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Getting The Deal Through

Fintech

in Turkey

Report generated on 24 August 2020

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Current developments

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Turkey

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FINTECH LANDSCAPE AND INITIATIVES

General innovation climate

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

A dynamic fintech climate exists in Turkey with the market being ripe for investment at both ends of the spectrum. Electronic payment institutions and electronic money institutions have emerged as new sectors (sub sectors) in financial intermediation. As of July 2020, there are 34 licensed payment institutions and 18 e-money institutions.

Technological innovation, accelerating the increase in the number of electronic and mobile payment providers and the appearance of new types and models of payment services in the fintech market has resulted in regulatory changes. The recent Amendment to the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (the Amendment), which entered into force on 1 January 2020, shall contribute to the development of innovation climate in fintech ecosystem as it introduces new types of payment services, namely account information services and payment initiation services.

Government and regulatory support

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

The government and regulators both provide support for financial innovation, albeit this support is not industry-specific to financial innovation in most circumstances. This support is provided to all entities that meet the criteria. Non-industry specific language is employed. For example, the incorporation of an entity within a special economic zone (ie, tech development zone) with its primary business activity listed as technology would qualify the entity for tax benefits. A dedicated legislation governs this field of incentives; Law on the Technology Development Zones, Law No. 4691 provides lower corporate income tax, withholding tax, income tax exemptions, employer social security contribution support payments and value added tax exemptions. As for legislation regulating incentives provided to investments in general, a pair of Ministerial Cabinet Decrees (an executive body that no longer exists) governs the field, namely the State Incentives for Investments Decree No. 2012/3305 and the Project Based Incentives Available to Investments Decree No. 2016/9495. Significant amendments to the incentive regime have been introduced by two subsequent Presidential Executive Orders on State Incentives Provided to Investments (Incentive Executive Orders), namely Executive Order No. 1402 and Executive Order No. 1403. The Incentive Executive Orders have introduced recent amendments, both coming into force on 7 August 2019 and have removed large-scale infrastructure project investments completely from the incentive regime followed by the introduction of increased incentives for research and development activities and value-added technology production. These research and development activities, as of the date of this questionnaire, only include activities in the machinery manufacturing industry and do not contain any reference to financial innovation activities being incentivised. Expectations point to the direction that further communiqués will be published, however, as of mid-2020 there is no indication that financial innovation will be included as an incentivised industry.

In addition, in the 11th Development Plan Report of Turkey, which was published in the Official Gazette on 23 July 2019, includes objectives directly related to the Turkish financial technologies ecosystem. Accordingly, a road map will be set up to support the current Turkish fintech ecosystem and create a more secure fintech ecosystem by taking into consideration international best practices. Even though any incentives specific to financial innovation are not included in the 11th Development Plan, it is expected that government bodies and regulatory authorities will take a definitive step to accomplish these objectives set out in the 11th Development Plan. The latest step in this regard was the Amendment to the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money

Institutions (the Amendment), in line with the requirements of the Payment System Services Directive II (Directive 2015/2366), which entered into force on 1 January 2020. The Amendment sets forth a provision of the establishment of the Turkey Payment Services and Electronic Money Association (Association) status has entered into force as of 28 June 2020. Accordingly, all payment and electronic money institutions shall be required to become members of this Association. Duties of the Association include, among other things, carrying out professional trainings, research and advertising activities, establishment of standards for the industry and helping ensure coordination among members and with the regulator.

FINANCIAL REGULATION

Regulatory bodies

Which bodies regulate the provision of fintech products and services?

Prior to the Amendment to the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (the Amendment), the Banking Regulation and Supervision Agency (BRSA) was the main authority regulating and monitoring fintech products and services. The Central Bank of the Republic Turkey (CBRT), on the other hand, was in charge of regulating payment and security settlement services. The recent Amendment brings a significant development as to the regulatory body of fintech products and services. According to the Amendment, the CBRT is the authorised body to supervise and regulate e-money institutions and payment service providers instead of the BRSA.

In addition to the CBRT, another body that regulates the fintech products and services is the Turkish Financial Crimes Investigation Board (MASAK), which is a main service unit of Ministry of Finance and is directly attached to Ministry of Finance. Among others, MASAK regulates fintech products and services through laws, by-laws and regulations to prevent and reveal money laundering proceedings for crime and terrorist financing.

Regulated activities

Which activities trigger a licensing requirement in your jurisdiction?

