

# **REGULATION CONCERNING THE PRINCIPLES OF OPERATIONS OF PRECIOUS METALS EXCHANGE INTERMEDIARY INSTITUTIONS AND FOUNDATION OF PRECIOUS METALS BROKERAGE HOUSES**

## **PART I**

### **Purpose and Scope, Basis and Defitions**

#### **Purpose and Scope,**

**ARTICLE 1-** (1) The purpose of this regulation is to regulate the conditions and principles of foundation and admittance of operations of Precious Metals Exchange intermediary institutions who shall operate in the Exchange and Precious Metals brokerage houses who shall be member of the Exchange.

#### **Basis**

**ARTICLE 2-** (1) This regulation has been prepared regarding to the Decree No. 32, concernng the Protection of the Value of Turkish Currency which has been put into effect by the Decision of Board of Ministers dated 7/8/1989 and number: 89/14391.

#### **Defitions**

**ARTICLE 3-** (1) the meaning of the terms which appear in this regulation, are as follows:

- a) Exchange : Istanbul Gold Exchange,
- b) Intermedary Institutions: Precious Metals brokerage houses, banks, authorized institutions, precious metals producing and marketing companies and branches of foreign companies resident in Turkey which are admitted to be member to the Exchange and who trade for the account of and on behalf of themselves, for the account of and on behalf of third parties or on behalf of themselves but for account of third parties and whose operational principles shall be governed by this regulation.
- c) Precious Metals Brokerage Companies: Companies which are admitted to operate on the Exchange by Under-Secretariat of Treasury and who trade for the account of and on behalf of themselves, for the account of and on behalf of third parties or on behalf of

themselves but for account of third parties and whose operational principles shall be governed by this regulation.

ç) Under-Secretariat: Under-Secretariat of Treasury.

## **PART II**

### **Foundation, License for Operation, Amendment of Statute, Participation and Opening of branches of Precious Metals Brokerage Houses**

**ARTICLE 4-** (1) The brokerage houses must comply with the following requirements

- a) To be founded as incorporated companies,
- b) To have minimum 500,000 TL paid-up capital,
- c) the shares of the brokerage houses must be issued in cash and shares must be issued on the name of the bearer.
- d) ç) to have the expression “Precious Metals” in their commercial tradename.
- e) to have the master agreement proper to the provisions of this regulation.
- f) The founders to have the conditions which are listed on the 5th article of this regulation.
- g) Minimum 2 of the real and corporate founders of the company should have experience of minimum 3 years of trade and production of Precious Metals and these persons to minimum 50 % or more shares of the company.

### **The Qualifications of the Founders of Precious Metals Brokerage Houses**

**ARTICLE 5-** (1) Founders of Precious Metals Brokerage Houses must have the following qualifications:

- a) must not have gone bankrupt, declared composition of debts, not to have any decision on themselves about postponement of bankruptcy, to have the acceptance of application of the restructuring the debts by compromise and not to have any tax debts regarding the execution and bankruptcy Law dated 9/6/1932 no: 2004,
- b) must document that they have not been subjected to a verdict of liquidation under the

Decree no: 35 dated 28/7/1981, regarding the transactions of insolvent bankers, no.35,

c) Have not been sentenced to heavy imprisonment or imprisonment of more than five years pursuant to the repealed Turkish Penal Code No. 765 or other laws, even though pardoned, with the exception of negligent offenses, have not been sentenced to imprisonment of more than three years pursuant to the Turkish Penal Code No. 5237 or other laws or have not been convicted of the violation of the provisions, that require imprisonment, of the repealed Banking Law No. 3182, of the Banking Law No. 4389 which is repealed by this Law, of this Law, the Capital Market Law No. 2499 and of the legislation on lending transactions, or have not been convicted of infamous crimes such as embezzlement, extortion, bribery, theft, swindling, forgery, breach of trust, fictitious bankruptcy, smuggling offenses other than those arisen by the acts of using and consuming, fraudulent acts in official tenders and trades, money laundering or crimes committed against the prestige of the State and unveiling State secrets, offenses committed against the sovereignty of the state or the prestige of its organs, offenses committed against the security of state, offenses committed against the constitutional order or the functioning of the constitutional order, offenses committed against national defense, offenses committed against the secrets of the state and espionage, offenses committed against relations with other states as well as tax evasion or have not been engaged in such offenses under the repealed Turkish Penal Code No. 765, Turkish Penal Code No. 5237 or other laws.

