



SCREENING CHAPTER 09 FINANCIAL SERVICES

**Country Session: The Republic of TURKEY
2-3 May 2006**



**SCREENING CHAPTER 09
FINANCIAL SERVICES**

AGENDA ITEM I: HORIZONTAL ASPECTS

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REORGANISATION AND WINDING-UP OF CREDIT INSTITUTIONS

RELEVANT TURKISH LEGISLATION

Reorganisation and winding-up of the credit institutions in Turkish Legal System have been arranged in the framework of:

- **Banking Law No. 5411**
(Official Gazette (OG) No. 25983, dated 01.11.2005)
- **Law of Bankruptcy No. 2004**
(OG No. 2128, dated 19.06.1932)
- **Turkish Commercial Code No. 6762**
(OG No. 9353, dated 09.07.1956)

COMPETENT AUTHORITIES

- **Banking Regulation and Supervision Agency - BRSA**
 - ✓ **Reorganisation**
 - ✓ **Voluntary Liquidation**

- **Savings Deposit Insurance Fund – SDIF or Fund**
 - ✓ **Rehabilitating the financial structure and reorganisation of the banks transferred to the Fund**
 - ✓ **Liquidation of the banks transferred to the Fund**

(Both the BRSA and the SDIF have the status of public legal entity and administrative and financial autonomy.)

REORGANISATION

- **Articles 67-71 of the Banking Law**
 - ✓ **If the conditions laid down in Article 67 occurs**
 - ✓ **The measures specified in Articles 68, 69 and 70 of the Banking Law can be taken promptly against the relevant bank by BRSA.**



CASES WHERE MEASURES ARE REQUIRED TO BE TAKEN (Article 67)

- **Maturity mismatch**
- **Incompliance to liquidity provisions**
- **Impaired balance and relations between revenues and expenses**
- **Insufficient internal audit, internal control and risk management systems**
- **Violation of the Banking Law and the applicable regulations**
- **Incompetence of the management**

MEASURES

- **Corrective (Art. 68)**
- **Rehabilitating (Art. 69)**
- **Restrictive (Art. 70)**
- **Revocation of operating permission or transfer to the Fund (Art. 71)**



REVOCAION OF OPERATING PERMISSION OR TRANSFER TO THE FUND (Article 71)

- Measures referred in Article 70 not taken within the period given by the BRSA Board
- Financial structure cannot be strengthened
- Endangering the rights of the relevant persons and security and stability of the financial system
- Obligations not fulfilled as they fall due
- The total value of the liabilities exceeding the total value of its assets
- Fraudulent usage of the resources.



REVOCAION OF OPERATING PERMISSION OR TRANSFER TO THE FUND (Article 71) (cont.)

BRSA Board is authorized

➤ **to revoke the operating permission of the bank**

OR

➤ **to transfer the shareholder rights except dividends and
the management and supervision of the banks to the SDIF**



THE MEASURES TAKEN FOR THE BANKS TRANSFERRED TO THE SDIF (Article 107)

SDIF realizes the operations regarding resolution of the transferred banks maximum in twelve months as of transfer date

- Transfer, sale or merge**
- Rehabilitation of financial structure and reorganisation**
- Request the revocation of operating permission of the bank from the BRSA Board**



REHABILITATION OF FINANCIAL STRUCTURE AND REORGANISATION BY SDIF

SDIF has the authority to;

- **Increase the bank's capital**
- **Cancel the penal interests derived from legal reserve requirements**
- **Purchase the subsidiaries, real estate and other assets or provide advance in return for these assets**
- **Make deposit in order to meet the liquidity requirements**
- **Take over its receivables or its losses**
- **Make all sorts of transactions regarding its assets and liabilities; and turn them into cash**



LIQUIDATION

- **Voluntary Liquidation (BRSA)**
- **Liquidation by the SDIF**



VOLUNTARY LIQUIDATION (Article 20)

- **The BRSA Board's permission and the BRSA supervision**
- **Promptly announce in minimum two national newspapers published and circulated in Turkey**

VOLUNTARY LIQUIDATION (cont.)

➤ Inform

- ✓ their depositors**
- ✓ the owners of participation funds**
- ✓ their creditors**
- ✓ persons through registered mail**

VOLUNTARY LIQUIDATION (cont.)

➤ **Regardless of maturity, within two months;**

✓ **all kind of deposits**

✓ **participation funds**

✓ **trusts**

shall be returned

✓ **all their debts shall be paid**



VOLUNTARY LIQUIDATION (cont.)

