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Dr E Seyfi Moroğlu, Burcu Tuzcu Ersin, Burcu Güray and Dr Ceylan Necipoğlu
Moroğlu Arseven

Turkey: Trends & Developments
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TURKEY

Law and Practice

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Moroğlu Arseven see p.25

Contents

TURKEY

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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 global fintech market has expanded; the value was around USD15 billion in 2021 and more than USD194.1 billion in 2022. According to the guide published on 16 March 2023 by the Republic of Turkey Finance Office, the number of fintech companies in Turkey (in 2022) has reached 629, the number of licensed payment and e-money institutions has reached 74, the number of digital banks has reached four and the number of crowdfunding platforms has reached eight, which exceeds expectations. Thus, the global fintech market is expected to grow in the forecast period of 2023–28 and reach over USD492.81 billion by 2028.

Though still relatively immature, the potential of Turkey's fintech industry should not be underestimated. Turkish fintech start-ups are rapidly developing innovative – and 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, as per the latest Fintech Global's report, Turkish fintech investments nearly quadrupled in 2022 and were expected to reach USD323 million in funding for the year based on investment pace in the first three quarters of 2022. Transactions in Turkey are also expected to set new records, reaching 54 deals in total for 2022, a 12% increase from 2021 levels. Param, a payment service provider, was the largest FinTech deal in Turkey during the first three quarters of 2022, raising USD200 million in their latest venture round, which included investment from Revo Capital, European Bank for Reconstruction and Development, Ceecat Capital and Alpha Associates. Param will use the funding to expand globally while strengthening its foothold in Turkey. The company said it operates 5.4 million cards across 138 business-to-business-to-consumer card programmes, facilitating payments for more than 90,000 merchants, including leading e-commerce players and large organisations.

Electronic Payment Systems

The Law on Security Settlement Systems, Payment Services and Electronic Money Institutions No 6493 (the "E-Payment Law") applies to payment systems, security settlement systems, payment institutions, and electronic money institutions operating in Turkey. Only banks and pay-

ment service providers authorised by the Central Bank of the Republic of Turkey (the "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. Thus, the Central Bank has newly published a guideline regarding possible set-ups for open banking.

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.

On 29 December 2021, the Banking Regulation and Supervisory Agency (BRSA), based on its mandate regulated in the Banking Law No 5411 (the "Banking Law"), published the Regulation on the Operating Principles of Digital Banks and Service Model Banking (DBR). The DBR sets forth regulations on how the banks provide services through digital channels without any physical branches and the operational principles. Accordingly, branchless banks operating in digital platforms can be established in Turkey by obtaining a licence. The conditions for the establishment and licensing of digital banks are regulated under the DBR. So far, five digital banking licences have been issued by the BRSA. Yet for the DBR model, no permission has been granted by the BRSA. BRSA has published the circular numbered 2022/2 on identity verification for the DBRs and required technical precautions to be followed by the DBRs.

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. On 29 December 2022, the CBRT issued a statement regarding the digital Turkish lira which can be considered as a stablecoin and has stated that they are currently testing payments in digital Turkish lira. The statement further reveals that the Central Bank prioritises working on the legal framework for payments in digital Turkish lira and that the digital Turkish lira will be put into use in the near future.

Blockchain and Cryptocurrencies

At present, there is no one uniformed legal document that regulates cryptocurrencies under Turkish law. There are, however, certain provisions in different pieces of legislation that refer to blockchain and cryptocurrencies.

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". In October 2021, debt-based crowdfunding was introduced into Turkish law. Debt-based crowdfunding is defined as "[r]aising money from the public through platforms in exchange for crowdfunding debt instruments". In this regard, duly authorised platforms can conduct equity-based and debt-based crowdfunding. Natural per-

sons who are not qualified investors can invest a maximum of TRY150,000 in a calendar year through debt-based crowdfunding. However, this limit can be applied as 10% of the annual net income declared by the investor to the platform, provided that it does not exceed TRY600,000. Natural persons who are not qualified investors can invest a maximum of TRY60,000 in a project through debt-based crowdfunding.

2.2 Regulatory Regime

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

The 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 Information Systems Used In Payment and Securities Settlement Systems No 2015/7, published in the Official Gazette No 29588, dated 9 January 2016.

Amendments

The E-Payment Law was amended by both the Law on the 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'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.

The Central Bank has restricted foreign exchange transactions via e-money institutions on 1 December 2022. Accordingly, the e-money institutions provide wallet services only in Turkish lira currency. On 26 December 2022, the Central Bank announced that e-money accounts will be able to benefit from the instant transfer (FAST) service in the first quarter of 2023.

The Banking Law

The Banking Law, effective as of 1 November 2005, establishes a regulatory scheme which promotes the efficient operation of financial markets and fosters systemic integrity by facilitating the issuance of bank loans. The Customer Secrecy Regulation (the "Secrecy Regulation") issued by the BRSA has been published in the Official Gazette No 31501 on 4 June 2021. Informative Circular No 2022/1 has been published by BRSA to clarify application of the Secrecy Regulation.

