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Turkey

Law & Practice
and
Trends & Developments

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1. FINTECH MARKET

1.1 Evolution of the Fintech Market

The Turkish fintech market has a significant number of participants of various sizes. Competitiveness notwithstanding, market players tend to co-operate with one another in keeping the marketplace fair. Consumers demand fast, user-friendly, and widely accessible digital financial services platforms, and, as in other parts of the world, fintech players in Turkey are striving to satisfy those demands. One example is BKM Express, a multibank cashless payment platform launched in 2012, now utilised by 200 fintech businesses and banks. The Turkish fintech market has expanded at a year-on-year rate of 14% and is currently valued at USD15 billion.

Though still relatively immature, the potential of Turkey's fintech industry should not be underestimated. Turkish fintech start-ups are rapidly developing innovative, in some cases disruptive, solutions to meet consumer fintech demands worldwide, and the involvement of Turkey's mature banking players continues to allow seamless integration of novel fintech applications within the banking system.

2. FINTECH BUSINESS MODELS AND REGULATION IN GENERAL

2.1 Predominant Business Models

The Turkish fintech industry has experienced rapid growth over the past few years. Turkey is an attractive market for fintech start-ups developing innovative products. A report by a Big Four accounting firm and BKM Express—the fintech-purposed consortium of the top ten Turkish banks – listed total venture capital investment in Turkish fintech at USD4.6 million for 2012, and USD53.2 million for 2016. Moreover, Start-up Watch's latest industry report lists total investment in Turkish fintech at USD108 million for the period January to November of 2020. There are currently more than 350 active players in Turkey's fintech marketplace operating primarily within the following subsectors.

Electronic Payment Systems

The Law on Security Settlement Systems, Payment Services and Electronic Money Institutions No 6493 ("E-Payment Law") applies to payment systems, security settlement systems, payment institutions, and electronic money institutions operating in Turkey. Only banks and payment service providers authorised by the Central Bank of the Republic of Turkey ("Central Bank") are allowed to carry out payment services in Turkey.

Open Banking

Open banking provides a way for third parties, with consent, to access personal financial data maintained by banks. Open banking has dismantled the monopoly once held by banks over customer financial data and opened new competitive avenues in fintech.

Digital Banking

Digital banking allows customers to manage all of their banking transactions through mobile apps, websites or call centres anywhere, at any time without any need to visit a physical branch or ATM.

Virtual Currency

Virtual currency (electronic money) in Turkish law refers to monetary values backed up by funds collected by the electronic money issuer, stored electronically, used to perform payment transactions and accepted as a means of payment by natural as well as legal persons other than the electronic money issuer. Electronic money and electronic money issuers are strictly regulated in Turkish law.

Blockchain and Cryptocurrencies

At present, Turkish law does not specifically regulate cryptocurrency. However, it is expected that, just like fiat currency transactions, cryptocurrency transactions will be subject to Turkish financial crimes laws.

Crowdfunding

Equity-based crowdfunding was introduced to Turkish law with the amendments dated 2017 to the Capital Markets Law No 6362 (CML) and defined as "collecting money from the public through crowdfunding platforms, without being subject to the provisions regarding investor compensation, in order to provide funds needed by a project or venture company".

2.2 Regulatory Regime

In Turkey, fintech systems like card and cardless payments, e-money and e-wallet are subject to different laws.

E-Payment Law

The main legislation governing electronic payment services in Turkey is the E-Payment Law, complemented by certain secondary legislation, including the Regulation on Payment Services, Electronic Money Issuance, Payment Institutions and Electronic Money Institutions, published in the Official Gazette No 29043, dated 27 June 2014, and the Communiqué on the Management and Inspection of Information Systems of Payment and Electronic Money Institutions, published in the same Official Gazette.

Amendments

The E-Payment Law was recently amended by both the Law on Amendment of the Law on Security Settlement Systems, Payment Services and Electronic Money Institutions No 7192, effective as of 1 January 2020, and the Law on the Amendment of Certain Laws and Decree Laws No 7247, effective as of 26 June 2020.

Central Bank Regulations

The Central Bank has prepared the following two draft regulations and published the same for industry comments: (i) the Draft Regulation on Payment Services and Electronic Money Issuance and Payment Service Providers, and (ii) the Draft Communiqué on Information Systems of Payment and Electronic Money Institutions and Data Sharing Services of Payment Service Providers.

The Central Bank's Regulation on the Generation and Use of TR QR Codes in Payment Services, effective as of 21 August 2020, regulates the generation and use of QR codes for making electronic payments of the types covered by the E-Payment Law.

Banking Law

Banking Law No 5411 ("Banking Law"), effective as of 1 November 2005, establishes a regulatory scheme which promotes efficient operation of financial markets and fosters systemic integrity by facilitating the issuance of bank loans.

Insurance Law

Insurance Law No 5684, effective as of 14 June 2007, ensures consistency in the insurance marketplace through a regulatory framework.

Law on Payment Systems

The Law on Payment Systems No 6493, effective as of 27 June 2013, regulates payment and securities settlement systems, payment services and electronic money companies.

Credit Card Law

Credit Card Law No 5664, effective as of 1 March 2006, provides a legal framework for establishing regulations on transaction clearing and the issuance of bank cards and credit cards.

AML Regulations

Turkey's anti-money laundering (AML) regulations align with the European Union Directive on Money Laundering. The Law on the Prevention of Laundering the Proceeds of Crime No 5549 ("AML Law"), which incorporates know your customer (KYC) and AML legislation, holds insurance

agencies, lending firms, cryptocurrency transfer companies, etc, criminally liable for engaging in financial crimes, and requires financial firms to verify the identity of individuals and their representatives engaging in certain financial transactions.

Capital Markets Legislation

The Capital Markets Legislation (CML) regulates capital market operations and instruments, public companies, traded companies, investment institutions, trade markets, and other capital markets institutions.

