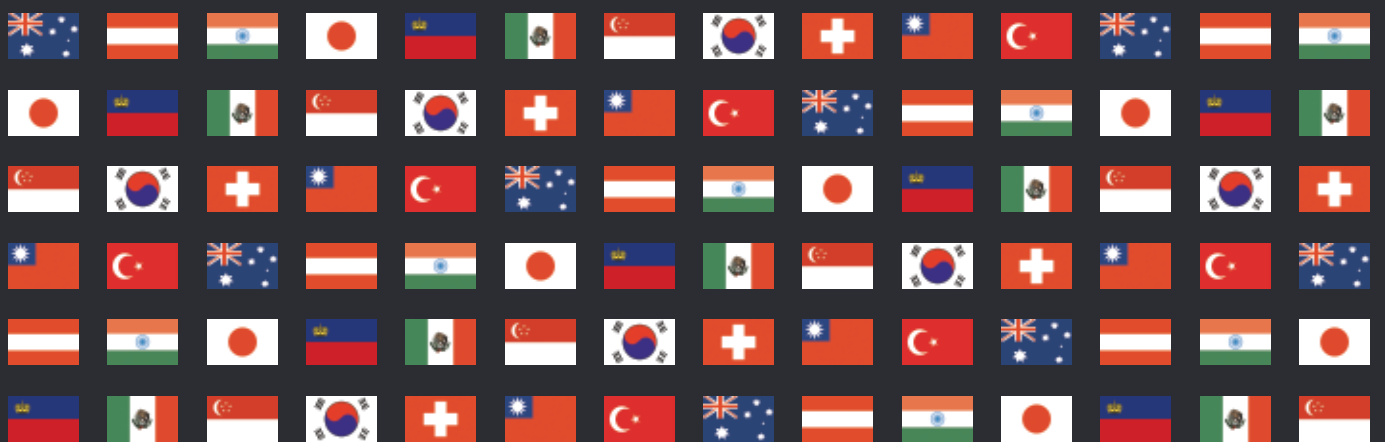


Cryptoassets & Blockchain 2021



Turkey

Cigdem Ayozger Ongun and Filiz Piyal

SRP Legal

GENERAL LEGAL AND REGULATORY FRAMEWORK

Legal framework

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

There is no specific legislation in Turkey governing cryptoassets and business transactions involving cryptoassets, and there is still ongoing debate regarding the legal definition of cryptoassets. Recently, the Information and Communication Technologies Authority of Turkey (ICTA) published a research study on cryptocurrencies in September 2020 (the ICTA Study). Under the ICTA Study, its definition of cryptocurrencies is 'digital or virtual currencies that use cryptography for ensuring security'. Although ICTA is not the main authority for cryptoassets, referring to a definition of cryptocurrencies by a regulatory authority is a noteworthy development.

Until the Turkish regulatory authorities agree on a specific legal definition of cryptoassets (eg, commodity, virtual money and currency), it will be difficult to establish a legal framework. For example, electronic money services and institutions are regulated by the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (Law No. 6493); however, this law does not cover cryptoassets and business transacting with cryptoassets. The Banking Regulatory Supervision Authority (BRSA) stated this in Press Release 2013/32. However, according to an announcement by the undersecretary of treasury, a working group has been established to enhance a regulatory framework for cryptoassets.

Government policy

- 2 | 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 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. If the 11th Development Plan is realised, it will be possible to take concrete action to establish a regulatory framework for cryptoassets.

Regulatory authorities

- 3 | Which government authorities regulate cryptoassets and businesses transacting with cryptoassets?

Owing to a gap in existing legislation, no specific government authority regulates cryptoassets and business transactions involving cryptoassets. In Press Release 2013/32 (25 November 2013) the BRSA declared that bitcoin does not qualify as electronic money under Law No. 6493 and, therefore, will not be regulated under that law because it is not backed by collateral or guarantee issued by an official or private entity. Similarly, on 1 December 2017, the Capital Markets Board of Turkey (CMB) issued a letter to the Capital Markets Association of Turkey (CMA) stating that cryptocurrencies are not regulated as derivative financial instruments within the framework of the Capital Markets Law (Law No. 6362). Therefore, under existing conditions, neither the BRSA nor the CMB is considered to be a competent regulatory authority for cryptoassets. However, the undersecretary of treasury has set up a working group consisting of different authorities such as the BRSA, the Central Bank of Turkey (TCB) and the CMB.

The ICTA Study mentions prospective regulation to be issued by the CMB indicating that the CMB may be authorised to supervise and regulate cryptocurrencies, pointing out that the CMB's prospective regulations will support the market's growth and increase consumer trust. This is also a sign that the CMB may have begun preparing a regulation on cryptocurrencies.

