction and responsibility along with to regulate the procedures and principles regarding the application to the Tribunal.

Legal Basis

ARTICLE 2 - (1) This Regulation has been prepared on the basis of the item (ğ) of the second paragraph of Annex-1 of the Law On Payment And Securities Settlement Systems, Payment Services And Electronic Money Institutions numbered 6493 and dated 20/6/2013 along with the item (ğ) of the first paragraph of Article 6 of Statute on Payment and Electronic Money Institutions Association which enters into force with Presidential Decree numbered 2678 which published on the Official Gazette dated 28/06/2020 and numbered 31169 and item (g) of the first paragraph of Article 18 of the same Statute.

Definitions

ARTICLE 3 – (1) The terms in this Regulation shall have the meanings indicated below:

- a) Bank: means the Central Bank of Türkiye Joint Stock Company;
- b) Private Customer: means the real person who benefits from the services of payment and electronic Money institutions;
- c) Association: means the Payment and Electronic Money Institutions Association of Türkiye;
- ç) Electronic money institution: means the legal entity which has been granted authorization to issue electronic money under the Law;
- d) Tribunal: means Arbitral Tribunal for Private Customer
- e) Law: means the Law on Payment and Securities Settlement Systems, Payment Services And Electronic Money Institutions dated 20/6/2013 and numbered 6493;
- f) Institution: means payment and electronic money institution which are members of Association;
- g) Payment institution: means the legal entity authorized pursuant to the Law numbered 6493 to provide and execute payment services;
- ğ) PTT: means Postal and Telegraph Corporation;
- h) Statute: means the Statute on Payment and Electronic Money Institutions Association which was published on Official Gazette dated 28/06/2021 and numbered 31169;
- ı) Tribunal Member: means the real person who is appointed by the members among from employed or contracted legal counsels and lawyers in order to join the Tribunal;
- i) Member: member of association means electronic money institution, payment institution and PTT in the event it has applied to become a member of Association

Establishment of the Tribunal

ARTICLE 4 - (1) Tribunal is established by the Board of Association in order to serve within the body of the Association. The secretariat services are conducted by the Association. If deemed necessary by the Board of Association more than one Tribunal may be established.

(2) The Tribunal consists of five Tribunal Member including one member from electronic Money institution, one member from payment institution, one member from an institution that provide exclusive services for establishment of invoice payments, and two Members of Tribunal who are appointed regardless of their field of activity. The Tribunal Members must satisfy the requirements of having at least bachelor's degree in the fields of law, economy, finance, treasury, banking, business administration, public administration, engineering and having at least 5 years of experience in banking, finance, or payments.

(3) The Members convey names of the candidates to the Association for the Tribunal Members along with other information and documents, which may be requested by the Association in order to establish the Tribunal within the time period to be determined by the Board of Association. The Board of Association selects five permanent members and two substitute members for Tribunal among the nominated candidates. As per this paragraph, only one candidate of a member may be elected as a Tribunal Member, at most. At least one of the Members of each Tribunal is required to have a bachelor's degree in the law. The Tribunal Members elects the president among themselves.

(4) The elected Tribunal Members may serve as permanent and substitute members in more than one Tribunal.

Term and expiration of Tribunal membership

ARTICLE 5 - (1) The term of service for Tribunal Members is two years. The Tribunal Member whose service term has expired may be re-elected for the same assignment.

(2) The Tribunal Member's service is terminated if one of these cases occur; incapacity to work, death, being placed under custody, resignation due to serious disease or disorder and the fact that the Tribunal Member starts working in a field outside the field of payments, termination of his/her business relationship with the Member or his/her failure to attend two meetings in one calendar year without any excuse. The Board of Association evaluates whether the Tribunal Members shall continue conducting their services or not depending on their excuses. The appointment is carried out among the substitute members by the decision of the Board of Association instead of the Tribunal Member whose service is expired or changed and who is not able to continue his/her services in the Tribunal. The newly appointed Tribunal Member serves for the remaining term of the Tribunal Member that he/she replaces.