Crowdfunding Regulations

The Communiqué on Equity Based Crowdfunding No III-35/A-1 regulates the procedures and principles regarding equity-based crowdfunding, the listing and activities of crowdfunding platforms, the collection of money from the public through equity-based crowdfunding, and the supervision and auditing required to ensure that the collected funds are used in accordance with their declared purpose.

2.3 Compensation Models

There are no specific regulations applicable to fintech customers. The compensation model and regulatory framework vary depending on the scope of the financial activity offered to the customers. Where the financial activity offered by a fintech company falls within the scope of a regulated area, such as banking, capital markets or payment services, specific regulations in these areas would apply.

Investment Institutions

Investment institutions are subject to strict rules under the capital markets legislation related to compensation and fee structure, depending on the investment services that they provide and the investment transactions. They must comply with the disclosure and information requirements vis-à-vis their customers, which vary depending on the scope of the investment service.

Payment and Electronic Money Services

Within the scope of payment and electronic money services, fintech service providers are only allowed to charge customers to the extent mutually agreed in a framework service agreement between the service provider and the customer. The Central Bank has the authority to set the maximum price and commission for each transaction.

Payment Services

For payment services, service providers are under obligation to provide information as to the fees applicable before execution of the agreement. If this information is published on the service provider's website, the disclosure obligation

is deemed to be satisfied. If requested by the customer, the service provider must inform the customer as to the fees applicable to the transaction. Also, once the payment transaction is accomplished, regardless of whether requested by the customer, the service provider is under obligation to inform the customer as to the fees applied.

Transactions outside the framework agreement

Where a certain transaction is not covered by the framework agreement (excluding bill payments), the service provider is obliged to inform the customer as to the information that needs to be provided by the customer for the payment, the maximum completion time of the payment transaction, a list of the total fees and fees payable, and the exchange rate to be applied in the payment transaction, if any. If this information is published on the service provider's website, the disclosure obligation is deemed to be satisfied.

On condition that it is agreed in the framework agreement, a reasonable and proportionate fee for expenses may be requested by the service provider when the framework agreement is terminated by the customer.

2.4 Variations between the Regulation of Fintech and Legacy Players

Fintech is not currently regulated under Turkish Law.

2.5 Regulatory Sandbox

There is currently no regulatory sandbox in Turkey. However, the Turkish government's recently published *Financial Reform Booklet* for the years 2021–2023 indicates that implementation is on the horizon.

2.6 Jurisdiction of Regulators

As explained under **2.1 Predominant Business Models** and **2.2 Regulatory Regime**, several regulatory authorities exist, including the following.

Central Bank

The Central Bank is an autonomous body charged with:

- promulgating Turkey's monetary policy;
- regulating the Turkish banking system;
- regulating foreign currency exchange rates;
- maintaining electronic stock trading and EFT systems;
- promoting economic stability through regulated issuance of banknotes;
- ensuring continuity of the exchange rate system; and
- regulating payment corporations and e-money corporations which provide open banking infrastructure.

Istanbul Stock Exchange (“BIST” or “Borsa Istanbul”)

The BIST is Turkey's single house for securities and commodities trading. It is subdivided into trading sectors, including:

- diamonds and precious metals;
- derivatives;
- debt securities;
- equities;
- futures; and
- options.

Capital Markets Board of Turkey (CMB)

The CMB is charged with ensuring the integrity of capital markets and regulating securities dealers. The CMB's policies seek to reassure investors by ensuring market transparency, improving capital markets operations, and implementing applicable laws.

The Banking Regulation and Supervisory Agency (BRSA)

The BRSA is an autonomous supervisory authority charged with regulating bank lending practices, consumer financing, domestic bank holding companies, and international banks operating in Turkey.

The BRSA is charged with:

- reducing costs associated with financial transactions;
- increasing market transparency;
- ensuring regulatory compliance;
- identifying systemic risk;
- ensuring generally accepted accounting is followed;
- reviewing annual financial reports;
- monitoring independent auditing firms;
- facilitating the efficient operation of credit markets;
- protecting consumer deposits;
- controlling incorporation, ownership, association, sale of shares, and financial holdings of factoring and leasing firms; and
- developing banking and financial services solutions.

Ministry of Treasury and Finance of the Republic of Turkey

The Ministry of Treasury and Finance is charged with:

- tax levying and collecting;
- regulating public properties;
- executing international exchange policies;
- harmonising AML laws and regulations; and
- ensuring transparency of economic affairs.

Following Presidential Decree No 48, effective as of 1 October 2019, the obligations of the Insurance and Private Pension Supervision and Supervisory Department were assumed by the Treasury Ministry, and include duties such as preserving private pensions, enforcing pension laws, and licensing of insurance and reinsurance companies.

Digital Transformation Office

The Digital Transformation Office seeks to facilitate Turkey's digital fintech transformation by connecting businesses, human capital and emerging opportunities within the communications and information technology sectors. Its operations include facilitating:

- access to national and domestic emerging technologies through development of infrastructure; and
- the transition to big data by drafting procedures, understanding data distribution and infrastructure, and maintaining cyber-stability.

Financial Crimes Investigation Board (“MASAK”)

MASAK is charged with monitoring money-laundering activity and researching effective methods of investigating and analysing criminal financial activity.

2.7 Outsourcing of Regulated Functions

Outsourcing is subject to strict rules in regulated sectors such as banking and finance, capital market and payment services.

Banking and Finance

Banking Law in Turkey prohibits banks to outsource:

- evaluation in terms of credibility, collateral, loan terms and types, and amount;
- accounting of banks' transactions and preparing their financial reports; and
- monitoring and evaluation of credit risk in the process until the liquidation of the loans allocated.

Other activities can be outsourced, subject to strict outsourcing rules under the Banking Law.

