



A NEW ASSET CATEGORY IN THE TURKISH CAPITAL MARKET: **CRYPTO ASSETS**

A significant step has been taken towards the legal regulation of crypto assets under Turkish Law, with the Draft Bill on Crypto Assets submitted to the Grand National Assembly of Turkey (TBMM).

The draft bill on crypto-assets was submitted to the Grand National Assembly of Turkey on 16.05.2024 as the “Draft Bill Amending the Capital Markets Law No. 6362” (“**the Draft Bill**”).

If the Draft Bill is enacted, the “Crypto Assets” will be legally regulated as a new type of asset under Turkish Law. The Draft Bill requires the crypto asset service providers to obtain a license and imposes comprehensive obligations by supervising the activities in the crypto market. In particular, the Draft Bill aims to protect the customers by regulating the trading activities of the crypto assets based on blockchain technology on the platforms.

The Draft Bill has increased the importance of the secondary regulations by authorizing the Capital Markets Board (“**Board**” or “**CMB**”) on many issues. It is important to carefully follow the secondary regulations to be issued by the Board, if the Draft Bill is enacted.

I. EXECUTIVE SUMMARY

- A. The Draft Bill does not aim to regulate blockchain technology, but rather the trading activities of crypto assets based on this technology.
- B. The Draft Bill establishes the definition of crypto-assets and obliges crypto-asset service providers to obtain permission from the CMB. If the Draft Bill is enacted, the establishment and activities of cryptocurrency exchanges, which are the crypto asset service providers, will be subject to the permission and supervision of the CMB. The CMB is authorized to issue secondary regulations to establish principles and guidelines on these matters.
- C. The Draft Bill stipulates that the members of the platform’s board of directors will be subject to criminal liability for embezzlement according to their faults and their personal bankruptcy may be declared by the court limited to the damage they have caused to customers.
- D. Within the Draft Bill, the assets of the service providers and customer assets will be segregated. For the protection of customer assets, the cash and crypto assets of customers cannot be seized, pledged, or subjected to precautionary measures due to the debts of the crypto asset service providers.

- E. In accordance with the Law No. 2004 on Enforcement and Bankruptcy and the Law No. 6183 on the Procedure for the Collection of Public Receivables, the cash and crypto assets of customers can be electronically queried, and all kinds of administrative and judicial requests related to these assets, such as measures and seizures, must be fulfilled by the crypto asset service providers.
- F. Pursuant to the Draft Bill, the existing crypto asset service providers shall obtain permission from the CMB within one (1) month after the enactment of the Draft Bill, and those who fail to obtain the permission shall cease their activities within three (3) months.

II. REGULATIONS INTRODUCED BY THE DRAFT BILL

- 1) With the enactment and entry into force of the Draft Bill, the following definitions will be established in the Legislation of CMB:
- a. **“Crypto Asset”** is defined broadly and inclusively as *“intangible assets that can be generated and stored electronically using distributed ledger technology or a similar technology, distributed over digital networks, and can express value or rights”*. In addition, it is stated in the general preamble of the Draft Bill that the crypto assets can be categorized as “securities”, “electronic money”, “utility tokens” and “crypto assets that constitute a proof of ownership similar to copyright”.
 - b. **“Crypto Asset Service Provider”** is defined as *“The platforms, crypto asset custody service providers and other organizations designated in the regulations to be established based on this Legislation to provide services in relation to crypto assets, including the initial sale or distribution of crypto assets”*. This broad definition refers to cryptocurrency markets in practice.
 - c. **“Crypto Asset Custody Service Providers”** will be authorised, again by the Board, and will perform *“the custody and management of the crypto assets of the Platform's customers or the private keys that provide the right to transfer these assets from the wallet, or other custody services to be determined by the Board”*. **“Platform”** is also broadly defined as *“organizations where one or more of the crypto asset trading, initial sale or distribution, clearing, settlement, transfer, custody and other transactions that may be determined by the Board are conducted.”*
 - d. **Wallet**, on the other hand, is defined more broadly than cold and hot wallets as *“software, hardware, systems or applications that enable the transfer of crypto assets and the online or offline storage of these assets or the private and public keys related to these assets”*. Customers are provided with the public key of their wallet addresses and the wallet addresses are controlled by the platforms. The cash and crypto asset amounts deposited into the account by the customers are transferred to the platforms' bank accounts and wallets controlled by the platforms. In return for the transferred amounts, registered Turkish Lira and crypto asset balances are created on the platform on behalf of the customers.
- 2) The Draft Bill introduces regulations for all market players as follows:
- a. The establishment of the crypto asset service providers, including crypto markets, will be subject to the Board's permission. The principles regarding their establishment, commencement of operations, shareholders structure, management, personnel, organization, capital and capital adequacy, obligations, information systems, and technological infrastructure, share transfers, activities, temporary or permanent suspension of activities, and other principles to be complied during operations will be determined by the Board. The crypto asset service providers will establish internal control systems for security and comply with the criteria set by the Scientific and Technological

Research Council of Turkey (“TUBITAK”) for their technological infrastructure. Furthermore, they will be subjected to audit while maintaining membership in the Turkish Capital Markets Association to ensure representation within a professional organization. In addition, the crypto asset service providers will be subject to supervision and will be required to be a member of the Turkish Capital Markets Association and will be represented by a professional organization.