Payment and expenses

ARTICLE 6 - (1) The Tribunal Members shall only be paid for such service within the framework of principles and procedures to be determined by the Board of Association. The expenses that are required for the activities of the Tribunal shall be paid from the annual budget of the Association.

(2) A contribution may be received from the members who are parties to the dispute with the decision of the Board of Association with respect to the payments and expenses to be paid from the Association's budget. The contribution to be received from the Members shall be determined for each member according to the files that occurred in the previous calendar year and were submitted to the Tribunal for resolution.

The scope of the applications to be submitted to the Tribunal

ARTICLE 7- (1) The Tribunal evaluates all of the applications concerning Members except for those stipulated below. The following applications are rejected by the secretariat without being put on the agenda of the Tribunal by the Association:

- a) The applications that do not arrive to the Association to be submitted to the Tribunal within two years from the occurrence date of the transaction or act which is the subject of the application.
- b) The applications that were submitted to the court or the Consumer Arbitration Committee.
- c) The applications that are arising from transactions with respect to non-individual commercial activities and the applications filed by legal entities.
- ç) The applications regarding the personnel of the Institutions or applications in general nature concerning the product and services that they were provided.
- d) The applications about the decisions taken by an institution which has been decided to be gone bankrupt or liquidated
- e) The applications concerning the transactions that have not executed yet.
- f) The applications that have been previously examined, resolved by the Tribunal, or were subject to a finalized court decision or decision of the Consumer Arbitration Committee.
- g) The applications that have been settled between the applicant and the members, without prejudice to the applicant's right to object
- ğ) The applications that are not submitted to the Tribunal within sixty days following the date on which the Association Member's reply is received by the applicant or the applicant is notified.
- h) The applications that are outside the scope of the activities regarding the payment service and electronic money exportation
- ı) The applications about the requests matters that are within the authority of jurisdiction.
- i) The applications about the actions that are set forth as crime under the laws.

(2) The applicant is informed in writing regarding the applications that are not included in the Tribunal's agenda within thirty days from the date of registration of the application.

(3) After the application was conveyed to the Tribunal, the Tribunal's service regarding the applications which has been submitted to the court or the Consumer Arbitration Committees shall be terminated. The applications that have been submitted to the court or the Consumer Arbitration Committees are notified to the Tribunal by the applicant or relevant Member.

Filing an application to the member

ARTICLE 8 - (1) Before applying to the Tribunal, the application regarding the dispute must be filed to the relevant member of the Association by the applicant within two years at the latest from the occurrence of the transaction and act, which are subject to the dispute. The relevant application for dispute is required to be conveyed to the relevant Member in writing through the Member's internet page, customer complaint line, or e-mail.

(2) The Members must establish relevant systems in order to enable their customers to convey their applications for dispute.

(3) The Member should inform the applicant about the receipt of his/her application through the system that the application for dispute has been filed from.

The processes to be conducted by the Member

ARTICLE 9 - (1) The Member concludes the application within time period starting from the date of receipt of application or the date application conveyed by the Association until the time stipulated in the first paragraph of Article 59 with the title of “Complaints and Objections” of the Regulation on the Payment Services and Electronic Money Export along with Payment Institutions and Electronic Money Institutions. If no response is provided within such time period, the application shall be deemed to be rejected.

(2) If a negative response has been provided, the applicant must be notified that he/she has right to convey his/her application to the Tribunal within sixty days following the date of the institution’s response. The text to be used by the Member for such notification is determined by the Association.

(3) The Member must include at the website the brochure prepared by the Association and samples of application form published at the Association’s website and information regarding Arbitral Tribunal for Private Customer in order to inform customers with respect to Tribunal’s jurisdiction and authority and its working principles and procedures.