ç) Not to be sentenced of the crime or connivance in the crime due to the article no: 8 of the law dated 12/4/1991 and No: 3713 related to fight against terrorist financing and the measures taken in Turkey,

d) Not to be sentenced by the crime or complicit with the crime due to the article no: 2, item (g) of the law dated 11/10/2006 and no: 5549 related to prevention of laundring proceeds of crime law.,

e) to have the financial power and authority to fulfil the amount of the capital committed during the foundation of the company.

### **The prior Authorization of the Operation of Precious Metals Brokerage Houses**

**ARTICLE 6- (1)** The prior authorization of the foundation of the Precious Metals Brokerage

Houses is given by the Under-Secretariat. Under-secretariat has the authority to demand additional information and documents when it deems necessary to the ones listed in the article no : 5. .

### **The Licence of the Operation of Precious Metals Brokerage Houses**

**ARTICLE 7- (1)** In case of admittance of the application of the foundation by the Under-Secretariat, the Precious Metals Brokerage Houses can apply to operate in the Exchange in case of confirming the documents listed below:

- a) The master agreement of the company to be registered at the Trade Registry Gazette where the statute was published,
- b) To identify the list of authorized signatures,
- c) To appoint a general manager who has under graduate degree from a finance or business management programme and have an experience of minimum 5 years job experience,
- ç) Members of board of directors, auditors and staff who have authority to sign should have the conditions listed in article no: (5),

(2) In case, the brokerage houses do not apply to the Under-Secretariat within 180 days starting from the date of obtaining the licence of foundation, together with the information and documents mentioned above, the licences permit which already awarded shall be canceled.

(3) In case of authorization of licence of operation, the Under-Secretariat gives a “licence of Operation Document”. The licence is posted in the company such as to be seen by everyone.

(4) It is essential to send the address and communication information to the Under-Secretariat and notify about the operation date after starting the operations.

(5) In case, brokerage houses do not apply to the Exchange within 60 days starting from the date of obtaining the licence of operation for the purpose of obtaining Exchange Membership, the operation licence of precious metals brokerage companies shall be canceled.

## **The Amendment of Statute, To have partnership and to open branch of Precious Metals Brokerage Houses**

**ARTICLE 8-** (1) In conditions of statute amendments, the brokerage houses must obtain the approval of Under-Secretariat and send a copy of the Trade Registry Gazette where their statute amendments was published within 30 days before applying to Ministry of Industry and Commerce to the Under Secretariat.

(2) The individuals who will take over the shares, have to possess the qualifications required of the founding partners, and further prove this point by presenting the documents stated in the Article 5 of this Regulation.

(3) In case the brokerage houses do not obtain the pre-permission before amending their statute, the Under-Secretariat is authorized to cease the operations of the brokerage houses in the Exchange temporarily beginning from one month up to six months.

(4) In case of the opening new branch or have partnership in Turkey or abroad, the Precious Metals brokerage houses must obtain authorization from the Under-Secretariat. The Under-Secretariat is authorized to cease the operations of the brokerage houses in the Exchange temporarily beginning from one month up to six months.

## **PART III**

### **The Operation Licence of Precious Metals Intermediary Institutions, Institutions Resided Abroad, Exchange Membership, Fields of Activity, Transactions and Operations Which The Intermediary Institutions Are Not Allowed To Perform**

#### **Licence for Operation of Precious Metals Intermediary Institutions**

**ARTICLE 9 –** (1) Banks, authorized institutions, precious metals producing or trading incorporated companies apply for trading at the Exchange with a petition paper to the Under-secretariat.

(2) In case of their application for operating as an Exchange member authorized institutions and precious metals producing or trading incorporated companies substantiate documents suggest that their partners, members of board of directors, auditors and authorized signatories

fulfill the conditions set forth at the Article 5. The Under-secretariat is authorized to demand additional information and document.

(3) The paid up capital of precious metals producing or trading incorporated companies must be at least 500 thousand TL and these companies should be in precious metals producing or trading business at least for three years.

