

CRYPTOASSETS & BLOCKCHAIN

Turkey



Cryptoassets & Blockchain

Consulting editors

Richard B. Levin, Kevin Tran

Nelson Mullins Riley & Scarborough LLP

Quick reference guide enabling side-by-side comparison of local insights, including into the legal and regulatory framework; use of cryptoassets for investment, financing, trading and payments; cryptocurrency mining; blockchain and other distributed ledger technologies; and recent trends.

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Contributors

Turkey



Cigdem Ayozger Ongun
cigdem@srp-legal.com
SRP Legal



Filiz Piyal
SRP Legal

GENERAL LEGAL AND REGULATORY FRAMEWORK

Legal framework

What legal framework governs cryptoassets? Is there specific legislation governing cryptoassets and businesses transacting with cryptoassets?

There is very limited legislation in Turkey governing cryptoassets and business transactions involving cryptoassets. The first of this legislation, the Regulation Prohibiting Payments Through Cryptoassets (the Regulation on Cryptoassets), was issued by the Central Bank of the Republic of Turkey (TCB) and was published in the Official Gazette No. 31456, dated 16 April 2021. It entered into force on 30 April 2021. The Regulation on Cryptoassets ended the debate regarding the legal definition of cryptoassets, providing the definition as 'intangible assets which are created virtually by a technology such as distributed ledger or similar and are distributed through digital networks but cannot be acknowledged as fiduciary money, deposit money, electronic money, payment instrument, security or other capital market instruments'.

The Regulation on Cryptoassets does not provide a specific definition for cryptocurrencies. However, the Information and Communication Technologies Authority of Turkey (ICTA) published a research study on cryptocurrencies (the ICTA study) in September 2020. In the ICTA study, the definition of cryptocurrencies is 'digital or virtual currencies that use cryptography for ensuring security'. The Regulation on Cryptoassets establishes a legal framework for cryptoassets that is limited on certain levels, meaning that the Regulation on Cryptoassets governs only certain uses of cryptoassets. Accordingly, the Regulation prohibits the following:

- direct or indirect use of cryptoassets in payments;
- provision of services for direct or indirect use of cryptoassets in payments;
- development of business models by payment service providers regarding the direct or indirect use of cryptoassets in provision of payment services and the export of electronic money, and provision of services regarding development of such business models by payment service providers; and
- mediation of the payment and electronic money institutions regarding fund transfers from and to the platforms providing services on the trading, depositing, transferring or exporting of cryptoassets.

Although the Regulation on Cryptoassets prohibits licensed payment and electronic money institutions from using cryptoassets in their operations, it does not introduce any provisions with respect to cryptoasset trading platforms.

Following the Regulation on Cryptoassets, the Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism (the Regulation on Prevention of Laundering Proceeds of Crime) was amended via Presidential Decision No. 3941 dated 30 April 2021, and was published in the Official Gazette No. 31471 dated 1 May 2021. The amendment of the Regulation on Prevention of Laundering Proceeds of Crime introduced a new obligation for cryptoasset service providers, which are now specified among the 'obliged parties' stated under the Regulation on Prevention of Laundering Proceeds of Crime. Further, the Financial Crimes Investigation Board of Turkey (MASAK), established under the Ministry of Finance and Treasury, published a guide entitled 'Main Principles for the Crypto Asset Service Providers Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism' (the Guide) on 4 May 2021. The Guide provides detailed and instructive application-oriented information regarding the obligations that cryptoasset service providers have under the Regulation on Prevention of Laundering Proceeds of Crime as obliged parties, as well as the sanctions imposed if cryptoasset service providers fail to fulfil their obligations.

Also, according to an announcement by the Undersecretary of the Treasury, a working group has been established to enhance a regulatory framework for cryptoassets. Thus, further regulations are expected.

Law stated - 01 November 2021

Government policy

How would you describe the government's general approach to the regulation of cryptoassets in your jurisdiction?

The government is closely observing all aspects of cryptoassets in terms of their risks to consumers and possible tax regimes. The legal status of bitcoin and the government's approach to it has been the subject of several parliamentary questions in the Grand National Assembly. In response to one of these questions, the Undersecretary of the Treasury stated that the government is following developments elsewhere on this issue and studies are being carried out regarding the advantages and risks of blockchain technology. According to the 11th Development Plan of Turkey, which was published in the Official Gazette on 23 July 2019, a blockchain-based digital central bank currency will be implemented. The Industry and Technology Road Map for 2023, which was announced by the Industry and Technology Ministry on 18 September 2019, includes significant details regarding blockchain and distributed ledger technology (DLT). Accordingly, the government plans to establish the National Blockchain Infrastructure to utilise DLT in the public administration. The government has also set out its plans to develop a regulatory sandbox for blockchain applications. This innovative approach towards blockchain technologies and the fintech environment became concrete and set within a timeframe with the Economic Reforms published on 12 March 2021 by the Ministry of Finance. However, within the past year, several official institutions, such as the TCB, have expressed the view that cryptoasset investments pose great financial and fraud risk due to their nature as anonymised, speculative transactions. Considering the Regulation on Cryptoassets, it is possible that the government is taking a conservative and protective approach towards cryptoassets.

Law stated - 01 November 2021

Regulatory authorities

Which government authorities regulate cryptoassets and businesses transacting with cryptoassets?

