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Getting The Deal Through

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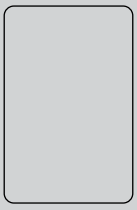

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Simmons & Simmons LLP

Lexology Getting The Deal Through is delighted to publish the sixth edition of *Fintech*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Mexico and the United States.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Angus McLean and Penny Miller of Simmons & Simmons LLP, for their continued assistance with this volume.

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Getting The Deal Through

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Cigdem Ayozger Ongun, Volkan Akbas and Selin Çetin

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FINTECH LANDSCAPE AND INITIATIVES

General innovation climate

1 What is the general state of fintech innovation in your jurisdiction?

There is a dynamic fintech climate in Turkey and all areas of the market are ripe for investment. The fintech ecosystem in Turkey in 2019 was one of the most important areas, as eight fintech companies (ie, credit scoring, payment and e-money institutions) were launched, and, accordingly, they were partially or totally acquired by local and foreign fintech or technology companies.

In the Turkish fintech ecosystem there are services (ie, payment and e-money services, money transfer and remittance, bill payment and system operator services) that are regulated under Turkish law, while others (ie, lending and credit scoring, digital wallet and application programming interface providers) are not. However, in less than a year, new regulations with regard to open banking, equity and lending-based crowdfunding entered into force. With the Economic Reforms Action Plan published by the Ministry of Treasury and Finance in 12 March 2021, it is expected that most of the legal regulations in this area will be implemented in 2021.

To strengthen the position of Istanbul Finance Center as a global fintech center, a regulation experiment area (Sandbox) in the field of payments will be established by the second half of 2022. In addition, fintech startups will be supported by the finance and technology base that is to be established in the Istanbul Finance Center.

Government and regulatory support

2 Do government bodies or regulators provide any support specific to financial innovation? If so, what are the key benefits of such support?

Both the government and regulators provide support to financial innovation; however, this support is not specifically financial industry-based. The support is provided to entities that meet specific criteria. In Turkey, investments have been supported pursuant to the Decision on State Aid in Investments brought into force with Decision of the Council of Ministers No. 2012/3305 and its Implementing Communiqué No. 2012/1; the Decision on Providing Project Based State Aid to Investments brought into force with Decision of the Council of Ministers No. 2016/9495; and Communiqué No. 30892 on the Code of Practice of Technology-Oriented Industrial Movements Programme (Communiqué No. 30892). Latest developments concern the Communiqué No. 30892: its amendments were published in the Official Gazette No. 30969 on, and were effective from, 5 December 2019.

Investment incentives are provided to all entities that meet the requirements pursuant to the above-mentioned laws and regulations. One of the purposes of the incentives is supporting high and medium-high technology investments that will provide technological transformation. Unlike many other information technology or e-commerce projects, fintech projects are more likely to benefit from R&D incentives because of the nature of fintech and its requirements, such as security, payment infrastructure, user experience and mobility.

During the establishment phase of fintech start-ups, there are alternatives, such as private incubation centres, techno-centres and collaboration offices, that may allow fintech start-ups to benefit from tax advantages. In addition to these investment incentive-focused regulations, fintech start-ups may also benefit from Technology Development Law No. 4691 and its implementing regulation. This law provides lower corporate income tax, withholding tax, income tax exemptions, employer social security contribution support payments and value-added tax exemptions for fintech start-ups. Moreover, the Presidential Decree on State Incentives Provided to Investments, which entered into force on 7 August 2019, saw a recent amendment that scrapped large-scale infrastructure project investments from the incentive regime and introduced increased incentives for R&D activities and value-added technology production.

Besides this, government support may be seen in the 11th Development Plan of Turkey (the 11th Plan), which was published in the Official Gazette on 23 July 2019. The 11th Plan includes objectives directly related to the Turkish financial technology ecosystem.

According to Presidential Decree No. 2834, published in the Official Gazette dated 8 August 2020 and numbered 31207, as of 8 August 2020, the rate of Bank and Insurance Transactions Tax (BITT) is applied as 0 per cent in foreign exchange sales to foreign resident organisations that perform at least one of the activities accepted as a financial institution activity in accordance with Banking Law No. 5411

The Amendment to the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (the Amendment), in line with the requirements of the Payment System Services Directive II (Directive 2015/2366), entered into force on 1 January 2020. The Amendment set forth a provision of the establishment of the Turkish Payment Services and Electronic Money Association (the Association), which entered into force on 22 May 2020. Accordingly, all payment and electronic money institutions are required to become members of the Association. The duties of the Association include, among other things, carrying out professional training, research and advertising activities, establishing standards for the industry and helping ensure coordination among members and with the regulator.

Finally, according to the Economic Reforms Action Plan published by the Ministry of Treasury and Finance in 12 March 2021, A Fintech Strategy Document will be prepared in which a roadmap for making regulations that will support the development of the sector will be determined by establishing an authorised structure that will lead to the development of the financial technology field and ensure the necessary coordination and cooperation. A finance and technology base will be established in the Istanbul Finance Center to support fintech startups.

FINANCIAL REGULATION

Regulatory bodies

3 | Which bodies regulate the provision of fintech products and services?

The Legislative Proposal to Amend the Law on Payment and Security Settlement Systems, Payment Services, and Electronic Money Institutions and Other Laws (the Amending Law) was published in the Official Gazette No. 30956 on 22 November 2019 and entered into force on 1 January 2020. On the effective date of the Amending Law, the powers of the Banking Regulation and Supervision Agency (BRSA) set forth under the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493) were transferred to the Central Bank of the Republic of Turkey (CBRT). Accordingly, the CBTR has the authority to monitor legal relations to which the payment service providers are a party owing to their activities in order to determine issues and areas for development. The Amending Law also grants the CBTR the authority to determine the rules and procedures of the legal relations therein and form working committees if it deems the relevant activities harmful to the area of payments. Finally, the CBRT is entitled to issue payments, e-money and system operator licences pursuant to the Law No. 6493, the Regulation on Payment Services and Electronic Money Issuance and Payment Institutions and the Communiqué on the Management and Supervision for Information Systems of the Payment E-Money Institutions.

In addition to the CBRT, the Turkish Financial Crimes Investigation (MASAK), which acts as Turkey's financial intelligence unit, effectively fights money laundering and terrorist financing (AML). MASAK checks whether financial institutions meet the requirements of AML regulations and laws. Therefore, fintech companies, such as payment service providers, cryptocurrency trading platforms and crowdfunding platforms, must fulfil their AML obligations.

Sale and marketing of financial services and products may fall under the supervision of the Turkish Capital Markets Board (CMB) or the Banking Regulation and Supervision Agency (BRSA). CMB's Communique on Principles on Investment Services and Activities and Ancillary services numbered III-37.1 and BRSA's Regulation on Bank's Procurement of Support Services impose certain restrictions on financial service providers as well as the vendors providing the sales and marketing of financial services in Turkey.