The service provider must be incorporated as a corporation and must have the necessary organisation, assets and employee structure. Also, where IT systems are outsourced, the agreement to be executed with a service provider must at least include service levels, terms and conditions termination, measures to be taken for business continuity of the bank, privacy and non-disclosure clauses, provisions regarding intellectual property rights, etc. Reporting obligations apply on the part of banks in the outsourcing process.

Payment Services

Outsourcing in payment services is also strictly regulated. Payment services providers must make an assessment of the possible risks before outsourcing. The agreement to be executed with a service provider must at least include service levels, terms and conditions termination, measures to be taken, privacy and non-disclosure clauses, provisions regarding intellectual property rights, etc.

Capital Markets

Similarly, capital markets regulations allow outsourcing under strict conditions. Before outsourcing a service, intermediary institutions should check whether the subject activity is a type of service which is permitted to be outsourced and assess the expected benefits and probable costs of outsourcing the services and determine whether the service provider has the technical equipment, infrastructure, financial power, experience, know-how and human resources adequate for performance of the subject services at the desired level. An agreement covering the mandatory content determined by the CMB must be executed between the intermediary institution and the outside service provider. Intermediary institutions are required to inform the CMB within ten business days as of the date of commencement of outsourced services, with respect to the outside service provider and the scope and nature of the outsourced services.

2.8 Gatekeeper Liability

Unlike the draft Digital Services Act of the EU, under Turkish Law, the term “gatekeeper” is not defined, and no obligations are encumbered specific to gatekeeper fintech providers. Every regulated provider is required to implement measures reasonably calculated to prevent its services from being used in furtherance of criminal activity. Depending on the service provided by them, they may be subject to certain AML and KYC obligations.

KYC Obligations

In order to comply with their obligations under the AML and combating the financing of terrorism legislation, the KYC principle applies to fintech providers. In this respect, to the extent applicable, fintech providers must detect the identity of the customer or those who act on behalf of the customer when a perpetual relationship is established or when certain transaction thresholds are exceeded. Recently, remote ID authentication became possible under Turkish law. Fintech providers are also under obligation to verify the authenticity documents necessary for the transaction and to track and notify the authorities of suspicious transactions. Otherwise, they may be found liable.

2.9 Significant Enforcement Actions

Based upon the opinions of the Central Bank of Turkey, the BRSA formulates operating principles for independent audit firms and maintains a current list of those in compliance. The BRSA also licenses and supervises banks operating in Turkey with respect to which it is authorised to levy administrative fines, revoke licences, and move other operations to the Savings Deposit and Insurance Fund (SDIF)—a public, legal entity that insures consumer savings deposit accounts.

Cryptocurrencies

Based on user-generated interest, Turkish regulators have focused on cryptocurrencies. The Ministry of Treasury and Finance announced the co-operation between the BRSA, the CMB and other related organisations to regulate crypto-money. In addition, the Ministry of Treasury and Finance recently requested all users' information from the crypto markets, which is considered by the market players as a concrete step towards regulating these markets.

Forex Transactions

In addition, the CMB regularly supervises leveraged transactions, as forex transactions can only be made through authorised institutions in Turkey. As per Decree No 32 on Protection of the Value of Turkish Currency ("Decree No 32"), foreign forex intermediaries which enable transactions over the internet are blacklisted, and access to these sites is regularly banned by the CMB.

2.10 Implications of Additional, Non-financial Services Regulations

Fintech players, both new and legacy, are impacted by the following non-financial services regulations:

- the Law on Protection of Personal Data No 6698 ("DP Law");
- the Law on Protection of Consumers No 6502 ("Consumer Law");
- the Law on Intellectual Property Rights No 5846; and
- the AML Law.

Presently in Turkey, there exists no standalone cybersecurity law, however the BRSA e-banking regulations applicable to cybersecurity state that:

- information systems and security must be produced in Turkey, or associated research and development must be in Turkey; and in either case, cybersecurity response teams must be present in Turkey; and
- primary or secondary cloud computing services may be procured (a) from a vendor serving only the procuring bank, or (b) by sharing cloud services with other banks,

provided that among the banks, cloud services are appropriately segregated.

Banks are liable for false bank ads in search engine results and on social media platforms with which they contract.

According to the Turkish Constitution, Banking Law, and Turkish Criminal Code, banks are obliged to protect customer secrets, including financial and personal information obtained before or within the term, or after the expiration of a banking contract. Finally, the IT systems of capital markets institutions are strictly regulated and are subject to a special audit. Fintech providers may also be subject to these regulations, depending on the service they provide.

2.11 Review of Industry Participants by Parties Other Than Regulators

The Turkish Commercial Code requires fintech participants to be audited at regular intervals by independent auditing firms; and tax and social security authorities may also assess specific regulatory compliance.

Companies outsourcing regulating activities are generally required to audit vendor compliance. For example, where a bank outsources capital markets settlement operations to another financial intermediary, the former must audit the latter's compliance.

Specific supervision and auditing are envisaged for the information systems of industry participants, depending on their activities.

2.12 Conjunction of Unregulated and Regulated Products and Services

If a fintech provider carries out its business in a regulated area, its field of activity must be limited to that area. In this respect, unregulated services cannot be provided by the same fintech provider.

3. ROBO-ADVISERS

3.1 Requirement for Different Business Models

No applicable regulation as to the rules and principles pertaining to robo-advisers' operations are in force in Turkey. Therefore, different business models are not required.

3.2 Legacy Players' Implementation of Solutions Introduced by Robo-Advisers

While robo-advisers are not specifically regulated under Turkish law, general banking, insurance, and financial laws and regulations are applicable, including the BRSA's best

practices and CMB licensing requirements, depending on the area of usage of robo-advisers.

3.3 Issues Relating to Best Execution of Customer Trades

Specific robo-adviser legislation does not yet exist in Turkey.

4. ONLINE LENDERS

4.1 Differences in the Business or Regulation of Loans Provided to Different Entities

Loan regulations are substantially similar in Turkey. Loans can generally be classified as commercial or consumer – based on the intended use, which might be subject to certain different rules under Turkish legislation. Only banks and authorised financing companies may allocate loans as their main line of business.

