

CRYPTOASSETS & BLOCKCHAIN

Turkey



Cryptoassets & Blockchain

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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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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 cryptoassets. However, the Information and Communication Technologies Authority of Turkey (ICTA) published a research study on cryptoassets (the ICTA study) in September 2020. In the ICTA study, the definition of cryptoassets 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 on Cryptoassets prohibits the following:

- the direct or indirect use of cryptoassets in payments;
- the provision of services for direct or indirect use of cryptoassets in payments;
- the development of business models by payment service providers regarding the direct or indirect use of cryptoassets in the 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
- the mediation of payment and electronic money institutions regarding fund transfers from and to 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, a Draft Bill that aims to amend the Capital Markets Law numbered 6362 to set the legal framework regarding cryptoassets has been included in the agenda of the Grand National Assembly of Turkey. In the Draft Bill, the concepts of crypto wallet, cryptoasset, cryptoasset trading platform, cryptoasset custody service and cryptoasset service

provider are defined. While the Draft Bill regulates cryptoassets within the Capital Markets Law, it does not qualify the cryptoassets as 'capital markets instruments'. Accordingly, cryptoassets will be subject to a legal regime different from that of capital markets instruments. Lastly, the Draft Bill authorises the Capital Markets Board of Turkey to issue secondary legislation on the matter.

Law stated - 22 November 2022

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. In this perspective, on 15 September 2021, the Central Bank of Turkey announced in its 2021-40 numbered press release that the Central Bank of Turkey 'Digital Turkish Lira Cooperation Platform' has been established. 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. In the Medium-Term Program (2023 to 2025), which has been published in the 1st repetition of the Official Gazette dated 4 September 2022 and numbered 31943, it is stated that sector-specific support will be provided in the fields of informatics, software, digital games, telecommunications, financial technologies (fintech) and smart urbanisation in order to open the sectors abroad and increase exports, and cryptoasset trading platforms will be included in the scope of regulation. However, within the past year, several official institutions, such as the TCB, have expressed the view that cryptoasset investments pose great financial and fraud risks 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 - 22 November 2022

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 cryptoassets 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.

In addition, the Capital Markets Board, in its Decision dated 27 September 2018 and numbered 47/1102, stated that practices aimed to raise money using blockchain technology, also known as crypto money sale or token sale are outside the scope of its regulation and supervision. However, in the Decision it is stated that token sale practices, which have similarities and differences with public offering and crowdfunding activities, will differ on a case-by-case basis as to whether it will fall within the regulatory limits of the Board.

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 cryptoassets 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 - 22 November 2022

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 cryptoasset platform that had allegedly transferred cash obtained from sales of cryptoassets 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.

Within the scope of the Turkish Penal Code numbered 5237, some types of crimes can also be committed in relation to cryptoassets. Although there is no specific legal regulation, they can be evaluated within the framework of the legislation. For example, the person who acquires a cryptoasset as a result of a fraud crime is considered to be the perpetrator of the crime and criminal liability occurs. Also, in the Draft Bill for Cryptoassets, penalties for instances involving unauthorised cryptoasset service providers and trading cryptoassets on unauthorised platforms are discussed.

Law stated - 22 November 2022

Court jurisdiction

Which courts have jurisdiction over disputes involving cryptoassets?

With the Decision of the First Chamber of the Board of Judges and Prosecutors dated 25 November 2021 and numbered 1230, which was published in the Official Gazette dated 30 November 2021 and numbered 31675, specialised courts have been set up to handle the cases to be filed for the crimes regulated, covered under the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions numbered 6493 dated 20 June 2013. This decision mainly effects payment and electronic money institutions.

However, no particular court has jurisdiction over disputes involving cryptoassets. 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 cryptoasset account because of the owner's debt. The enforcement court decided that a certain value of cryptoasset 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 - 22 November 2022

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 cryptocurrency 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 cryptocurrencies must bear their own risk.

Law stated - 22 November 2022

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 - 22 November 2022

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 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 - 22 November 2022

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 as '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 - 22 November 2022

Investor classification

How are investors in cryptoassets classified and treated differently?

Turkish law does not classify cryptoasset investors.