Article 6 of the Regulation on Establishment and Activities of Asset Management Companies sets forth that asset management companies must obtain authorisation from the CMB prior to their establishment to carry out their activities. According to the Banking Law and the Financial Leasing Law, only entities with a licence granted by the BRSA may legally conduct lending activities. However, following the entry into force of the Amending Law, new licences will be granted by the CBRT as of 1 January 2021.

Regulated activities

4 | Which activities trigger a licensing requirement in your jurisdiction?

A large number of financial services and activities are regulated in Turkey. Some of these activities, which trigger licensing, authorisation or registration requirements in Turkey, include, and are regulated by, the following.

- The Central Bank of the Republic of Turkey authorises payment services, invoicing services, e-money services and system operator services.
- The Banking Regulatory and Supervisory Agency issues licences for banking and finance activities, such as banking services, factoring and financial leasing services.
- The Capital Market Authority is responsible for authorising equity and lending-based crowdfunding platform services, trading and carrying out intermediation activities in securities and other capital markets instruments.
- The Ministry of Treasury and Finance authorises insurance activities.
- The Central Securities Depository of the Turkish Capital Markets provides its members with registration (public offering, etc), settlement and custody services.
- The Risk Center established within the Banks Association of Turkey collects risk data and information of clients of credit institutions and other financial institutions to be deemed eligible by the Banking Regulatory and Supervisory Board, ensuring that such information is shared with said institutions or with the relevant persons or entities themselves, or with real persons and private law legal entities if approved or consented.
- Kredi Kayıt Bürosu (KKB) conducts all operational and technical activities through its own organisation as an agency of the Risk Center of the Banks Association of Turkey and provides data collection and sharing services to financial institutions that are members of the Risk Center.

Consumer lending

5 | Is consumer lending regulated in your jurisdiction?

Consumer lending is regulated within the scope of the Banking Law, the Law on Bank Cards and Credit Cards, the Regulation on Credit Operations of Banks and by the Ministry of Commerce through the Consumer Law, the Regulation on Consumer Loan Agreements and the Regulation on Housing Finance Agreements.

Secondary market loan trading

6 | Are there restrictions on trading loans in the secondary market in your jurisdiction?

In Turkey, in principle, loans can only be provided by bank and credit institutions, which do not include payment service or e-money institutions. These banks and credit institutions must be established and authorised by the Banking Regulation and Supervision Agency. Additionally, loan-based transactions are subject to the Turkish Banking Law and regulations. Transferring a loan by way of novation (ie, discharging the original debt) will have the effect of extinguishing the Turkish law-governed security. In these cases, there is a requirement to re-establish the security for the new lender. A parallel debt structure may be a way of preventing the fall of the accessory security as a result of novation. The transfer of debts is also possible and made by an agreement between the transferor, the transferee and the debtor. The agreement does not have to be in writing. However, security providers for these debts should provide their consent in written form as well. There are no registration requirements with the authorities in Turkey for a transfer or assignment to be effective.

On the other hand, debt instruments, which can only be provided by the above-mentioned institutions, can be purchased and sold in the secondary market under the Capital Markets Law and regulations.

Borsa İstanbul AŞ (BIST) is the most active and organised DIBS secondary market in Turkey. The bonds and bills markets are outright purchase and sales and repo and reverse-repo markets. Intermediary institutions and banks can participate in these markets, and the rules of BIST are valid. In BIST, of which the Central Bank is also a member, participants send their requests and proposals to the BIST system with all the necessary details. When the best demand and offer are met in the system, transactions are carried out within the framework of the determined operating rules. Law No. 7222 on the Amendment

of Banking Law and Some Other Laws (the Amending Law), which was published in the Official Gazette dated 25 February 2020 and numbered 31050 and came into force on the same date, introduced the concept of crowd-lending by an inclusion made to Law No. 6362. With regard to crowdfunding, with the amendment made in the first paragraph of article 35/A of Law No. 6362, the CMB is empowered to make determinations regarding crowdfunding activities that collect money from the public based on partnership or lending; hence, establishing the legal basis of the lending-based crowdfunding model. As per the Amending Law, the provisions of the banking legislation shall not be applied for the financing provided through lending-based crowdfunding and shall not be considered as deposit or participation fund acceptance. Regulations regarding lending-based crowdfunding affect the situation of the trading of the funds in the secondary market, which will be provided through a lending-based crowdfunding platform, although, a communiqué for these platforms has not yet been prepared by the CMB. According to the Economic Reforms Action Plan, crowdfunding applications based on equity and lending will be implemented quickly for innovative companies' access to finance.

Collective investment schemes

7 | Describe the regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would fall within its scope.

In Turkey, the general rules and principles regarding investment funds are mainly regulated under the Capital Markets Law and regulations. In this respect, further details regarding the establishment and activities of investment funds are regulated under the Communiqué on the Principles of Investment Funds (III.52.1). Accordingly, the Investment Funds Guide clarifies the rules and principles stipulated in this Communiqué.

The regulatory regime for collective investment schemes is new, and equity and lending-based crowdfunding platforms have been highly regulated under Turkish Capital Markets Law. The Communiqué on Equity Based Crowdfunding III-35/A.1 was issued by the CMB and was published in the Official Gazette No. 30907 on 3 October 2019. As per this Communiqué, only the platforms authorised and listed by the CMB may carry out equity-based crowdfunding activities. Law No. 7222 on the Amendment of Banking Law and Some Other Laws (the Amending Law), which was published in the Official Gazette dated 25 February 2020 and numbered 31050 and came into force on the same date, introduced the concept of crowd-lending by the inclusion made to Law No. 6362. With regard to crowdfunding, with the amendment made in the first paragraph of article 35/A of Law No. 6362, the CMB is empowered to make determinations regarding crowdfunding activities that collect money from the public based on partnership or lending; hence establishing the legal basis of the lending-based crowdfunding model. On the other hand, a communiqué for lending-based crowdfunding platforms has not yet been prepared.

As per the Amending Law, the provisions of banking legislation shall not be applied for financing provided through lending-based crowdfunding and shall not be considered as deposit or participation fund acceptance. This situation may bring an alternative to conventional and participation banking models, especially in financing innovative projects with industrial and technology companies. In addition, with the amendments made to article 35A of Law No. 6362, responsibility regarding the information form on the crowdfunding transactions has been clarified and venture companies, whose shares are monitored and recorded, are now allowed to hold general assembly meetings electronically. The CMB is continuing the work on secondary regulations on equity-based crowdfunding. However, according to the Economic Reforms Action Plan, crowdfunding applications based on equity and lending will be implemented quickly for innovative companies' access to finance.

Additionally, peer-to-peer lending is not currently regulated in a manner synonymous with the definition found under PSD II. However, lending-based crowdfunding platforms, which can be considered peer-to-peer lending, have just been regulated as mentioned.