Regulatory penalties

- 4 | What penalties can regulators impose for violations relating to cryptoassets?

Because cryptoassets are not specifically regulated under Turkish legislation, no violations related to cryptoassets are defined. Similarly, cryptoasset transactions are 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 related law. For example, the CMB reviewed a complaint regarding a cryptocurrency platform that had allegedly transferred cash obtained from sales of cryptocurrencies to its personal bank account and determined that this violation fell within the scope of criminal liability under articles 157 and 158 of the Criminal Code (5237), which regulate fraud and white-collar crime.

Court jurisdiction

- 5 | Which courts have jurisdiction over disputes involving cryptoassets?

No particular court has jurisdiction over disputes involving cryptoassets. However, violations relating to cryptoassets mainly result in criminal or civil liability. Accordingly, the criminal courts have jurisdiction if a

crime involving cryptoasset is committed (eg, fraud, theft or white-collar crime) and individuals who suffer damages owing to a business transaction involving cryptoassets have the right to seek damages in the civil courts.

Legal status of cryptocurrency

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

The Turkish legislative framework includes no specific provisions prohibiting individuals from owning or possessing cryptocurrency. Various cryptocurrency exchange platforms operate in the Turkish fintech ecosystem, offering cryptocurrency trading and exchange services. In addition to cryptocurrency exchange platforms, other businesses, such as real estate and informatics companies, accept cryptoassets as a payment method. However, none of these businesses is licenced under the BRSA, the CMB or any other Turkish regulatory authority; therefore, individuals who transact with cryptoassets in their businesses must bear their own risk.

Fiat currencies

7 | 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 the project to develop a blockchain-based digital currency backed by the TCB. If the development plan is realised as planned, this cryptocurrency will be an alternative digital fiat currency accepted in Turkey and under international trading systems.

Industry associations

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

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

CRYPTOASSETS FOR INVESTMENT AND FINANCING

Regulatory threshold

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

The regulatory authorities consider several criteria defined in the legislation to assess whether a cryptoasset is subject to regulation.

Presently, none of the regulatory bodies has declared that cryptoassets fully fall under the scope of the regulatory framework.

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

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

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

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

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

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

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

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

Investor classification

10 | How are investors in cryptoassets classified and treated differently?

Turkish law does not classify cryptoasset investors.

Initial coin offerings

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

Because Turkish law neither defines cryptoassets nor sets out a framework for cryptoasset regulation, the legal status of ICOs and the restrictions regarding investment in ICOs are unclear. In Resolution 47/1102 (27 September 2019) the CMB stated that ICOs mostly fall outside the scope of its supervision. The CMB also reiterated that ICOs may have similar aspects to public coin offerings or crowdfunding activities depending on their nature, and in that case, ICOs

may fall under the supervision of the CMB. The CMB has also issued the Communiqué on Equity Crowdfunding (III-35/A.1), which regulates fundraising from the public through equity by excluding other similar crowdfunding activities such as ICOs and security token offerings.

Security token offerings

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

Stablecoins

13 | 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 will have 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.

Airdrops

14 | 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.

Advertising and marketing

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

Because the legal status of cryptoassets is not yet clear, the advertising and marketing of cryptoassets used for investment and financing are not subject to specific regulation or restriction. However, in cases where certain types of cryptoasset can be considered to be 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)

Trading restrictions

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

As ICO/STO/stablecoin offerings and trading are not currently subject to regulation, no restrictions apply to these investors. In cases where the CMB determines that an offering and its trading qualifies because the issuance of securities, investors will be bound to the requirements and restrictions set out under Law No. 6362, and the Communiqué on Sales of Capital Market Instruments (II-5.2).

Crowdfunding

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

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

Transfer agents and share registrars

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

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

Anti-money laundering and know-your-customer compliance

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

No specific AML and KYC requirements or regulatory guidelines apply specifically to the offering of cryptoassets in Turkey. However, numerous cryptocurrency trading and exchange platforms actively provide services to customers through cooperation with banks in the Turkish market. In practice, these trading and exchange platforms may voluntarily undertake to comply with AML/KYC requirements as

best practice. Accordingly, some of the cryptoasset businesses in the Turkish market appoint compliance officers, establish KYC procedures or prepare documentation in this regard.

Sanctions and Financial Action Task Force compliance

20 | 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?