The Insurance Law

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

The 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 EU Directive on Money Laundering. The Law on the Prevention of Laundering the Proceeds of Crime No 5549 (the "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 Crowdfunding No III-35/A-2 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 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.

In Article 82 of the CML it is regulated that the Capital Markets Board (CMB) will take a compensation decision if it is determined that investment institutions cannot fulfil their cash payment or delivery of capital market instruments obligations arising from capital market activities or cannot fulfil them in a short time. The Investor Compensation Centre (YTM), which is a public legal entity, was established with the aim of compensating investors within the framework of the conditions set forth in the CML, pursuant to its Article 83.

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 2021–23 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.

The 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.

The 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.

The 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 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.

The 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 47, effective as of 1 October 2019, the obligations of the Insurance and Private Pension Supervision and Supervisory Department were assumed by the Ministry of Treasury and Finance, and include duties such as preserving private pensions, enforcing pension laws, and licensing of insurance and reinsurance companies.

The 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 cyberstability.

The 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
The 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, and 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, failing which they may be found liable.

2.9 Significant Enforcement Actions

Based upon the opinions of the Central Bank, the BRSA formulates operating principles for independent audit firms and maintains an up-to-date 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 cryptocurrency. In addition, 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.

On 16 April 2021, the Central Bank published the country's first crypto-asset regulation, the Regulation on the Use of Crypto-Assets in Payments (the "Crypto Regulation"), effective 30 April 2021, in Official Gazette No 314561.

Notable provisions include:

- crypto-assets cannot be used, directly or indirectly, to purchase goods and services in Turkey;
- crypto-assets cannot be used in the provision of payment services or issuance of e-money;
- intermediary financial services to crypto-asset platforms and service providers, including funds transfers, and custodial, settlement, and issuance services are prohibited; and
- the development of financial services business models involving crypto-assets is prohibited.

The Regulation on the Amendment of the Regulation on the Measures for Prevention of Laundering Proceeds of Crime and Terrorist Financing, effective as of 1 May 2021, was published in Official Gazette No 31471 of that same date. The Amendment Regulation expands the definition of obligated entities under Article 4 of the Regulation on the Measures for Prevention of Laundering Proceeds of Crime and Terrorist Financing, published in Official Gazette No 26751 of 9 January 2008, and provides the following subparagraphs:

"(ü) crypto-asset service providers,

(v) savings financing companies."

Accordingly, as of 1 May 2021, crypto-asset service providers, savings financing companies, their branches, agents, representatives, commercial agents, and affiliated entities are required to comply with the above-mentioned Regulation.

The draft proposal, which envisages amendments to the Capital Markets Law in order to create the legal framework for crypto-assets, was brought to the agenda of the Turkish Grand National Assembly.

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:

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

Presently in Turkey, there is 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.

2.13 Impact of AML Rules

According to the Regulation on the Amendment of the Regulation on the Measures for Prevention of Laundering Proceeds of Crime and Terrorist Financing, effective as of 1 May 2021, published in the Official Gazette No 31471 of that same date, crypto-asset service providers, payment and electronic money institutions, and debit and credit card issuance institutions are considered as parties obligated to comply with AML rules. Fintech companies that are in this scope must comply with AML rules, including identification obligation and suspicious transaction reporting.

The identification obligation applies:

- regardless of the amount in a permanent business relationship establishment;

- when the transaction amount or the total amount of more than one related transaction exceeds TRY185,000 as of 1 February 2023;
- when the transaction amount in electronic transfers or the total amount of more than one related transaction is equal to or more than TRY15,000 as of 1 February 2023;
- regardless of the amount in cases that require suspicious transaction reporting; and
- regardless of the amount when there is doubt regarding the adequacy and accuracy of previously obtained customer identification information, which must be obtained before the establishment of a business relationship or transaction.

According to Article 4 of the AML Law, a transaction is regarded as suspicious if any information available regarding the assets subject to the transaction made, or attempted to be made before or through obliged parties, suggests that those assets were obtained illegally or used for illegal purposes. In this context, that includes assets that are used for terrorist acts, by terrorist organisations, terrorists or terrorist financiers.

Regardless of the amount of the transaction, any suspicious transaction must be notified. Also, a suspicious transaction notification must be made even when the transaction has already been notified as a part of the continuous notification requirements for transactions of a certain volume. Covered institutions are under the obligation to provide any relevant documents and information requested by MASAK and they cannot avoid giving information or documents by depending on the provisions of specific regulations that regulate them (such as the Banking Law), without prejudice to the provisions regarding the right to defence. Suspicious transaction notifications can be made through online or traditional channels. The suspicious transaction form is completed by the obliged parties and sent to MASAK.

As of 2021, identification through an informatics or electronic communication device has become possible. Therefore, fintech companies can comply with the customer identification obligation without having a physical branch for this purpose.

MASAK has published the guideline on obliged parties including cryptocurrency service providers. Ministry of Treasury and Finance published MASAK General Communiqué No 21 (the "MASAK Communiqué") on 17 November 2022. With this MASAK Communiqué, Politically Exposed Persons (PEP) has been regulated for the first time in the Turkish regulatory landscape in order to align with the Recommendations Nos 12 and 22 of the Financial Action Task Force (also known as the FATF).