It has also been stipulated that crowdfunding platforms shall not be subject to the provisions of the Capital Markets Law regarding publicly held corporations, public offerings, issuers, the obligations of issuing prospectuses and issuance documents, investment services and activities, ancillary services and exchanges, market operators and other organised marketplaces.

Finally, secondary regulation works carried out by the CMB on crowdfunding platforms is shaped within the framework of the project titled 'Giving Support to the Preparation of Secondary Legislation Relating to Crowdfunding in Turkey' for analysing studies on foreign practices and models that can be applied in Turkey.

Alternative investment funds

8 | Are managers of alternative investment funds regulated?

Alternative investment funds (AIFs) are operated and managed by portfolio management companies on behalf of their investors in exchange for a consideration, namely 'a participation share'. Managers of AIFs are subject to the Communiqué on Portfolio Management Companies and Activities of Such Companies (III-55.1) issued by the CMB.

Portfolio management companies are required to be established as joint-stock companies with the main objective of operating and managing investment funds. Compliance with certain conditions and obtaining the CMB licence as set forth under the above Communiqué are required for establishing and operating a portfolio management company (PMC). The manager can either be the founder (founding a PMC or real estate PMC (REPMC)) or hold another role in the PMC or REPMC pursuant to a portfolio management contract. Fintech companies do not fall under the scope of the legislation concerning alternative investment fund managers.

Peer-to-peer and marketplace lending

9 | Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

Lending activities are highly regulated by the BRSA. For instance, according to the Banking Law or the Financial Leasing Law, only the entities with a licence granted by the BRSA can legally conduct lending activities. According to the Turkish Criminal Code No. 5237, money lending and earning interest from that money without holding a licence is a crime, defined as usury, that is subject to imprisonment between two to six years and a monetary fine of an amount up to 500,000 Turkish lira.

In addition, peer-to-peer lending is not currently regulated in a manner synonymous with the definition found under PSD II. Lending-based crowdfunding platforms, which can be considered peer-to-peer lending, have just been regulated under Turkish Capital Markets Law. However, a communiqué for these platforms has not been prepared yet by the CMB. Accordingly, carrying out lending-based crowdfunding activities is not yet allowed.

Crowdfunding

10 | Describe any specific regulation of crowdfunding in your jurisdiction.

Reward-based crowdfunding platform activities are not regulated in Turkey. Donation-based crowdfunding platforms may be subject to

certain regulations. Both reward- and donation-based crowdfunding platform activities have been performed by several companies in Turkey.

In addition, equity and lending-based crowdfunding platforms are highly regulated under Turkish Capital Markets Law. Law No. 7222 on the Amendment of Banking Law and Some Other Laws (the Amending Law), which was published in the Official Gazette dated 25 February 2020 and numbered 31050 and came into force on the same date, introduced the concept of crowd-lending by the inclusion made to Law No. 6362. The Communiqué on Equity Based Crowdfunding III-35/A.1 was issued by the CMB and was published in Official Gazette No. 30907 on 3 October 2019. According to this Communiqué, only the platforms authorised and listed by the CMB may carry out equity-based crowdfunding activities. With the amendment made in the first paragraph of article 35/A of the Law on Capital Markets Law No. 6362, the CMB is authorised to make determinations regarding crowdfunding activities by collecting money from the public through partnership or lending. Therefore, the legal basis of the lending-based crowdfunding model is established. On the other hand, a communiqué for lending-based crowdfunding platforms has not been prepared yet by the CMB.

Invoice trading

11 | Describe any specific regulation of invoice trading in your jurisdiction.

The accounts receivable are usually, but not always, in the form of cheques or cashier's cheques assigned or transferred to the assignee by the assignor in return for immediate payment. The Law on Financial Leasing, Factoring, and Financing Companies and its secondary regulations are the primary pieces of legislation that govern this field in Turkey.

In addition, establishing a platform to provide information and services regarding electronic invoices to merchants, is not regulated in Turkish jurisdiction. However providing services for mediating invoice payments is subject to Law No. 6493.

Payment services

12 | Are payment services regulated in your jurisdiction?

Payment services are regulated in Turkey under Law No. 6493. According to Law No. 6493, the following activities are defined as payment services:

- all the operations required for operating a payment account, including the services enabling cash to be placed on a payment account and cash withdrawals from a payment account;
- payment transactions, including transfers of funds from the payment account of a payment service user before the payment service provider; direct debits, including one-off direct debits, execution of payment transactions through a payment card or a similar device; and the execution of money transfers, including regular standing orders;
- issuing or acquiring payment instruments;
- money remittance;
- executing payment transaction where the consent of the payer to execute a payment transaction is given by means of any information technology or electronic telecommunication device and the payment is made to the information technology or electronic telecommunication operator, acting only as an intermediary between the payment service user and the supplier of the goods and services; and
- services for mediating invoice payments.

Open banking

13 | Are there any laws or regulations introduced to promote competition that require financial institutions to make customer or product data available to third parties?

The Amending Law was published in the Official Gazette No. 30956 and dated 22 November 2019 and entered into force on 1 January 2020. The Amending Law extended the list of payment services to include 'payment initiation services' and 'account information services', which were introduced by the Directive (EU) 2015/2366 on payment services (PSD2). However, unlike the PSD2, banks are not legally required to offer third-party providers access to their customers' accounts via open application programming interfaces (APIs), at least until the CBRT issues its secondary legislation on data-sharing practices; although, a number of Turkish banks already publish their APIs to promote third-party developers. Foreign exchange buying and selling transactions in cash, without the use of a payment account, are not considered payment services under the scope of Law No. 6493. Therefore, to conduct these kind of transactions, there is no need to obtain any licence from the CBRT.

Relevantly, the term 'open banking' has been defined for the first time in the Banks' Information Systems and Electronic Banking Services (the Regulation) published in the Official Gazette 15 March 2020 and numbered 31069. The effective date of the Regulation, which also refers to sharing via API, has been determined as 1 January 2021. Pursuant to the Regulation, remote identification and digital onboarding have been regulated for the first time. Open Banking services may be used for Digital Identity.

Robo-advice

14 | Describe any specific regulation of robo-advisers or other companies that provide retail customers with automated access to investment products in your jurisdiction.

In Turkey, unlike other countries, there is no legal regulation specifically regarding robo-advisory or automatic consultancy. For this reason, there is no automated consultancy company that serves in an open architectural structure, can provide investment consultancy services to its customers and can act on their behalf. The institutions that are allowed to conduct consultancy activities regarding fund allocation and to provide fund advice to the participant, are portfolio management companies subject to the Turkish Capital Markets Law.

Even though automatic consultancy services are not directly available to the participant, currently, Turkish automatic consultancy products are used by companies such as pension companies.

Insurance products

15 | Do fintech companies that sell or market insurance products in your jurisdiction need to be regulated?