Consumer Loans

The terms of conditions of consumer loans are strictly regulated by Banking Law, and the loan agreement must include certain provisions, such as, the consumer's right to rescind the contract and its conditions, and the consumer's rights, pre-closure and discount rates in such case. Ancillary obligations, such as pre-contractual information, apply to consumer loans. The loan and security ratio, joint offer of insurance products, maximum interest rates and number of instalments, are also limited for consumer loans, pursuant to consumer protection legislation, namely, the Consumer Law and Regulation on Consumer Loan Agreements.

Commercial Loans

While most of the commercial provisions can be freely determined in commercial loans, certain restrictions apply to commercial loans as well, especially with respect to fees which the banks may request from their commercial customers. Banks usually use general template agreements for loan allocations to their commercial customers. Facility agreements in LMA format are used instead of general template agreements for loans of a certain size and purpose, especially in large volume transactions and project financing.

Small and medium-sized enterprises and certain incentivised sectors can benefit from certain interest incentives. Private and government banks usually make specific loan offers to small and medium-sized enterprises.

FX and FX-indexed Loans

Turkish-resident real persons and legal entities are not entitled to utilise FX and/or FX-indexed loans to the extent that they fall within the scope of exceptions listed under Decree

No 32. Borrowers are allowed to obtain credit facilities from abroad when such credits are disbursed through Turkish banks. The repayment is also effected through Turkish banks. The above disbursement rule through Turkish banks does not apply to specific cases listed in the Capital Movements Circular of the Turkish Central Bank.

Crowdfunding

Only equity-based crowdfunding is available under Turkish law. In this respect, crowdfunding is not an option for debt financing.

4.2 Underwriting Processes

Underwriting is primarily regulated under the Regulation on Lending Transactions of Banks ("Lending Regulation") promulgated by the BRSA. Pursuant to the Lending Regulation, banks operating in Turkey must obtain an account status form from clients, conforming to applicable Lending Regulation provisions.

For companies, this account status form must, among other things, include: field of activity, investments, number of employees, names of directors, credit notes, financials, and tax documents.

For real persons, this account status form must include: names of family members, real property and chattel and the status of all encumbrances thereon, occupation, and other debt service obligations.

Strict AML rules and online onboarding rules are applicable to the banks under the Banking Law.

4.3 Sources of Funds for Loans

In Turkey, loans are provided primarily by banks funded through:

- deposit accounts – savings banks must be licensed and are strictly monitored by the BRSA;
- syndicated loan fees – syndicated loans are unregulated, obligations are established by contract among syndicate lenders, loan balances are rolled over annually;
- commercial paper issuance – unregulated, obligations are established by contract, periodically rolled over;
- bond issuance pursuant to indentures – regulated by the CMB and BRSA, as applicable;
- peer-to-peer funding; and
- issuance of mortgage-backed securities – regulated by the CMB and BRSA, as applicable.

Capital markets debt offerings by banks, including securitisations, are regulated by the CMB and capital markets

legislation, and, in the case of regulatory capital issuances, additionally by the BRSA's equity regulations on capital qualification.

4.4 Syndication of Loans

Syndicated loans do exist in Turkey, but they are fairly rare in terms of transaction numbers. They are unregulated and obligations are established by contract among syndicate lenders.

5. PAYMENT PROCESSORS

5.1 Payment Processors' Use of Payment Rails

Payment processors are required to use existing payment rails.

5.2 Regulation of Cross-Border Payments and Remittances

Payments and remittances are primarily regulated under financial crimes investigation laws, as well as publications by the Revenue Administration within the Ministry of Treasury and Finance, and the MASAK. Cross-border transfers are also regulated by the Central Bank, as per the Capital Movements Circular and Decree No 32.

6. FUND ADMINISTRATORS

6.1 Regulation of Fund Administrators

Funds and fund administrators are primarily regulated by the CML and secondary legislation published by the CMB. All activities related to funds management are subject to strict rules determined by the CMB and require a licence.

6.2 Contractual Terms

Under Turkish law, funds are managed by the portfolio management companies defined under the CMB's legislation. The Communiqué on Portfolio Management Companies and Principles Regarding Their Activities, Serial No III-55-1 provides strict statutory requirements for the establishment, activities, organisation, internal control, risk management, and personnel of the portfolio management company, to assure performance and accuracy.

In addition, the mandatory content of the portfolio management agreement executed between the portfolio management company and its clients is pre-determined by the CMB under the mentioned Communiqué.

7. MARKETPLACES, EXCHANGES AND TRADING PLATFORMS

7.1 Permissible Trading Platforms

The BIST is the single authorised house in Turkey, and incorporates distinct trading platforms for stocks, debt securities, derivatives, and diamonds and precious metals. Each of these markets has its very own regulations determining the trading rules and procedures.

Equity Market

The equity market consists of BIST Stars, BIST Main, BIST SubMarket, Watchlist, Structured Products and Fund Market, Equity Market for Qualified Investors, and Pre-Market Trading Platform.

The instruments traded in the equity market in the BIST are equities, exchange traded funds, warrants, certificates, participation certificates of venture capital investment funds, and real estate investment funds and real estate certificates.

Debt Securities Market

Also, public debt instruments, private sector debt instruments, lease certificates, repo and Eurobonds are traded in the debt securities market.

Outside the Centralised Markets

In addition to the centralised marketplaces, investment institutions can conduct over-the-counter derivative transactions in electronic trading platforms, that will be notified to the Capital Markets Association. Trading in crypto-assets, including cryptocurrency, is unregulated.

7.2 Regulation of Different Asset Classes

Each asset class is subject to a specific regulatory regime. Settlement, trading and collateral requirements and methods differ for each asset class. Also, the licensing requirements of investment institutions might vary depending on the assets to be traded. Trading in crypto-assets, including cryptocurrency, is unregulated.