Pursuant to the MASAK Communiqué, PEP is defined as "high-level real persons, members of the board of directors of international organizations, senior executives and other persons who have an equivalent duty, to whom an important public duty has been entrusted by election or appointment in the country or a foreign country".

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. Both can process obligations via digital (video) KYC as of 2022 since the Regulation on Remote Identification Methods to be Used by Financial Leasing, Factoring, Financing and Savings Financing Companies and the Establishment of Contract Relationship in the Electronic Environment, published in Official Gazette No 31716 of 11 January 2022. The said regulation entered into force on 11 February 2023, one month after its publication date; in practice, it is not actively used since the BRSA has not yet made an announcement regarding the infrastructure.

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. SMEs and certain incentivised sectors can benefit from certain interest incentives. Private and government banks usually make specific loan offers to SMEs.

FX and FX-Indexed Loans

In principle, 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 Central Bank.

Crowdfunding

Although equity-based crowdfunding has been long regulated, debt-based crowdfunding is introduced as a new concept into the Turkish law under the Communiqué on Crowdfunding No III-35/A-2, which came into force upon being published in the Official Gazette No 31641 dated 27 October 2021. Pursuant to the mentioned communiqué, the principles and procedures regarding debt-based crowdfunding are also regulated in addition to equity-based crowdfunding. Now, start-ups can collect contributions via crowdfunding platforms in exchange for financial instruments for their projects.

4.2 Underwriting Processes

Underwriting is primarily regulated under the Regulation on Lending Transactions of Banks (the "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 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 above-mentioned Communiqué.

As of February 2021, remote identification by intermediary institutions and portfolio management companies in accepting new customers, and the establishment of a contractual relationship over an informatics or electronic communication device, whether remotely or not, in a way that replaces the written form or remotely, has become possible. The identification can be conducted through near-field-communication (NFC) with the TR identification card, and, if not possible, through video chat by confirming at least four security elements of the TR identification card.

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, Commodity Market 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

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, which 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 the process of being developed. Recently, the Ministry of Treasury and Finance made an announcement about cryptocurrency, 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, in particular the BIST Regulation on Stock Market Operations and the BIST Listing Directive dated 2015, revised in 2022. 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. On January 2022, the first platform was authorised by the CMB for debt-based crowdfunding.

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 for 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 regarding 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 their 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 the handling of 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 particular, 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 agree 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 for 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 considered 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 for 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 by 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 that cover different types of insurance.

11. Regtech

11.1 Regulation of Regtech Providers

Regtech is not currently regulated in Turkey. However, 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 for contractual terms to assure performance and accuracy. 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 a time limit, 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. As a start, a national professional standard is, however, recognised for blockchain analysts under the Communique on National Professional Standards No 2022/10. Blockchain is defined as "*a structure that provides a permanent record of transactions in a network and uses a decentralized ledger similar to a system database but instead of traditional end-to-end, allowing each participant in the network to have their own copy of the ledger and be able to see all transactions*". Blockchain analyst is classified under ISCO:08 2511 (System Analysts).

According to the Crypto Regulation, on the other hand, crypto-assets cannot be used in the provision of payment.

12.3 Classification of Blockchain Assets

Blockchain is currently not directly regulated in a single uniformed legal document in Turkey. However, digital securities have structural similarities with investment instruments regulated under the CML. In this sense, it is important to make a detailed assessment of 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.

Crypto-asset is defined under Article 3 of the Crypto Regulation as "*intangible assets that are created virtually using distributed ledger technology or a similar technology and distributed over digital networks but are not qualified as fiat money, dematerialized money, electronic money, payment instrument, security or another capital market instrument*".

The status of cryptocurrencies has been one of the most problematic topics since their entrance to the Turkish market. There are two main approaches in the world: cryptocurrency as money and cryptocurrency as a commodity.

The term "money" is not defined under the Turkish Civil Code (TCC). However, under Decree No 32 on the Protection of the Value of Turkish Currency ("Decree No 32"), Turkish currency is defined as "money in circulation, and the money called in, but exchange term of which is still ongoing". As per Turkish law, the Turkish Republic Central Bank is the only authority to issue Turkish currency. In this regard, Turkish currency is only the money that is issued by the Central Bank and in circulation. Any cryptocurrencies that are not issued by the Central Bank cannot be regarded as Turkish currency.

On the other hand, Decree No 32 also defines foreign currency as any kind of account, document, or tool that enables payment with foreign money including money from foreign countries in the form of banknotes. Considering the definition, it is not clear whether cryptocurrencies can be regarded as foreign exchange. However, the classical approach to currency is to only regard money that is issued by the central bank of another country as currency. In this regard, it does not look very likely that cryptocurrencies will be regarded as currencies unless they are issued by central banks in the classical approach.