Insurance services and, accordingly, selling insurance products are highly regulated under the Turkish Insurance Law and regulations. Companies that decide to perform these activities must obtain authorisation from the Ministry of Treasury. As the activities of insurance companies are restricted, they are not allowed to perform activities other than providing insurance services. In this respect, fintech companies must pay attention not to be considered insurance companies by facilitating activities in the insurance market.

Credit references

16 | Are there any restrictions on providing credit references or credit information services in your jurisdiction?

Kredi Kayıt Bürosu (KKB) offers its services not only to financial institutions, but also to individuals and the real sector through the cheque report, risk report and electronic report systems launched in January 2013. As of September 2014, KKB gathered its services aimed at individuals and the real sector under the umbrella of Findeks, the consumer service platform of KKB.

Providing credit references or credit information services in Turkey is a regulated activity under the Banking Law (Law No. 5411). The Risk Centre was established within the Banks Association of Turkey (TBB) for the purpose of collecting the risk data and information of clients of credit institutions and other financial institutions to be deemed eligible by the Banking Regulatory and Supervisory Board and ensuring that this information is shared with these institutions or with the relevant persons or entities themselves or with real persons and 61 private law legal entities if approved and consented to. The KKB was founded in accordance with article 73/4 of the Banking Law and it conducts all operational and technical activities through its own organisation as an agency of the Risk Centre of the TBB and provides data collection and sharing services to the 180 financial institutions that are members of the Risk Centre.

CROSS-BORDER REGULATION

Passporting

17 | Can regulated activities be passported into your jurisdiction?

Regulated activities cannot be passported into Turkey as regulated in the Markets in Financial Instruments Directive II for the European Economic Area.

Requirement for a local presence

18 | Can fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

A fintech company is required to be incorporated and licensed in the local Turkish jurisdiction. Apart from being licensed by the Banking Regulation and Supervisory Authority, the paid-in capital, in cash and free from any collusion, must be at least one million Turkish liras for payment institutions providing the services, and at least two million Turkish liras for other payment institutions and limitations on the controlling ownership of shares and share transfers.

However, it is stated in the Economy Reform Package that digital (branchless) banking licensing will be enabled, and the action is aimed to be completed by 31 December 2021 under the responsibility of the BRSA. Thus, neobanks that are 100 per cent digital and do not have physical branches will also take their place in the digital scene and emerge as potential competitors to established banks.

SALES AND MARKETING

Restrictions

19 | What restrictions apply to the sales and marketing of financial services and products in your jurisdiction?

The sale and marketing of financial services and products may fall under the surveillance of the Capital Markets Board (CMB) or the Banking Regulation and Supervision Agency (BRSA). The CMB's Principles on Investment Services and Activities and Ancillary Services No. III-37.1 and the BRSA's Regulation on Bank's Procurement of Support Services impose certain restrictions on financial service providers and on the vendors providing the sale and marketing of financial services in Turkey.

CHANGE OF CONTROL

Notification and consent

20 | Describe any rules relating to notification or consent requirements if a regulated business changes control.

Some companies performing in the banking and finance sector, such as payment service providers, crowdfunding platforms, banks and financial institutions, that are supposed to be parties to business transactions (ie, mergers, acquisitions or share transfers) must notify the relevant authorities (ie, the Banking Regulation and Supervision Agency, the Central Bank of the Republic of Turkey and the Capital Market Authority).

FINANCIAL CRIME

Anti-bribery and anti-money laundering procedures

21 | Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?

Turkish money laundering and terrorist financing legislation, namely the Law for Preventing Laundered Criminal Income (Law No. 5549) and its supplementary regulation, requires that fintech companies implement procedures to combat bribery. The appointment of a compliance officer, identity verification of account holders and reporting of suspicious transactions are commonplace requirements the regulation imposes on fintech companies. The Turkish Financial Crimes Investigation Board (MASAK), also regulates fintech products and services in terms of money laundering proceedings for crime and terrorist financing.

Additionally, the term 'financial group' has been defined in article 2 of the Law on the Prevention of Laundering Proceeds of Crime with the amendment made pursuant to article 20 of Law No. 7262 on Preventing Financing of Proliferation of Weapons of Mass Destruction (Law No. 7262) dated 27 December 2020. The term has been defined as to also include foreign-based financial companies. The aforementioned definition has been stipulated to comply with the regulation on 'financial groups' for which new obligations have been imposed within the scope of article 5 of Law No. 5549. The article regulates that companies affiliated to the financial group may share information within the group regarding accounts and transactions with the recognition of the customer to ensure that specified measures are taken at the group level. Information-sharing cannot be avoided by putting forward the provisions in special laws.

Within the framework of the Regulation on the Amendment of the Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism, which entered into force through the Presidential Decision dated 30 April 2021 and numbered 3941, published in the Official Gazette dated 1 May 2021 and numbered 31471, crypto-asset service providers have been specified among the 'obliged parties' given in the Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism (the Regulation).

MASAK's guide titled 'Main Principles for the Crypto Asset Service Providers Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism' (the Guide) includes information on administrative and legal sanctions to be imposed in the case of failing to fulfil the obligations that crypto-asset service providers have as obliged parties under the Regulation. Accordingly, failing to fulfil the obligation of know your customer; the obligation of suspicious transaction reporting; and the obligation of regular reporting causes administrative fines to be

issued by MASAK under Law No. 5549 On Prevention of Laundering Proceeds of Crime (Law No. 5549). Moreover, failing to fulfil the obligation of not disclosing any information on suspicious transaction reporting to parties except for the auditors assigned for auditing of obligations and for the courts during trial; the obligation of providing information and documents; and the obligation of retaining and submission causes the sanctions of imprisonment and legal fines under Law No. 5549; whereas security measures are imposed on legal persons.

Guidance

22 | Is there regulatory or industry anti-financial crime guidance for fintech companies?

Yes, both industry and regulatory authorities provide assistance to entities active in regulated industries. MASAK, mandated by Ministry of Treasury and Finance, provides guidance and education. MASAK has issued Sectoral Guidance Notes addressing Financial Institutions and Banks but not specifically addressing the fintech companies.

MASAK's Guide, published on 4 May 2021, first provides brief explanations regarding the activities of MASAK, and the crimes of laundering proceeds of crime and financing of terrorism. As for the definition of 'crypto-asset', the Guide refers to the Regulation Prohibiting Payments Through Crypto Assets, which is published in the Official Gazette dated 16 April 2021 and numbered 31456, which entered into force on 30 April 2021. The Guide defines the activities of crypto-asset service providers as 'the mediation regarding the trading of the crypto-assets through electronic transaction platforms'.

PEER-TO-PEER AND MARKETPLACE LENDING

Execution and enforceability of loan agreements

23 | What are the requirements for executing loan agreements or security agreements? Is there a risk that loan agreements or security agreements entered into on a peer-to-peer or marketplace lending platform will not be enforceable?