In its Press Release 2013/32 dated 25 November 2013, the Banking Regulatory Supervision Authority (BRSA) declared that bitcoin does not qualify as electronic money under the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493) and, therefore, will not be regulated under this law because it is not backed by collateral or guarantee issued by an official or private entity.

Similarly, on 1 December 2017, the Capital Markets Board of Turkey (CMB) issued a letter to the Capital Markets Association of Turkey (CMA), stating that cryptocurrencies are not regulated as derivative financial instruments within the framework of the Capital Markets Law (Law No. 6362). Therefore, as of 1 December 2017, neither the BRSA nor the CMB was considered to be a competent regulatory authority for cryptoassets. However, this changed with the Regulation on Cryptoassets, which became effective on 30 April 2021.

Also, the Undersecretary of the Treasury has set up a working group consisting of different authorities such as the BRSA, the TCB and the CMB. The ICTA Study mentioned a prospective regulation to be issued by the CMB, indicating that the CMB could be authorised to supervise and regulate cryptocurrencies and pointing out that the CMB's prospective regulation would support the market's growth and increase consumer trust. However, currently, the only regulation specific to cryptoassets, the Regulation on Cryptoassets, is issued by the TCB, making the TCB the primary authority to govern certain aspects of the cryptoassets within the legal framework.

In addition, the most recent legal development regarding cryptoasset service providers is the amendment on the Regulation on Prevention of Laundering Proceeds of Crime and the Guide, which are governed by MASAK; therefore, cryptoasset service providers' activities are now under the supervision of MASAK and thus the Ministry of Finance, as

cryptoasset service providers are stated among the obliged parties that must fulfil certain obligations under the Regulation on Prevention of Laundering Proceeds of Crime.

Law stated - 01 November 2021

Regulatory penalties

What penalties can regulators impose for violations relating to cryptoassets?

The Regulation on Cryptoassets did not introduce any specific penalties for violations relating to cryptoassets. However, it did introduce certain prohibitions for payment and electronic money institutions regarding the use of cryptoassets in their services. If payment and electronic money institutions fail to comply with the prohibitions under the Regulation on Cryptoassets, this may result in sanctions under Law No. 6493, which is the main legislation that governs payment and electronic money institutions. On the other hand, cryptoasset service providers are now recognised as obliged parties under the Regulation on Prevention of Laundering Proceeds of Crime; thus, if they fail to fulfil their obligations, they may face administrative and legal sanctions in accordance with the applicable legislation.

However, cryptoasset transactions, except for payments using cryptoassets, are still not supervised or monitored by any regulatory body; therefore, any violation or damage arising from a business transaction involving cryptoassets can be punished only under the general provisions of the applicable legislation. For example, the CMB reviewed a complaint regarding a cryptocurrency platform that had allegedly transferred cash obtained from sales of cryptocurrencies to its personal bank account and determined that this violation fell within the scope of criminal liability under articles 157 and 158 of the Criminal Code (No. 5237), which regulate fraud and white-collar crime.

Law stated - 01 November 2021

Court jurisdiction

Which courts have jurisdiction over disputes involving cryptoassets?

No particular court has jurisdiction over disputes involving cryptoassets. However, violations relating to cryptoassets mainly result in criminal or civil liability. Accordingly, the criminal courts have jurisdiction if a crime involving cryptoassets is committed (eg, fraud, theft or white-collar crime) and individuals who suffer damage owing to a business transaction involving cryptoassets have the right to seek damages in the civil courts. In April 2021, the subject of cryptoassets has emerged in an enforcement court in Istanbul due to a filed legal request to stop the confiscation of a cryptocurrency account because of the owner's debt. The enforcement court decided that a certain value of cryptocurrency can be evaluated as seizable by the enforcement authorities for compensation of the debt. The decision is not final yet, but it represents a flexible approach to cryptoassets.

Law stated - 01 November 2021

Legal status of cryptocurrency

Is it legal to own or possess cryptocurrency, use cryptocurrency in commercial transactions and exchange cryptocurrency for local fiat currency in your jurisdiction?

Currently, the Turkish legislative framework includes no specific provisions prohibiting individuals from owning or possessing cryptocurrency. However, the Regulation on Cryptoassets prohibits the use of cryptoassets in payments and in certain activities of payment and electronic money institutions.

Nevertheless, various cryptocurrency exchange platforms can still operate in the Turkish fintech ecosystem, offering

cryptocurrency trading and exchange services. However, none of these businesses are licensed under the BRSA, the CMB, the TCB or any other Turkish regulatory authority; therefore, individuals who transact with cryptoassets must bear their own risk.

Law stated - 01 November 2021

Fiat currencies

What fiat currencies are commonly used in your jurisdiction?

The Turkish lira is the only fiat currency backed by the TCB and used in Turkey. However, both the 11th Development Plan and the Turkish presidency's 2020 Annual Programme include plans to develop a blockchain-based digital currency backed by the TCB. As the Regulation on Cryptoassets entered into force on 30 April 2021, it is probable that the future digital central bank currency of Turkey will not be crypto-based.

Law stated - 01 November 2021

Industry associations

What are the leading industry associations addressing legal and policy issues relating to cryptoassets?

