



**COUNTRY
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Turkey

BLOCKCHAIN

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This country-specific Q&A provides an overview of blockchain laws and regulations applicable in Turkey.

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TURKEY BLOCKCHAIN



1. Please provide a high-level overview of the blockchain market in your jurisdiction. In what business or public sectors are you seeing blockchain or other distributed ledger technologies being adopted? What are the key applications of these technologies in your jurisdiction?

First, it should be noted that the core business associated with blockchain and crypto in Turkey is crypto trading. Although there is no registered list, it is known that over 50 crypto trading platforms are operating. 4-5 of them are among the world's top 100 platforms.

Although the blockchain field in Türkiye is still open to developments, it can be said that blockchain technology has been adopted mostly in financial areas. Below are various examples of blockchain-based projects other than crypto trading platforms, but these are more empirical examples.

- A Turkish technology startup founded in 2017 started to provide services where it digitally timestamps assets to prove who they rightfully owned by. It is one of the first and only Blockchain startup in the world to combine Blockchain and Trusted Certification Authorities on a single platform to generate legal timestamp proofs through Android, iOS and Web applications.
- The Interbank Card Center ("BKM"), which has many banks and payment institutions in Türkiye as members, was established in 1990 with the aim of creating systems, platforms and infrastructures that enable or support all kinds of payments or money transfers without the need to use cash, is known to have carried out many blockchain-based studies on digital identity, smart contracts, and distributed ledgers. Among these works, perhaps the most significant one is BKM's development of a cryptocurrency called "keklik" with a company called T2 Software in 2017. This currency was tested by 200 users on a restricted and controlled blockchain platform and was carried out as a proof-of-concept project.

- An Ankara-based company sold a International Renewable Energy Certificate (I-REC) in 2021 through blockchain. This is the first renewable energy certificate in Türkiye and in the world that has been sold through blockchain.

- The first phase of the "End-to-End Design of the Export Process with Blockchain Technology (In-Türkiye)" project, owned by the Ministry of Trade, financed by the Ministry of Treasury and Finance and supported by the European Bank for Reconstruction and Development (EBRD), was completed in 2022. The project aims to eliminate repetitive data sharing in the export process, reduce paper-based procedures, increase collaboration between stakeholders, prevent document forgery, accelerate processes through smart contracts, strengthen data security and traceability through distributed ledgers and encryption, and is expected to be the world's first "Proof of Concept" (PoC) example of an end-to-end export process with blockchain technology.

- A project was developed to ensure commercial and financial tracking of goods imported to Turkey via the blockchain network.

- A project prepared with the Know Your Customer (KYC) concept, which allows adding new customer information to Borsa Istanbul's database, changing existing information and document management via the Blockchain network, was developed and announced.

2. To what extent are tokens and virtual assets in use in your jurisdiction? Please mention any notable success stories or failures of applications of these technologies.

In Türkiye, the Regulation Prohibiting Payments Through Crypto Assets ("Regulation"), which entered into force after being published in the Official Gazette on April 16, 2021, prohibited the direct or indirect use of crypto assets in payments and the providing of related services. Although the use of crypto assets as a payment

instrument is prohibited, it is not prohibited to provide services that let individuals to purchase, sale, and transfer crypto assets. Also providing those services regarding offering and custody of crypto assets. are not prohibited either. In Türkiye, due to the prohibition stated above, tokens and crypto assets have only been used as investment instruments for many years, thus restricting the use of crypto assets in Türkiye to a great extent.

However, the projects shared as examples in the answers to Question 1 may serve as examples of the use of tokens and virtual assets. However, since there is no legislation in this field in Turkey yet and there are some prohibitions on crypto, projects containing the word "crypto" are very common. NFT projects are mostly on the art side. For example, NFT artworks created by a Turkish artist have found buyers for millions of dollars in total. It is also known that tens of millions of dollars of turnover was obtained from the pre-sale of the fan token issued by a Turkish sports club.

3. To what extent has blockchain technology intersected with ESG (Environment, Social and Governance) outcomes or objectives in your jurisdiction?

Since blockchain projects in Türkiye are still in their early phases and yet to be completed, the alignment of blockchain technology in practice with ESG outcomes and objectives has not been assessed. However, for example, if it becomes possible for blockchain technology to be used in import/export process, it arouses the idea that environmental and governmental objectives can be achieved together in terms of speeding up the process, preventing document fraud and contributing to the environment by reducing paper consumption.

4. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?

Currently, there is no specific legislation on Blockchain in Türkiye. The only regulation that includes the term crypto asset is the Regulation on Measures to Prevent Laundering Proceeds of Crime and Financing of Terrorism. Within the scope of this regulation, "Crypto

Asset Service Providers" are listed among the institutions that are subject to certain obligations such as KYC and AML prevention and providing information and documents requested by the relevant authority, Financial Crimes Investigation Board. However, although Crypto Asset Service Providers are mentioned in this regulation, the definition of Crypto Asset Service Provider has not been defined, and there are no regulations on how the crypto asset services shall be provided, whether those who want to provide this service should obtain a certain permission or not, or the conditions that must be met.

With the amendments expected to be made to the Capital Markets Law No. 6362 in the near future, certain regulations regarding crypto asset service providers may be included in the legislation. With this amendment, it is expected that the operating crypto asset trading platforms will be subject to the permission of the Capital Markets Board, platforms that are already operating will be able to continue to operate without permission for a period of compliance to be determined, and there will be provisions regarding the conditions and obligations that crypto asset service providers shall fulfil and how these providers will be audited.

Following this possible amendment, more detailed secondary amendments are expected to enter into force within 6 months. As the explanations regarding the regulation prohibiting the direct or indirect use of crypto assets in payments will be made in Article 10, the provisions of that regulation will not be reviewed in this section. This regulation is expected to be released in February 2024, but there is no officially published draft yet. However, it is expected that the regulation will impose very challenging requirements for crypto asset service providers, such as minimum capital obligation, technical competence and information security conditions, corporate governance principles and operating principles, and the establishment of control and risk units.

5. What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?

While the Turkish government's approach to cryptocurrencies is considered to be neutral, its approach to blockchain is considered to be positive. It is known that the Ministry of Industry and Technology of the Republic of Türkiye and Strategy and Budget Presidency of the Republic of Türkiye are actively working on and considering blockchain projects. In this context, the "Blockchain Research Laboratory" (BZLab), established by TUBITAK (the official research institution

of Türkiye) in 2017, has emerged to respond to the needs of public and private institutions and carries out research and development activities on blockchain technologies, security and privacy analysis, business models, crowdfunding approaches and technical details. In this context, it would be necessary to mention the contributions of the Blockchain Türkiye Platform, which was established in 2018 under the leadership of the "Informatics Foundation of Türkiye" and has organized many workshops on blockchain and presented reports to the public, to blockchain technology in Türkiye. In this context, Türkiye is growing further in the field of blockchain and continues to take the steps to adapt blockchain technology to real life.

6. Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox or a central bank digital currency initiative)?

Türkiye currently has a central bank digital currency initiative. The Central Bank of the Republic of Türkiye initiated Digital Currency Research and Development Studies in 2020, and within the framework of proof-of-concept studies, tests of the applicability of various distributed ledger technologies to the Central Bank Digital Currency were also carried out. In 2021, these proof-of-concept studies were completed, and technology partnership relations were established with various institutions and entities, and the "Digital Turkish Lira Cooperation Platform" was established. In 2022, Phase-1 activities were initiated, and the first pilot test was conducted. The first phase of this project was completed in the first half of 2023 and the first phase report was published at the end of 2023.

In this context, in the proof of concept and phase 1 of the project, comparisons were made between permissioned distributed ledger platforms that are frequently used in central banks' digital currency projects. While most of these platforms were blockchain platforms, non-blockchain distributed ledger platforms were also analysed.

The scope of the first phase includes the following;

- Preparation of the technical working environment for the Digital Turkish Lira System studies
- Preparing the infrastructure for the tests of the Digital Turkish Lira System
- Establishment of a distributed ledger platform for the

Digital Turkish Lira System

- Design and development of smart contracts and applications to work with the distributed ledger platform
- Integration of the prototype digital identity system into the Digital Turkish Lira System
- Design and development of a digital wallet application for digital Turkish lira transactions
- Simulation and testing of issuance, distribution, online payment/transfer and redemption scenarios of the digital Turkish lira
- Conducting cyber security studies
- Conducting pilot test processes
- Measuring system performance and user experience.

