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CURRENT DEVELOPMENTS IN CRYPTO ASSETS

On 16 April 2021, Turkey published its first regulation regarding the use of crypto assets in payments, the Regulation Prohibiting the Use of Crypto Assets in Payments (the "**Regulation**") by the Central Bank of the Republic of Turkey. Accordingly, crypto assets are defined as "intangible assets created virtually by using the distributed ledger technology, or a similar technology that is distributed through digital networks, and are not qualified as fiat money, bank money, electronic money, payment instrument, security, or any other capital market instrument." Following the Regulation's enactment, on 1 May 2021, crypto asset service providers were included among the obliged parties within the scope of the Law on the Prevention of Laundering of Crime Revenues (the "**Law**").

The Definition of Crypto Assets

The use of the term "crypto assets" instead of "crypto money" in the Regulation indicates the differences of crypto assets from fiat currencies and the commodity nature of crypto assets. As per the Recommendations of the Financial Action Task Force (*FATF*) (the "**Recommendations**"), virtual assets are defined as "a digital representation of a value that can be digitally traded or transferred and can be used for payment or investment purposes." For the purposes of the Recommendations' implementation, countries should consider virtual assets as "property," "proceeds," "funds or other assets," or other "corresponding value."

The Nature of Crypto Assets

With the Regulation, crypto assets are excluded from direct or indirect payment instruments. The Regulation also states that payment service providers cannot develop business models in which crypto assets will be directly or indirectly used in the performance of payment services and electronic money issuance, and cannot provide any services related to such business models.

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It is prohibited for payment and electronic money institutions to mediate on platforms that offer trading, custody, transfer, or issuance services for crypto assets, or to mediate transfers of funds to be made from such platforms, and it is understood from the provision that payment service providers, other than payment and electronic money institutions, are excluded from the scope of this prohibition. In other words, banks are not prohibited from performing these transactions.

The Definition of Crypto Asset Service Provider

Recently, crypto asset service providers were included among the obliged parties within the scope of the Law. Although the Law does not provide a definition for crypto asset service providers, it signalled that crypto assets, which are not recognized as payment instruments under the Regulation, may be used in Turkey, and additional regulations relating to such crypto assets will be introduced.

As per the Recommendations, crypto asset service providers are defined as any individual or legal entity (a) who is not specified otherwise under the Recommendations, and (b) who conducts one or more of the following activities or operations for, or on behalf of, other individuals or legal entities:

- (i) Exchange between virtual assets and fiat currencies;
- (ii) Exchange between one or more forms of virtual assets;
- (iii) Transfer of virtual assets;
- (iv) Safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and
- (v) Participation in, and provision of financial services related to, an issuer's offer and/or sale of a virtual asset.

In addition, the Financial Crimes Investigation Board, in a guideline on crypto service providers published on its website on 4 May 2021, defined crypto asset service providers as institutions and organizations that mediate the trading of crypto assets through electronic transaction platforms.

Crypto Asset Service Providers' Obligations Under the Law

As per the Law, crypto asset service providers are obliged to take the necessary measures to know their customers and those acting on behalf, or on account, of their customers, and to ascertain the transaction's real beneficiary.

Crypto asset service providers are also obliged to:

- (i) Notify the Directorate of the Financial Crimes Investigation Board (the "**Directorate**"), upon encountering any suspicious transaction, regardless of the amount of the transaction;
- (ii) Provide all information and documents that may be requested by public institutions and organizations, individuals, and legal entities and non-legal entities, the Directorate, and audit staff;

KOLCUOĞLU DEMİRKAN KOÇAKLI

(iii) Inform the Directorate of the transactions they are a party to, or intermediary of, that exceeds the amount to be determined by the Ministry of Treasury and Finance; and

(iv) Keep and submit all documents regarding its obligations and transactions.

Upon the violation of certain obligations stated above, administrative fines will be imposed, and those who fail to comply with the obligations above will be sentenced to imprisonment, and will be subject to a judicial fine or security measures.

Under the Regulation on Measures to Prevent Money Laundering and Terror Financing, branches, agencies, representatives, commercial representatives, and similar affiliated agents (located in Turkey) of the crypto asset service providers that are headquartered abroad are also considered to be obliged parties. In terms of crypto asset service providers headquartered in Turkey, branches, agencies, representatives and commercial representatives, and similar affiliated agents that are located abroad, are obliged to apply the measures included in the Regulation on Measures to Prevent Money Laundering and Terror Financing to the extent permitted by the relevant legislation and competent authorities of the country in which they carry out their operations.

New Regulations Awaited

Currently, there is no regulation in Turkey regarding crypto asset service providers and the specific criteria they must meet. However, according to the Recommendations, crypto asset service providers should be required to be licensed or registered, at least in the jurisdiction(s) in which they are established. Within the scope of the Markets in Crypto Assets Regulation (*MiCA*) that the European Commission has been drafting since 2018, and which is currently at the proposal stage, crypto asset service providers must comply with additional specific requirements in terms of the initial capital, IT infrastructure, corporate structure, and the management's and, indirectly, the managers' suitability.

It is expected that similar regulations will be introduced in Turkey and the situation will be clarified in the near future.

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