The leading industry association is the Blockchain Turkey Platform, which was established as an initiative of the Turkish Informatics Foundation in October 2018. The aim of the Blockchain Turkey Platform is to build a sustainable blockchain ecosystem in Turkey and to secure Turkey's leading position on blockchain in the region. To expand the use of blockchain technology and establish a bridge between regulators, public institutions and legislators, the Blockchain Turkey Platform organises training programmes, issues publications and participates in collaborative efforts such as meeting with regulators and exchanging of ideas with legislators. Several working groups have been established under the Blockchain Turkey Platform; particularly, the law, regulations and government-relations working group that was established to undertake studies related to blockchain systems, including cryptoassets, and inform legislators and regulators in this area. The Ministry of Trade and the Blockchain Turkey Platform have signed a cooperation agreement and a representative of the ministry attends the working-group meetings.

Law stated - 01 November 2021

CRYPTOASSETS FOR INVESTMENT AND FINANCING

Regulatory threshold

What attributes do the regulators consider in determining whether a cryptoasset is subject to regulation under the laws in your jurisdiction?

The regulatory authorities consider several criteria defined in the legislation to assess whether a cryptoasset is subject to regulation. Presently, none of the regulatory bodies has declared that cryptoassets fully fall under the scope of the regulatory framework.

In Press Release 2013/32, the Banking Regulatory Supervision Authority (BRSA) clearly stated that cryptoassets do not constitute electronic money and, therefore, do not fall under the scope of the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493). Thus, the BRSA has no authority to supervise business transacted with cryptoassets under Law No. 6493. Reviewing the definition of 'electronic money' in Law No. 6493, it is clear that a monetary value can be qualified as electronic money only in cases

where the monetary value is:

- issued on the receipt of funds by an electronic money issuer;
- stored electronically;
- used to undertake payment transactions defined in Law No. 6493; and
- accepted as a payment instrument by natural and legal persons.

Therefore, the BRSA does not consider cryptoassets to be electronic money.

Further, the Capital Markets Board of Turkey (CMB), in its letter issued to the Capital Markets Association of Turkey on 1 December 2017, stated that cryptocurrencies are not regulated as a derivative financial instrument within the scope of the Capital Markets Law (Law No. 6362); therefore, Turkish investment institutions must not engage in any spot or derivatives transactions based on cryptocurrencies. According to Law No. 6362, capital market instruments include:

- securities;
- derivative instruments; and
- other capital market instruments designated by the CMB, including investment contracts.

The CMB does not qualify cryptoassets as derivative instruments, but the following are considered to be securities under Law No. 6362:

- shares, other securities similar to shares and depositary receipts related to these shares;
- debt instruments or debt instruments based on securitised assets and revenues; and
- depositary receipts related to these securities.

However, the CMB does not consider these criteria to assess cryptoassets as security. It is likely to assess cryptoassets under capital market instruments by considering criteria included in the definition of capital market instruments 'other capital market instruments designated in this context by the CMB'. In this case, the taxation of business transactions involving cryptoassets will also be considered.

Finally, the Regulation Prohibiting Payments Through Cryptoassets (the Regulation on Cryptoassets), which entered into force on 30 April 2021, provides a definition of cryptoassets as 'intangible assets which are created virtually by a technology such as distributed ledger or similar and are distributed through digital networks but cannot be acknowledged as fiduciary money, deposit money, electronic money, payment instrument, security or other capital market instruments'. Thus, the criteria considered in the definition of cryptoassets under the Regulation on Cryptoassets follows the prior statements of the relevant authorities and the applicable regulations.

Law stated - 01 November 2021

Investor classification

How are investors in cryptoassets classified and treated differently?

Turkish law does not classify cryptoasset investors.

Law stated - 01 November 2021

Initial coin offerings

What rules and restrictions govern the conduct of, and investment in, initial coin offerings (ICOs)?

Although the Regulation on Cryptoassets establishes a framework for the use of cryptoassets, the legal status of ICOs and the restrictions regarding investment in ICOs remain unclear. However, given that the Regulation on Cryptoassets broadly prohibits the direct or indirect use of cryptoassets in payments, under the applicable legislation the direct and indirect use of cryptoassets in ICOs is not permitted.

Also, in its Resolution No. 47/1102 dated 27 September 2019, the CMB stated that ICOs mostly fall outside the scope of its supervision. The CMB further reiterated that ICOs may have similar aspects to public coin offerings or crowdfunding activities depending on their nature, and in that case, ICOs may fall under the supervision of the CMB. The CMB has also issued the Communiqué on Equity Crowdfunding (III-35/A.1), which regulates fundraising from the public through equity by excluding other similar crowdfunding activities such as ICOs and security token offerings.

Law stated - 01 November 2021

Security token offerings

What rules and restrictions govern the conduct of, and investment in, security token offerings (STOs)?

According to Law No. 6362, 'security' means:

- shares, securities similar to shares and the depositary receipts related to these shares;
- debt instruments or debt instruments based on securitised assets and revenues; and
- depositary receipts related to these securities.

Because securities give their owner the right to a partnership and are purchased and sold for investment purposes, security tokens can qualify as securities under Law No. 6362. However, the CMB has not classified or assessed STOs yet.