Cryptocurrencies have an economic value. Therefore, they should be accepted as part of a person's assets. However, it is not clear which provisions regarding property apply to cryptocurrencies. Immovable property is defined under the TCC on a *numerus clausus* basis and cryptocurrencies do not fall within the scope of immovable properties. Movable properties, on the other hand, are defined as "movable tangible properties and natural forces that are not defined as immovable property". Certain scholars argue that the scope of the movable property should not be interpreted narrowly, and the economic needs of the day should be taken into consideration. According to them, so long as control can be acquired on a thing that is not defined as immovable property, such property can be defined as movable property. If this approach is adopted, crypto coins can be regarded as movable property.

Finally, as explained above, the Crypto Regulation defines crypto-assets as intangible assets not qualified as fiat money, dematerialised money, electronic money, payment instrument, security or another capital market instrument. In this case, the Crypto Asset Regulation con-

firmed that cryptocurrency is an asset but does not qualify as an electronic or dematerialised money or a payment instrument.

In any case, since cryptocurrencies have an economic value, thus, they can be regarded as part of a person's estate, and they can be inherited, or an attachment may be established on them. However, the lines are still grey in this area.

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.

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. As stated above, crypto-assets cannot be used in payments.

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 derivate 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. Moreover, the Crypto Regulation stipulates that crypto-assets are not considered fiat money, electronic money, payment instruments, securities or other capital market instruments. 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.

12.9 Non-fungible Tokens (NFTs)

NFTs and NFT platforms are not regulated in Turkey. The NFTs' legal classification in Turkish law is problematic as crypto-assets' legal status is controversial due to the lack of specific regulation. Although there is a tendency towards the qualification of crypto-assets as property, this opinion is criticised due to lack of any physical existence. It is problematic when digital assets such as artworks, videos, games, or tweets are "sold" in NFT format. It is controversial whether

they can be regarded as property under the Turkish Civil Code, and thus can be made subject to any legal title, which would eventually lead to the possibility of transfer of such title.

Like cryptocurrencies, the NFTs are not specifically regulated under Turkish law. However, there are certain restrictions on the use of crypto-assets in various regulated sectors. For instance, payment and electronic money institutions are forbidden to provide services directly or indirectly for the use of crypto-assets as a means of payment, to develop business models, or provide services regarding those business models where crypto-assets are used in the provision of payment services and issuance of electronic money. Similarly, capital markets intermediary institutions are not allowed to conduct any derivative or spot transaction based on crypto-assets. In this regard, the use of the NFTs in capital markets and payment services is not possible in Turkey. Furthermore, blockchain is currently not regulated under any specific law or regulation either. It is understood, however, from publicly available data that work on draft legislation is in progress. The use of cryptocurrencies in capital markets is prohibited.

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 (the "BRS Board") can regulate all aspects of open banking.

By definition, all provisions governing electronic banking apply to open banking. The Regulation on Payment Services, Electronic Money Issuance and Payment Service Providers and the Communiqué on Information Systems of Payment and Electronic Money Institutions, and Data Sharing Services of Payment Service Providers in the Field of Payment Services (the "Communiqué") drafted by the Central Bank was published in Official Gazette No 31676 on 1 December 2021 and entered into force. The Regulation and Communiqué were previously shared with the market players by the Central Bank but were not made available to the public. With the Regulation and Communiqué drafted based on the following amendments made in the E-Payment Law, which was published in the Official Gazette on 22 November 2019, Turkish legislation has been aligned with Directive (EU) 2015/2366 on payment services (the Second Payment Services Directive, PSD2). The Communiqué granted a transition period for the compliance of the market players until 28 February 2023.

With the amendment made to E-Payment Law, the payment order initiation service offered for the payment account in another payment service provider upon the request of the payment service user, subject to the payment service user's approval, the service of presenting consolidated information regarding one or more payment accounts of the payment service user with payment service providers on online platforms and other transactions and services that reach a level

to be determined by the Central Bank in terms of total size or area of influence in the field of payments were regulated and the field of activity was paralleled with PSD2, thus paving the way for fintechs.

In addition, the Central Bank was authorised to determine the characteristics, maximum amount or rates of fees, expenses, commissions and other benefits received by a party under any name regarding a certain type of transaction within the scope of the payment service, and to release them partially or completely. In general, it is possible to say that there are no regulations that differ from PSD2.

13.2 Concerns Raised by Open Banking

Open banking services in Turkey are expected to become fully functional in the near future with the enactment of secondary legislation by the BRS Board and the 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 legislative amendments to this effect are awaited in line with PSD2.

In addition, the definition under the DP Law is expected to be amended in line with the EU General Data Protection Regulation 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.

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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 dedicated team of lawyers who are experts in their respective fields and who offer outstanding client service with the support of distinguished independent of counsel. Moroğlu Arseven is known as a detail-oriented, well-connected and hands-on law firm that is expert at handling complex tasks, whether these relate to transactions, disputes or settlements. Its clients include national, foreign and multinational commercial, industrial and financial enterprises, which it advises on complex issues and high-profile matters. The firm's primary goal in advising clients is to provide 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 legal and commercial situation and offer expertise in individual subjects, while also collaborating with subject experts from other practices.