Turkey regulates an extensive scope of financial services and activities. Financial institutions must obtain authorisation from their regulators (ie, the BRSA, the Capital Markets Board (CMB) and the Treasury) to be incorporated and carry out financial activities. These services include the following:

- accepting deposits – consisting of traditional retail banking activities for the operation of current and deposit accounts;
- accepting participation funds – consisting of Islamic banking activities for the operation of current and participation accounts (ie, accounts paying a yield of profit share under Islamic banking principles);
- extending loans – consisting of cash and non-cash loans extended to legal entities, real persons and consumers;
- providing factoring and financial leasing services;
- issuing electronic money – electronic money is a pre-paid electronic payment product accepted as a payment instrument by its issuer and other individuals and legal entities;
- carrying out payment services – including the deposit and withdrawals from payment accounts, fund transfers, issuance or acceptance of payment instruments and money transfers;
- banks' asset management – consisting of purchasing and selling banks and other financial institutions' non-performing loans;
- issuance of debit and credit cards and providing related payment services – consisting of financial institutions' provision of debit and credit card services;

- trading and carrying out intermediation activities in securities and other capital markets instruments – this covers banks and brokerage firms engaging in proprietary trading that also receive and route orders for the sale and purchase of securities;
- underwriting and intermediation of public offering of capital markets instruments;
- providing investment advice;
- asset management – comprising the management of investments on behalf of third parties by the investment companies, mutual funds and non-Turkish collective investment schemes;
- incorporating, operating and winding up investment companies and mutual funds (collective investment schemes);
- providing custody services – custody services related to assets that include investments;
- carrying out insurance activities (effecting and carrying out both life and non-life insurance contracts) – each type of insurance requires a separate licence;
- carrying out private pension activities (can also engage in life and personal accident insurance business with separate licences); and
- insurance and private pension intermediation activities – this covers insurance agents and brokers as well as private pension intermediaries.

Conducting any banking activity requires a licence as per the Banking Law (Law No. 5411). Carrying out financial leasing, factoring, and finance activities requires a licence as per the Financial Leasing, Factoring and Finance Companies Law (Law No. 6361).

Licensing requirements are triggered in any and all events that involve the provision of payment and e-money services. The market itself, together with the existence of significant financial barriers of entry into the market, is highly regulated. Payment services and e-money services can solely be offered if the provider is a licensed entity. This being said, a licensed entity can be incorporated to offer payment services only if it is incorporated as; a financial institution that falls under the definition of a bank as listed within Turkey's banking legislation (Law No. 5411), an electronic money institution or a payment services provider.

Consumer lending

Is consumer lending regulated in your jurisdiction?

Consumer lending is regulated by the BRSA through the Banking Law (Law No. 5411) and the Law on Bank Cards and Credit Cards (Law No. 5464), the Regulation on Credit Operations of Banks and by the Ministry of Commerce through the Consumer Law (Law No. 6502), the Regulation on Consumer Loan Agreements and the Regulation on Housing Finance Agreements. Article 14/4 of the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493), sets a clear ban on payment service providers and electronic money institutions in the fintech industry performing their commercial or business activities in a manner that may be synonymous with commercial lending or extending a credit line. Based on article 14/4 of Law No. 6493, whether these activities carried out related to payment services are regarded as the business of granting credit or not is also determined in the Regulation on Payment Services and Electronic Money Issuance and Payment Institutions (Regulation). According to article 11 of the Regulation, payment and e-money institutions cannot engage in loan-granting activities and cannot mediate payments that are made in instalments.

Secondary market loan trading

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

Although lending of a loan is a regulated activity requiring authorisation by the BRSA, trading loans itself is not, however, a regulated activity, notwithstanding the relevant licensing requirements applicable to entities that provide lending in respect of such loans.

Collective investment schemes

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

In Turkey, the general rules and principles regarding investment funds are mainly regulated under articles 52-57 of the Capital Markets Law (Law No. 6362). Additionally, the CMB has regulated further details regarding the establishment and activities of investment funds under the Communiqué on the Principles of Investment Funds (III.52.1) (the Communiqué). The CMB also introduced the Investment Funds Guide (the Guide) with its resolution numbered 19/614, to clarify the rules and principles stipulated in the Communiqué.

The Communiqué Amending the Communiqué (III-52.1.c) (the Amending Communiqué) entered into force upon its publication in the Official Gazette No. 30712 on 12 March 2019. The CMB also amended the Guide on the same date to reflect the changes introduced through the Amending Communiqué. This article will focus on the novelties introduced by the Amending Communiqué and the Guide into the investment funds regime in Turkey. While the collective investment scheme of crowdfunding itself is not a novel method of acquiring funding, the legislation that governs the scheme in Turkey is new. The recently enacted Communiqué on Equity Based Crowdfunding (the Crowdfunding Communiqué) was published in the Official Gazette on 3 October 2019 and sets forth the Capital Markets Board of Turkey as the supervisory regulatory authority. Providing alternative finance products, services, and collective investment methods would fall under the scope of the Crowdfunding Communiqué. However, the Communiqué only regulates equity based or share-based crowdfunding, and fund-raising from the public through equity-based crowdfunding. In addition to that credit lines and loans are not listed as permissible services to be offered by payment service providers and electronic money institutions as the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493) sets strict prohibitions to the permissibility of offering credit lines or loans by payment services providers or electronic money institutions. Peer-to-peer lending is not currently regulated in a manner synonymous with the definition found under European Regulation PSD II.

Alternative investment funds

Are managers of alternative investment funds regulated?