7.3 Impact of the Emergence of Cryptocurrency Exchanges

Cryptocurrency trading is presently unregulated in Turkey. It is understood, however, that a regulatory scheme is in process. Recently, the Ministry of Treasury and Finance made an announcement about crypto-money, indicating that there would be co-operation between the BRSA, the CMB and other related organisations to regulate this area. The Information and Communication Technologies Authority (ICTA) also

announced in its strategy plan that the ICTA and TÜBİTAK had initiated their work regarding the technology infrastructure for cryptocurrencies. Moreover, the Ministry of Treasury and Finance requested all users' information from the crypto-markets, which is considered by the market players as a concrete step towards regulating these markets.

7.4 Listing Standards

Listing standards are mainly regulated under the CML and the BIST's regulations, especially under the BIST Regulation on Stock Market Operations and the BIST Listing Directive dated 2015.

Listing conditions differ depending both on the asset class and market segment. The listing requirements are determined by the Listing Directive and Listing Regulation of the BIST. Generally, financial strength, the market value of the equities offered to the public, business continuity and profitability are taken into consideration in the listing.

7.5 Order Handling Rules

Handling rules differ depending on the asset type and the trading platform. In general, investment institutions accept and fulfil customer orders in accordance with their order execution policy, the principles specified in the framework agreement, and in compliance with the duty of care and loyalty to the customer. Investment institutions are obliged to protect the confidentiality of customer orders and show professional care in their activities. Investment institutions are subject to the obligation to reach the best possible result when executing a client's order, by taking different factors into consideration.

Orders may also be accepted through electronic means. In such case, the system that receives the order electronically must comply with certain requirements determined under the CMB's legislation.

7.6 Rise of Peer-to-Peer Trading Platforms

Peer-to-peer trading is not allowed in Turkey except for crowdfunding. As a rule, a centralised exchange is accepted. However, under certain conditions, trade on the over-the-counter market is possible.

7.7 Issues Relating to Best Execution of Customer Trades

The Communiqué on Investment Services and Activities and Ancillary Services, Serial No III-37-1 imposes best-execution requirements on investment institutions. Accordingly, when executing orders, investment firms are obliged to fulfil the orders in a way that will give the best possible result for the customer in compliance with its order execution policy,

considering the preferences of the customer in price, cost, speed, clearing, custody, counterparty and any other considerations relevant to the execution of orders.

Investment institutions can refuse orders provided that refusal conditions are stipulated under the framework agreement (except for lawful orders for filling the open positions in derivatives).

7.8 Rules of Payment for Order Flow

Turkey does not have specific rules or guidance on payment for order flow. Under Turkish law, investment firms are fiduciaries of their customers and are required to: disclose conflicts of interest, and act fairly and honestly in protecting customer interests and market integrity. To that end, investment firms are required to implement the measures necessary to prevent conflicts of interest with its customers, shareholders, and staff, and to address inter-customer conflicts. Investment firms are under obligation to implement a conflict-of-interest policy. This policy contains examples of possible conflict-of-interest scenarios, the measures to be taken and procedures regarding handling conflict-of-interest cases.

7.9 Market Integrity Principles

Market manipulation and insider trading are defined as criminal offences carrying jail time under the CML in order to protect investors, in this respect, especially small investors.

8. HIGH-FREQUENCY AND ALGORITHMIC TRADING

8.1 Creation and Usage Regulations

High-frequency trading (HFT) and algorithmic trading are regulated under various procedures of the BIST, including Algorithmic Transactions in Equity Market and BISTECH PTRM/Pre-Trade Risk Management Procedure, Equity Market Procedure, Forward Transaction and Options Market Procedure. Those wishing to use HFT systems must undertake to comply with these procedures and must notify the BIST regarding the software used, including the location and ownership of the servers on which the software is set up. In order to differentiate high-frequency transactions from normal customer orders and to follow them, different user accounts are allocated for these transactions with a market member application. In order submission of algorithms based on high-frequency transactions, a separate user account must be defined for each different algorithmic order transmission system. These users are required to use the risk group controls (user limits) of the Pre-Trade Risk Management Application. In order for a user to be con-

sidered a high-frequency transaction user, the servers that generate orders on behalf of this user must be deployed by the market member in the co-location centre of the BIST and a user code with a distinctive feature must be given to these users by the BIST.

8.2 Requirement to Register as Market Makers When Functioning in a Principal Capacity

Market making and rules regarding market makers are mainly regulated under the Equity Market Procedure of the BIST. No specific registration requirement is envisaged for high-frequency traders functioning in a principal capacity as market makers. HF traders meeting the requirements, however, may apply to register as a market maker.

8.3 Regulatory Distinction between Funds and Dealers

Current regulations make no distinction between funds and dealers.

8.4 Regulation of Programmers and Programming

A market member is directly responsible to the BIST for the algorithmic order transmission systems it uses to transmit orders on behalf of itself or its customers. The market member who uses/mediates systems on the market has an inalienable responsibility for the effects and results of these systems. The market member will be deemed to have accepted and committed that the orders will be sent in a way that will not hinder the functioning of the markets, or risk or cause misdirection, and that control practices will be established for this. It is the responsibility of the market members to carry out the necessary controls and tests regarding the software to be used in order transmission to the algorithmic order transmission systems, to monitor the risks that may occur in real time after commissioning, to limit these risks, and to terminate the order transmission by stopping the software as soon as possible, when necessary.

9. FINANCIAL RESEARCH PLATFORMS

9.1 Registration

Currently, financial research platforms are unregulated as long as they do not reach investment consultancy level. Comments and recommendations for investors, including expressions to encourage the trading of certain capital markets instruments or that may otherwise affect investor decisions, are regarded as investment advice. Comments and recommendations based on an anonymous investor, regardless of the risk or return criteria of a particular person, are referred to as general investment advice. General investment advice

is not subject to licence, except if certain conditions apply. Subjective and exaggerated expressions such as “the best” and “the most reliable” must not be included in the comments and recommendations offered, as they might mislead investors or exploit their lack of knowledge and experience. Also, a warning banner should be visible stating that the investment advice provided is not within the scope of investment consultancy, as the advice is not personalised and may not be suitable to the advice receiver, and thus may have an undesirable effect.