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Trends and Developments

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Cryptocurrencies Under Turkish Law

Introduction

Since their introduction in 2008 by Satoshi Nakamoto, cryptocurrencies are one of the most controversial topics discussed in the financial sector. Although central banks of many countries approached this technology with caution, today, many of them are looking at creating their cryptocurrencies just like Turkey. Besides the arguments about whether cryptocurrencies can be accepted as money or not, the cessation of cryptocurrencies is not happening in the near future. Regulation of this area, therefore, is an essential need.

Blockchain is a decentralised, synchronised digital public ledger in a network, recording transactions by many peers. The distributed database ensures that each piece of information is recorded in blocks interconnected, with encryption methods. Once a transaction is recorded, it cannot be changed or deleted, therefore it is a safe means of recording transactions. As each participant maintains a copy of the records, blockchain technology will immediately identify and correct any unreliable information; thus, any malicious changes can be verified by other participants and corrected. This feature of blockchain enables the use of cryptocurrencies; as each transaction can be verified by several participants, and if the records are identical, the transaction is approved and recorded to the ledger. Although the use of blockchain started with cryptocurrencies, today it can be used for many purposes such as smart contracts, smart appliances, asset management, supply chain sensors, and many others.

Blockchain is not specifically regulated under Turkish law. A national professional standard is, however, recognised for the occupation of blockchain analyst under the Communiqué on National Professional Standards No 2022/10. Blockchain is defined as “a structure that provides a permanent record of transactions in a network and uses a decentralized ledger similar to a system database but instead of traditional end-to-end, allowing each participant in the network to have their own copy of the ledger and be able to see all transactions”. Blockchain analyst is classified under ISCO:08 2511 (System Analysts).

Cryptocurrency, on the other hand, is a term to define decentralised digital/virtual encrypted currencies that are based on blockchain technology. Cryptocurrency is a digital currency that uses blockchain technology to verify and record transactions. As explained, when a cryptocurrency transaction is made, it is verified by all participants and, if completely verified, the transaction is recorded. Unlike traditional money transactions, there is no intermediary such as banks and money-wiring institutions for cryptocurrency transactions.

Many problems with prior experiences of digital money, such as the double-spending problem, are solved in cryptocurrencies. Unlike traditional money, cryptocurrencies are not issued by central banks; they are created by participants

called "miners" by solving SHA256 hashes. Bitcoin is the first cryptocurrency and introduced blockchain technology. Now there are over 200 cryptocurrencies bought and sold in the world.

Different approaches to cryptocurrencies

As mentioned above, countries' approaches to the cryptocurrencies differ. However, it is clear that many countries, where cryptocurrencies have been grey areas before, now tend to regulate the area.

- European Union (EU) – Currently, there is no unified regulation for cryptocurrencies across the EU; however, member states may have their own. The European Commission is preparing to implement a comprehensive regulation, as stated under "EU's approaches to cryptocurrencies" below, which is not effective yet.
- UK – There is no specific regulation. Cryptocurrencies are only regulated for money laundering purposes. However, the Financial Conduct Authority has recently banned the sale of crypto derivatives to retail consumers. The ban is effective as of 6 January 2021. This regulation, on the other hand, does not ban the sale of cryptocurrency itself or ban the sale of crypto derivatives to anyone other than the retail consumers.
- USA – There is no specific regulation. Thus, cryptocurrencies are regarded as different legal institutions in different practices. The US Department of Treasury considers cryptocurrency as convertible digital currency while the Commodity Futures Trading Commission considers it as a commodity. According to the Internal Revenue Service, cryptocurrencies are defined as assets and will be taxed accordingly. There are also contradicting court decisions whether it can be regarded as digital money. Some stores such as Microsoft and Subway accept cryptocurrency as a payment method for their services while Facebook issues its own cryptocurrency. Despite all the discussions, almost all banks in the US have integrated crypto payment solutions into their systems.
- China – Cryptocurrencies are strictly regulated and mostly prohibited in China; however, China is preparing to issue its digital currency.
- Japan – In 2017, Bitcoin was accepted as a legitimate medium of exchange. However, due to its high risk to be used for illegal trade, certain measures are taken in order to verify the identity of the investor.
- Canada – Cryptocurrencies are accepted as a commodity; however, cryptocurrency exchange markets are expected to be registered under the Financial Transactions and Reports Analysis Centre of Canada and to notify suspicious transactions, keep certain records, and comply with other regulations.
- Australia – Treats cryptocurrencies as a foreign exchange; trade of cryptocurrencies and mining is allowed.
- Russia – A recent bill passed by the legislature provided legal status to cryptocurrencies, but it outlawed the use of cryptocurrencies as a payment method. However, actual laws regarding cryptocurrencies are expected to be passed by the legislative branch in the near future. Russia is also preparing to issue its cryptocurrency.
- Bolivia – Cryptocurrencies are prohibited.

Certain countries brought in clear regulations concerning cryptocurrencies. For example, Estonia recognised cryptocurrencies as a means of exchange or payment. Cryptocurrencies, cryptocurrency exchanges, and e-wallets are defined and regulated, and Estonia is the first country to regulate this area in the EU. Malta is another country that regulates cryptocurrencies.