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

Portfolio management companies are required to be established as joint-stock companies with the main objective being operating and managing investment funds. Compliance with certain conditions and obtaining the CMB licence as set forth under the Communiqué are required for establishing and operating a portfolio management company. The manager can either be the founder (founding portfolio management company (PMC), private equity portfolio management company (PEPMC), real estate portfolio management company (REPMC) or other PMCs or PEPMCs/

REPMCs pursuant to a portfolio management contract. Fintech companies do not fall under the scope of the legislation concerning alternative investment fund managers.

Peer-to-peer and marketplace lending

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

There is no specific legislation regulating the marketplace lending activities or peer-to-peer lending. Lending activities are highly regulated by the BRSA. According to the Banking Law or the Financial Leasing Law, only the entities with a licence granted by the BRSA can legally conduct lending activities. Money lending and earning interest from that money without holding a licence is a crime, defined as usury, which is subject to imprisonment of between two and five years and a monetary fine up to 500,000 lira (Criminal Code No. 5237).

Crowdfunding

Describe any specific regulation of crowdfunding in your jurisdiction.

Crowdfunding is regulated by the recently enacted Communiqué on Equity Based Crowdfunding III-35/A.1 (the Communiqué), which was issued by the Capital Markets Board (CMB) and published in the Official Gazette No. 30907 on 3 October 2019. The Communiqué sets forth the secondary legislation applicable to crowdfunding, which was first introduced to the Turkish market with the amendments to the Capital Markets Law (Law No. 6362) in November 2017. As per the Communiqué, only the platforms authorised and listed by the CMB may carry out crowdfunding activities. The scope of the Communiqué only covers the equity-based crowdfunding through the purchase of shares and excludes the crowdfunding based on donation or rewards.

Invoice trading

Describe any specific regulation of invoice trading in your jurisdiction.

While invoice trading itself does not find a direct application to the Turkish jurisdiction, the method of debtor financing referred to as factoring does find presence in Turkey. The accounts receivable, usually but not necessarily always, is in the form of cheques or cashier's cheques is assigned or transferred to the assignee by the assignor in return for immediate payment. The Law on Financial Leasing, Factoring and Financing Companies (Law No. 6361) and its supplemental secondary legislation are the primary pieces of legislation that govern this field in the Turkish jurisdiction.

Payment services

Are payment services regulated in your jurisdiction?

Yes, the payment services are regulated in our jurisdiction under the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493).

As per Law No. 6493, the following activities are defined as payment services:

- all transactions required for operating a payment account including the services enabling cash to be placed on and withdrawn from a payment account;
- execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider, direct debits, including one-off direct debits, payment transactions through a payment card or a

similar device, credit transfers including standing orders;
- issuing or acquiring payment instruments;
- money remittance;
- execution of payment transaction, where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services;
- corresponding services enabling bill payments (added by Law No. 7192 of 12 November 2019);
- at the request of the payment service user, the payment initiation service related to the payment account at another payment service provider (included by Law No. 7192 of 12 November 2019);
- upon approval of the payment service user, the online provision of consolidated information of one or more payment accounts held at payment service providers by payment service users (included by Law No. 7192 of 12 November 2019); and
- other transactions and services reaching the level to be determined by the bank in terms of total size or impact in payments.

Open banking

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

There are significant duties levied upon financial institutions regarding duty of confidentiality within the Turkish legislation, namely the Banking Law (Law No. 5411), the Turkish Commercial Code and the Turkish Criminal Code. This duty, together with the personal data protection laws, limits the sharing of data in a manner that would be considered as promoting competition. However, various pieces of legislation, such as the Regulation Detailing the Principles and Procedures on Accounting Practices and Document Retention and the Communiqué on Financial Charts and Explanations and Footnotes to be Made Public exist where banks and financial institutions must make banking data available to the BRSA. Nevertheless, article 9 of Law No. 7192, which introduced a variety of amendments to Law No. 6493 (Amendment to Law No. 6493), stipulates that the Turkish Central Bank is empowered to enact secondary legislation that may require payment service providers to share data with other payment service providers.

The Amendment to Law No. 6493 extends the list of payment services by introducing the definitions of 'payment initiation services' and 'account information services'. However, the banks would not be legally required to offer third-party providers access to their customers' accounts via open application programming interfaces (APIs), as long as the CBRT does not issue a secondary legislation on data sharing practices. Nevertheless, some Turkish banks already release their APIs to promote third-party developers.

In addition, the Banking Regulatory and Supervisory Authority set forth a regulatory framework for open banking with the Regulation on Banks' Information Systems and Electronic Banking Services issued on 15 March 2020. Under this Regulation, which will enter into force on 1 January 2021, Turkish banks will be able to utilise open banking to carry out many activities and are expected to collaborate more with fintechs.