Transferring loans is possible and is done by entering into an agreement between the transferor, the transferee and the debtor. The agreement does not have to be in writing. However, security providers for these debts should provide their consent in written form as well. The Compulsory Use of Turkish Language Law No. 805, dated 10 April 1926, requires all agreements by Turkish parties to be made in Turkish.

Loan agreements or security agreements are not allowed to be entered into on peer-to-peer or marketplace lending platforms, which have not been regulated or allowed to run yet.

Assignment of loans

24 | What steps are required to perfect an assignment of loans originated on a peer-to-peer or marketplace lending platform? What are the implications for the purchaser if the assignment is not perfected? Is it possible to assign these loans without informing the borrower?

There are no registration requirements with the authorities in Turkey for a transfer or assignment of loans to be effective. However, peer-to-peer or marketplace lending platforms have not been allowed to run yet.

Securitisation risk retention requirements

25 | Are securitisation transactions subject to risk retention requirements?

The primary piece of legislation that governs asset-backed securities and the risk retention system and requirements that must be put in place is the Communiqué on Asset Backed Securities No. III-59.1. The originator must retain the risk.

Securitisation confidentiality and data protection requirements

26 | Is a special purpose company used to purchase and securitise peer-to-peer or marketplace loans subject to a duty of confidentiality or data protection laws regarding information relating to the borrowers?

There are two distinct regulations regarding the duty of confidentiality. The first piece of legislation that governs the confidentiality of banking and financial information is the Banking Law (Law No. 5411). Additionally, the Personal Data Protection Law (Law No. 6698), codified on 24 March 2016, bars and sets limitations on the disclosure, processing and transfer of personal information, which also includes borrower information.

In relation to special purpose vehicles (SPVs) being utilised for securitisation confidentiality, with the Communiqué on Principles of Venture Capital and Private Equity Investment Companies (III-48.3) there are no limitations on using these entities, but the scope of their confidentiality duties is limited to the duty of confidentiality provisions found within the Turkish Commercial Code, the Turkish Criminal Code and any bilateral agreement barring disclosure that the SPV involved in the securitisation transaction may be party to. Consequently, SPVs are not awarded any special status, and any applicable duties, including the duty of confidentiality, still remain intact.

ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTO-ASSETS

Artificial intelligence

27 | Are there rules or regulations governing the use of artificial intelligence, including in relation to robo-advice?

There are neither rules nor regulations governing the use of artificial intelligence in Turkey.

Distributed ledger technology

28 | Are there rules or regulations governing the use of distributed ledger technology or blockchains?

There are neither rules nor regulations governing the use of distributed ledger technology or blockchains. However, distributed ledger technology and blockchains have recently started to be used in various sectors, including banking and finance sector. Therefore, they are not forbidden.

Turkey's cryptocurrency law is expected to be ready by the end of 2021.

Crypto-assets

29 | Are there rules or regulations governing the use of crypto-assets, including digital currencies, digital wallets and e-money?

The Regulation on Not Using Crypto Assets in Payments has been published by the CBRT in the Official Gazette dated 16 April 2021 and numbered 31456. It entered into force on 30 Apri 2021. With the regulation, the definition of 'crypto-asset' was made for the first time in the current legislation.

The Regulation regulates the subjects below:

- not using crypto-assets in payments;
- procedures and principles are determined to ensure that crypto-assets are not used directly or indirectly in the provision of payment services and issuance of electronic money; and

- payment and electronic money institutions do not act as intermediaries for platforms that provide trading, custody, transfer or issue services regarding crypto-assets or fund transfers from these platforms.

With the Regulation, payment service providers (banks, electronic money and payment institutions, Posta ve Telgraf Teşkilatı AŞ) cannot develop business models in a way that crypto-assets will be used directly or indirectly in the provision of payment services and issuing electronic money, it is stipulated that it cannot provide a service regarding the business model mentioned. In addition, payment and electronic money institutions are prohibited from intermediating on platforms that provide trading, custody, transfer or issue services regarding crypto-assets or fund transfers to be made from these platforms.

The Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493) and its supplemental secondary legislation regulates the market and the concepts such as e-money, digital wallets, and digital currencies. The Turkish Financial Crimes Investigation Board published an updated guidebook that states that fund transfers made to intermediary institutions for the purpose of purchasing crypto-assets (ie, bitcoin) will no longer automatically be considered a suspicious movement of funds and will be analysed on a know your customer basis. In addition, the Turkish Banking Regulation and Supervision Agency explicitly states within its public announcement No. 2013/32 that crypto-assets are not to be considered as e-money.

The use of digital wallets is allowed, but there are no rules or regulations governing this tool.

Finally, e-money, which is regulated under Law No. 6493 on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions, can only be issued by e-money institutions authorised by the Central Bank of the Republic of Turkey.

Digital currency exchanges

30 Are there rules or regulations governing the operation of digital currency exchanges or brokerages?

The Turkish Capital Markets Law and regulations govern the operation of digital currency exchanges and brokerages. However, neither cryptocurrencies nor crypto-assets can benefit from these rules and regulations.

Additionally, on 1 March 2021, the Ministry of Treasury and Finance announced that regulatory studies on cryptocurrency exchange platforms are carried out in cooperation with the Central Bank, BRSA, CMB and other institutions.

Lastly, pursuant to the Regulation on the Non-Use of Crypto Assets in Payments, published in the Official Gazette on 30 April 2021 and drafted by the CBRT, no ban was imposed on the trading of cryptocurrencies on exchanges.

Initial coin offerings

31 Are there rules or regulations governing initial coin offerings (ICOs) or token generation events?

Neither initial coin offerings nor security token offerings are allowed in Turkey. However, cryptocurrency trading platforms are allowed.

DATA PROTECTION AND CYBERSECURITY

Data protection

32 What rules and regulations govern the processing and transfer (domestic and cross-border) of data relating to fintech products and services?

The Personal Data Protection Law, the Regulation on the Erasure, Destruction, or Anonymisation of Personal Data and the other secondary regulations are the main laws that regulate personal data processing activities (ie, collection, domestic and cross-border transfers, destruction and protection) for all sector players, including fintech companies.

On the other hand, payment service providers must obtain a Payment Card Industry Data Security Standard certificate and comply with its principles and procedures, which also include rules regarding data erasure, transfer, destruction and processing. Moreover, they must keep all data in Turkey under the Communiqué on the Administration and Auditing of Payment Institutions and Electronic Money Institutions' Information Systems.

Finally, there are personal data protection and privacy-specific provisions in other laws and regulations, such as the Turkish Banking Law and Turkish Capital Markets Law.

The Personal Data Protection Authority's decision dated 23 June 2020 and numbered 2020/471 has confirmed that a foreign bank with a representative office in Turkey shall be regarded as a Data Controller under the Data Protection Law, and should register with the Data Controllers' Registry (VERBIS).