Malta has recently passed three bills to regulate cryptocurrencies, cryptocurrency exchanges, e-wallet providers, advisers, ICOs, brokers, and asset managers. Singapore also regulates cryptocurrencies and requires cryptocurrency businesses to obtain a licence.

As is clear, there is no common approach to cryptocurrencies among different countries. The general concern is, however, cryptocurrency being used for illegal trade activities. As it is not centralised, and no intermediary institution is required to execute a transaction, strict regulation by financial institutions can be (and has been) avoided if governments do not intervene. However, its advantages, such as ease of transaction, lower transaction fee, strong security, transparency and easier cross-border transactions, make it very preferable for legitimate purposes. Therefore, fully ignoring or banning it is not always the best choice for economies.

EU's approaches to cryptocurrencies

In October 2022, the European Council approved the Markets in Crypto-Assets Regulation (MiCA), one of the first attempts globally at comprehensive regulation of cryptocurrency markets since it covers issues such as money laundering, consumer protection and the accountability of crypto companies. Further to those stated, MiCA will cover several key areas including transparency, disclosure, authorisation and supervision of transactions. The Regulation applies to natural and legal persons and other undertakings that are engaged in the issuance, offer to the public and admission to trading of crypto-assets or that provide services related to crypto-assets in the EU.

As an approach, MiCA separates crypto-assets into three sub-categories, and applies different requirements to each. The three categories are as follows:

- E-money (electronic money) tokens – These are crypto-assets that aim to stabilise their value by referencing only one official currency.
- Asset-referenced tokens – These are crypto-assets that are not electronic money tokens and which purport to maintain a stable value by referencing to any other value or right or a combination thereof, including one or more official currencies. This category captures all crypto-assets which are not e-money tokens and whose value is backed by assets.
- All other crypto-assets – This covers all crypto-assets which are not e-money tokens or asset-referenced tokens. This would include utility tokens (ie, a type of crypto-asset that is only intended to provide access to a good or a service supplied by the issuer of that token).

MiCA does not apply to crypto-assets that are "unique and not fungible with other crypto-assets, including digital art and collectibles".

Considering the current Central Bank approach, it is the authors' opinion that, unlike the EU, NFTs will not be subject to secondary regulations as they are traded in high volume in Turkish markets.

Cryptocurrencies and financial crimes regulation

As briefly explained above, the first and common reflex towards cryptocurrencies among different states is to prevent money laundering and crimes committed by or targeting cryptocurrencies. Some examples of criminal activities concerning cryptocurrencies can be listed as money laundering, fraud, hacking, crypto thefts, and the use of cryptocurrencies as a medium of exchange for criminal purposes.

A major cryptocurrency-related criminal activity is the use of cryptocurrencies as a medium of exchange for criminal purposes. As no intermediary is required for cryptocurrency transactions to be accomplished, major criminal organisations use it instead of fiat money or commodity. According to the CT Report, criminally associated bitcoin addresses sent over USD3.5 billion worth of Bitcoin in 2020. These cryptocurrencies, however, should be laundered eventually.

According to Chainalysis Report, over the counter (OTC) brokers are mainly used for money laundering using cryptocurrencies. This is backed up by the fact that a small segment of accounts is taking in most of the illicit Bitcoin being sent to Binance and Huobi. The OTC brokers usually first exchange Bitcoin and other cryptocurrencies into stable currencies and then convert them into fiat money.

Taking these facts into consideration, many countries, even though they do not have a specific cryptocurrency policy, approach the issue from the criminal law aspect and include cryptocurrency crimes in their anti-money laundering policy.

With the same concern, certain rules apply to the use of bitcoin for illegal activities. The Financial Crimes Investigation Council (MASAK) has published criteria for cryptocurrency transactions. Until 11 September 2019, any money transfer from bank accounts for the purpose of purchasing Bitcoins (although the wording used was Bitcoin, it meant all cryptocurrencies) to the cryptocurrency intermediaries were regarded as a suspicious transaction and should have been reported by relevant banks to MASAK. With the amendments made in the guide, the definition of suspicious transactions was altered in favour of cryptocurrencies. In this respect:

- money transfers from the client's bank account to domestic or foreign cryptocurrency exchange markets or natural or legal persons, to purchase cryptocurrencies, in an unusual frequency and amount, and
- money transfers to the client's bank account from an unknown source or as a result of cryptocurrency sale suspected to be made incompatible with the financial profile of the client

are defined as suspicious transactions and obliged to be reported to MASAK by banks. After this amendment, certain banks started to allow cryptocurrency transactions through their mobile or web applications.

Thereafter, MASAK published a suspicious transaction reporting guide specific to crypto money platforms. As can be understood from this guide, there are no restrictions on the buying and selling of cryptocurrencies by Turkish citizens.

In the near past, MASAK announced that "a very serious inspection" would be carried out in the cryptocurrency exchange markets for the prevention of illegal gambling. A few months after this announcement, MASAK made another announcement that an international cryptocurrency transfer in the amount of TRY100 million had been blocked, and an investigation initiated.

Finally, in Decree No 3030 on Approval of Medium-Term Programme, published in Official Gazette No 31256 dated 29 September 2020, it is stated that a tracking mechanism will be established for the prevention of the use of digital assets, which can be bought, sold and transferred and represent a digital value, to finance terrorism.