Insurance products

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

Insurance activities and activities in relation to insurance activities including sale and marketing insurance products a

regulated market in Turkey and fall under the supervision of the General Directorate of Insurance of the Ministry of Treasury and Finance, which will be replaced by the current Insurance and Private Pension Regulation and Supervision Agency that will conduct its activities as an affiliated institution to the Ministry of Treasury and Finance. According to Insurance Law No. 5684, insurance agencies selling or promoting policies underwritten by licensed insurers in Turkey are also required to obtain an authorisation from the Undersecretariat of the Treasury General Directorate of Insurance for each insurance branch in which they would like to operate. Insurance companies and reinsurance companies shall not be engaged in other businesses except insurance transactions and businesses that are directly related to insurance operations. According to article 6 of the Regulation on Activities to be Evaluated under Insurance Services, on Insurance Contracts Concluded in favour of the Consumer and on Distance Insurance Contracts titled Contracts and Activities that Cannot be evaluated Within the Scope of Insurance, contracts (and the activities carried out within the scope of these contracts) that are subject to human or intellectual work, such as service contracts, work contracts or subscription contracts, for a certain fee are not insurance contracts unless they are entered into in order to eliminate the damage of the counterparty. Fintech companies may engage in such activities.

Credit references

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

The Credit Registry Bureau (KKB) offers its services not only to financial institutions, but also to individuals and the real sector through Cheque Report, Risk Report and Electronic Report systems launched in January 2013. As of September 2014, KKB gathered its services aimed at individuals and the real estate sector under the umbrella of Findeks, KKB's consumer service platform.

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

CROSS-BORDER REGULATION

Passporting

Can regulated activities be passported into your jurisdiction?

As a general application of passporting of regulated activities into the Turkish jurisdiction is not possible.

Turkey is not a member of the European Union (but is a candidate in the negotiations for full membership) or the European Economic Area, or a party to an agreement for passporting financial services across Europe. Therefore, a Turkish financial institution cannot passport its authorisation into the European Economic Area member states or any other jurisdiction, and reciprocally foreign financial institutions cannot operate without the required licences in Turkey.

The Communiqué on Foreign Capital Market Instruments, Depository Receipts and Foreign Investment Fund Shares published by the Turkish Capital Market Authority No. VII.128.4 (Communiqué) sets forth the procedures and requirements for the sale of foreign mutual fund units in Turkish capital markets. Some of these can be included as regulated activities that may be passported into the Turkish jurisdiction. Communiqué establishes a framework

enabling the public offering of foreign stocks that are issued by the foreign companies in Turkey, a regulated activity to be passported to our jurisdiction.

Requirement for a local presence

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

A fintech company is required to be incorporated and licensed in the local Turkish jurisdiction. Apart from being licensed by the Banking Regulation and Supervisory Authority, it needs to be incorporated as a corporation, with minimum capital requirements (approximately US$170,000) and limitations on controlling ownership of shares and share transfers.

SALES AND MARKETING

Restrictions

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

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

CHANGE OF CONTROL

Notification and consent

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

Pursuant to article 18 of the Banking Law, for any persons who directly or indirectly acquire 10 per cent or more of the issued share capital of a bank, increase their already existing shares to 10, 20, 33 or 50 per cent of the issued share capital, or sell off their shares in a manner where the seller's ownership decreases below to the mentioned thresholds of share capital, are all examples of control changes that are subject to the approval of the Banking Regulation and Supervision Authority (BRSA).

Issuing preferential shares that enable a vote for the board of directors or the audit committee are all subject to the approval of the BRSA.

BRSA approval is commonplace for any share purchase agreement or shareholders' agreement resulting in a dilution or change in the shareholder structure of the bank.

As per article 25 of the Law On Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions No. 6493 governing the acquisition and transfer of shares and notification of changes, any acquisition of shares that results in the acquisition directly or indirectly of shares representing 10 per cent or more of the capital of a bank or that results in a situation in which shares held directly or indirectly by a shareholder exceeding 10 per cent, 20 per cent, 33 per cent or 50 per cent of the capital, and transfers of shares that result in a decline of a shareholder's

shares below these percentages, shall require the permission of the bank. Establishment and termination of usufructuary rights that include voting rights shall be considered as an acquisition and transfer within the ratios stated in this paragraph. Assignment and transfer of preferential shares granting the right to promote a member to the board of directors or the audit committee, or issuance of new preferential shares shall be subject to the bank's permission irrespective of the ratio thresholds stated in the first paragraph. The transfer of shares resulting in the change of control of legal persons that have 10 per cent or more of the institution's capital shall be subject to the bank's permission. The person who acquires the shares during the share transfers must meet the qualifications required for bank founders pursuant to Law No. 5411. Share transfers that are subject to permission but performed without any permission shall not be recorded in the register of shares. Records recorded in the share register in contravention of this provision shall be considered null and void.

FINANCIAL CRIME

Anti-bribery and anti-money laundering procedures

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

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

Guidance

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

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

PEER-TO-PEER AND MARKETPLACE LENDING

Execution and enforceability of loan agreements

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

As a principal, lending activities are highly regulated in Turkey by the Banking Regulation and Supervisory Authority (BRSA). Only entities that are authorised by the BRSA are allowed to engage in lending activities under the Banking Law (Law No. 5411) or the Financial Leasing Law. Loan agreements need to be in writing and amendments to be made to the loan agreements need to be in writing as well. Security agreements, especially security agreements where the collateral is an asset where possession is required for the establishment of the security, these agreements need to be in writing and there needs to be registration of the security to the settlement bank (signifying the possession has been transferred).