(4) Authorized institutions and precious metals producing and trading incorporated companies are obliged to declare the amendments concerning their partners to the Under-secretariat of Treasury with the documents suggest that their partners fulfill the conditions set forth at Article 5 before the amendment.

(5) Precious metals brokerage houses, authorized institutions and precious metals producing and trading incorporated companies are obliged to declare the amendments concerning their members of board of directors, auditors and authorized signatories to the Under-secretariat of Treasury with the documents suggest that these persons fulfill the conditions set forth at Article 5 before the amendment.

(6) The paid up capital of authorized institutions must be at least 500 thousand TL.

### **Institutions Resided Abroad**

**ARTICLE 10** – Institutions resided abroad and have the operation licence from the relevant country’s regulatory authority for precious metal production, trade or brokerage are subject to permission of Under-secretariat for operating as a member of Exchange by establishing a branch office in Turkey.

### **Exchange membership**

**ARTICLE 11** - (1) “Precious Metals Exchange Membership Certificate” is given by the Exchange Board of Directors to the precious metals intermediary institutions which are allowed to operate by the Under-secretariat for trading at the Exchange. The operation licence of precious metals intermediary institutions is deemed cancelled in case of not fulfilling the application to Exchange Presidency within 60 days as from the operation licence date.

(2) Central Bank of Republic of Turkey is the member of the Exchange as of right.

## **Fields of activity of precious metals intermediary institutions**

**ARTICLE 12** – (1) The intermediary institutions are authorized to perform the following activities within the scope of brokerage activities, without prejudice to their powers granted by their respective internal regulations:

- a) Purchasing and selling operations of precious metals, lending and borrowing operations of precious metals and operations of capital markets instruments based on precious metals for the account of and on behalf of themselves, for the account of and on behalf of third persons, on behalf of themselves but for the account third persons in compliance with the principles prescribed by related regulations, such precious metals being limited to those standards and fineness of which are determined by the Under-secretariat.
- b) Export and import of processed and unprocessed precious metals and processed or unprocessed precious stones and precious goods made of these in compliance with the export and imports regulations.
- c) Temporary import of processed and unprocessed precious metals and stones to use them for the purpose of manufacturing finished products and export the same as finished or semi-finished goods and stones.
- ç) Purchasing and selling of cash foreign currency being limited to their activities at the Exchange.

## **Transactions and operations which the precious metals intermediary institutions are not allowed to perform**

**ARTICLE 13** – (1) Precious metals intermediary institutions;

- a) are not allowed to issue securities related to unprocessed precious metals they purchase or sell and borrow or lend within the framework of brokerage business, they are not allowed to purchase and sell capital market instruments, they are not allowed to perform money lending transactions.
- b) are not allowed to engage in any industrial and agricultural business beyond the activities for the performance of which a licence has been obtained from the Under-Secretariat and the related transactions and operations; further, they are not allowed to acquire real estate beyond

the level required for proper execution of their business.

c) are not allowed to collect savings as described in the Banking Code number 5411.

ç) are not allowed to promise, either orally or in written form, that they guarantee a definite income to their customers through purchase and sale of precious metals.

d) are not allowed to make any advertisements or announcements containing information that is exaggerated, contrary to the facts and misleading for the customers and the public and to make any other oral or written announcement of the same nature.

e) are not allowed to take unprocessed precious metals in trust or receive them for safekeeping purposes instead of safekeeping service at the Exchange vault.

f) are not allowed to let their employees effect transactions on their own behalf and for their own account by making use of the facilities provided to them, beyond the ordinary customer-broker relationship.

g) are not allowed to engage in trading without a real change of ownership of the subject unprocessed precious metals, intended to increase, decrease or hold at a definite level the prices of precious metals artificially or to influence artificially the purchase and sale demands for precious metals or to create the impression that there is an active market.

(2) The banks which will engage in brokerage house business included in the scope of this regulation, shall not be subject to the provisions of (a), (b), (c) and (e) of this Article's first sub-article.

(3) The precious metals producing and trading companies which will engage in brokerage house business included in the scope of this regulation, shall not be subject to the provision of (b) of this Article's first sub-article.

(4) Precious metals intermediary institutions except banks and authorized institutions may not purchase and sell cash foreign currency other than those required by their activities at the Exchange.