It is stated in the Phase 1 report that research and development activities will continue in the following phases, and issues such as transformations between the forms of the Turkish lira, smart payments, offline payments, and legal and economic dimensions will be addressed in the following phases.

We would like to point out that the first phase report on the digital lira states that Digital Turkish Lira is not a crypto asset, but rather a digital form of the banknote used as national currency.

7. Have there been any recent governmental or regulatory reviews or consultations concerning blockchain technology in your jurisdiction and, if so, what are the key takeaways from these?

Türkiye's development plan for the country between 2019 and 2023 was published in the 11th Development Plan on 18.07.2019 by the Strategy and Budget Presidency of the Republic of Türkiye. This development plan also included plans for blockchain. In this context, it was mentioned that the necessary legal and physical infrastructure works will be completed in transportation and customs services to ensure the widespread use of blockchain applications, and that process and technological infrastructure improvements will be made in order to benefit from new technologies such as big data, cloud computing, mobile platforms, internet of things, artificial intelligence, blockchain in improving public services.

In 2019, in line with the 11th Development Plan, the Ministry of Industry and Technology of the Republic of

Türkiye published the Industry and Technology Strategy, which states that a national blockchain infrastructure will be developed and thus incentives will be provided for blockchain-based networking, which is a new and emerging technology. In this context, the plans regarding blockchain included in the strategy document are shared below:

- In order to develop application development competence on blockchain technology, first of all, public-centred applications (e.g. land registry, diploma, customs applications, etc.) that can be transferred to blockchain infrastructure will be identified and projected within the "Open-Source Platform" initiative.
- A test environment and participant cluster will be created to conduct pilot applications over fiction and application models in the blockchain infrastructure developed for testing new, secure business models and processes (supply chain, banking, legal follow-up applications, etc.).
- It is aimed to create a "virtual regulatory sandbox" together with the regulatory board to conduct regulatory compliance tests of the developed blockchain applications, and to support the certification of the initiatives that successfully complete the tests and receive investment.

Based on the above statements, we can state that the adoption of Blockchain technology in Türkiye is on the government's agenda and the necessary groundwork is in progress.

8. Has any official guidance concerning the use of blockchain technology been published in your jurisdiction?

Financial Crimes Investigation Board of Türkiye published the Crypto Asset Service Providers Guidelines in May 2021 on what precautions crypto asset service providers should take within the scope of KYC and AML prevention. This guidance contains the basic principles regarding the obligations of Crypto Asset Service Providers which contains the prevention of laundering proceeds of crime and financing of terrorism. Apart from the aforementioned guidance, no official guidance on the use of blockchain technology has been published.

9. What is the current approach in your jurisdiction to the treatment of cryptocurrencies for the purposes of financial regulation, anti-money laundering

and taxation? In particular, are cryptocurrencies characterised as a currency?

As will be shared in Article 10 below, the definition of cryptocurrency in Turkish legislation states that cryptocurrencies cannot be classified as money, registered money, electronic money, payment instrument, security, or any other capital markets instruments. In this context, although the legal nature of cryptocurrencies is still controversial, in 2021 the Istanbul Courts compared the crypto assets' nature to securities. (Since the relevant decision will be mentioned in Article 18, so the details will not be mentioned here.)

Although the anti-money laundering area is the first area regulated in Turkish legislation in the field of cryptocurrency, as Cryptocurrency Service Providers are considered as an institution subject to regulated obligations under the Regulation on Measures to Prevent Laundering Proceeds of Crime and Financing of Terrorism, the approach to taxation of cryptocurrencies is still unclear and will depend on whether the cryptocurrency is classified as money or property.

10. Are there any prohibitions on the use or trading of cryptocurrencies in your jurisdiction?

Regulation Prohibiting Payments Through Crypto Assets that entered into force after being published in the Official Gazette on April 16, 2021, introduces a number of prohibitions on crypto assets. Article 3, Paragraph 1 of the Regulation defines crypto assets as *"intangible assets that are created virtually using distributed ledger or similar technologies and are distributed over digital networks, and that are not qualified as money, registered money, electronic money, payment instrument, security, or any other capital markets instrument"*.

This regulation prohibits the direct or indirect use of crypto assets in payments and the providing services for the direct or indirect use of crypto assets in payments.

In addition, Article 4 of the same regulation prohibits payment service providers from developing business models in a way that crypto-assets will be used directly or indirectly in the offering of payment services and the issuance of electronic money, and from providing any services related to such business models, and payment and electronic money institutions from intermediating platforms that offer trading, custody, transfer or issuance services related to crypto-assets or fund transfers to be made from these platforms.