In terms of equity token offerings that can be assessed as STOs, there are some restrictions. According to the Turkish Commercial Code (6102) (TCC), non-public joint-stock companies are not required to issue share certificates and shareholding rights arise on registration of a joint-stock company. In that case, equity token offerings can be realised as shareholder rights based on a token rather than a share certificate. However, in the case of share transfers in a non-public joint-stock company, equity token offerings cannot meet the requirements of the TCC because the transfer of shares without an issued certificate requires written agreement on share transfer, and it is uncertain how the parties will fulfil the requirement to execute a written agreement as described in the TCC. Also, even if a non-public joint-stock company issues share certificates, endorsement and a possession transfer are required to transfer the shares. Thus, equity token offerings cannot meet requirements because they enable investors to obtain shares through the blockchain network. For public joint-stock companies, a similar result will be obtained. Even if a written agreement is not required for share transfers in public joint-stock companies, these transactions are carried out under the supervision of the Central Registry Agency according to Law No. 6362.

Law stated - 01 November 2021

Stablecoins

What rules and restrictions govern the issue of, and investment in, stablecoins?

No specific rules and restrictions govern transactions with stablecoins in Turkey. However, because stablecoins commit to providing a certain amount of reserve to their investors, this commitment has legal consequences in line with the general provisions of both civil and criminal law. Therefore, stablecoin issuers must conduct their businesses in line with the principle of good faith.

Law stated - 01 November 2021

Airdrops

Are cryptoassets distributed by airdrop treated differently than other types of offering mechanisms?

No specific classification for cryptoassets distributed by airdrop exists. As for other types of offering mechanism, the legal status of cryptoassets distributed by airdrop is unclear.

Law stated - 01 November 2021

Advertising and marketing

What laws and regulations govern the advertising and marketing of cryptoassets used for investment and financing?

Even though the Regulation on Cryptoassets establishes a framework for the use of cryptoassets, the advertising and marketing of cryptoassets used for investment and financing are not subject to specific regulations or restrictions. However, in cases where certain types of cryptoassets can be considered securities, individuals and institutions that conduct advertising and marketing activities for cryptoasset investment will be subject to the restrictions set out in the Regulation on Commercial Advertising and Unfair Commercial Practices issued by the Ministry of Trade and the Communiqué on Principles Regarding Investment Services (No. III-37.1).

Law stated - 01 November 2021

Trading restrictions

Are investors in an ICO/STO/stablecoin subject to any restrictions on their trading after the initial offering?

ICO/STO/stablecoin offerings and trading are not specifically subject to regulation; however, given that the Regulation on Cryptoassets broadly prohibits the direct or indirect use of cryptoassets in payments, under the applicable legislation, direct and indirect payment via cryptoassets during ICOs and STOs is not permitted. Also, in cases where the CMB determines that an offering and its trading qualifies because the issuance of securities, investors will be bound by the requirements and restrictions set out under Law No. 6362 and the Communiqué on Sales of Capital Market Instruments (II-5.2).

Law stated - 01 November 2021

Crowdfunding

How are crowdfunding and cryptoasset offerings treated differently under the law?

Crowdfunding and cryptoasset offerings are treated differently by the CMB. The CMB has issued the Communiqué on Equity Crowdfunding (III-35/A.1), which entered into force on 3 October 2019 and regulates fundraising from the public through equity. However, the CMB has not regulated cryptoasset offerings yet. Moreover, according to the definition of 'capital market instruments' in Law No. 6362, the CMB has the authority to determine and regulate all other new capital market instruments.

Law stated - 01 November 2021

Transfer agents and share registrars

What laws and regulations govern cryptoasset transfer agents and share registrars?

Although the Regulation on Cryptoassets establishes a framework for the use of cryptoassets, thus far there is no explicit regulation that governs cryptoasset transfer agents and share registrars. However, according to article 37 of Law No. 6362, several investment services (eg, the reception and transmission of orders concerning capital market instruments) must be conducted through a CMB-authorized intermediary. In cases where cryptoassets are qualified as a capital market instruments, institutions that receive or transmit a cryptoasset order will be required to obtain authorisation from the CMB in line with the Communiqué on Principles Regarding Investment Services, Activities and Ancillary Services (III-37.1).

Law stated - 01 November 2021

Anti-money laundering and know-your-customer compliance

What anti-money laundering (AML) and know-your-customer (KYC) requirements and guidelines apply to the offering of cryptoassets?

The Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism (the Regulation on Prevention of Laundering Proceeds of Crime) was amended in April 2021 and cryptoasset service providers became one of the obliged parties responsible for fulfilling certain obligations involving detailed customer due diligence (KYC) and suspicious transaction reporting (AML) procedures. However, the obligations established under the Regulation on Prevention of Laundering Proceeds of Crime for cryptoasset providers are not specifically designed for the offering of cryptoassets. Therefore, there are no specific AML and KYC requirements or regulatory guidelines that apply specifically to the offering of cryptoassets in Turkey. However, numerous cryptocurrency trading and exchange platforms actively provide services to customers through cooperation with banks in the Turkish market. Accordingly, some of the cryptoasset businesses in the Turkish market appoint compliance officers, establish KYC procedures or prepare documentation in this regard, which became obligatory under the Regulation on Prevention of Laundering Proceeds of Crime.

Law stated - 01 November 2021

Sanctions and Financial Action Task Force compliance

What laws and regulations apply in the context of cryptoassets to enforce government sanctions, anti-terrorism financing principles, and Financial Action Task Force (FATF) standards?