## **PART IV**

### **Bookkeeping, Recording and Documentation, Information, Auditing and Principles**

#### **Bookkeeping, Recording and Documentation**

**ARTICLE 14** – (1) Precious metals brokerage houses, authorized institutions, precious metals producing and trading incorporated companies and Turkey branches of the institutions resided abroad are obliged to keep the books and records and to issue the documents which are adequate to meet the requirements of their business and which the first class merchants are required to keep and are further obliged to comply with the arrangements made by the Exchange administration regarding the accounting, records, documents and transactions related to the brokerage activities, within the provisions of Turkish Code of Commerce dated 29/6/1956 and numbered 6762, Code of Tax Procedure dated 4/1/1961 and numbered 213, the laws of General Regulation Concerning the Foundation and Operation Principles of Precious Metal Exchange issued at the Official Gazette number 21541 dated 3/4/1993 and the Regulation of Istanbul Gold Exchange issued at the Official Gazette numbered 23741 dated 30/6/1999.

#### **Information**

**ARTICLE 15** – (1) Concerning their activities, the intermediary institutions are obliged to furnish any kind of document and information demanded by the Under-secretariat to the Under-secretariat.

(2) Exchange informs the Under-Secretariat;

a) about the precious metal import figures of precious metals intermediary institutions,

b) about the transactions executed at the markets of the Exchange by precious metals intermediary institutions within one month and on a quarterly and yearly basis.

(3) Precious metals intermediary institutions except banks and authorized institutions submit their yearly balance sheets and profit/loss statements to the Under-secretariat within 3 months following the concerning year.

(4) Precious metals intermediary institutions are obliged to inform their change of addresses to the Under-secretariat and Exchange within fifteen days as from this change.

### **Monitoring and Auditing**

**ARTICLE 16** – (1) Precious metals intermediary institutions shall be subject to monitoring and auditing of the Under-Secretariat. During the performance of monitoring and auditing duties, the intermediary institutions are obliged to present the relevant books, records and documents to the officials in charge of performing such duties and furnish any information that they may require and to sign the minutes prepared by such officials and to provide them any facility that may be required.

### **Principles that should be obeyed during operations**

**ARTICLE 17** – (1) Precious metals intermediary institutions;

- a) are obliged to necessary attention and care required by the business while conducting their operations , they are obliged to effectively use the resources and to take necessary measures for this.
- b) are obliged to act honestly and transparently by protecting their customers interests and market integrity market while executing their transactions, are obliged to evade transactions that will create conflict of interests with their customers and to organize according to these, are obliged to protect their customers interests and to act fairly,
- c) are obliged to provide adequate information and transparency during their relations with their customers, such as custody on behalf of customer and investor protection regulations and any issue related with their customers.

(2) Precious metals intermediary institutions are obliged to behave and act according to the rules of good will and in compliance with the relevant laws and regulations and the order and discipline at the Exchange.

(3) Precious metals intermediary institutions are free to reject wholly or partially purchase and sale orders given by their customers; however, they are obliged to inform their customers or representatives of the customers immediately thereof without being obliged to explain the reasons for such rejection.

(4) Precious metals intermediary institutions are not allowed to receive or offer off-tariff commission.

(5) Precious metals intermediary institutions are responsible for all transactions they effect in the exchange including the delivery of precious metals and payment at their price.

## **PART V**

### **Know Your Customer Rule, Signing Framework Agreement Liability, Customer Account Number, Suspension of Intermediary Institutions' Operation and Cancellation of Operation Licence, Documents Provided from Abroad and Authority**

#### **Know Your Customer**

**ARTICLE 18-** (1) Precious Metals Brokerage houses must determine the identities of their customers before opening accounts due to the law dated 11/10/2006 and no: 5549 related to prevention of laundring proceeds of crime law according to the related regulations.,

#### **Obligation of Signing Frame Agreement**

**ARTICLE 19** – Before Precious Metals Intermediary Institutions makes transaction with that their customer; They must sign contract in writing. This contract is a framework agreement which sign once in the begining and contain rules of transactions. Also it organize general relationship between Intermediary Institutions and customer.

### **Customer' s Account Number**

**ARTICLE 20** – All customer get different account numbers who makes Intermediary framework agreement. The account number can' t given to other customer, before the deadline date of framework agreement to get over 10 years.