Law stated - 22 November 2022

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 Crowdfunding (III-35/A.2), which regulates fundraising from the public through equity by excluding other similar crowdfunding activities such as ICOs and security token offerings. In accordance with this, if the activity has a similar nature to crowdfunding, it may be subject to the regulatory framework of the CMB. However, at this point, the definition of crowdfunding in the Capital Markets Law is remarkable. According to this definition, crowdfunding can only be done through crowdfunding platforms. Therefore, if an ICO project is

characterised as crowdfunding, the ICO process should be carried out not by the entrepreneur but through a crowdfunding platform.

Law stated - 22 November 2022

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 numbered 6102 (TCC), non-public joint-stock companies are not required to issue share certificates and shareholding rights arise on the 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 - 22 November 2022

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 - 22 November 2022

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 - 22 November 2022

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 - 22 November 2022

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 - 22 November 2022

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 Crowdfunding (III-35/A.2), which entered into force on 27 October 2021 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. With Resolution No. 47/1102 dated 27 September 2019, The CMB reiterated that ICOs may have similar aspects to public coin offerings or crowdfunding activities depending on their nature.

Law stated - 22 November 2022

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-authorised intermediary. In cases where cryptoassets are qualified as 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 - 22 November 2022

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.

Also, MASAK's guide titled 'Main Principles for the Cryptoasset 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 cryptoasset 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 may result in administrative fines to be imposed by MASAK under the Law on the Prevention of Money Laundering Proceeds of Crime numbered 5549. In addition, MASAK's Suspicious Transaction Reporting Guideline for Cryptoasset Service Providers, which was published on 18 April 2022, explains procedures for reporting suspicious transactions and the process of sending suspicious transaction reports. 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 - 22 November 2022

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 of 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 of 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 - 22 November 2022

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 - 22 November 2022

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 - 22 November 2022

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:

‘The services related to capital market instruments deposited or delivered in the dematerialised or physical form concerning capital market activities, whether due to capital market activities or as custodian or to manage or as a guarantee or regardless of the name.’

Since cryptoassets are not deemed to be capital market instruments, which is 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 - 22 November 2022

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 services such as securities trading, public offerings and derivatives trading. However, cryptoasset brokerage institutions cannot be considered as intermediary services that must be authorised by the CMB because cryptoassets are not yet qualified as capital market instruments by the CMB. Although cryptoassets are not currently considered as capital market instruments, pursuant to the Draft Bill, which is on the agenda, it is discussed that individuals who carry out activities as a cryptoasset service provider without permission will be sentenced to prison. It is considered that cryptoasset providers will have to obtain permission from the CMB for their operations.

Law stated - 22 November 2022

Decentralised exchanges

What is the legal status of decentralised cryptoasset exchanges?

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

Law stated - 22 November 2022

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, the direct and indirect use of cryptoassets for payments is prohibited.

Law stated - 22 November 2022

Trading with anonymous parties



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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:

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

Besides, the relevant obligation is included in the Guidelines for Crypto Asset Service Providers published by MASAK in May 2021. The most important measure to be taken within the scope of the obligation is the customer's identification. Identification must be completed before establishing a business relationship or making a transaction.

Law stated - 22 November 2022

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 - 22 November 2022

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 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 also be applicable.

Law stated - 22 November 2022

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 cryptoassets 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 since 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.

As a result, according to Turkish law and income tax legislation, since there is no regulation regarding cryptoassets, taxation of income generated by cryptoassets is not in question. On the other hand, it is clearly stated that a permanent income should be subject to tax. In article 37 of the Income Tax Law, it is stated that 'earnings arising from all kinds of commercial and industrial activities should be taxed as they are considered commercial income'.

It should also be noted that based on the 'Digital Assets Report' dated 7 February 2022 published by the Banks Association of Turkey (TBB), it has been stated that establishing a transparent taxation policy on cryptoasset incomes,

and the inflow of high transaction volumes around the world to Turkey, even if the taxation is based on the declaration method, will reinforce the opportunities for both direct and indirect tax revenues to be brought to the Turkish Treasury.