In Report T-001-3.47 (20 November 2014), the Financial Crimes Investigation Board of Turkey (MASAK) defined money transfer transactions to purchase bitcoin as suspicious activity. However, the report only referred to bitcoin and did not cover other cryptoassets, such as ethereum. In its Suspicious Transaction Reporting Guideline (11 September 2019), MASAK amended the definition of a 'suspicious transaction' regarding cryptocurrency transactions and declared that transfers made to purchase cryptocurrency will be deemed to be suspicious in cases of:

- carrying out money transfers to national and international cryptocurrency exchanges or real persons' or legal entities' accounts in an amount and frequency contrary to the customer's profile; and
- incoming transfers to clients' accounts from an unknown source or suspected to result from a cryptocurrency sale that is incompatible with the receiving party's financial profile.

Under these circumstances, banks or other obliged financial institutions must inform MASAK of suspicious activities. Further, the FATF adopted an interpretive note to Recommendation 15 on New Technologies, clarifying its previous amendments to the international standards on virtual assets. The FATF described how countries and regulated entities must comply with the relevant FATF recommendations to prevent the misuse of virtual assets for money laundering and terrorist financing. As a member of the FATF since 24 September 1991, Turkey recently adopted these recommendations and the Regulation on Prevention of Laundering Proceeds of Crime has been amended so that cryptoasset service providers are one of the obliged parties responsible for fulfilling certain obligations to prevent money laundering and terrorist financing.

Law stated - 01 November 2021

CRYPTOASSET TRADING

Fiat currency transactions

What rules and restrictions govern the exchange of fiat currency and cryptoassets?

No explicit rules and restrictions govern the exchange of fiat currency with cryptoassets. Cryptocurrency exchange and trading platforms usually determine their own exchange policy according to supply and demand equilibrium or other cryptoasset exchange markets with which they are partnered.

Law stated - 01 November 2021

Exchanges and secondary markets

Where are investors allowed to trade cryptoassets? How are exchanges, alternative trading systems and secondary markets for cryptoassets regulated?

There is no regulatory framework determining specific marketplaces in which investors are allowed to trade. Numerous cryptoasset businesses currently operate in Turkey without obtaining a licence or permission from a Turkish regulatory authority. The existing legislative framework neither prohibits investors from trading cryptoassets nor provides a clear regulatory base for these trading transactions and systems. Alternatively, some financial regulatory authorities, such as the Capital Markets Board of Turkey (CMB) and the Banking Regulatory Supervision Authority (BRSA) have warned

investors that cryptoasset trading is not yet regulated, thus they may incur serious risk.

Law stated - 01 November 2021

Custody

How are cryptoasset custodians regulated?

There are no specific laws and regulation for cryptoasset custodians. In Turkey, custodian services are mainly regulated by the CMB and the BRSA. According to Law No. 6362, custody services refer to:

Because cryptoassets are not deemed to be capital market instruments, which was also mentioned in the Regulation Prohibiting Payments Through Cryptoassets (the Regulation on Cryptoassets) and by the CMB, it is unclear whether cryptoasset custodians can be regulated under Law No. 6362. If cryptoassets are considered as a security or a capital market instrument under Law No. 6362 in the future, the businesses that offer custody services for cryptoassets may be subject to licensing requirements in the same way as other authorised institutions holding securities.

Law stated - 01 November 2021

Broker-dealers

How are cryptoasset broker-dealers regulated?

No specific regulations apply to cryptoasset broker-dealers. In Turkey, all intermediary institutions must be authorised by the CMB to be able to provide investment services. The licensing requirement is limited to various types of service such as securities trading, public offerings and derivatives trading. However, cryptoasset brokerage institutions cannot be considered as an intermediary service that must be authorised by the CMB because cryptoassets are not yet qualified as capital market instruments by the CMB.

Law stated - 01 November 2021

Decentralised exchanges

What is the legal status of decentralised cryptoasset exchanges?

Even though the Regulation on Cryptoassets recently established a framework for the use of cryptoassets, the legal status of decentralised cryptoasset exchanges is not yet defined under Turkish Law. Alternatively, various cryptocurrency exchange platforms are established in Turkey to provide decentralised cryptoasset exchange services.

Law stated - 01 November 2021

Peer-to-peer exchanges

What is the legal status of peer-to-peer (person-to-person) transfers of cryptoassets?

No specific regulation determines the legal status of peer-to-peer cryptoasset transfers. However, under the Regulation on Cryptoassets, cryptoassets cannot be traded as payment.

Law stated - 01 November 2021

Trading with anonymous parties

Does the law permit trading cryptoassets with anonymous parties?

The existing regulatory framework does not include a regulation for cryptoasset trading with anonymous parties. However, under the Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism (the Regulation on Prevention of Laundering Proceeds of Crime), cryptoasset service providers are now obliged to adhere to specific KYC procedures for their customers. Cryptoasset service providers are also obliged to fulfil detailed procedures for suspicious transaction reporting, providing information and documents, regular reporting, and retaining and submission. Also, the Regulation on Cryptoassets prohibits the following:

- use of direct or indirect use of cryptoassets in payments;
- provision of services for direct or indirect use of cryptoassets in payments;
- development of business models by payment service providers regarding the direct or indirect use of cryptoassets in provision of payment services and export of electronic money, and provision of services regarding development of such business models by payment service providers; and
- mediation of the payment and electronic money institutions regarding fund transfers from and to the platforms providing services on trading, depositing, transferring or exporting of cryptoassets.