9.2 Regulation of Unverified Information

Spreading of rumours and unverified information may be criminally prosecutable as information-based market manipulation under the CML. Those who provide false or misleading information, rumours or comments, or who prepare reports in order to affect prices, the value of capital markets instruments or the decisions of investors, and acquire benefits as a result, are punished with imprisonment. However, in order for this to be punishable, harm must be done and the offender must acquire a benefit from the offence.

9.3 Conversation Curation

Financial research platforms are unregulated, however, the CMB has discretion to consider ad hoc cases of possible market manipulation through postings. Information-based market manipulation is a criminal offence under the CML.

10. INSURTECH

10.1 Underwriting Processes

There is no specific regulation for insurtech. Extant underwriting rules for insurance also apply to insurtech.

10.2 Treatment of Different Types of Insurance

There are no applicable regulations.

11. REGTECH

11.1 Regulation of Regtech Providers

Regtech is not currently regulated in Turkey. On the other hand, depending on the field in which services are provided, specific market regulations may apply, such as, banking, energy, capital markets, etc.

11.2 Contractual Terms to Assure Performance and Accuracy

There is no statutory regulation envisaged to achieve this end. Rather, agreements need to be carefully drafted to assure the performance of services.

12. BLOCKCHAIN

12.1 Use of Blockchain in the Financial Services Industry

The implementation of blockchain technology in Turkey has been quick and traditional players are optimistic about its potential. For example, the Central Bank is planning to launch a blockchain-based virtual currency, and numerous private banks have enabled cryptocurrency transactions made through contracted cryptocurrency platforms.

Capital Markets

The use of cryptocurrencies in capital markets is, however, prohibited. In 2017, the CMB sent a general letter to intermediary institutions, pursuant to their information request, stating that there is neither a regulation, nor a definition of crypto-assets under Turkish legislation, and as crypto-assets are not listed among the underlying assets that a derivative instrument can be based on, intermediary institutions should not conduct any derivative or spot transaction based on cryptocurrencies.

Financial Sector

On the other hand, blockchain technology is usable in the financial sector. For example, the BIST has carried out a project to use a customer database that is based on blockchain technology. In this respect, adding new customers and the changing of data and documents are managed through a blockchain network. Similarly, Istanbul Takas ve Saklama Bankası A.Ş. has implemented a blockchain application to enable physical gold to be converted into a digital asset and thereby allow the transfer of gold without time limitation, from person to person.

12.2 Local Regulators' Approach to Blockchain

Blockchain is currently unregulated. It is understood, however, that applicable legislation is in progress.

12.3 Classification of Blockchain Assets

Blockchain is currently unregulated in Turkey. On the other hand, digital securities have structural similarities with investment instruments regulated under the CML. In this sense, it is important to make a detailed assessment regarding whether they may fall within the scope of the CML and relevant legislation while issuing these assets. Where the instrument has a regulated underlying asset such as equities, the issue of such asset would probably subject it to the CML and relevant legislation.

Cryptocurrency transactions are believed to be subject to extant laws on the prevention of financial crimes, AML and combating the financing of terrorism, and laws of taxation.

The 11th Development Plan of Turkey, published in Official Gazette No 30840, dated 23 July 2019, contemplates the development of blockchain technology in Turkey, and a blockchain-based virtual currency issued by the Central Bank by 2023. In early 2020, the CMB issued a statement indicating that cryptocurrency regulations are in progress.

Neither "money" nor "currency" is defined under Turkish law. Fiat currency may be issued only by the Central Bank.

12.4 Regulation of "Issuers" of Blockchain Assets

Blockchain asset issuers are unregulated at present, save for some exceptions, as explained in **12.3 Classification of Blockchain Assets**.

12.5 Regulation of Blockchain Asset Trading Platforms

There are no specific regulations applicable to either blockchain asset trading platforms or secondary market trading of blockchain assets.

12.6 Regulation of Funds

In the absence of specific blockchain regulations, existing law limits the types of assets in which a fund may invest. Since blockchain assets are not specifically approved, it is reasonable to conclude that funds may not invest in them. Moreover, the CMB does not allow intermediary institutions to conduct any derivative or spot transaction based on crypto-assets.

12.7 Virtual Currencies

Virtual currencies are defined in Turkish law as "Monetary value that is issued on the receipt of funds by an electronic money issuer, stored electronically, used to make payment transactions defined in this Law and also accepted as a payment instrument by natural and legal persons other than the electronic money issuer."

In order to settle potential conflicts on this issue, the BRSA published a public statement in November 2013 assessing cryptocurrencies' legal status with respect to the Payment Law. According to the BRSA, cryptocurrencies (bitcoin in the public statement) cannot be regarded as electronic money since they are not issued by any official or private institution, and their intrinsic value is not reserved by funds received by the issuer.

In this respect, virtual currencies are regulated in Turkish law. However, cryptocurrencies are not regarded as virtual currencies.

12.8 Impact of Regulation on “DeFi” Platforms

Decentralised finance (“DeFi”) is not presently regulated by Turkish law.

13. OPEN BANKING

13.1 Regulation of Open Banking

The Regulation on Information Systems of Banks and Electronic Banking Services defines open banking as “[a]n electronic distribution channel where customers or parties acting on behalf of customers can perform banking transactions by remotely accessing financial services offered by the bank through API, web service, file transfer protocol, or give instructions to the bank to perform these transactions.”

In addition, the Regulation provides that one-factor authentication may be used for open banking services if the communication between the bank and the client or client’s agent is end-to-end encrypted. In addition, the Banking Regulation and Supervision Board (“BRS Board”) can regulate all aspects of open banking.