A standard security agreement only needs to be in writing. However, a security agreement that is part of a right to claim needs to also be accompanied by the transfer of possession. A similar rule establishes security over real estate put up as collateral. Yet, peer-to-peer lending, or marketplace lending , is not currently regulated. Therefore there is a risk that loan agreements or security agreements entered in to on a peer-to-peer or marketplace platform will not be deemed enforceable in the Turkish jurisdiction.

Assignment of loans

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

There are no registration requirements with Turkish authorities for a transfer or assignment of loans to be effective However, peer-to-peer lending, is not currently regulated in the Turkish jurisdiction. Therefore, there are no registration requirements with Turkish authorities for a transfer or assignment of loans to be effective.

Securitisation risk retention requirements

Are securitisation transactions subject to risk retention requirements?

The primary piece of legislation that governs asset-backed securities and the risk retention system or requirements that must be set in place is the Communiqué on Asset Backed and Mortgage Backed Securities No. III-58.1 (Communiqué No III 58.1).

The originator or founder is required to retain the risk by repurchasing the asset-backed securities/mortgage-backed securities corresponding to 5 per cent of the nominal value of the asset-backed securities or mortgage-backed securities issued, and retain this value until maturity. For the asset-backed securities/mortgage-backed securities that are issued in classes, this requirement applies either:

- in the event the asset-backed securities/mortgage-backed securities classes do not have a credit rating or have the same credit rating, on a pari passu or pro rata basis for each class; or
- to the class or classes having the lowest credit rating, if there are different asset-backed securities/mortgage-backed securities classes with different credit ratings.

The CMB is empowered to change the above ratio depending on the type of assets or on the originators or founders, but the ratio cannot exceed 10 per cent.

Securitisation confidentiality and data protection requirements

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

There are two distinct regulations regarding duty of confidentiality. The first piece of legislation that governs confidentiality of banking and financial information is the Banking Law (Law No. 5411). In addition to this, the Personal Data Protection Law (Law No. 6698) (the PDP Law) bars and sets limitations on the disclosure, processing and transfer of personal information, which would also include borrower information. As long as that the PDP Law applies to a

special purchase vehicle (SPV) used for the purchase and securitisation of peer-to-peer or marketplace loans, the SPV will be subject to certain obligations under the PDP Law relating to the borrowers' personal data,

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

ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTO-ASSETS

Artificial intelligence

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

No regulation exists. However, the Digital Transformation Office, structured under the Presidency, has been granted the task to lead the AI transformation process.

Distributed ledger technology

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

Specific to distributed ledger technologies or blockchains, there is no current legislation or regulation. The Turkish Financial Crimes Investigation Board, MASAK, has published an updated guidebook where fund transfers made to intermediary institutions for purposes of purchasing crypto-assets (ie, bitcoin) will no longer automatically be considered suspicious movement of funds and shall be analysed on a know-your-customer (KYC) basis. This represents a more flexible approach towards crypto-assets. Nevertheless, the Turkish Banking Regulation and Supervision Agency (BRSA) explicitly states within its public announcement No. 2013/32 that crypto-assets are not to be considered as e-money.

Crypto-assets

Are there rules or regulations governing the use of cryptoassets, including digital currencies, digital wallets and e-money?

The Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493) and its supplemental secondary legislation defines and regulates the market and its participants regarding e-money, digital wallets and digital currencies. Yet, owing to a lack of consensus among regulatory and supervisory authorities, the status of crypto-assets does not have a precise definition under Turkish law. If crypto-assets are considered a security, then the Law on Capital Markets (Law No. 6362) shall be the governing legislation. If the definition of a crypto-asset falls under one similar to e-money, then Law No. 6493 shall be the governing legislation.

MASAK has published an updated guidebook where fund transfers made to intermediary institutions for purposes of purchasing crypto-assets (ie, bitcoin) will no longer automatically be considered suspicious movement of funds and shall be required to be analysed on a KYC basis. This represents a more flexible approach towards crypto-assets. Nevertheless, the BRSA explicitly states within its public announcement No. 2013/32 that crypto-assets are not to be considered as e-money.

Both the BRSA and the Turkish Central Bank have stated that crypto-assets, namely bitcoin, are not considered e-money nor does the status of crypto-assets fall under the definition of a security. The approach of the Turkish Central Bank is most likely to have crypto-assets designated under the definition of capital market instruments.

Digital currency exchanges

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

No there is no rule or regulation restricting or governing the operation of digital currency exchanges or brokerages.

Initial coin offerings

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

Since Turkish law does not define crypto-assets nor set out a framework for crypto-asset regulation, the legal status of ICOs and the restrictions regarding investment in ICOs are unclear. There is no specific regulation governing ICO or token generation events.

DATA PROTECTION AND CYBERSECURITY

Data protection

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

The primary piece of legislation that governs this area is the Personal Data Protection Law (Law No. 6698), the Regulation on the Erasure, Destruction or Anonymisation of Personal Data, which regulate the procedure and principles to be complied throughout the processing of personal data for all sector players, including fintech companies. The Communiqué on the Management and Audit of Information Systems of Payment and E-Money Institutions (Information Systems Communiqué) published on the Official Gazette and became effective on 27 June 2014 prior to the enactment date of the Law No. 6698 dated 24 March 2016. Among other things, the Information Systems Communiqué includes definitions of personal information, sensitive payment data, and user data and sets forth special requirements in relation to data protection, security and authorisation and confidentiality.