No specific laws and regulations apply in the context of cryptoassets, but in Report T-001-3.47 (20 November 2014), the Financial Crimes Investigation Board of Turkey (MASAK) defined money transfer transactions to purchase bitcoin as suspicious activity. However, the report only referred to bitcoin and did not cover other cryptoassets such as ethereum. In its latest Suspicious Transaction Reporting Guideline (11 September 2019), MASAK amended the definition of a 'suspicious transaction' regarding cryptocurrency transactions and declared that transfers made to purchase cryptocurrency will be deemed to be suspicious in cases of:

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

Under these circumstances, banks or other obliged financial institutions must inform MASAK of suspicious activities.

Further, the FATF adopted an interpretive note to Recommendation 15 on New Technologies, clarifying the FATF's previous amendments to the international standards on virtual assets. The FATF describes 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. Being a member of the FATF since 24 September 1991, Turkey must adopt these recommendations and has until June 2020 to take prompt action in the context of virtual-asset activities in line with the FATF recommendations.

CRYPTOASSET TRADING

Fiat currency transactions

21 | 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.

Exchanges and secondary markets

22 | 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.

Custody

23 | 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 the Capital Markets Law (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.

Because cryptoassets are not deemed to be capital market instruments by the CMB, it is unclear whether cryptoasset custodians can be regulated under Law No. 6362. If cryptoassets are ever considered as a security or other capital market instrument under that law, businesses that offer custody services for cryptoassets may be subject to licensing requirements in the same way as other authorised institutions holding securities.

Broker-dealers

24 | How are cryptoasset broker-dealers regulated?

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

Decentralised exchanges

25 | What is the legal status of decentralised cryptoasset exchanges?

The legal status of decentralised cryptoasset exchanges is not defined in Turkey because no specific laws and regulations govern cryptoasset exchanges. Alternatively, various cryptocurrency exchange platforms are established in Turkey to provide decentralised cryptoasset exchange services.

Peer-to-peer exchanges

26 | 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.

Trading with anonymous parties

27 | Does the law permit trading cryptoassets with anonymous parties?

The existing regulatory framework includes no specific regulation for cryptoasset trading with anonymous parties.

Foreign exchanges

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

No. Because no specific laws and regulations govern cryptoasset exchanges in Turkey, foreign cryptocurrency exchanges are not subject to specific regulation for cryptoasset exchanges.

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

No specific laws apply to Turkish citizens wishing to exchange cryptoassets on a foreign exchange because cryptoassets are not legally recognised. Although several cryptocurrency platforms provide foreign exchange services to their customers, these businesses are not recognised by any Turkish regulatory body. 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 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, cannot be denominated in foreign currency or be indexed to foreign currency, except in circumstances determined by the Ministry of Treasury and Finance. Accordingly, depending on where the exchange of cryptoassets takes place and the parties of the exchange are residing at the foreign currency ban or the exceptions arising from the Decree 32 may be applicable.

Taxes

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

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

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

The gains derived from cryptocurrency do not fall into any of these categories. If cryptoassets were to be qualified as a commodity in Turkey, the income derived from the exchange of cryptoassets would be subject to income tax as commercial income (depending on the volume and continuity of the exchange). Also, in line with the Corporate Income Tax Law (Law No. 5520), any corporate income (eg, income derived from cryptocurrency) is subject to taxation.

Because there is no specific legal definition of cryptoassets in Turkey, there is 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 that law because the exchange of cryptoassets cannot be included in the type of transactions listed in article 1 of Law No. 3065. However, if an intermediary service is provided for the exchange of cryptoassets, this business will be subject to Law No. 3065.

CRYPTOASSETS USED FOR PAYMENTS

Government-recognised assets

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

The government has not recognised any cryptoasset as a lawful form of payment yet. However, according to the 11th Development Plan of Turkey, which was published in the Official Gazette on 23 July 2019, including the Turkish presidency's 2020 Annual Programme, the Central Bank of Turkey is currently working to issue a blockchain-based national digital currency. Accordingly, the design and software development stages of the instant payment system will be completed and testing will take place.

Bitcoin

32 | Does Bitcoin have any special status among cryptoassets?

Although bitcoin has greater public recognition than other cryptoassets, it has no legal status in Turkey. 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.

Banks and other financial institutions

33 | Do any banks or other financial institutions allow cryptocurrency accounts?

Presently, no public or private Turkish banks allow cryptocurrency accounts; however, cryptoasset exchange or trading platforms that provide bank payment options open corporate accounts for their services. These accounts are not specific to cryptocurrencies and allow the exchange or trading platform only to accept or make payments through their bank accounts. However, one Turkish investment bank recently invested in a cryptocurrency exchange platform to provide a secure cryptocurrency exchange and storage service. Banks are monitoring these cryptoasset services with interest and are testing out experimental technologies because customer demand for cryptoassets is on the increase.

CRYPTOCURRENCY MINING

Legal status

34 | 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.