Except for those mentioned above, there is no general regulation prohibiting the use or trading of crypto assets, but it is known that various business models are not deemed appropriate within the scope of the opinions received by individual institutions from the authorities. For example, it is known that the Capital Markets Board considers that leveraged transactions made individually should not be made. For this reason, it may not be possible to implement every business model based on crypto assets and blockchain technology in Turkey. In this context, we consider that it is reasonable to proceed by obtaining the opinion of the Capital Markets Board when necessary.

11. To what extent have initial coin offerings taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs?

Since there is no legal regulation on crypto assets in Türkiye, initial coin offerings have remained at the utility token offering level. The most common example of these utility tokens are fan tokens of sport clubs. These fan tokens are generally linked to the fact that fans can have a role in the decisions of the sports club, get VIP experiences, support the club, win prizes, and so on, in exchange for purchasing the tokens of the teams they support.

12. If they are permissible in your jurisdiction, what are the key requirements that an entity would need to comply with when launching an ICO?

As mentioned above, there is no legislation on cryptocurrencies in Türkiye. In this context, although it cannot be said that initial coin offerings are prohibited, due to the restrictions in the Capital Markets Law, activities such as collecting investment in return for a certain share and crowdfunding are subject to permits and certain procedural requirements within Turkish authorities and it cannot be stated that these kinds of activities are completely free. In this context, the updates expected to be made in the legislation, including the area of initial coin offerings, are expected to fill the gaps in the legislation. However, for now, they are likely to be considered capital market instruments.

13. Is cryptocurrency trading common in your jurisdiction? And what is the attitude of mainstream financial institutions to

cryptocurrency trading in your jurisdiction?

It is possible to state that Turkey shows great interest in crypto trading platforms. When this situation is considered together with Turkey's population density, it can be argued that the potential transaction volume in the crypto sector in Turkey is quite high.

There are many international and/or local service providers actively providing crypto trading platform services in Turkey. These providers are obliged to fulfil necessary obligations before the Financial Crimes Investigation Board, as stated in Question 4.

However, since the Regulation prohibits the direct or indirect use of crypto assets in payments and providing those services related to such payments, for a considerable period of time many banks in Türkiye have been reluctant to provide services for cryptocurrency transactions that are not prohibited by regulation. Currently, the number of banks providing services for opening accounts for crypto platforms to be used to collect funds within the scope of crypto trading is around 5-6. However, banks do not serve many crypto asset service providers. Payment and e-money institutions are already prohibited from working with crypto asset service providers in accordance with the legislation.

There are indications that these banks are planning to start providing services in this area with the expected amendments to the Capital Markets Law regarding crypto assets.

14. Are there any relevant regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies (e.g. trading of tangible property represented by cryptographic tokens)?

There are no regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies. In accordance with applicable legislation, only the use of crypto-assets as a payment instrument and the providing services that use crypto-assets as a payment instrument are prohibited.

15. Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over tokens and virtual assets?

Problems related to the transfer of title or the granting of security over tokens and virtual assets are mainly

centred on the assessment of the legal nature of these tokens and virtual assets. In Turkish law, the subject matter of the right to property may only be goods, whereas the right to property, which is guaranteed by the Constitution of Türkiye, covers not only goods in the sense of property law, but also all property rights that have an economic value. In this context, it is necessary to discuss the legal nature of tokens and virtual assets under Turkish law. Although no consensus has yet been reached on this subject, it is expected that this issue will be clarified through new legislative amendments.

It may be argued that under Turkish law, Non-Fungible Tokens (NFTs) may qualify as artworks within the scope of the Law No. 5846 on Intellectual and Artistic Works, and in the event that the rights of other authors are violated while creating NFTs, intellectual property protection remedies may be applied within the scope of this law.

16. How are smart contracts characterised within your legal framework? Are there any enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?

While smart contracts are not defined in our legal framework, it is still controversial whether smart contracts should be legally recognized as contracts. In the doctrine, there are opinions stating that smart contracts will not constitute a contract in the legal sense and will only facilitate the performance of a contract between the parties; as well as opinions stating that smart contracts may result as a contract in the legal sense.