Payment service providers and e-money institutions also fall under the scope of the duty to transfer financial data to the Banking and Regulation Supervision Agency (BRSA) pertaining to what the Law No. 5411 defines as ‘banking data’. Law No. 7192, which introduced a variety of amendments to the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493), states within article 9 that the Turkish Central Bank holds the right to enact secondary legislation that may require payment service providers to share data with other payment service providers.

Cybersecurity

What cybersecurity regulations or standards apply to fintech businesses?

Article 31 of the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493) levies the duty to uphold a secure information technology system upon the licensed

payment service provider. Further to this, the Communiqué on the Management and Audit of Information Systems of Payment and E-Money Institutions (Information Systems Communiqué). According to the Information Systems Communiqué, the fintech institution should create a security incident management and cyber incident response process to address and track security incidents that take place, including security-related user complaints, and to integrate with the information security management process. As to the definition of cyber incident response, the Information Systems Communiqué makes a reference to the Communiqué on the Regulations and Guidelines for the Foundation, Missions and Activities of Cyber Incidents Response Teams issued by the Ministry of Transport, Maritime Affairs and Communication on the date of 11 November 2013, which sets forth the principles for the Ministries to set up their institutional cyber incident response teams based on their specific needs in a way that covers the divisions and related agencies.

OUTSOURCING AND CLOUD COMPUTING

Outsourcing

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

As a general principle, financial services companies may not outsource their core operations.

For banking operations, as per the Regulation on the Procurement of Support Services by Banks, banks may outsource certain activities if all the following requirements are met:

- preparation of an action plan and risk management and technical adequacy reports on the outsourcing activities by the bank;
- support service providers have the required corporate structure;
- support service providers have liability insurance, meet certain risk management and information security procedure requirements; and
- the agreement between the bank and support service provider includes certain mandatory provisions.

In addition, the Regulation on Information Systems of Banks and Electronic Banking Services, which entered into force on 1 July 2020, introduced additional measures to be taken by the banks and service providers for outsourcing the services related to the bank's information systems.

For payment institutions, payment service providers can outsource certain activities if the following requirements are met (among others):

- establishment of a monitoring structure for the outsourced services and prepare risk management policies for these services;
- execution of an agreement between the payment institution and the supplier include certain mandatory provisions, which ensure that the supplier complies with the payment regulations; and
- use of information systems and back-ups that are maintained in Turkey by the supplier.

As per the insurance services the Regulation on Insurance Support Services, companies that are subject to the Insurance Law and the Law on Personal Pension Savings may receive support services if the following requirements are met:

- the supplier meets certain corporate requirements (including requirements related to its organisation, structure,

technical capacity, qualified personnel and licences); and
- the agreement between the customer and the service provider includes certain mandatory provisions; and
- the supplier is established in Turkey.

As to the capital market activities, companies that fall under the scope of Capital Markets Law and secondary legislation may only outsource certain activities that do not fall within the scope of their main activity, provided that internal control, risk management and information security procedures are implemented in accordance with the relevant capital markets legislation.

Under the Communiqué on Information Systems Management(VII-128.9), certain institutions (including publicly held companies) that are subject to capital markets regulations can use outsourcing information systems services if the following requirements are fulfilled (among others):

- implementation of a surveillance mechanism for the potential risks to arise from outsourcing information systems management;
- establishment of a written agreement between parties regarding the definitions, termination of the agreement; and
- access rights must be granted.

Under the provisions regarding the continuity of information systems, institutions subject to the Communiqué (No. VII-128.9) shall keep their primary and secondary systems in Turkey.

As per the financial leasing, factoring and financing companies that are subject to the Law on Financial Leasing, Factoring and Financial Companies No.6361 (Law No.6361), may outsource services regarding their information system provided that they retain decision-making power and responsibility regarding to the functions such as management, access, control, audit, updating and obtaining reports or information during the performance of their duties arising from the legislation.

Under the Communiqué on the Management and Audit of the Information Systems of Financial Leasing, Factoring and Financial Companies, the following requirements shall be complied with to be able to use the outsourcing information systems services (among others):

- all systems and procedures within the scope of the outsourcing services must comply with the risk management, security and privacy policies of the companies subject to this law;
- risks that may arise from the unexpected suspension or termination of the outsourcing services, must be managed; and
- access rights granted to the supplier shall only be limited to the information necessary for the performance of the services.

Companies subject to the above Law No 6361 must keep their primary and secondary systems in Turkey. Information systems and their back-ups that are used by an outside service provider for the performance of the services must be kept in Turkey.

Cloud computing

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

As per the Communiqué on the Management and Audit of the Information Systems of Payment Institutions and Electronic Money Institutions, payment service providers may use outsourced cloud computing services for processing, retaining and transferring all types of data. However, obtaining cloud computing service to process, store and transmit sensitive payment data, personal information or any user information by the payment service institution that makes it specific or determinable is only possible if it is procured through a private cloud service model where this external service is provided only through the hardware and software resources specially allocated to the organisation.