Law stated - 01 November 2021

Foreign exchanges

Are foreign cryptocurrency exchanges subject to your jurisdiction's laws and regulations governing cryptoasset exchanges?

No. As the only regulation in Turkey that governs cryptoasset transactions is the Regulation on Cryptoassets, which does not provide a specific provision on foreign cryptocurrency exchanges, such foreign cryptocurrency exchanges are not yet subject to specific regulation for cryptoasset exchanges.

Law stated - 01 November 2021

Under what circumstances may a citizen of your jurisdiction lawfully exchange cryptoassets on a foreign exchange?

Although the Regulation on Cryptoassets establishes a framework for the use of cryptoassets, no specific laws apply to Turkish citizens wishing to exchange cryptoassets on a foreign exchange. However, the Regulation on Cryptoassets clearly prohibits the mediation of payment and electronic money institutions regarding fund transfers from and to the platforms providing services on trading, depositing, transferring or exporting of cryptoassets. Therefore, the activities of payment and electronic money institutions regarding foreign cryptoassets can be considered shut down. Although several cryptocurrency platforms provide foreign exchange services to their customers, these businesses are not specifically governed by any Turkish regulatory body, except the Financial Crimes Investigation Board of Turkey under the Regulation on Prevention of Laundering Proceeds of Crime.

Decree 32 on the Protection of Value of Turkish Currency (Decree 32) regulates the details of restrictions on payments made with a foreign currency to protect the value of the Turkish lira. The agreement or contract price and any other payment obligation arising from the following cannot be denominated in foreign currency or be indexed to foreign currency (except in circumstances determined by the Ministry of Treasury and Finance):

- sale and purchase agreements or contracts for movable and immovable assets;
- lease or rent agreements for any movable and immovable assets, including vehicles and financial leasing;
- employment;
- service; and
- construction agreements, executed by and between persons residing in Turkey.

Accordingly, depending on where the exchange of cryptoassets takes place and where the parties of the exchange are residing, the foreign currency ban or the exceptions arising from Decree 32 may be applicable.

Law stated - 01 November 2021

Taxes

Do any tax liabilities arise in the exchange of cryptoassets (for both other cryptoassets and fiat currencies)?

No specific tax regulations apply to the exchange of cryptoassets. According to the Income Tax Law (Law No. 193), the income of individuals is subject to income tax. The following types of income are subject to income tax:

- commercial income;
- agricultural earnings;
- wages;
- self-employment earnings;
- real estate capital income;
- securities capital income; and
- other earnings and revenue.

The gains derived from cryptocurrency do not fall into any of these categories. If cryptoassets were to be qualified as a commodity in Turkey, the income derived from the exchange of cryptoassets would be subject to income tax as commercial income (depending on the volume and continuity of the exchange). Also, in line with the Corporate Income Tax Law (Law No. 5520), any corporate income (eg, income derived from cryptocurrency) is subject to taxation. Although the Regulation on Cryptoassets provides a definition for cryptoassets, there is still uncertainty as to whether cryptoassets meet Turkish taxation requirements. Under the Value Added Tax Law (Law No. 3065) the exchange of cryptoassets is likely to be exempt from the scope of the law because the exchange of cryptoassets cannot be included in the type of transactions listed in article 1 of Law No. 3065. However, if an intermediary service is provided for the exchange of cryptoassets, this business will be subject to Law No. 3065.

Law stated - 01 November 2021

CRYPTOASSETS USED FOR PAYMENTS

Government-recognised assets

Has the government recognised any cryptoassets as a lawful form of payment or issued its own cryptoassets?

The Regulation Prohibiting Payments Through Cryptoassets (the Regulation on Cryptoassets) is the first regulation specific to cryptoassets and it clearly prohibits the use of cryptoassets in payments as well as the provision of services

for direct or indirect use of cryptoassets in payments. However, according to the 11th Development Plan of Turkey, which was published in the Official Gazette on 23 July 2019, including the Turkish presidency's 2020 Annual Programme, the Central Bank of Turkey is currently working to issue a national digital currency. Accordingly, it is expected that by 2022, the design and software development stages of the instant payment system will be completed and testing will take place in a timely manner.

Law stated - 01 November 2021

Bitcoin

Does Bitcoin have any special status among cryptoassets?

Although bitcoin has greater public recognition than other cryptoassets, as a cryptoasset it has no special legal status in Turkey and it cannot be used in payments in accordance with the Regulation on Cryptoassets. On 25 November 2013, the Banking Regulatory Supervision Authority (BRSA) published Press Release 2013/32 on bitcoin, in which it defined bitcoin as 'a virtual currency that is not issued by any public authority or private institution and its consideration is not assured'. Accordingly, the BRSA concluded that bitcoin does not qualify as electronic money.

Law stated - 01 November 2021

Banks and other financial institutions

Do any banks or other financial institutions allow cryptocurrency accounts?

Presently, no public or private Turkish banks allow direct cryptocurrency accounts within their organisation; however, cryptoasset exchange or trading platforms that provide bank payment options open corporate accounts for their services. These accounts are not specific to cryptocurrencies and allow the exchange or trading platform only to accept or make payments through their bank accounts. However, one Turkish investment bank recently invested in a cryptocurrency exchange platform and founded a platform to provide a secure cryptocurrency exchange and storage service, which was later shut down due to having low trading volume. Banks are monitoring these cryptoasset services with interest and are testing out experimental technologies because customer demand for cryptoassets is increasing. However, any future projects regarding cryptoassets should be in line with the Regulation on Cryptoassets.