Law stated - 22 November 2022

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 the direct or indirect use of cryptoassets in payments. Pursuant to the Turkish Presidency's 2022 Annual Programme, it has been announced that advanced pilot application for the digital Turkish lira, which has been developed as the official cryptoasset version of the Turkish lira, will soon be initiated. Also, within the Turkish Presidency's 2022 Annual Programme, the sharp value increases regarding cryptoassets were recognised.

Additionally, it is expected that by the end of 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 - 22 November 2022

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. However, with a broader approach, it was stated by the BRSA president that digital money is a new concept and it creates confusion among the public, and legislative efforts are being made on this issue.

Law stated - 22 November 2022

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 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.

It should also be noted in the 'Digital Assets Report' dated 7 February 2022, published by the Banks Association of

Turkey (TBB); it is stated that the purpose of the report is primarily to help Blockchain technology be evaluated as a business model with high potential and transformational impact, rather than only being subject to a narrow classification based solely on cryptocurrency applications. Additionally, it is stated that various instruments and applications (smart contracts, digital identity, etc) that are encountered through blockchain technology should also be examined and evaluated independently of cryptocurrencies.

Law stated - 22 November 2022

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 - 22 November 2022

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.

Furthermore, based on the 'Digital Assets Report' dated 7 February 2022, published by the Banks Association of Turkey (TBB); it has been stated that a simple licensing arrangement on mining and incentives as deemed necessary will both record the earnings made in cryptoassets and relieve the citizens engaged in mining, as well as contribute to Turkish economy by allowing mining companies to invest in Turkey.

Law stated - 22 November 2022

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. But it has been discussed through the 'Digital Assets Report' dated 7 February 2022, published by the Banks Association of Turkey (TBB), that a simple licensing agreement will relieve a natural or legal person in this sector.

Law stated - 22 November 2022

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 Revenue 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 whether 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 - 22 November 2022

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 - 22 November 2022

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 - 22 November 2022

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 - 22 November 2022

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 - 22 November 2022

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 - 22 November 2022

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). Despite the many innovations and opportunities it has brought, it still does not have a legal basis under Turkish Law.

Law stated - 22 November 2022

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 information cannot be considered inventions.

Law stated - 22 November 2022

UPDATE AND TRENDS

Recent developments

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

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 been introduced in Turkey. Also, the Crypto Currency Research Report, containing general information about cryptoassets, 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.

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 time frame with the economic reforms published on 12 March 2021 by the Ministry of Finance.

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:

- the direct or indirect use of cryptoassets in payments;
- the provision of services for direct or indirect use of cryptoassets in payments;
- the development of business models by payment service providers regarding the direct or indirect use of cryptoassets in the provision of payment services, export of electronic money and provision of services regarding the development of such business models by payment service providers; and
- the mediation of payment and electronic money institutions regarding fund transfers from and to the platforms providing services on trading, depositing, transferring or exporting 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. However, the Draft Bill is expected to be completed and put into effect in 2023. We expect that blockchain technology will still grow rapidly despite the Regulation on Cryptoassets and that investments will increase upon the clarification of the legislation.







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 on 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 and another guide entitled 'Suspicious Transaction Reporting Guideline for Cryptoasset Service Providers' on 18 April 2022. It is obvious that authorities are trying to clarify the legislation with regard to companies working in areas of cryptoassets and blockchain technology. Turkish regulatory bodies closely monitor the developments and draft reactive regulations to meet the requirements generated by the technological developments. Although it seems that an unfriendly environment has been created with the Regulation on Cryptoassets, it can be said that the government is closely observing the uncertainties on cryptoassets as well as technological developments. In the face of the fact that the use of cryptoassets is likely to increase in the future, it is expected that important new regulations will be introduced within Turkish legislation.

Also, the decisions of the Judges and Prosecutors Council on the establishment of specialised courts for cybercrimes and financial crimes were published in November 2021. It is considered that the determination of areas requiring legal expertise and the establishment of specialised courts are remarkable steps leading to progress on judicial reform and the Human Rights Action Plan.

Law stated - 22 November 2022

Jurisdictions

	Austria	Schoenherr
	Cyprus	Kinanis LLC
	France	Nomos
	India	AZB & Partners
	Italy	Lexia Avvocati
	Japan	Nishimura & Asahi
	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