- **Deposits, participation funds, trusts and receivables not claimed are kept by the BRSA for a period of ten years, duly announcing them at the beginning of every year**
- **After ten years of announcement, they are registered as income by the Fund**



LIQUIDATION BY SDIF (Article 106)

- In the event that the license of a bank to perform banking operations and to accept deposits is revoked, its management and supervision shall be assumed by the Fund.**
- SDIF pays the insured deposits of the bank of which management and supervision has been assumed by it and institute bankruptcy proceedings in the name of the depositors against the bank. Bankruptcy judgement is issued in 6 months by the court.**
- In the event that a bankruptcy judgement is issued, SDIF shall act as a privileged creditor and shall liquidate the bank.**



LIQUIDATION BY SDIF (cont.)

- In cases where the bank is not declared bankrupt, SDIF realizes the voluntary liquidation of the bank.
- Liquidation of the bank is announced by the press. It is announced that the creditors of the credit institution declare their claims.
- The claims of the creditors of credit institution are examined in detail and the sequence list is formed.
- All the assets of credit institutions are converted into cash by sale.



LIQUIDATION BY SDIF (cont.)

- **Distribution is made according to the sequence list and the liquidation is concluded. During the liquidation procedure, the creditors may demand all information from the liquidator.**
- **The principles and procedures regarding the application of the provisions of liquidation by SDIF shall be established by the Fund through a by-law prepared in agreement with the BRSA.**



BRANCHES OF FOREIGN CREDIT INSTITUTIONS

- In cases where the operating permission of any bank established abroad and having branch in Turkey has been revoked or suspended, it has been decided to be declared bankrupt or liquidated and it has declared bankrupt in the home country, the BRSA shall revoke the operating permission of the branches of such bank in Turkey (Article 12).
- The provisions of Article 106 of the Banking Law on liquidation by SDIF are applied to foreign bank branches whose operating permissions have been revoked. The principles concerning the transfer of the assets and claims of these branches abroad are determined by SDIF.