### **Abort of Precious Metals Intermediary Institutions Activities and Their Operating Permit**

**ARTICLE 21** – 1) Precious Metals Intermediary Institutions who makes Clandestine Activities which are listed in Article 13 in this public act or Precious Metals Intermediary Institutions who don' t make any transaction in one year is lost their transaction permits. This operation is made by Turkish Treasury.

2) If Precious Metals Intermediary Institutions' s partners has lost their feauters which are searched in this public act treasury will give them until 6 months to make adjustments. If this adjustments aren' t made by Precious Metals Intermediary Institutions, their transaction permit will be abrogated by Turkish Treasury.

3) Turkish Treasury has attribution to abrog Precious Metals Intermediary Institution transactions until 6 months or continuous if they ascertain contrary transactions to this public act.

4) Precious Metals Intermediary Foundation' s transaction permit will be over too if they lose their establishment permit with for any reason whatsoever.

5) Precious Metals Intermediary Institution' s will lose their transactions permit if their activites are abroged by Turkish Treasury twice in one year.

6) If Board of Directors of Bourse abrogate the Bourse' s Membership Certificate, Precious Metals Intermediary Institution' s will lose their transactions permit too.

7) Precious Metals Intermediary Institution can' t use any word, term, mark which make up impression as they make such as activities in their advertisement and declaration if they lose their their transactions permit.

8) When their transaction permit is abrogated, Precious Metals Intermediary Institution must stop their activities and should give back their Bourse Membership Certificate. In the form of to keep going their transactions Law On The Protection Of The Value Of Turkish Currency which dated on 20/2/1930 come in to force.

9) Precious Metals Intermediary Institution whose transactions are abrogated, must show their improvement to Turkish Treasury for starting again their transactions with Treasury's approval.

10) In both Precious Metals Intermediary Institution activities are stopped for provisional time, or are abrogated for full time and are initiated again by Treasury, this events are disseminated in bourse bulletin and at least 2 national newspaper by Board of Director of Bourse.

11) If there is evidence that are contrast situations to this public act, Law On The Protection Of The Value Of Turkish Currency come in to force to the persons concerned.

#### **Abrogation of Bourse Membership Certificate**

**ARTICLE 22 – 1)** In both Precious Metals Intermediary Institution activities are stopped for provisional time, or are abrogated for full time and are initiated again, this events are disseminated in bourse bulletin and at least 2 national newspaper by Board of Director of Bourse.

2) If Precious Metals Intermediary Institution want to branch from bourse membership with their own accord, they must inform Treasury.

#### **Document That are Provided From Abroad.**

**ARTICLE 23 – 1)** Articles which are about applications are valid for foreign national rank and file.

2) If there isn't government offices in foreign country for set up integral documents, foreign national people should come out this situation with documents which are taken from authorized agency.

3) Needed documents from abroad which are listed in this public act must approval by Turkish Consulate and authorized agency in this country. However the act which are find

acceptance in private law states Hague Conference can be used for this target. And also this document must be approved by public notary.

### **Authority**

**ARTICLE 24 – 1)** Treasury has power to take the necessary steps if it is necessary.

## **PART VI**

### **Cumulative and Last Provisions**

#### **The Public Act Which was revoked**

**ARTICLE 25 – 1)** The Public Act which was about Precious Metals Intermediary Institution activities, establishment rules and how to get bourse's membership certificate and issued 16/10/1993 and 21730 numbered official Gazzette was revoked.

#### **Orientation Duration;**

**Temporary Article – 1)** Precious Metals Intermediary Institution must to from their circumstances according to articles until one year from this public act is issued. If there is act of providence and Treasury approval that there can be one year additional time.

#### **Orientation Duration About Paid-in Capital**

**Temporary Article – 2) 1)** Since 26/08/2009, Precious Metals Intermediary Institution must promote their capital to 500.000 TL. Below from this amount will be ignored and transaction permit will be abrogated.

If there is act of providence and Treasury approval that there can be one year additional time.

2)The public act which is used on application date is used for applicant which are about transaction or establishment permits After 26/08/2009 expect this article first head.

### **Effectivity**

**ARTICLE 26-** This regulaton shall come into effect on the date of its publicaton.

**Execution**

**ARTICLE 27-** The provisions of this regulaton shall be executed by the Minister.