Law stated - 01 November 2021

CRYPTOCURRENCY MINING

Legal status

What is the legal status of cryptocurrency mining activities?

No specific regulations restrict or allow cryptocurrency mining activities in Turkey. However, because mining activities require large amounts of electricity, this activity may be subject to restrictions regarding excessive energy use.

Law stated - 01 November 2021

Government views

What views have been expressed by government officials regarding cryptocurrency mining?

Government officials are closely following recent developments on cryptoassets and cryptocurrency-related services

and the topic has been the subject of various parliamentary questions. Although the Regulation Prohibiting Payments Through Cryptoassets establishes a framework for the use of cryptoassets, the Capital Markets Board of Turkey and the Ministry of Finance continue to conduct studies to determine further regulations for cryptoassets, which may involve cryptocurrency mining.

Law stated - 01 November 2021

Cryptocurrency mining licences

Are any licences required to engage in cryptocurrency mining?

No licence is required to engage in cryptocurrency mining because no regulation applies to this area yet.

Law stated - 01 November 2021

Taxes

How is the acquisition of cryptocurrency by cryptocurrency mining taxed?

No specific laws and regulations govern the taxation of income derived from the acquisition of cryptocurrency by cryptocurrency mining activities, and there are no Tax Administration rulings or court decisions on the taxation concerning the income generated by the acquisition of cryptocurrency by cryptocurrency mining. However, cryptocurrency mining activities are likely to be considered as a commercial activity because miners are paid in exchange for verifying blocks and transactions on the blockchain network. Therefore, if the cryptocurrency obtained by way of cryptocurrency mining is qualified as income, the income to incur owing to cryptocurrency mining activities may be considered as generating commercial income depending on the volume and continuity under the Income Tax Law (Law No. 193). In terms of value added tax, because cryptocurrency mining and the acquisition of cryptocurrency may only be carried out online, the applicability of value added tax for a cryptocurrency mining service depends on if the delivery of that service is in Turkey. The Law on Digital Services Tax and Amending Various Laws and the Statutory Decree (Law No. 7194) was promulgated according to the Official Gazette of 7 December 2019. To become effective, beginning from the third month after the publication of Law No. 7194, the revenue generated from the provision of the digital services defined under the Law No. 7194 that are offered in Turkey will be subject to a digital services tax of 7.5 per cent. If cryptocurrency mining is considered a digital service within the scope of Law No. 7194, the revenue generated by the acquisition of cryptocurrency by cryptocurrency mining may be subject to digital services tax.

Law stated - 01 November 2021

BLOCKCHAIN AND OTHER DISTRIBUTED LEDGER TECHNOLOGIES

Node licensing

Are any licences required to operate a blockchain/DLT node?

Blockchain and other distributed ledger technologies are not legally recognised in Turkey. Therefore, no licensing requirements apply.

Law stated - 01 November 2021

Restrictions on node operations

Is the operation of a blockchain/DLT node subject to any restrictions?

No restrictions are imposed on the operation of a blockchain/DLT node, subject to the Turkish AML/KYC framework. The Personal Data Protection Law (Law No. 6698) and its secondary legislation may be considered an applicable regulation because nodes simply facilitate the operation of blockchain networks and include personal data such as transaction data. In these circumstances, a node will be considered as a personal-data processor or controller depending on the nature of the case. Therefore, nodes must comply with the requirements of Law No. 6698.

Law stated - 01 November 2021

DAO liabilities

What legal liabilities do the participants in a decentralised autonomous organisation (DAO) have?

No regulation governs the ownership of DAO assets. Therefore, any party that purchases a DAO token is considered to be the owner of the DAO.

Law stated - 01 November 2021

DAO assets

Who owns the assets of a DAO?

No regulation governs the ownership of DAO assets. Therefore, any party that purchases a DAO token is considered to be the owner of the DAO.

Law stated - 01 November 2021

Open source

Is DLT based on open-source protocols or software treated differently under the law than private DLT?

No regulation governs DLT. Therefore, DLT based on open-source protocols or software and private DLTs all operate under their own conditions.

Law stated - 01 November 2021

Smart contracts

Are smart contracts legally enforceable?

Smart contracts are not legally recognised under Turkish law. However, in line with the principle of freedom of contract, parties are free to enter into a contract and determine its content unless it is contrary to the law, morality, public order, personal rights and freedoms. Under Turkish jurisdiction, various smart contract applications apply in different sectors (eg, transportation and insurance). Presently, these applications are subject to general contract liability provisions. Therefore, without separate legislation to regulate smart contracts, their enforceability may be challenged because they restrict parties' negotiation powers over the terms and conditions of an agreement. Also, smart contracts are not legally enforceable for the formal contracts specified by certain laws (eg, real estate contracts and vehicle-sales

agreements).

Law stated - 01 November 2021

Patents

Can blockchain/DLT technology be patented?