In addition, pursuant to the Information Systems Management Communiqué numbered (VII-128.9) published by the Capital Markets Board, the companies, institutions and other legal entities that are obliged to have their information systems located in Turkey, cloud computing is within the scope of said systems. Among the legal entities listed in the Communiqué, are publicly held companies, stock markets and capital markets institutions.

Pursuant to the Regulation on Information Systems of Banks and Electronic Banking Services, which entered into force on 1 July 2020, the information systems and the backups used by service providers to offer outsourcing services or cloud computing services relating to the primary or secondary systems of the banks, are also deemed as primary and secondary systems and shall be located in Turkey. The Regulation enables banks to procure cloud-computing systems as an outsourced service for primary or secondary systems in a special cloud service model through hardware and software sources allocated to a single bank. The Regulation also allows the outsourcing through a community cloud service model, where hardware and software sources allocated to organisations under the supervision of the BRSA were physically shared, but through a way that sources were specifically allocated to each of the bank requires the BRSA's approval.

Pursuant to the Communiqué on the Management and Audit of the Information Systems of Financial Leasing, Factoring and Financial Companies, cloud computing services can be outsourced in accordance with the conditions below:

- For primary and secondary systems, private cloud services which are provided on hardware and software resources specifically allocated to a single company must be used.
- Subject to the approval of the BRSA, the cloud services to be provided may be shared between companies that are subject to the supervision of the BRSA. However, the cloud services must be provided on hardware and software specifically allocated to those companies and the systems of the entities must be serviced separately via a logical separation.
- Subject to the approval of the BRSA, a company that is subject to the Law on Financial Leasing, Factoring and Financial Companies, may use cloud services provided on hardware and software through a logical separation, together with its parent company, subsidiary and the subsidiaries of the parent company.

INTELLECTUAL PROPERTY RIGHTS

IP protection for software

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

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

over software.

Copyright protection is a natural protection that is offered to the creator commencing from the moment the property is offered or made available to the public. There is no application similar to that of a patent application that is required of a copyright holder.

A patent establishes a protection over the invention and grants property rights over it. A patent, after a submission to the local patent office, will be up for assessment and upon a successful display of the patent holder's novelty claims and function, a patent right will be granted. Upon the fulfilment of criteria such as novelty, invented and implementable nature of the invention, yet, business methods and software-implemented inventions cannot be encompassed under patent protection. As for the patent application procedure, an application to the Turkish Patent Office must be lodged to initiate a patent application and the following review procedure.

IP developed by employees and contractors

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

Industrial Property Code numbered 6769 (IPL) sets forth the procedures and principles regarding the protection of employee inventions. The Regulation on Employee Inventions, Inventions Made within the Higher Education Institutions and Inventions Made within the Projects Supported by the Public Authorities, published in the Official Gazette dated 29 September 2017 No. 30195 (Employee Inventions Regulation) further stipulates certain rights and obligations for the employees and the employers in the event of realisation of an invention by the employee. Accordingly an invention created by an employee during his or her employment, (1) while fulfilling his or her duties for the employer (either a public or private institution), or (2) based mainly on the experience and works of the public or private enterprise, is deemed as a 'service invention'. All other inventions, which fall outside the scope of service inventions, are deemed as 'independent inventions'. If the employee makes a service invention then is obliged to notify his or her employer of this invention, and to provide technical explanations regarding the invention. The employer is entitled to demand intellectual property rights on service inventions (partially or in full). If the employer claims rights on the service invention in full, then becomes entitled with all rights relating to the invention as of the date of the written notification received by the employee. If the employer does not claim any rights regarding the service invention within this specified time period, the service invention then is deemed as an independent invention. In that case, the employee may make use of such an independent invention without being subject to any restrictions concerning his or her employment. If the employer claims partial rights on the service invention, then the invention is converted into (and deemed as) an independent invention. If the employer claims a full or partial intellectual property right on the employee invention, then is obliged to pay a reasonable compensation and an award to the employee.

Joint ownership

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

Yes, certain restrictions and joint ownership provisions can exist, both for copyrights and patents. For copyrights, joint ownership provisions and restrictions find form within the Law on Intellectual and Artistic Works (Law No. 5846). Patents, under the Industrial Property Code No. 6769, defines joint ownership as being permissible and regulates restrictions upon the patent holders' IP rights.

These are provisions that detail compensatory payments that a patent holder must make (ie, an employee to the

employer, where the employer will be entitled to receive these payments from the patent holder). Yet, the acceptance of the paying of these payments by the patent holder shall not be read to mean any limitation upon the ownership of the patent.

Trade secrets

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

Trade secrets are protected both under the Turkish Criminal Code (Law No. 5237) and the Turkish Commercial Law (Law No. 6102). Duties of confidentiality are established for a variety of parties, including but not limited to, board members, shareholders, proxies, auditors, employees and contractors.