Filing an application to the Tribunal

ARTICLE 10 - (1) In the event the response provided by the Member is not found sufficient by the applicant, the applicant may apply to the Tribunal by filling the form that is created by the Association through the website of the Association or in writing within sixty days following the date of the response or if the Member has not responded in due time, following the expiry of the time period when a response should have been given.

(2) In the application form following are indicated: the clear identity and address of the applicant, the member of the Association whom the statement is made about, the subject of the dispute, material facts, legal reason, if known, and the date of application. In the application form, it is mandatory to state clearly and perceptibly what the process and the request are. In the application form it is mandatory to attach proving evidence together with documents and information in this regard.

(3) Filing an application to the Tribunal is free of charge. However, if it is determined that the application rights are abused or unlawfully used the Association’s right of action and right to claim regarding the collection of expenses from the applicant that is incurred for the dispute resolution are reserved.

(4) The repetitive applications to be filed by the applicant regarding the subject of the same dispute are not evaluated by the Tribunal.

Evaluation of the application

ARTICLE 11 - (1) With respect to the duly filed applications, the relevant Member is requested by the Association to submit his/her opinions on the subject matter and necessary information and documents within fifteen days from the date of registration of the application. The information and documents must be submitted to the Association by the relevant member within twenty days after the request is delivered to the Member by the Association. Upon Member’s written request to be submitted to the Association, such time period may be extended for ten days, for once.

(2) In the event the Association has been provided with the response and other relevant information and document concerning the resolution of the dispute by the Member, the applicant shall be informed by the Association with respect to the removal of such application from the agenda within twenty days following the receipt of Member’s response. If the applicant has an objection regarding the removal of his/her application from the agenda, it is required that the applicant should notify the Association concerning his/her objection in writing within thirty days after the delivery of the Association’s notice.

(3) Without prejudice to the provisions under article 7 of this Regulation, the objection to the application is evaluated by the Association. In the event the application is included in the agenda again, the ninety-day time limit stipulated in the first paragraph of article 16 of this Regulation shall commence on the date when the applicant's objection is received.

(4) The Tribunal is informed regarding the information and documents submitted by the Member after the time periods stipulated in the first paragraph of this article have passed. The Tribunal determines whether the information and documents that are submitted after their time-period shall be evaluated or not.

(5) During the evaluation of the application, the Tribunal may request additional evidence, information, and document from the parties by providing time limits by way of granting interim decision. The interim decision granted by the Tribunal suspends the ninety-day time limit.

Meeting of the Tribunal and quorum

ARTICLE 12- (1) The agenda of the meeting is determined by the Association based on the dates of application and is notified to the Tribunal Members in writing at least seven days before the meeting.

(2) The Tribunal gathers with the presence of at least three Tribunal Member and by considering the work load of the filed applications. It is mandatory to have one Tribunal Member who has degree in law in the Tribunal. The decisions are taken by an absolute majority. Tribunal Members cannot abstain from a vote. The Tribunal Member cannot participate in discussions and finalizations of the applications related to themselves, their spouse, and their blood relatives and in-laws up to the third-degree (including third-degree) or the Member to whom he/she is affiliated. In such a case, a substitute Tribunal Member participates in the meeting.

(3) It is essential for the Tribunal Members to be in the meetings. Tribunal Members who have excuses notify the Association in writing regarding their excuse within three business day in advance, if they know the issue that caused the excuse before. In such a case, a substitute Tribunal Member is invited to the meeting by the Association.

Discussion and voting

ARTICLE 13 - (1) The applications are discussed in chronological order. The president of the Tribunal allows in a row to those who have requested permission to speak during the discussion of the application. After the discussions are concluded the agenda item is put to the vote. Voting is conducted by the open ballot system. A re-vote cannot be held regarding an application that is discussed and resolved in the Tribunal. The Tribunal renders decision of lack of jurisdiction regarding the applications submitted to the court and claims with respect to material and immaterial damages.

Tribunal's decisions

ARTICLE 14 - (1) The decisions of the Tribunal are signed by the Tribunal Members who attended the meeting. The Tribunal Members sign the decisions that they are dissenting to by stating their reasons.