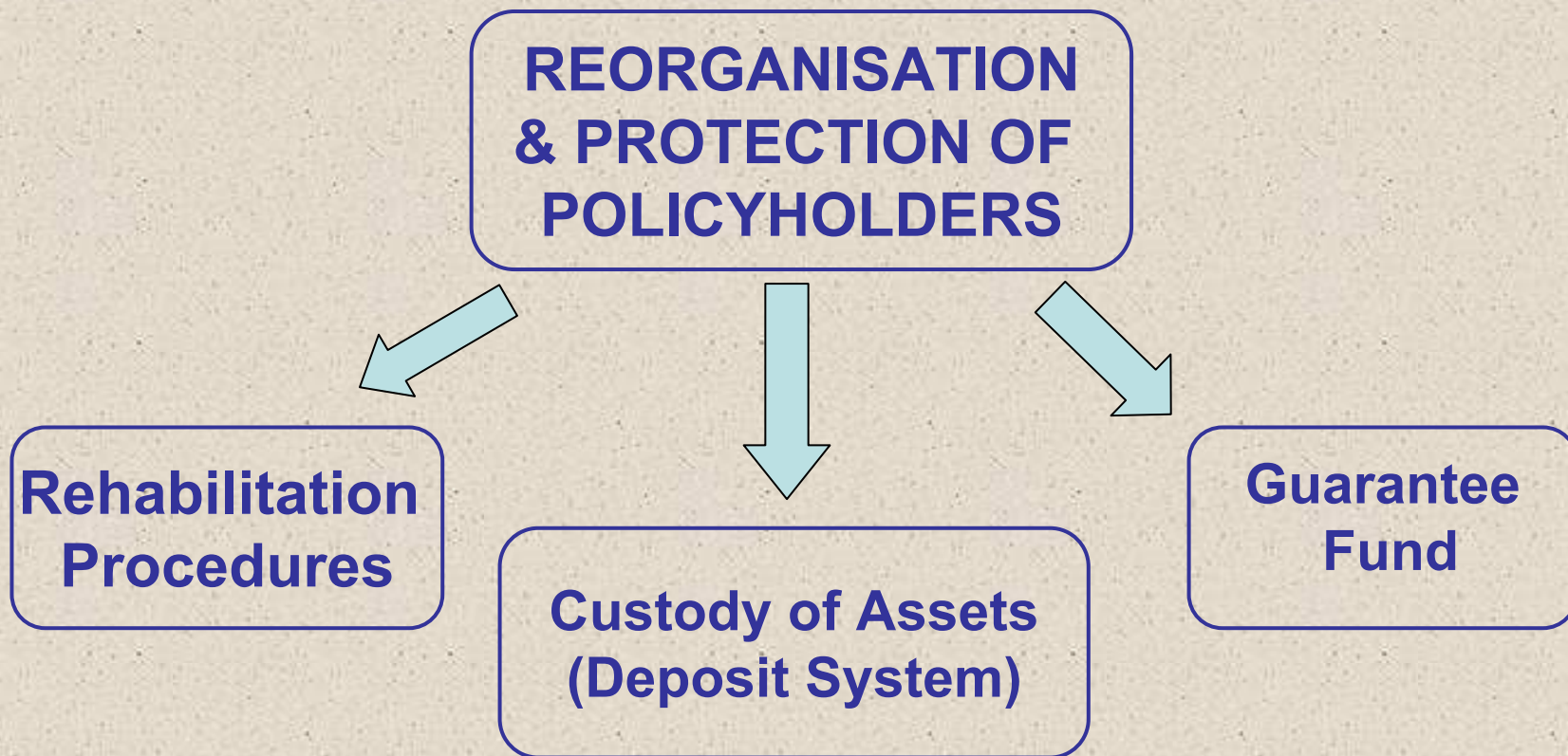


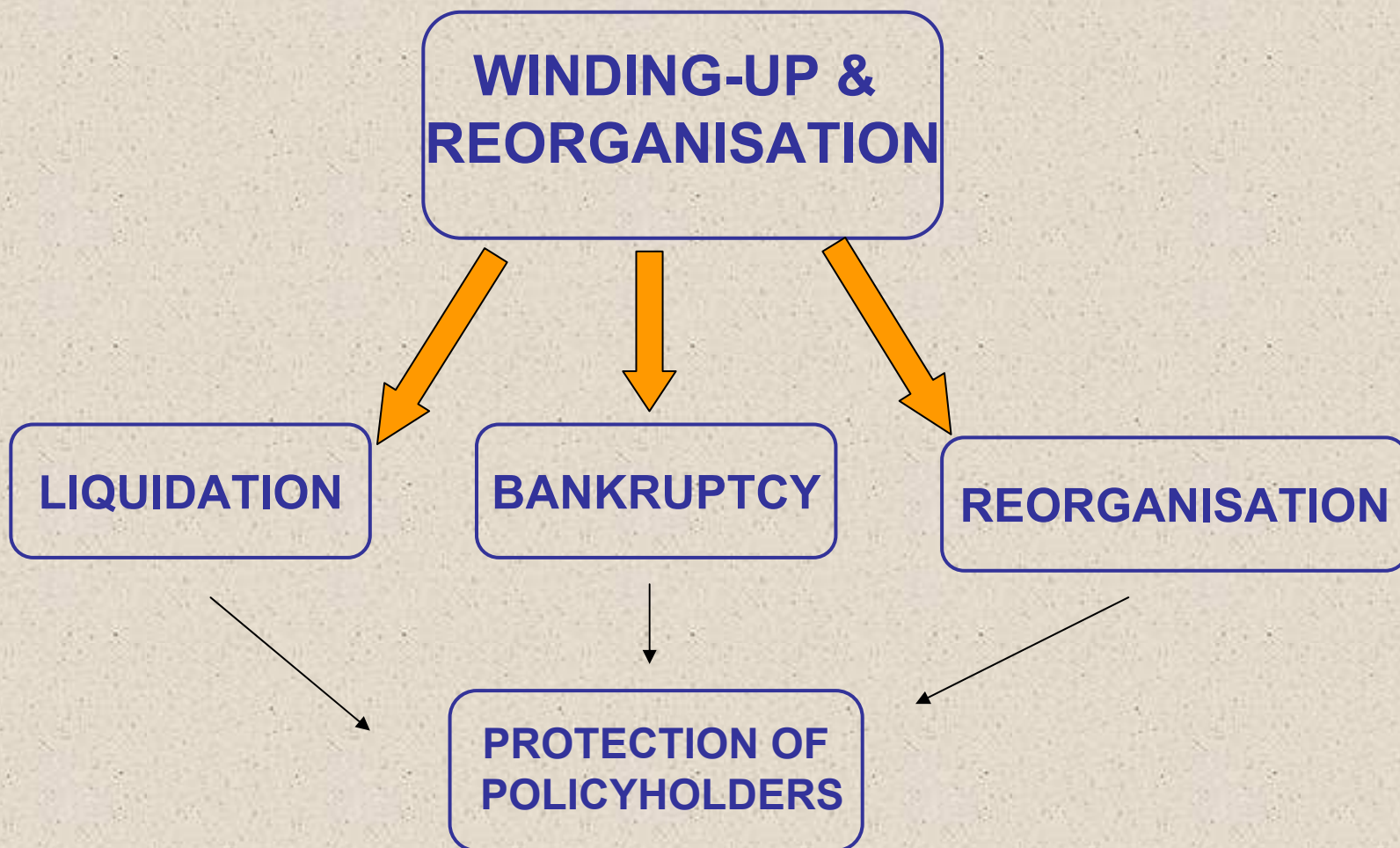
PRINCIPLES OF REORGANISATION AND WINDING-UP

- **Publicity:** All announcements with respect to protection of the rights of bank creditors and depositors shall be made upon prescribed communication ways as laid down by the law.
- **Non-discrimination:** Same proceedings shall be acted impartially to all depositors and creditors during the reorganisation and winding-up processes.
- **Exclusive competence:** Decisions and processes of reorganisation and winding-up are fulfilled exclusively by the competent authorities determined by the law.