As for the protections offered during litigation processes where the court records become public knowledge, article 329 of the Turkish Civil Procedure Code (Law No. 6100) can be utilised. This article establishes sanctions against parties that frivolously use the litigation proceedings and do not act in good faith.

Branding

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

IP rights are afforded to protect branding under the Industrial Property Code No. 6769 (IPC). An application, similar to the process of applying for a patent, must be filed to claims property rights over a brand or branding.

Entities active in the fintech industry can follow the process of researching already granted patents and brand rights. Patents and branding rights already granted to existing right holders can be accessed through an online registry held at the Turkish Patent and Brand Authority. A patent or brand registration certificate will be provided to the rightful owner.

Remedies for infringement of IP

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

Penalties pertinent to the breach of copyright holders' rights exists in two forms: civil penalties and criminal penalties. Civil penalties within itself splits into three remedies offered to the copyright holder. These are the right to compensation for past violations, the right to prevent future violations, and compensatory payments. As for criminal penalties, these exists when the breach or violation of IP protections are done for personal reputation or academic gain or commercial gain. The violations that can materialise over an IP right are still the same as those mentioned above.

Patent holders are afforded a more encompassing list of property rights. However, software-implemented inventions or business models are not a part of patent protections unlike the generally afforded protections by US law to software.

COMPETITION

Sector-specific issues

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

The Turkish Competition Board recently announced a seminal decision relevant to the fintech industry where it revoked

the exemption rights granted to the Interbank Card Centre (ICC), which comprises 13 Turkish banks and the activities it performs under the ICC Express brand, where it acted as a payment service provider, a digital wallet and payments data house. The original licence that ICC Express held was only to permit the licence holder to act as a system operator responsible for as a clearinghouse for exchanges and authorisation transactions. The revocation of this licence, not effective until mid-2020, presents a risk as to how antitrust provisions may be applied to fintech companies that participate in their designated markets via an exchange.

TAX

Incentives

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

There are a variety of tax incentives that are applicable to entities that are active in the technology industry, albeit these incentives are not exclusive to the fintech industry and under most circumstances an entity's entitlement to these incentives shall require that a sectoral analysis of the applicant be performed on a case-by-case basis. Therefore, the fintech industry shall be considered as falling under the technology industry and at this point the level of research and development activity and the novel technology that is being output shall play a significant role in being granted the said tax incentives.

As per the Technology Developing Zones Law (Law No. 4691) a taxpayer whose primary place of business is located within a designated tech-zone shall be excluded from the duty of paying corporate tax and income tax until 31 December 2023. Any income derived from software and R&D activities shall also fall under this exclusion from the duty to pay corporate tax and income tax.

Increased tax burden

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

A new Digital Service Tax was introduced with the Law on the Digital Service Tax and Amendments on Certain Laws & the Decree No. 375 (Law No. 7194), which was published in the Official Gazette on 7 December 2019 and will be effective within three months of the Law's publication in the official gazette. Revenues gained from the activities that fall under the definition of digital services and intermediary services provided in the digital environment for the above services shall be subject to digital service tax. Taxpayers exceeding a revenue threshold of €750 million in global revenue and 20 million liras in local revenue will be subject to a digital service tax at a rate of 7.5 per cent.

The transactions carried out by the fintech companies that fall within the scope of the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493) are subject to Banking Insurance and Transaction Tax (BITT) at a rate of 5 per cent in general (although some transactions are subject to 1 per cent or zero per cent BITT).

IMMIGRATION

Sector-specific schemes

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

There is no specific immigration scheme for fintech businesses to recruit any staff from abroad. The Law on Foreigners Work Permits (Law No. 4817) together with its supplemental regulations and the Turkish Citizenship Law (Law No. 5901) are the primary pieces of legislation that regulate the status of foreigners wishing to reside in Turkey, either under a work permit or after a citizenship application.

Persons who provide significant investment and employment opportunities, or are expected to provide significant improvements to the technology and sciences sector, can receive Turkish citizenship under article 12 of Law No. 5901.

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

UPDATE AND TRENDS

Current developments

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

A vibrant and developing fintech industry exists in Turkey. Even though there is no specific definition within key legislation applicable to crypto-assets, there is no restriction on engaging in these cryptocurrency transactions in Turkey. There have been developments in the legal and regulatory landscape for equity-based crowdfunding, payments, open banking and the protection of personal data. The recent Amendment to the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions reorganised the regulatory framework of the payment and electronic money services and introduced new definitions of account information services and payment initiation services in line with the European PSD2 Regulation. This Amendment is expected to enable the entry of new actors to the fintech market, increase cooperation with the banking sector and facilitate the development of fintech sector in Turkey. The BRSA set forth the legal framework for open banking with the Regulation on Banks' Information Systems and Electronic Banking Services (Regulation) issued on the Official Gazette on 15 March 2020. The provisions concerning open banking will enter into force on the date of 1 January 2021. Open banking is expected to have a significant impact on customers' banking transactions habits and constitute the initial step for fintech companies for a higher integration in the financial services.

LAW STATED DATE

Correct on:

Give the date on which the above content is accurate.

22 July 2020.