According to article 82 of the Industrial Property Law (Law No. 6769), a patent can be granted to an invention in any field of technology providing that it has novelty, involves an inventive step and has an industrial application. Therefore, blockchain or DLT itself cannot be patented as a technology. However, blockchain-based or blockchain-related systems and technologies may be patented if they fulfil the conditions set out in Law No. 6769. Also, Law No. 6769 sets out some exceptions to patentability: subjects or activities such as computer programs, business activities and the presentation of the information cannot be considered as inventions.

Law stated - 01 November 2021

UPDATE AND TRENDS

Recent developments

Are there any emerging trends, notable rulings or hot topics related to cryptoassets or blockchain in your jurisdiction?

Until recently, the regulatory framework did not explicitly restrict or prohibit individuals from carrying out business transactions involving cryptoassets and, as a result, the Turkish cryptocurrency market grew rapidly. However, as the Regulation Prohibiting Payments Through Cryptoassets (the Regulation on Cryptoassets) established a framework for the use of cryptoassets, prohibitions regarding the use of cryptoassets have also been introduced in Turkey. Also, the Crypto Currency Research Report, containing general information about cryptocurrencies, utilisation areas and status in Turkey and around the world, conducted by the Sectoral Research and Strategy Development Department, was published on the Information Technologies and Communication Authority of Turkey website.

According to research conducted by a private banking company in Turkey, one in five people owns cryptoassets. The Industry and Technology Road Map for 2023, which was announced by the Industry and Technology Ministry on 18 September 2019, includes significant detail regarding blockchain and distributed ledger technology (DLT). Accordingly, the government plans to establish the National Blockchain Infrastructure to utilise DLT in public administration. The government has also set out its plans to develop a regulatory sandbox for blockchain applications. This innovative approach towards blockchain technologies and the fintech environment became concrete and set within a timeframe with the Economic Reforms published on 12 March 2021 by the Ministry of Finance. Also, in September 2019, the Istanbul Clearing, Settlement and Custody Bank, known as Takasbank, announced a physically-backed blockchain-based platform that enables users to transfer electronically physically stored gold at the Borsa Istanbul Stock Exchange. The platform went live on 30 December 2019. The Istanbul Metropolitan Municipality has become a very innovative actor in Turkey in terms of procuring public services with blockchain technologies. However, the approach of the government towards cryptoassets has become conservative and protective within the past year. This is reflected in the Regulation on Cryptoassets, which entered into force on 30 April 2021. It establishes a legal framework for cryptoassets and is limited on certain levels, meaning that it governs only certain uses of cryptoassets. The Regulation on Cryptoassets ended the debate regarding the legal definition of cryptoassets and provided the definition as 'intangible assets which are created virtually by a technology such as distributed ledger or similar and are distributed through digital networks but cannot be acknowledged as fiduciary money, deposit money, electronic money, payment instrument, security, or other capital market instruments'. Accordingly, the Regulation on Cryptoassets prohibits the

following:

- direct or indirect use of cryptoassets in payments;
- provision of services for direct or indirect use of cryptoassets in payments;
- development of business models by payment service providers regarding the direct or indirect use of cryptoassets in provision of payment services, export of electronic money and provision of services regarding development of such business models by payment service providers; and
- mediation of payment and electronic money institutions regarding fund transfers from and to the platforms providing services on trading, depositing, transferring or exporting of cryptoassets.

The legal framework of the Regulation on Cryptoassets was a surprise for the business sector in Turkey, as well as many start-ups and individual investments related to cryptoassets. The expectation was a more flexible and supportive legal framework that would both regulate and procure a space for ongoing developments within the technologies of cryptoassets. We expect that the blockchain technology will still grow rapidly despite the Regulation on Cryptoassets; however, an important part of the fintech environment in relation to cryptoassets is expected to cause a fall in investment and innovation volume.

Following the Regulation on Cryptoassets, the Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism (the Regulation on Prevention of Laundering Proceeds of Crime) was amended via Presidential Decision No. 3941 dated 30 April 2021, and was published in the Official Gazette No. 31471 dated 1 May 2021. The amendment of the Regulation on Prevention of Laundering Proceeds of Crime introduced a new obligation for cryptoasset service providers, which are now specified among the 'obliged parties' stated under the Regulation on Prevention of Laundering Proceeds of Crime. Further, the Financial Crimes Investigation Board of Turkey published a guide entitled 'Main Principles for the Crypto Asset Service Providers Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism' (the Guide) on 4 May 2021. The Guide provides detailed and instructive application-oriented information regarding the obligations that cryptoasset service providers have under the Regulation on Prevention of Laundering Proceeds of Crime as obliged parties, as well as imposed sanctions if cryptoasset service providers fail to fulfil their obligations.

Law stated - 01 November 2021

Jurisdictions

	Australia	Piper Alderman
	Austria	Schoenherr
	India	AZB & Partners
	Japan	Mori Hamada & Matsumoto
	Liechtenstein	Niedermüller Rechtsanwälte Attorneys at Law
	Luxembourg	CMS Luxembourg
	Mexico	Ramos, Ripoll & Schuster
	Portugal	Morais Leitão, Galvão Teles, Soares da Silva & Associados
	Singapore	RHTLaw Asia LLP
	South Korea	Bae, Kim & Lee LLC
	Switzerland	MLL Meyerlustenberger Lachenal Froriep Ltd
	Taiwan	Lee and Li Attorneys at Law
	Turkey	SRP Legal
	USA	Nelson Mullins Riley & Scarborough LLP