By definition, all provisions governing electronic banking apply to open banking.

13.2 Concerns Raised by Open Banking

Open banking services in Turkey are expected to become fully functional soon with the enactment of secondary legislation by the BRS Board and Central Bank. The BRS Board is expected to determine which services may be provided as open banking services, and the procedures and principles of open banking services within the scope of banking as explained in **13.1 Regulation of Open Banking**. The Central Bank, on the other hand, is expected to regulate procedures and principles regarding data transfer between the service providers for open banking services. Also, as mandatory account access is compulsory in order for the open banking system to operate functionally, several amendments to this effect are awaited under the law in line with PSD2.

In addition, the definition under the DP Law is expected to be amended in line with the GDPR in due course, in which case, data subjects’ rights such as data mobility, and new concepts such as joint data controllers, may be applicable to open banking applications.

TURKEY LAW AND PRACTICE

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Moroğlu Arseven is an independent full-service law firm established in 2000, with broadly demonstrated expertise and experience in business law. It has a dynamic and dedicated team of lawyers who are experts in their respective fields and who offer outstanding client service with the support of distinguished independent of counsels. The firm's primary guiding principles are universal and national ethical values, independence of legal practice and the indivisibility of legal science and legal practice. Moroğlu Arseven is known as a detail-oriented, well-connected, hands-on and focused law firm that is expert at handling complex tasks, whether these relate to transactions, dis-

putes or settlements. Its clients include national, foreign and multinational commercial, industrial and financial enterprises which it advises on complex issues and high-profile matters that require multidisciplinary legal support. The firm's primary goal in representing and advising clients is to provide and implement clear, applicable and pragmatic solutions that focus on each client's specific needs, transactions, legal questions or disputes. Its attorneys adopt a holistic approach to the broader legal and commercial situation and offer expertise in individual topics, while also collaborating with topic experts from other practices.

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Trends and Developments

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Open Banking

The ongoing global transformation from analog to digital began, arguably, with the invention of the first computer. For the purposes of this article, digital transformation refers to the integration of traditional business processes and digital technology.

The internet's journey from relatively obscure technology to, as it were, a ubiquitous household service, along with always-on access since the advent of smartphones, has powered rapid digital transformation; now big business is paying attention.

From the early implementation of online banking to today's complete online financial services platforms, the financial services sector has always been a pioneering force in digital transformation. Until recently, a bank's digital financial products could be accessed online only via the bank's digital platform, seriously inconveniencing consumers utilising the products of several banks simultaneously. Now, however, technology developed by fintech providers allows consumers to access all their financial products and perform all transactions on a centralised digital platform in accordance with financial services regulations.

The Open Banking Concept

Conceptually, open banking implements a secure channel through which an individual's bank-held financial information can be accessed—with the individual's consent obtained primarily through application programming interfaces (APIs) and similar means—by certain third parties to facilitate financial transactions. Thus, for the benefit of consumers, open banking breaks the longstanding institutional monopoly of banks over consumer data and encourages competition within the sector.

Within the financial services sector, potential benefits of widespread implementation of open banking APIs include:

- allowing consumers to aggregate their accounts and conveniently conduct all transactions using an efficient single platform;
- helping lenders to evaluate an individual's credit risk and offer appropriate loan products;
- encouraging development of new analytical products;

- allowing auditors to more easily access an individual's financial data;
- providing a convenient, single platform for managing recurring consumer payments;
- reducing EFT and wire fees;
- providing an avenue for user-specific, user-targeted budget guidance; and
- making it easier to open and close accounts.

Potential benefits of open banking extend beyond financial services, including facilitating the generation and presentation of tailored products—eg, housing, shopping, education, and transportation.

Open Banking in the Fintech Market

Fintech, or the Financial Technology Industry, uses the combined resources and know-how of the financial services and technology sectors to provide enhanced, improved, convenient, fast, and user-friendly digital financial solutions.

According to Allied Market Research 1, overall, open banking generated revenue of USD7.29 billion in 2018; by 2026, revenue is projected to reach USD43.15 billion, representing year-on-year growth of 24.4% for the period. Within the marketplace, banking and capital markets produced the lion's share of open banking revenue in 2018, due to a surge in new services. The payments segment is projected to see year-on-year growth of 27.3% through 2026, due to the increase in consumer use of digital banking platforms for initiating debt payments. Accordingly, open banking is poised to power rapid growth in fintech.

Recent Developments Due to COVID-19

Lockdowns, quarantines, social distancing, and similar COVID-19 pandemic restrictions have resulted in a dramatic increase in consumer demand for online services of all kinds; and specific to fintech, increased demand for online financial services and contactless payment platforms. According to a survey by Ipsos MORI and the Open Banking Implementation Entity, 50% of small and medium-sized businesses in the UK use open banking services; 60% of them due to the pandemic. Furthermore, according to the Open Banking Implementation Entity, during the pandemic the number of open banking users in the UK increased from one to two million.

The extent of open banking penetration in Turkey cannot be meaningfully estimated at present. What is certain, however, is that digital banking in Turkey continues to expand at a remarkable rate. According to the Banks Association of Turkey, active digital banking customers totalled approximately 50 million in the period July–September 2019, and 63 million in the period July–September 2020; a dramatic increase attributable primarily to the pandemic.

Regulation of Open Banking in the EU

The Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (“PSD2”), amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, is the primary EU legislation on open banking. The initial EU directive on payment services was introduced in 2007. Thereafter, to address insufficient competition in the financial services sector and to improve consumer transactional security, a comprehensive set of amendments comprising PSD2 was enacted into law on 13 January 2016. EU member states were given a two-year window for internal implementation.

Notable PSD2 provisions open parts of the financial services market to third-party payment providers by allowing them access to bank-held consumer financial data. PSD2 provides that banks and other financial institutions holding consumer deposit accounts, accessible online and set up for online payments, are permitted to give third-party financial services providers access to data associated with those accounts.