REORGANISATION AND WINDING-UP OF INSURANCE COMPANIES







REHABILITATION PROCEDURES

Rehabilitation procedures initiated in the cases where an insurance or reinsurance company is not able to;

- Establish necessary guarantees or reserves
- Fulfil its obligations arising from contracts
- Protect the insureds' rights and interests because of its weakened financial structure



REHABILITATION PROCEDURES - First Step -

➤ **The Minister of State, by allowing a suitable period of time, may require;**

✓ **The capital to be increased, payment of its unpaid portion if any, payment to be made on account of the capital to the company or to stop distribution of dividends**

✓ **To dispose partly or entirely its participations or fixed assets**



REHABILITATION PROCEDURES - First Step - (cont.)

- ✓ **To alter the percentages and amounts of shares of reinsurance contracts and the retentions**
- ✓ **To convene general assembly on the basis of an agenda to be determined**
- ✓ **To take other similar measures aimed at strengthening the financial structure**
- **Boards of directors or executives are obliged to take necessary measures following these directions and report to the Undersecretariat of Treasury.**



REHABILITATION PROCEDURES (cont.)

The Minister is also authorized for further requirements in the cases where;

- It is ascertained that the measures enquired within the first step cannot be fulfilled.**
- Weakening of financial structure still continues despite the application of these measures.**
- It is impossible to improve the weakening in the financial structure even with these measures.**



REHABILITATION PROCEDURES - Second Step -

- The Minister may require;**
 - ✓ To re-appoint all or a part of the members of the board of directors or auditors or executives**
 - ✓ To stop doing business**
 - ✓ To decide on the fully or partially transfer of the insurance portfolio**
 - ✓ To revoke the company's license**



PROTECTION OF POLICYHOLDERS

➤ Insurance companies obliged to set up the proportional amount of the premiums as a safe custody to set obligations for the insurance contracts.

PROTECTION OF POLICYHOLDERS (cont.)

- In case of the liquidation or the bankruptcy of the insurance companies, the safe custody is determined for the provision of the insureds' receivables.**
- Insureds have the right to participate to the bankrupt's estate as the third sequence for the claims which could not be covered by custody of assets.**



CUSTODY OF ASSETS (DEPOSIT SYSTEM)

Aim of the Custody of Assets

- Constitutes reserve for the credits of the insureds in the events of revocation of licences or bankruptcy.**
- There is no discriminative treatment among claimants.**

CUSTODY OF ASSETS (DEPOSIT SYSTEM) (cont.)

Main Properties of the Deposits

- **Compulsory**
- **Allocated firstly for the payment of the insureds' credits**
- **Shall not be subject to suits or executions for any other kinds of credits as well as to liquidation or bankruptcy estate before the payment of the insureds' credits in full**

CUSTODY OF ASSETS (DEPOSIT SYSTEM) (cont.)

Establishment Rules of Custody of Assets

➤ For Non-Life Branches

Guarantees are established at the rates determined by the Undersecretariat of Treasury in non-life insurances not to exceed 20% of the premium.



CUSTODY OF ASSETS (DEPOSIT SYSTEM) (cont.)

➤ For Life Branches

Guarantees to be established by the insurance companies in life group is the total of the amount remained after deducting loans made on life contracts from the total of mathematical reserves retained from net premiums of life insurances and life outstanding losses amount as well as the amount of accrued profit share reserve.



CUSTODY OF ASSETS (DEPOSIT SYSTEM) (cont.)

Assets to be Accepted as Custody;

- **Treasury bills & bonds**
- **Shares of the companies**
- **Participation certificates in investment funds**
- **Real estates in Turkey**



CUSTODY OF ASSETS (DEPOSIT SYSTEM) (cont.)

Fundamental Financial Instruments for Guarantees

- **Turkish Lira and foreign currencies as well as stocks and bonds established as guarantee are blocked in the name of the Undersecretariat of Treasury at the banks.**
- **Should not be released in any way without permission of the Undersecretariat of Treasury.**

SPECIAL ISSUES FOR PENSION COMPANIES

**Pension accumulations kept by the custodian
(Takasbank = Istanbul Stock Exchange (ISE) Settlement &
Custody Bank)**

- ✓ **Easy transfer of accumulations to another pension company in case of pension company bankruptcy**

➤ Rehabilitation Measures

- ✓ **Earmarking of free assets**

SPECIAL ISSUES FOR PENSION COMPANIES (cont.)

➤ **Rehabilitation plan must be submitted by the pension company within 10 days following the notification.**

➤ **Further Actions**

- ✓ **Cancellation of pension operating license**
- ✓ **Requiring the liquidation of the company**