- b. The Platforms based abroad are not directly banned, however, a crypto service provider must create a Turkish website, establish a workplace in Turkey, and conduct promotion and marketing activities in Turkey subject to Board permission. The foreign platforms not wishing to be subject to Board permission can serve Turkish-resident customers without a Turkish branch and marketing in the English language, however, additional criteria for the determination whether these activities target Turkish-resident customers will be set by the Board.
 - c. The procedures and principles regarding the trade and initial sale or distribution of the crypto assets; clearance, transfer, and custody will be regulated by the Board. Platforms will be required to establish a surveillance system to detect and prevent market-distorting actions and transactions. Transparency will be ensured by imposing an obligation to record all transfer transactions conducted on the platforms.
 - d. The regulations imposing obligations on banks will require the opinion of the Banking Regulation and Supervision Agency (BDDK).
 - e. Contracts between customers and the crypto asset service providers will be mandatory, and these contracts can be signed remotely via communication tools or other methods approved by the Board. In this respect, the identification of customers will be conducted. Customers will be held responsible for the risks of the crypto asset market.
 - f. Crypto influencers and crypto advertisements will be supervised by the Board within the extent of information abuse, market fraud, and market-distorting behaviour.
 - g. Within the framework of the secondary regulations of the Board, companies will be able to issue capital market instruments such as stocks, bonds and notes as the crypto assets without being included to the Central Registry Agency system.
- 3) Possible disputes between customers and the crypto asset trading platforms will be subject to general provisions. In other words, since the crypto assets are not defined as capital market instruments, the compensation provisions carried out by the Investor Compensation Centre will not apply to the crypto assets. It is stated that granting operational licenses to the platforms by the Board does not mean that transactions are under public guarantee. Emphasizing the abuses experienced worldwide and in Turkey, it is regulated that the crypto asset service providers will be liable under the provisions of the Turkish Code of Obligations for danger liability for acts such as cyber-attacks and information security breaches. The Board will be able to determine the bare minimums in the contract between the customer and the crypto service provider. Any contractual terms that eliminate or limit the liability of providers to their customers will be invalid.
- 4) The Draft Bill introduces provisions for the implementation of administrative and judicial requests such as seizure, attachment, and similar measures regarding customers' cash and crypto assets, exclusively through the crypto asset service providers, enabling electronic inquiries and electronic seizures if necessary.
- 5) The Draft Bill introduces provisions to keep customers' cash and the crypto assets segregated from the assets of the crypto asset service providers. In this regard, it is stipulated that customer cash and the crypto assets cannot be seized, pledged, or subjected to precautionary measures due to the debts of the crypto asset service providers, thereby aiming to protect customer assets.

- 6) For the crypto assets that will be subject to the pledge agreement, similar to the pledge agreements that are subject to financial contracts regarding capital market instruments and derivative instruments, the Law No. 6750 on Movable Pledge in Commercial Transactions will not apply.
- 7) The platforms will pay 1% of their revenues, excluding the previous year's interest income, to the Board and 1% to TUBITAK each year.
- 8) The Draft Bill stipulates that the platform board members will be subject to criminal liability for embezzlement according to their faults and may be personally declared bankrupt by the court limited to the damage caused to customers.
- 9) Various measures have been taken for the implementation of the Draft Bill, granting the Board the power to block access, remove content, and impose administrative fines, as well as to apply the precautionary measures of the Capital Markets Law to the crypto asset market.
- 10) The Board is authorized to determine the principles and guidelines for investment consultancy and portfolio management for the crypto assets.

III. ENFORCEMENT AND COMPLIANCE

In the event of the enactment of the Draft Bill, the legal regulations will come into effect as of the publication date and within this scope;

- i. According to the compliance and transition provisions, the existing service providers must apply to the Board within **one (1) month** with the documents to be determined by the Board and obtain a permit and authorization certificate.
- ii. On the other hand, those who do not intend to continue their activities will liquidate within **3 (three) months** without harming the interests of the customer.
- iii. Those wishing to start operations after the enactment of the Draft Bill must obtain permission from the Board.
- iv. The non-resident crypto asset service providers that do not adapt their activities to the regulations in the Draft Bill will be obliged to terminate their activities for Turkish residents within **3 (three) months** following the date of enforcement of the Legislation.
- v. Providing services without obtaining permission will constitute the crime of unauthorized service provision activity.

For detailed information, you can contact us.



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The assessments contained in this memorandum do not constitute legal advice or legal opinion and Aksu-Çalışkan-Beygo Attorney Partnership is not responsible for these assessments in any way. It is recommended to seek legal consultation for questions and problems within the scope of this memorandum.

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