Moreover, MASAK General Communiqué No 21 (the "Communiqué 21") was published on 17 November 2022. With Communiqué 21, politically exposed persons (PEP) have been regulated for the first time in the Turkish regulatory landscape. In this way, MASAK requirements come into line with Recommendations Nos 12 and 22 of the Financial Action Task Force (also known as FATF).

Pursuant to Communiqué 21, PEP are defined as "high-level real persons, members of the board of directors of international organizations, senior executives and other persons who have an equivalent duty, to whom an important public duty has been entrusted by election or appointment in the country or a foreign country." Thus, with Communiqué 21, relatives and close associates of PEP are defined as "people who have all kinds of social, cultural or economic closeness which can be considered as a combination of interests or purposes, such as being engaged, company partnership, being a company employee or kinship other than the first degree."

Communiqué 21 regulates that Financial Institutions, Crypto-asset Service Providers, and Designated Non-Financial Businesses and Professions are obliged to take necessary measures to determine whether the customer or real beneficiary is a PEP or not and sets the framework for the procedures and principles of the measures to be taken regarding PEPs.

In case of non-compliance with Communiqué 21, where an obliged party does not fulfil the KYC obligation, an administrative fine of between TRY40,860 and TRY5,448,000 will be imposed by MASAK. For breaching the suspicious transaction reporting obligation, an administrative fine of between TRY68,100 and TRY5,448,000 will be imposed.

Regulation of cryptocurrencies under Turkish law

In Turkey, until very recently, there was no specific regulation regarding cryptocurrencies in Turkish law. Cryptocurrencies were mainly subject to anti-money laundering and terrorist financing laws, and capital market regulations were applicable to cryptocurrencies. Being unregulated, use of cryptocurrencies was neither prohibited nor restricted as a means of payment. Official Gazette No 31456, dated 16 April 2021, published the Regulation on the Use of Crypto-assets in Payments (the "Crypto-asset Regulation") and cryptocurrencies are regulated directly for the first time.

The Crypto-asset Regulation is the first direct legally binding document for the regulation of crypto-assets in Turkey, and came into force on 30 April 2021. Crypto-asset is defined under Article 3 of the Regulation as "intangible assets that are created virtually using distributed ledger technology or a similar technology and distributed over digital networks but are not qualified as fiat money, dematerialized money, electronic money, payment instrument, security or another capital market instrument".

Article 3 of the Regulation prohibits the use of crypto-assets as a means of payment. As per Article 3, crypto-assets may not be used directly or indirectly in payments, and similarly, provision of services directly or indirectly for the use of crypto-assets as a means of payment. Only recently, Royal Motors had declared that they would accept cryptocurrencies (Bitcoin namely) as a payment option, becoming the first Turkish automotive company to accept cryptocurrencies as a payment method.

Article 4 of the Regulation prohibits payment service providers to develop business models

or provide services regarding those business models where crypto-assets are used in the provision of payment services and issuance of electronic money. Article 4 also prohibits payment and electronic money institutions to mediate platforms and fund transfers from the platforms offering trading custody, transfer, or issuance services for crypto-assets.

E-money versus crypto

The status of cryptocurrencies has been one of the most problematic topics since their entrance to the Turkish market. There are two main approaches in the world as explained above: cryptocurrency as money and cryptocurrency as a commodity.

The term "money" is not defined under the Turkish Civil Code (TCC). However, under Decree No 32 on the Protection of the Value of Turkish Currency ("Decree No 32"), Turkish currency is defined as "money in circulation, and the money called in, but exchange term of which is still ongoing". As per Turkish law, the Turkish Republic Central Bank (TRCB) is the only authority to issue Turkish currency. In this regard, Turkish currency is only the money that is issued by TRCB and in circulation. Any cryptocurrencies that are not issued by the TRCB cannot be regarded as Turkish currency.

On the other hand, Decree No 32 also defines foreign currency as any kind of account, document or tool that enables payment with foreign money including money from foreign countries in the form of banknotes. Considering the definition, it is not clear whether cryptocurrencies can be regarded as foreign exchange. However, the classical approach to currency is to only regard money that is issued by the central bank of another country as currency. In this regard, it does not look very likely that cryptocurrencies will be regarded as currencies unless they are issued by central banks in the classical approach.

Cryptocurrencies have an economic value. Therefore, they should be accepted as part of a person's assets. However, it is not clear which provisions regarding property apply to cryptocurrencies. Immovable property is defined under the TCC numerus clausus and cryptocurrencies do not fall within the scope of immovable properties. Movable properties, on the other hand, are defined as "movable tangible properties and natural forces that are not defined as immovable property". Certain scholars argue that the scope of the movable property should not be interpreted narrowly, and the economic needs of the day should be taken into consideration. According to them, so long as control can be acquired on a thing that is not defined as immovable property, such property can be defined as movable property. If this approach is adopted, crypto coins can be regarded as movable property.

