

### NEW REGULATIONS IMPACTING THE CRYPTO ASSET SECTOR

Law No 7518 on Amendment of Capital Markets Law (the “**Law**”) has been published on 2 July 2024, and has entered into force on the same date. Upon its enactment, the Law established the procedures and principles applicable to entities in the crypto-asset sector and the services provided by such entities. In this respect, the new regulations introduced by the Law and the principles published by the Capital Markets Board (CMB) following the entry into force of the Law are summarized below.

#### 1. Definitions Specific to the Crypto Asset Sector

The Law distinguishes itself by elucidating the definitions of key concepts specific to the crypto asset ecosystem. In this context, crypto assets are defined as intangible assets that can be created and stored electronically using distributed ledger (or similar) technology; they are distributed over digital networks and can express values or rights. Despite “intangible nature”, the Law reserves the provisions of the Law on the Protection of the Value of Turkish Currency, and the relevant legislation regarding all kinds of transactions made with crypto assets.

Furthermore, entities wherein one or more of crypto asset trading, initial sale or distribution, clearing, settlement, transfer, custody and other transactions can be carried out are defined as “platforms”. Platforms, along with crypto asset custody service providers and other entities designated to provide services in relation to crypto assets, are collectively defined as “crypto asset service providers”.

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## **2. Institution with Regulatory and Supervisory Authority**

The Law authorizes the CMB to establish regulatory procedures, make general and context-specific decisions, and impose sanctions on crypto assets that confer rights specific to capital markets instruments. Additionally, the CMB is empowered to issue secondary regulations to guide the implementation of various elements that are not currently regulated in the Law. The authorities of other institutions and organizations (relevant Ministries, Financial Crimes Investigation Board, etc.) arising from other legislative provisions that may be applicable to crypto-asset transactions are reserved. Furthermore, within the framework of principles determined by the CMB, technical criteria regarding the technological characteristics of crypto assets may also be introduced with the opinion of TÜBİTAK (The Scientific and Technological Research Council of Türkiye) or other necessary institutions.

## **3. Operating License and Other Principles**

Crypto asset service providers must obtain an operation license issued by the CMB to commence operations, complying with additional requirement specified in forthcoming secondary regulations. The CMB is also entitled to determine the principles regulating the activities of platforms, including their capital and capital adequacy, information systems, technological infrastructure, permissible activities, and conditions for temporary or permanent suspension of operations. While the Law does not provide detailed rules on these principles, it is anticipated that secondary regulations to be issued by the CMB will clarify these implementation guidelines.

It is important to note that the Law establishes criteria regarding the common aspects of eligibility for crypto asset service providers. Shareholders must not be in a state of liquidation/bankruptcy and must not have been convicted of certain offenses listed in the relevant laws. Additionally, members of the board of directors and individuals, authorized to represent the crypto asset service providers, even if not board members, are required to meet similar conditions.

According to the Law, in principle, customers' crypto assets will be stored in their own personal wallets. For assets that customers do not wish to keep in their own wallets, custody will be provided through banks authorized to do so by the CMB and deemed appropriate by the Banking Regulation and Supervision Agency. The introduction of custody provisions is significant for both individual and institutional investments.

In essence, the Law establishes a comprehensive liability regime designed to protect customers. Platforms are required to identify actions and transactions manipulating the market, report them to the CMB, and take necessary measures, including restricting, suspending, or closing accounts involved in such activities. Additionally, crypto asset transfer transactions must comply with the regulations of the CMB and the Financial Crimes Investigation Board. Financial audits and information systems audits of crypto asset service providers will be conducted by independent audit institutions listed by the CMB. If the CMB deems necessary, TÜBİTAK will also participate in the audit activities.

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Finally, crypto asset service providers are held liable for damages arising from their unlawful activities and their failure to fulfill cash payment or crypto asset delivery obligations. Additionally, these entities are responsible for losses resulting from issues such as the operation of information systems, cyber-attacks, information security breaches, or any misconduct by their personnel. However, if damages cannot be compensated by the crypto asset service providers or it is evident that recovery is not possible, the members of these providers may be held liable to the extent that the damages can be attributed to their actions, based on their faults and the specific circumstances of each case.