There are various regulations, such as the Regulation Detailing the Principles and Procedures on Accounting Practices and Document Retention and the Communiqué on Financial Charts and Explanations and Footnotes to be Made Public. According to said regulations, banks and financial institutions must make banking data available to the Banking Regulation and Supervision Agency (BRSA). Although article 9 of Law No. 7192 that introduced a variety of amendments to the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493) (the Amendment) stipulates that the Central Bank of the Republic of Turkey (CBRT) is vested with the power to enact secondary legislation that may require payment service providers to share data with other payment service providers. The Amendment extends the list of payment services by introducing the definitions of 'payment initiation services' and 'account information services'.

However, the banks would not be legally required to offer third-party providers access to their customers' accounts via open application programming interfaces (APIs), as long as the CBRT does not issue a secondary legislation on data-sharing practices. Nevertheless, some Turkish banks already release their APIs to promote third-party developers.

Cybersecurity

33 What cybersecurity regulations or standards apply to fintech businesses?

Article 31 of Law No. 6493 on Payment and Securities Settlement Sy stems, Payment Services and Electronic Money Institutions levies the duty to uphold a secure information technology system on the licensed payment service provider. Additionally, the Communiqué on the Administration and Auditing of Payment Institutions and Electronic Money Institutions' Information Systems sets clear regulatory standards applicable to fintech businesses.

The Communiqué on Principles Applicable to Banking Information Systems Management published by the Banking Regulation and Supervision Agency also regulates the field of cybersecurity applicable

to financial institutions, however, it does not govern payment service providers and e-money institutions. Additionally, the Electronic Communications Law also governs the issue of cybersecurity pertinent to businesses active in the fintech industry, namely with its supplemental Regulation titled Network and Information Security in the Electronic Communications Industry published in the Official Gazette No. 29059 on 13 July 2014.

OUTSOURCING AND CLOUD COMPUTING

Outsourcing

34 Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?

Outsourcing limitations exist in two areas. One is related to outsourcing where the outsourcing also needs to carry the qualifications and standards that are required from the entity (the licensed outsourcer, in other words, the payment service provider) that is being licensed. This is detailed within the Law No. 6493 on Payment and Securities Settlemen t Systems, Payment Services and Electronic Money Institutions and its secondary regulations.

The second legal requirement concerns outsourcing services pertinent to personal data and transferring personal data abroad. There exists red tape for transfers abroad: practically a de facto rule requiring all processing activities be performed within Turkey.

Cloud computing

35 Are there legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?

There are no specific requirements focused on the use of cloud computing. However, depending on where the cloud data is physically located, the use of cloud computing may be restricted, forbidden or conditioned.

For instance, the Personal Data Protection Law (Law No. 6698) regulates the personal data transfer in two subsections concerning transfers within Turkey and transfers out of Turkey, respectively. Therefore, depending on where cloud data is physically located, the relevant requirements and conditions must be fulfilled. For instance, if there is a cross-border personal data transfer generated from the use of cloud computing, the data controller may be obliged to enter into an agreement with the cloud computing service provider and apply to the Personal Data Protection Board to get its authorisation.

According to the Communiqué on the Management and Supervision for Information Systems of the Payment Institutions and E-Money Institutions, institutions are obliged to have their information systems located in Turkey and cloud computing must be within the scope of these systems.

In addition, pursuant to the Information Systems Management Communiqué No VII-128.9 published by the Capital Markets Board, companies, institutions and other legal entities are obliged to have their information systems located in Turkey (cloud computing is included in the scope of these systems). The legal entities listed in the Communiqué include publicly held companies, stock markets and capital markets institutions.

Finally, according to the Regulation on Bank Information Systems and Electronic Banking Services, customer data may not be transferred abroad without the explicit request of the customer. Owing to this regulation, the use of cloud computing services that have servers located abroad may be problematic in terms of banking services, as the use of cloud computing services with servers located abroad is regarded as data transfer abroad by Law No. 6698.

INTELLECTUAL PROPERTY RIGHTS

IP protection for software

36 Which intellectual property rights are available to protect software, and how do you obtain those rights?

Unlike common law jurisdictions that offer patent protection to software-implemented inventions and upon the fulfilment of certain criteria, even business methods, Turkey does not afford patent protection to software-implemented inventions and business methods. Copyright protection is the method that can be utilised for protecting the ownership of rights over software.

If a copyrighted work such as a piece of software is created, it is not compulsory to register it, and one owns the copyright and the protection at the time it is created or made public. Nevertheless, there is a non-compulsory registry system at the General Directorate of Copyright of the Ministry of Culture and Tourism that requires little proof. The general protection period is the lifetime of the author plus 70 years.

There is no application similar to that of a patent application that is required of a copyright holder.

Software and programs are classified in the class 09 in the Turkish Classification System published on the Turkish Patent and Trademark Authority's website; however, each piece of software may contain characteristics of more than one specific class and this should be taken into consideration.

IP developed by employees and contractors

37 Who owns new intellectual property developed by an employee during the course of employment? Do the same rules apply to new intellectual property developed by contractors or consultants?

In principle, pursuant to the Industrial Property Law (Law No. 6769), unless otherwise agreed upon because of special contracts made between the parties (employer and employee) or the nature of work, the rights to designs made by employees shall belong to the employer according to employees' job descriptions and obligations arising from the labour contract; or owing to the experiences and operations of business organisation.

For an invention to qualify as an 'employee service invention', it must be realised during the course of employment. The employee is obliged to report the invention to his or her employer in writing without delay. Additionally, free inventions that are the employee's inventions outside the scope of employee service inventions are also subject to reporting obligations for employees, who must make a declaration of the invention to their employer if the invention is made during their employment contract.

Joint ownership

38 Are there any restrictions on a joint owner of intellectual property's right to use, license, charge or assign its right in intellectual property?

Certain restrictions and joint ownership provisions exist, both for copyright and patents. For copyright, joint ownership provisions and restrictions find form within the Law on Intellectual and Industrial Rights (Law No. 5846). For patents, Law No. 6769 provides that joint ownership is permissible and imposes restrictions upon the patent holders of IP rights.

Pursuant to Law No. 6769, if an invention is made by more than one person, each of the inventors may apply for a patent and these inventors shall be granted joint ownership.

If the design application or design belongs to more than one person, the partnership claim on the right shall be determined pursuant to the agreement concluded between the parties, and if there is no such agreement between the parties, it is determined in accordance with the provisions related to joint ownership in the Turkish Civil Code No. 4721.

For a patent licence to be granted to third parties in relation to the use of an invention, each of the right owners must grant permission unanimously. Even in the case of joint ownership, the rights of the owners may not be separated in relation to patent application or patent assignment. Additionally, in the case of joint ownership, the right owners may assign a joint representative.