Government views

35 | 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. The Capital Markets Board of Turkey and the Ministry of Finance are conducting studies to determine a regulatory framework for cryptoassets.

Cryptocurrency mining licences

36 | 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.

Taxes

37 | How is the acquisition of cryptocurrency by cryptocurrency mining taxed?

No specific laws and regulations govern the taxation of income derived from the acquisition of cryptocurrency by cryptocurrency mining activities, and there are no Tax Administration rulings or court decisions on the taxation concerning the income generated by the acquisition of cryptocurrency by cryptocurrency mining. However, cryptocurrency mining activities are likely to be considered as a commercial activity because miners are paid in exchange for verifying blocks and transactions on the blockchain network. Therefore, if the cryptocurrency obtained by way of cryptocurrency mining is qualified as income, the income to incur owing to cryptocurrency mining activities may be considered as generating commercial income depending on the volume and continuity under the Income Tax Law (Law No. 193). In terms of value added tax, because cryptocurrency mining and the acquisition of cryptocurrency may only be carried out online, the applicability of value added tax for a cryptocurrency mining service depends on if the delivery of that service is in Turkey. The Law on Digital Services Tax and Amending Various Laws and the Statutory Decree (Law No. 7194) has been promulgated according to the Official Gazette of 7 December 2019. To become effective, beginning from the third month after Law No. 7104 publication, 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.

BLOCKCHAIN AND OTHER DISTRIBUTED LEDGER TECHNOLOGIES

Node licensing

38 | 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.

Restrictions on node operations

39 | 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.

DAO liabilities

40 | 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.

DAO assets

41 | 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.

Open source

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

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

Smart contracts

43 | 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).

Patents

44 | Can blockchain/DLT technology be patented?

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

UPDATE AND TRENDS

Recent developments

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

Because the regulatory framework does not explicitly restrict or prohibit individuals from carrying out business transactions involving cryptoassets, the Turkish cryptocurrency market has grown rapidly. The Crypto Currency Research Report, containing general information about cryptocurrencies, utilisation areas and status in Turkey and around the world, conducted by the Sectoral Research and Strategy Development

Department, was published on the Information Technologies and Communication Authority (ICTA) website.

According to research conducted by a private banking company in Turkey, one in five people owns cryptoassets. The Industry and Technology Road Map for 2023, which was announced by the Industry and Technology Ministry on 18 September 2019, includes significant detail regarding blockchain and distributed ledger technology (DLT). Accordingly, the government plans to establish the National Blockchain Infrastructure to utilise DLT in public administration. The government has also set out its plans to develop a regulatory sandbox for blockchain applications. Also, the Istanbul Clearing, Settlement and Custody Bank, known as Takasbank, has announced a physically backed blockchain-based platform that enables users to transfer electronically stored physical gold at the Borsa Istanbul Stock Exchange.

Although there are no specific laws and regulations for cryptoassets and blockchain/DLT technology in Turkey, the government and institutions are closely watching blockchain technology to implement these new technologies into public institutions and practices.

The recently published ICTA Study provides some important sectoral insights and information, namely:

- since 2020, cryptocurrency holders in Turkey number more than 2.4 million;
- Turkey ranks as 14th in the world for the number of cryptocurrency traders, constituting a 2.14 per cent global share; and
- the most invested-in cryptocurrencies in Turkey – bitcoin, ripple, digibyte, bitcoin cash and stellar lume – are rated as the top five.

The ICTA Study reveals that Turkey is working towards building its own cryptocurrency in addition to foreign cryptocurrency. Within that scope, a domestic cryptocurrency by the Central Bank of Turkey is planned for issue.

As to the sectoral developments, the Turkish crypto industry is growing rapidly to become one of the largest crypto exchanges in the world, offered Turkish cryptocurrency trading options to Turkish users in 2020. Huobi, the Singapore-based exchange, continues to make large inroads in Turkish lira.

Coronavirus

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

During the covid-19 pandemic, certain relief regulations have been stipulated. These amendments affect labour law, commercial law, tax law and finance law, to working conditions, credit opportunities, employee supportive payments, profit distribution regulations and the practicalities and delays relating to tax payments. Civil and criminal proceedings and enforcement proceedings have been postponed and institutions have started accepting online applications only. However, this has not hindered the application of laws. There have been no relief programmes directly involving cryptoassets and blockchain; however, because cryptoassets and blockchain technology interacts with several aspects of the law, such as banking, tax, insurance, corporate governance, copyrights and securities, the relief programmes may ultimately affect the use of cryptoassets and blockchain technology too.

Despite some sectors having been adversely affected, some companies within specific sectors have profited considerably during this period.

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

Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security			
Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)