Turkey has enacted the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (the "e-Money Law") in June 2016 in order to regulate the procedures and principles regarding payment and securities settlement systems, payment services, payment institutions, and electronic money institutions. Electronic money is defined under the e-Money 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."

If cryptocurrencies could be defined as electronic money, e-Money Law would apply to cryptocurrencies. In order to settle the potential conflicts on this issue, the Banking Regulation and Supervision Agency (BRSA) published a public statement in November 2013 assessing cryptocurrencies' legal status with respect to the e-Money Law. According to 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 the funds received by the issuer. It is also added in the public statement that cryptocurrencies' supervision and surveillance as per the e-Money Law is not possible.

The cryptocurrencies such as Bitcoin are not centralised and therefore not issued by an institution; instead, they are added to the system when participants solve hashes, in other words, "mined". They are also not backed by any money or commodity. Considering these properties of cryptocurrencies, they cannot be regarded as electronic money as defined under the e-Money Law and therefore it does not apply to cryptocurrencies.

As per Decree No 32, certain agreements between residents of Turkey cannot be denominated in or indexed to foreign currency. In such a case, whether cryptocurrencies can be regarded as foreign currencies as per Decree No 32 should be determined.

Foreign currency is defined in Decree No 32 as any kind of account, document or tool that enables payment with foreign money including money of foreign countries in the form of banknote. Considering its nature, it is not very likely to regard cryptocurrencies like Bitcoin as foreign currencies. On the other hand, some cryptocurrencies are backed by a national currency (stablecoin) and they can be converted to national currencies with their actual values at any time. In such a case it is not clear how these cryptocurrencies would be treated.

In any case, if a cryptocurrency can be accepted as a foreign currency as described, executing certain agreements denominated in or indexed to said cryptocurrency between residents of Turkey will not be allowed. On the contrary, if they are not regarded as foreign currencies, the agreements executed between residents of Turkey may not be subject to Decree No 32.

Finally, as already explained, the Crypto-asset Regulation defines crypto-assets as intangible assets not qualified as fiat money, dematerialised money, electronic money, payment instrument, security or another capital market instrument. In this case, the Crypto-asset Regulation confirmed that cryptocurrency is an asset but does not qualify as an electronic or dematerialised money or a payment instrument.

In any case, since cryptocurrencies have an economic value, thus, they can be regarded as a part of a person's assets, and they can be inherited, or an attachment may be established on them. However, the lines are still grey in this area.

NFT regulation

As a relatively new concept, the legal framework of the NFT is generally unresolved and vastly argued. The NFTs are not specifically regulated under Turkish law; albeit the general principles of Turkish law, eg, the Turkish Civil Code, the Turkish Code of Obligations, and the Turkish Copyright Law, draw the lines for formation of related contracts, the legal title, transfer and use of NTFs.

The NFTs' legal classification in Turkish law is problematic as crypto-assets' legal status is controversial due to the lack of specific regulation. Although there is a tendency towards the qualification of crypto-assets as property, this opinion is criticised due to lack of any physical existence. It is problematic when digital assets such as artworks, videos, games or tweets are "sold" in NFT format. It is controversial whether they can be regarded as property under the Turkish Civil Code, thus, can be made subject to any legal title which would eventually lead to the possibility of transfer of such title.

Right to property is generally accepted to include any items that have an economic value as can be understood from the preamble of Article 35 of the Constitution. However, how its definition as "property" under the Turkish Civil Code will be applied to NTFs is controversial. As and when NFTs have an economic value, they can be subject to rights of property, which provide the rights to use, benefit and dispose. In this respect, NFTs can be subject to legal transactions based on right of property, such as sale or lease.

Just as with cryptocurrencies, NFTs are not specifically regulated under Turkish law. However, there are certain restrictions on the use of crypto-assets in various regulated sectors. For instance, payment and electronic money institutions are forbidden to provide services directly or indirectly for the use of crypto-assets as a means of payment, to develop business models, or provide services regarding those business models where crypto-assets are used in the provision of payment services and issuance of electronic money. Similarly, capital markets intermediary institutions are not allowed to conduct any derivative or spot transaction based on crypto-assets. In this regard, the use of NFTs in capital markets and payment services is not possible in Turkey.

Furthermore, as per Article 2 of Law No 5549 on the Prevention of Laundering Proceeds of Crime, artwork merchants and intermediaries including auctioneers are defined as an obliged party, and they are obliged to make certain notifications. It is yet to be made clear whether the sale of NFT format artworks and videos, etc would be regarded as artwork trading by the Financial Crimes Investigation Board, as the tremendous sales values for an intangible asset and content make it very possible for the use for money-laundering activities.

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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 dedicated team of lawyers who are experts in their respective fields and who offer outstanding client service with the support of distinguished independent of counsel. Moroğlu Arseven is known as a detail-oriented, well-connected and hands-on law firm that is expert at handling complex tasks, whether these relate to transactions, disputes or settlements. Its clients include national, foreign and multinational commercial, industrial and financial enterprises, which it advises on complex issues and high-profile matters. The firm's primary goal in advising clients is to provide 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 legal and commercial situation and offer expertise in individual subjects, while also collaborating with subject experts from other practices.

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