Finally, according to Law No. 5846, if a work is created by more than one author and if the work is of an inseparable nature, joint ownership shall be assumed and the provisions regarding ordinary partnerships stipulated under Turkish Obligations Law No. 6098 shall apply.

Trade secrets

39 How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

Trade secrets are protected under several Turkish regulations, including the Turkish Criminal Code.

Duties of confidentiality are established for a variety of parties, including but not limited to, board members, shareholders, proxies, auditors, employees and contractors. Trade secrets, such as technical production secrets, production methods, and research and development plans, are protected also under Law No. 6769.

According to Turkish Commercial Law No. 6102, the protection of trade secrets is stipulated as unfair competition, and persons that act in violation of the confidentiality obligation regarding trade secrets and disclose trade secrets in bad faith; and employees, representatives and other contractors that deceive employers into providing trade secrets, shall be subject to an administrative sanction or imprisonment of up to two years. In addition, pursuant this Law, employers may request pecuniary and non-pecuniary damages from persons that violate the confidentiality obligation and non-competition obligation, causing unfair competition.

As for the protections offered during litigation processes where court records become public knowledge, the Turkish Civil Procedure Code shall apply. Pursuant to Law No. 6100, parties that act in bad faith and unreasonably utilise litigation proceedings to have access to trade secrets shall be subject to part of a or whole retainer fee in addition to a disciplinary fine.

Additionally, pursuant to the Amendment to the Banking Law published in the Official Gazette dated 25 February 2020, save for the mandatory provisions of the relevant legislation, client information has been specified as 'client secret' and the criteria regarding processing and transfer of said information shall be realised in accordance with the Personal Data Protection Law (Law No. 6698). Customer secrets will not be shared with or transferred to third parties in Turkey and abroad, except for exceptional cases specified in the Banking Law. Even in cases where the client grants explicit consent regarding the processing of his or her personal data, said data may not be transferred or shared domestically or abroad without the explicit request or order of the client.

The Regulation on the Sharing of Confidential Information (the Regulation) has been published in the Official Gazette dated 4 June 2021 and numbered 31501. Also referring to Law No. 6493, the Regulation is aimed at determining the scope, procedures and principles of the sharing and transfer of bank secrets and customer secrets. Within the scope of article 73 of Law No. 5411, regulations were made regarding the confidentiality obligation, exceptions and definition of 'customer secret'. In the Regulation, all information regarding real and legal persons becoming bank customers is included in the scope of customer secret. With the Regulation, it has been mandatory for banks to establish an information-sharing committee. The committee will be responsible for coordinating the sharing of customer secret and bank secret information, taking into account the proportionality factor, and recording these evaluations by evaluating the appropriateness of sharing requests. Lastly, due to the nature of the transaction, it has been necessary to interact with a bank, payment service provider, payment, security settlement or messaging systems established in the country or abroad, and it is a mandatory element of the transaction to share customer secret information with parties in the country or abroad to complete the transaction. For transactions such as domestic or international fund transfer, international letter of credit, letter of guarantee, reference letter, initiating the transaction by the customer or entering an order by the customer through the distribution channels for electronic banking services has been regarded as the customer's request or instruction in terms of such shares.

Branding

40 What intellectual property rights are available to protect branding and how do you obtain those rights? How can fintech businesses ensure they do not infringe existing brands?

There are no specific regulations on intellectual property protection regarding fintech innovations. Intellectual and industrial property rights are generally protected by Law No. 5846 on Intellectual and Artistic Work and Law No. 6769. If fintech products or services are subject to industrial property rights (ie, a trademark or patent), a patent or trademark is required to be registered before the Turkish Patent and Trademark Office. However, there is no registration requirement in terms of intellectual rights.

According to the Law No. 5846, ownership of a fintech innovation will belong to its first creator and he or she will be deemed as an author. If an employee creates an innovation during the employment contract, the author will be his or her employer. The duration of the IP right is the life of the author plus 70 years.

Remedies for infringement of IP

41 What remedies are available to individuals or companies whose intellectual property rights have been infringed?

According to Law No. 5846, authors whose intellectual property rights have been violated may:

- file a civil lawsuit regarding the prohibition of the infringement;
- file a civil lawsuit regarding the prevention of infringement;
- request compensation; or
- file a criminal lawsuit.

According to Law No. 6769, persons whose rights are being violated may:

- file a civil lawsuit regarding probable infringement;
- file a civil lawsuit to cease infringement;
- file a civil lawsuit regarding the removal of infringement and request compensation; or
- request for necessary precautions to be taken.

COMPETITION

Sector-specific issues

42 Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction?

Since 2018, Turkish Competition Authority (TCA) has rendered decisions in favour as well as against fintech companies. Recently, the TCA made a series of decisions that may potentially affect the market structure

and the nature of competition in payment systems. Essentially, those decisions are based on the re-evaluation of earlier granted exemptions for certain services of the Interbank Card Centre (BKM). In brief, the TCA found that the BKM's digital wallet, BKM Express, is not qualified for exemption as its restrictive effects on competition outweigh the benefits to general welfare, and the TCA ordered the BKM to stop BKM Express services no later than 30 June 2020.

There are significant duties levied upon financial institutions regarding the duty of confidentiality within the Turkish legislation, namely the Banking Law, the Turkish Commercial Code, the Turkish Criminal Code and Personal Data Protection Law. This duty limits the sharing of data in a manner that would be considered as promoting competition.

Lastly, The Competition Authority is working on a Financial Technologies Sector Inquiry and will share this sector inquiry (or preliminary finding report) with the public in the coming days.

TAX

Incentives

43 Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

There exists a variety of tax incentives that are applicable to entities that are active in the technology industry, albeit these incentives are not exclusive to the fintech industry and under most circumstances an entity's entitlement to these incentives requires that a sectoral analysis of the applicant be performed on a case-by-case review.

According to Law No. 4691 on Technology Development Zones, the fintech companies located in technoparks can benefit from numerous tax incentives, including exemption from corporate tax, income tax and VAT. In addition, if fintech companies are essentially research and development companies, these companies have the right to deduct 50 per cent of the social security premium exemption for its employees for a period of five years. Further, under the same law, a taxpayer whose primary place of business is located within a designated tech zone shall be excluded from the duty of paying corporate tax and income tax until 31 December 2023.

According to Presidential Decree No. 2834, published in the Official Gazette dated 8 August 2020 and numbered 31207, as of 8 August 2020, the rate of bank and insurance transactions tax (BITT) is applied as 0 per cent in foreign exchange sales to foreign resident organisations that perform at least one of the activities accepted as a financial institution activity in accordance with Banking Law No. 5411.

Increased tax burden

44 Are there any new or proposed tax laws or guidance that could significantly increase tax or administrative costs for fintech companies in your jurisdiction?