In Turkish law, one of the fundamental principles governing the law of contracts is freedom of contract. In this context, there is no obstacle to the drafting of smart contracts, provided that the law does not specifically stipulate a contract form for that type of contract, and it is not prohibited by the law.

The issues related to the protection of the consumer, the protection of personal data, the protection of the investor and the enforcement of the contract are discussed in the current legal framework on smart contracts.

17. To what extent are smart contracts in use in your jurisdiction? Please mention any key initiatives concerning the use of

smart contracts in your jurisdiction, including any examples relating to decentralised finance protocols.

Although it is possible to create smart contracts within the scope of freedom of contract in Turkey, no significant initiative has yet been taken regarding smart contracts. In this context, it can be stated that smart contracts have not been widely adopted yet.

18. Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?

In practice, it was known that requests for the seizure of crypto assets were forwarded to the relevant crypto trading platforms. Therefore, there was a practice regarding the seizure of crypto assets. However, with the decision shared below, these practices have been revealed for the first time by a legal evaluation made by a court.

In 2021, a creditor requested the enforcement office to seize the debtor's account in a Türkiye-based crypto trading platform, the procedure of 'seizure of the debtor's property and rights in third parties' was adopted pursuant to Article 89/1 of the Enforcement and Bankruptcy Law, and the cryptocurrency in the relevant account was blocked by sending a seizure notice to the crypto trading platform. Subsequently, the dispute was brought to the Istanbul courts to examine the debtor's complaint that the cryptocurrency could not be seized and the request for nullification of the notice due to the lack of legislation. As a result of the examination, the court rejected the debtor's complaint by making the following precedent-setting decision:

"Although the claimant has filed a complaint claiming that cryptocurrencies cannot be seized, it is understood that such coins should be evaluated within the scope of commodities and securities, are accepted as a kind of digital currency or virtual money, and therefore can be seized, therefore, it has been decided to dismiss the claim."

19. Has there been any judicial consideration of blockchain concepts or smart contracting in your jurisdiction?

Except for the court decision shared in article 18, there has been no judicial consideration of blockchain concepts or smart contracts.

20. Are there any other generally-applicable laws or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?

The first problems encountered in the use of blockchain technology are the problems encountered in the establishment of smart contracts. In this respect, due to the automatic creation of smart contracts, issues such as filling the gaps in the contracts, structural problems of smart contracts in terms of the application of certain contract provisions, the effects of extreme difficulty of performance on smart contracts, the difficulties of the enforcement of precautionary measures on the basis of smart contracts, and the determination of the applicable law in the absence of an explicit choice of law in contracts with a foreign element should be considered.

The area of personal data protection law should be particularly examined in this context. One of the first problems is whether adequate data protection will be provided in smart contracts due to the difficulty of tracking the transfer of personal data on the blockchain. At the same time, due to the fact that the provisions of the legislation do not overlap with the decentralized structure of the blockchain technology, the difficulties that may be experienced in identifying the data controller(s) and data processors on the network will also arise. Among these difficulties is the uncertainty of who will fulfil the obligations of the data controller due to the difficulty in identifying the data controller. In addition, how data subjects will withdraw their explicit consent and how the procedure for data deletion or data rectification will be carried out is also a subject left open-ended.

21. Are there any other key issues concerning blockchain technology in your jurisdiction that legal practitioners should be aware of?

As mentioned in many sections of this article, due to the lack of legislative regulations on crypto-assets in Türkiye, it is currently awaited that certain regulations regarding crypto-asset service providers will be included in the legislation with the amendments expected to be made to the Capital Markets Law No. 6362, followed by the publication of secondary legislation in line with this law in a short period of time. With these amendments, it is anticipated that some heavy obligations will be imposed on crypto asset service providers in terms of capital, shareholding and share structure. It also is expected to require permission from the Capital Markets Board for the establishment and operation of crypto asset trading platforms.

In line with the above explanations, these obligations and requirements cannot be fulfilled by all crypto asset service providers currently operating in Türkiye. We would like to point out that there is an uncertainty experienced by crypto asset service providers across the country due to the uncertainty of what the new legislation will entail. However, as we stated in question 4, the regulation is expected to be released in February 2024, and it is expected that the regulation will impose very challenging requirements for crypto asset service providers, such as minimum capital obligation, technical competence and information security conditions, corporate governance principles and operating principles, and the establishment of control and risk units.

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