PSD2 contemplates two primary third-party services, namely:

- Payment Initiation Services (PIS); and
- Account Information Services (AIS).

PSD2 defines PIS as “a service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider”. PIS services simply facilitate interparty online payments and EFTs.

PSD2 defines AIS as “an online service to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider”. With AIS, consumers can manage their aggregate financial affairs on a single platform and without institutional limitations. Thus, AIS facilitates effective financial affairs management by presenting consumers with a complete financial picture.

The key concept which enables the third parties to participate in the financial services and thus compete with the banks and other financial institutions is, as explained above, the obligation of the banks to open their financial services and data to third-party applications. However, as per PSD2, the use of these services depends on the explicit consent of the user. PSD2 and the General Data Protection Regulation (GDPR) contemplate different aspects of explicit consent. The GDPR deals with it within the context of secure processing of personal data, whereas PSD2 does so within the context of open banking processes. PSD2 does address the secure transfer of personal data, eg, Article 66 provides that PIS/AIS user data obtained during provision of payment services may be provided to the payee only with the payer’s explicit consent.

Aiming to promote open banking through user trust in applications, PSD2 increases online fraud protection by requiring strong electronic payment security measures to safeguard consumer data.

Notwithstanding PSD2, EU fintech companies must register with and obtain a licence from competent member state authorities regulating capital and other requirements for market participation.

Regulation of Open Banking in Turkey

Banking regulations

The Regulation on Information Systems of Banks and Electronic Banking Services (“Regulation”), which is published in Official Gazette No 31069, dated 15 March 2020, and effective as of 1 July 2020, defines open banking as “[a]n electronic distribution channel where customers or parties acting on behalf of customers can perform banking transactions by remotely accessing financial services offered by the bank through API, web service [or] file transfer protocol, or give instructions to the bank to perform these transactions”.

The Regulation applies only to bank-offered services, and open banking is addressed only in an article which provides, in the relevant part, that one-factor authentication may be used for open banking, provided that communication between the bank and the consumer or consumer’s agent is secured by, among other data protections, end-to-end encryption; and that the Banking Regulation and Supervision Board (“BRS Board”) in its discretion may determine the universe of open banking services and regulate same.

Since open banking services are included in the Regulation’s definition of electronic banking services, its provisions on electronic banking services are also applicable to open banking services.

TURKEY TRENDS AND DEVELOPMENTS

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Payment regulations

In Turkey, AIS and PIS, considered basic services under PSD2, are regulated by the Law on Payment and Securities Settlement Systems, Payment Systems and Electronic Money Institutions No 6493 (“Law No 6493”), which, though originally intended to align with the initial EU Payments Services Directive 2 as amended (amendments effective as of 1 January 2020), includes AIS and PIS in its definition of payments services (see Law No 6493, Article 14), thus placing it under the rubric of open banking.

Article 14 of the Law No 6493 makes licensing mandatory for open banking services providers wishing to participate in the marketplace. Licences are issued by the Central Bank of the Republic of Turkey (CBRT) which, under Article 14/A of Law No 6493, regulates AIS/PIS data-sharing among open banking service providers. Although secondary legislation has yet to be enacted, the CBRT has prepared draft AIS/PIS regulatory guidelines.

The Communiqué on the Management and Audit of Information Technology Systems of Payment Institutions and Electronic Money institutions (“IT Communiqué”) governs management and auditing of IT systems maintained by open banking market participants, and imposes certain obligations on payment institutions, including open banking companies, eg, preparing policies, making risk assessments, assigning duties, and ID authentication. In addition, payment institutions are required to store transaction logs for three years before disposing of them. Furthermore, the IT systems of payment institutions are subject to biennial independent audits.

Of note, particularly for foreign players seeking entry into the Turkish open banking sector, primary and secondary payment institution systems must be housed in Turkey.

Outsourcing is also regulated by the IT Communiqué.

Personal data protection

Data protection is the foundation of consumer trust in systems that process personal data. Personal data is protected by strict laws permitting processing only if necessary to carry out an intended and agreed upon consumer service. If the data is special category personal data, then explicit consent to process it is required. Otherwise, provided processing is narrowly tailored, explicit consent is not required.

Notification of data subjects is crucial in open banking. Data subjects have the unequivocal right to full disclosure regarding processing of personal and financial data. In particular, where provider performance requires data processing beyond mere monitoring of accounts or initiation of payments, the data subject must be given prior notice with adequate detail in clear, easily understood language.

In cases of data breach, open banks are liable as data controllers. Currently, it is unclear whether, in the absence of a services agreement between bank and consumer, a bank must provide data to an open banking services provider. This is a material divergence from PSD2, which prescribes such access. Accordingly, under Turkish law banks may, in the interest of data privacy, refuse to allow service providers to access consumer data. Furthermore, unlike PSD2 which mandates certain third-party access to bank-held consumer data, under Turkish law it is not clear whether, even with explicit consent, a bank is obliged to share consumer data.

What is missing/awaited?

Open banking is developing in Turkey. Full implementation is not expected before the enactment of secondary legislation, in which the BRS Board is expected both to specify permitted open banking services and present a regulatory scheme; while the CBRT is expected to promulgate a regulatory scheme for open banking data transfer.

Furthermore, since a functioning open banking system requires mandatory data-sharing with service providers – according to PSD2 – and since Turkish law does not provide for this, amendments to Law No 6493 are expected. It is noteworthy, and perhaps indicative of future developments, that CBRT’s most recent draft regulations conform to PSD2.

Moreover, in due course, amendments to the Law on Personal Data Protection No 6698 are expected to align it with the GDPR and – in the context of open banking – address, among other things, consumer data portability and joint data controllers.

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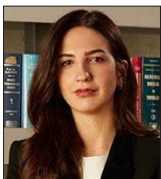
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