A new digital service tax was introduced with the Law on the Digital Service Tax and Amendments on Certain Laws and Decree No. 375, which was published in the Official Gazette on 7 December 2019 and became effective after three months following its publication. Revenue gained from the activities that fall under the definition of digital services and intermediary services provided in the digital environment shall be subject to digital service tax. Taxpayers exceeding a revenue threshold of €750 million in global revenue and 20 million liras in local revenue will be subject to a digital service tax at a rate of 7.5 per cent.

The transactions carried out by the fintech companies that fall within the scope of the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions are subject to banking insurance and transaction tax (BITT) at a rate of 5 per cent in general (although some transactions are subject to 1 per cent or 0 per cent BITT).

IMMIGRATION

Sector-specific schemes

45 What immigration schemes are available for fintech businesses to recruit skilled staff from abroad? Are there any special regimes specific to the technology or financial sectors?

There is no specific immigration scheme for fintech businesses to recruit staff from abroad. However, in the Turkish legal framework, there are several laws and regulations for immigration schemes to recruit skilled staff from abroad. The main regulations are the Turkish Citizenship Law, the Law on Foreigners and International Protection, the International Labour Law, the Law on Work Permits for Foreigners and the Law on Residence and Travel of Foreigners in Turkey.

Persons that provide significant investment and employment opportunities or are expected to provide significant improvements to the technology and sciences sector, can receive Turkish citizenship under the Turkish Citizenship Law.

As for work permits, industries that require specific expert employment or a qualified executive candidate be appointed to director positions, auditor positions that require the supervision of technical and administrative standards, or any other personnel that might be classified as key personnel will be eligible to receive a residency and work permit.

UPDATE AND TRENDS

Current developments

46 Are there any other current developments or emerging trends to note?

A spirited and developing fintech industry exists in Turkey. Even though there are no specific definitions of crypto-assets in key legislation, there are no restrictions on engaging in these cryptocurrency transactions in Turkey. There have been developments in the legal and regulatory landscape for equity-based crowdfunding, payments, open banking and the protection of personal data. The recent Amendment to the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions reorganised the regulatory framework in the payment and electronic money services and introduced new definitions of account information services and payment initiation services in line with the Directive (EU) 2015/2366 on payment services. This Amendment is expected to enable the entry of new players to the fintech market, increase cooperation with the banking sector and facilitate the development of fintech sector in Turkey.

The Regulation on Not Using Crypto Assets in Payments was published by the CMB in the Official Gazette dated 16 April 2021 and numbered 31456; it entered into force on 30 Apri 2021. With the regulation, the definition of 'crypto-asset' was made for the first time in the current legislation. It is clearly regulated that crypto-assets cannot be used directly or indirectly in payments and services cannot be provided for this purpose. With the Regulation, payment service providers (banks, electronic money and payment institutions, Posta ve Telgraf Teşkilatı AŞ) cannot develop business models in a way that crypto-assets will be used directly or indirectly in the provision of payment services and issuing electronic money. It is stipulated that it cannot provide a service. In addition, payment and electronic money institutions are prohibited from intermediating platforms that offer trading, custody, transfer or

issue services regarding crypto-assets or fund transfers to be made from these platforms.

With the Economic Reform Package, the planned regulations regarding the fintech world are as follows:

- TROY, a brand of Turkey in the field of card payment requests, will continue its activities under the roof of a separate company;
- a surveillance mechanism will be established for the protection of financial consumers, market integrity and strengthening of competition;
- steps will be taken to establish an economic, technological and legal infrastructure for digital currencies;
- digital banking licensing will also be provided;
- within the scope of increasing financial inclusivity, a 'fintech strategy document' will be prepared in which a roadmap for making regulations that will support the development of the sector will be determined by establishing an authorised structure that will lead the development of the field of financial technology and ensure the necessary coordination and cooperation;
- fintech institutions operating in the field of payments will have access to payment systems and public databases operated by the Central Bank;
- representation of payment and electronic money institutions at the Interbank Card Center will be provided. A 'regulation test area' (sandbox) will be established in the field of payments, which will strengthen the Istanbul Finance Center's becoming a global center in the field of fintech;
- a finance and technology base will be established in the Istanbul Finance Center to support fintech startups;
- the Risk Center, which includes all financial credit and risk data of Turkey, will be reorganised under the control of the CBRT;
- the Central Bank will form the economic, technological and legal infrastructure of digital money; and
- a surveillance mechanism will be established for the protection of financial consumers, market integrity and strengthening of competition.

Coronavirus

47 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

During the covid-19 outbreak, certain relief regulations have been stipulated. These include changes to labour law, commercial law, tax law and finance law, such as amendments to working conditions, credit opportunities, supportive payments to be made to employees, profit distribution regulations and the practicalities and delays relating to tax payments. Civil and criminal proceedings and enforcement proceedings have been postponed and institutions have started to accept online applications only. However, this has not hindered the application of laws. Although some sectors have been adversely affected, some companies within specific sectors have considerably profited during this period.

In Turkey, the online education, fitness application, mobile retail and domestic grocery sectors have profited most during this period, whereas the most negatively affected are airlines, entertainment businesses and transport services.

According to the regulations stipulated under tax and finance laws, if a company's activity decreases by one-third and the company is in a poor financial state, we advise that these companies take advantage of the relevant regulations adopted following the covid-19 outbreak.

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As another result of the impact of the pandemic, there has been increasing awareness among consumers of contactless technologies. The digital transformation can be clearly observed (with examples such as mobile banking, QR-based and contactless payment systems, cryptocurrency) in the banking sector. To meet these expectations, works regarding the fintech sector and the competition in the fintech sector have increased in Turkey as well as worldwide.

In addition to the expenditures directed towards online platforms through e-commerce, contactless payments have also commenced to come into prominence in physical expenses. In this period of covid-19, card payment methods have been replaced by contactless card payments. QR-based payments have become increasingly common through mobile contactless payments and payments through loyalty programme-based applications.

The Regulation on Remote Identification Methods and Establishment of Contractual Relations in Electronic Environment to be Used by Banks has been drafted by the Banking Regulation and Supervision Agency (BRSA) and has been published in the Official Gazette dated 1 April 2021 and numbered 31441. The Regulation, which will enter into force as of 1 May 2021, regulates the procedures and principles for the establishment of a contractual relationship over an informatics or electronic communication device, or as a replacement for the written form or at a distance, which is intended to be used in remote identification methods that may be used by banks to gain new customers and banking services to be offered after the identification of the customer, whether it is distant or not.

Additionally, The Communiqué on the Amendment of 'Financial Crimes Investigation Board General Communiqué (No. 5)' (No. 18) (the Amending Communiqué), published in the Official Gazette dated 26 February 2021 and numbered 31407, shall enter into force as of 1 May 2021. With the amendment, the monetary amounts based on identification have been updated within the scope of simplified measures, and implementation requirements have been arranged.

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