The matters that must be included in the decisions

ARTICLE 15 - (1) The decisions must include the following matters:

- a) Date and number of the decision
- b) The name, surname, and signature of the Tribunal Member who rendered the decision

- c) The name, title and address of the parties along with applicant's Turkish identity number
- ç) Application and summary of the defense
- d) Summary of technical and legal issues that have been evaluated and discussed
- e) Evaluation of all submitted evidence and explanations
- f) Reasoning and basis of the decision
- g) If any, dissenting vote and its reasons
- ğ) In the application where the result or subject of it may be measured in terms of money, the amount subject to the decision

Finalization of the application and notification of the decisions to the relevant parties and their effects

ARTICLE 16- (1) The application is finalized with its reasons by the Tribunal through the evaluation of the disputed issue between the Member and the applicant within ninety days at the latest after the registration date of application and the rendered decision is notified to the relevant Member and the applicant by the Association in writing or through electronic mail within twenty days.

(2) The Tribunal may decide on each application filed by the same person with respect to more than one transaction, relating to the same type of Tribunal by treating such as one application. The decisions of the Tribunal on the disputes up to three thousand Turkish Liras per transaction are implemented by the Members to be subject to a judicial remedy. The Member complies with the decision and notifies the applicant within fifteen days following the receipt of the decision and informs the Association in writing regarding each transaction. The applicant may apply to the Association in writing regarding non-compliance with the decision following the end of the fifteen-day period after the receipt of the letter sent by the Association concerning the Tribunal's decision.

3) Every year in January, the upper limit set out in the second paragraph of this article is increased in the proportion of announced reassessment. The last digits in the currency are not taking into account in the calculation of the increase.

Keeping the decisions of the Tribunal and the documents which are subject to the application

ARTICLE 17 - (1) The decisions of the Tribunal and the documents which are subject to the application must be kept by the Association for five years.

(2) The Bank may make evaluations regarding the decisions of the Tribunal if needed and, in the event, it is determined that the decisions granted before the Tribunal is in clear violation of the Law and relevant secondary regulations, in particular, the relevant legislation except for the exceptions, the Bank is authorized to request Tribunal Members to be changed.

Information

ARTICLE 18- (1) The Association publishes necessary announcements, information on the operation of the Tribunal, and requirements for applying to the Tribunal at the website concerning the disputes in order to inform the sector and public.

(2) The disputes which are submitted to the Tribunal and finally settled and relevant statistical information, the events which shall be served as an example and the decisions which are granted regarding such events may be published at the Association's website.

(3) In the publications to be made to the public, in no event the information regarding dispute resolution or identity of the parties, their legal representatives, and Tribunal Members shall be included.

Annual activity report

ARTICLE 19 - (1) The Members present to the Association the information regarding numbers, subjects and result of application submitted to them with individual content in a report to be determined by the Association in quarterly periods to be calculated from the beginning of the calendar year, until the end of the month following such period. The Association gathers such and sends to the Bank until the end of the following month. The Association submits to the Bank the Tribunal's annual report containing such information and statistical information regarding the applications that are submitted to the Tribunal and settled finally and publish such at its own website by the end of March of each year, at the latest.

Confidentiality of members and customers

ARTICLE 20 - (1) Tribunal Members and officers of the Association shall not disclose the confidential information of the Members or customers that they have received due to their titles and roles with the third parties. Such obligation shall continue after the resignation of relevant people from their role in the Tribunal and Association. The general provisions shall apply for those who have disclosed the confidential information of Members and customers.

Sanction

ARTICLE 21 - (1) Within the scope of the Association's Disciplinary Regulation, the actions are taken against the Institutions that are alleged to act in violation of this Regulation.

Entry into Force

ARTICLE 22 - (1) This Regulation shall enter into force 6 months after its approval by the General Assembly of Association

Enforcement

ARTICLE 23 - (1) The provisions of this Regulation shall be enforced by the President of the Association.