## **4. Sanctions**

Individuals and officials of legal entities found to be operating as crypto asset service providers without obtaining authorization from the CMB are subject to imprisonment ranging from three to five years, and a judicial fine ranging from 5,000 to 10,000 days. Additionally, the board members, and other executives of a crypto asset service provider who embezzle money, money-substitute documents or securities, other assets entrusted to them due to their role, or which they are obliged to protect, keep, and supervise, will be sentenced to imprisonment ranging from eight to 14 years and a judicial fine of up to 5,000 days. They will also be required to compensate any financial harm caused to the crypto asset service provider.

## **5. Enforcement/Transition Provisions**

Crypto asset service providers operating as of the Law's effective date and willing to continue were required to apply for an operating license from the CMB by 2 August 2024, submitting the necessary information and documents. Crypto asset service providers who intend to discontinue their activities are required to declare to the CMB that they will commence the liquidation process by 2 October 2024 without harming customer rights and interests (and not accepting new customers during the process). Entities intending to commence new activities after the Law's effective date must apply to the CMB prior to initiating their operations, complying with additional requirements specified in forthcoming secondary regulations. Additionally, platforms operating outside Türkiye are required to cease their activities for Turkish residents by 2 October 2024.

## **6. CMB's Principal Decisions**

Following the enactment of the Law, the CMB adopted its initial principal decision addressing the establishment, ownership structure, executive appointments, and capital requirements of platforms through a principal decision published in the CMB bulletin dated 8 August 2024, numbered 2024/38 (the "**Principal Decision**"). In order to obtain an approval from the CMB for the incorporation, platforms must meet the following criteria: (i) be established as a joint stock company, (ii) have all its shares as registered shares, (iii) issue shares in exchange for cash, (iv) minimum capital of TRY 50,000,000 must be fully paid in cash and the equity capital must not be less than this amount, (v) have its articles of association comply with the provisions of the Law and related regulations, (vi) specify in its articles of association that the subject of its business

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activities are exclusively limited to one or more of these activities as trading, initial sale or distribution, exchange, transfer, and custody operations of crypto assets, (vii) include the term "crypto asset trading platform" in its trade name to reflect the services provided, (viii) have a board of directors consisting of at least three members, and (ix) maintain a transparent and clear ownership structure.

In addition to the articles of association that comply with the establishment requirements and documents demonstrating that the conditions for founders and executives have been met, the annex to the Principal Decision includes a list of required documents for the establishment application, such as the resolution of the authorized body, and documents related to the company's custody infrastructure, information systems, and risk management processes, as well as the application form. It is emphasized that this application pertains solely to the establishment of the platform, and a separate application must be submitted to the CMB to obtain an operating license.

According to the transitional and compliance provisions of the Principal Decision, it was clarified that applications from companies declaring they were operational during this period but had no customers and/or custody balances as of the application date were not accepted, as their declarations did not satisfy the requirements set forth in the Law. However, it was noted that deficiencies, apart from certain documents and forms specified in the CMB's announcement dated 2 July 2024, could be rectified at a later stage. Companies may be added to the "List of Active Entities" if they submit the missing documents and information to the CMB within 15 business days from the date of the request. Companies already listed in the "List of Active Entities" or those that complete the required documentation to be included in this list must comply with the conditions outlined in the Principal Decision and submit their applications to the CMB by the close of business on 8 November 2024.

In addition, the CMB introduced a number of principles to prevent various practical problems that may arise in the sector through a principal decision published in the CMB bulletin dated 19 September 2024 and numbered 2024/48. Accordingly, the CMB set out various principles and guidelines to guide the existing practices in the sector regarding the receipt and storage of customers' cash by trading platforms, the methods of placing customer orders, and the platforms' advertisements and announcements. One of the important issues determined by the aforementioned principle decision is that the provisions of the Law will not apply to those who carry out the purchase, sale, initial sale or distribution, clearing, transfer and custody transactions of crypto assets that are used to record the representation and ownership of digital assets (Qualified Intellectual Property-NFT) and crypto assets that are used only to create or provide various elements in virtual games.

In conclusion, the swift issuance of the principal decisions by the CMB is expected to eliminate the problems in the crypto assets market to a large extent and to bring greater clarity and structure to the sector. Although comprehensive guidelines for crypto asset activities will be established through secondary regulations within six months of the Law's enactment, certain implementation

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gaps persist, leaving some issues unresolved. Nevertheless, these developments represent a pivotal step in fostering growth and regulatory refinement in Türkiye's crypto asset markets.

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