



## THE REGULATION REGARDING THE DEFINITION AND USE OF CRYPTO ASSETS HAS BEEN INTRODUCED BY THE CENTRAL BANK OF TURKEY

Regulation on the Prohibition of Crypto Assets in Payments (“**Regulation**”) introduced by The Central Bank of the Republic of Turkey (“**CBRT**”) pursuant to Article 12 and Article 18 of the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (“**Law No. 6493**”) and Central Bank of Republic of Turkey Law No: 1211 has been published in the Official Gazette numbered 31456 on 16 April 2021.

CBRT is the competent authority for the regulation and supervision of activities of payment institutions and electronic money institutions.

### EXECUTIVE SUMMARY

With the Regulation, crypto assets is defined for the first time under Turkish law and certain prohibitions are adopted regarding the activities under the Law No. 6493 related to crypto assets of payment institutions, electronic money institutions and banks:

- (i) *Crypto assets cannot be directly or indirectly used in payments, and services regarding the direct or indirect use of crypto assets in payments cannot be provided.*
- (ii) **Payment institutions and electronic money institutions** are prohibited from intermediating transfer of funds to platforms that provide trading, custody, transfer or issuance services regarding crypto assets and the transfer of funds therefrom.
- (iii) *Developing business models related to the use of crypto assets in the provision of payment services and electronic money issuance and providing any services to such business models by **payment service providers including banks as well as payment institutions and electronic money institutions** are prohibited.*

### I. Definition of the Crypto Asset

Crypto assets are defined under Article 3 of the Regulation for the first time under Turkish law as “*intangible assets virtually created over a distributed ledger technology or similar technologies and transferred over digital networks and which do not constitute fiat money, representative money, electronic money, payment instrument, security or other capital market instrument*”.

The ambiguity in practice regarding crypto assets due to lack of regulation was attempted to be eliminated with Regulation by defining crypto assets. The fact that the Regulation does not in detail define the relevant technologies was a sound judgment on the side of lawmakers –despite a brief reference to the technological infrastructure– as it allows different interpretations based on technological developments.

The absence of any reference to the words "right" or "property" in terms of crypto asset definition make it difficult to classify crypto from a legal perspective. However, we consider it a facilitating factor of the use of the word "intangible asset" in defining crypto assets regarding their classification under possible future regulations in terms of accounting and tax law.

The fact that the term "payment instrument" is included among those not qualified as crypto assets is open to interpretation. The Law no 6493 defines payment instruments as personalized instruments such as mobile phones and credit cards. It would have been more appropriate to define crypto assets as "funds" –a term defined under Law No. 6493 as *banknotes, coins, bank money or electronic money*– instead of the "payment instrument".

## II. Regulations Regarding Payments

Considering the impactful extent of the provisions regarding payments, the provisions of the Law No. 6493 which forms the legal basis of the Regulation should be taken into consideration.

Crypto assets cannot be directly or indirectly used in payments and any service cannot be provided in this regard as per the 2nd and 3rd paragraphs of Article 3 of the Regulation,

The term "*payment*" should be considered as a "*payment transaction*" in accordance with Law No. 6493 while evaluating the scope of prohibition of the use and providing services for the use of crypto assets under the Regulation. A "payment transaction" is defined as the "*act of depositing, transferring or withdrawing funds*" upon order under Article 3/u of Law No 6493.

Therefore it should be considered that the prohibition of the use of crypto assets in payments should be narrowly interpreted as a prohibition solely within the scope of Law No. 6493 and sale and purchase, barter and similar agreements regarding crypto assets should not be subject to the prohibition except for the circumstances regulated under Regulation.

## III. Regulations on the Provision of Payment Services and Electronic Money Issuance

It is seen that the CBRT intentionally avoided regulating areas under the jurisdiction of Banking Regulation and Supervision Agency ("**BRSA**") and other institutions. The scope of the two essential prohibitions under the Regulation is limited to the institutions which CBRT is the supervisory authority.

The first of the prohibitions as per Article 4 is related to the business models based on the use of the crypto assets. The aforementioned Article states that **payment service providers** cannot develop a business model that crypto assets will be directly or indirectly used in providing payment services or issuing electronic money and cannot provide services thereto related.

Law No. 6493 should be taken into consideration while determining the scope of the aforementioned Article. In accordance under Article 3 of the Law No. 6493, the following institutions and organizations qualified as payment service providers:

- (i) Banks subject to Law No. 5411,
- (ii) Electronic money institutions,
- (iii) Payment institutions,
- (iv) Postal and Telegraph Corporation (Posta ve Telgraf Teşkilatı A.Ş.)

Providing payment services and the issuance of electronic money constitute the two main subjects of the Law No. 6493 and institutions that wishes to engage in these activities are subject to the permission and supervision of the CBRT. In this context, adoption of the provision of Article 4 of the Regulation may be interpreted as an aim of CBRT to prevent the widespread use of crypto assets within the scope of Law No. 6493. The CBRT stipulated that the banks - principally under the

supervision of the BRSA- should also comply with the prohibitions since these two activities are regulated under the Law No. 6493 and the CBRT is the relevant competent authority.

#### IV. Regulations on Transferring Funds to and from Crypto Asset Platforms

**Payment and electronic money institutions** are prohibited from intermediating the transfer of funds to or from the platforms that provide trading, custody, transfer or issuance services regarding crypto assets under 2nd paragraph of Article 4 of the Regulation.

The prohibition of intermediating for transferring funds will only be applied to payment and electronic money institutions and banks are excluded from the scope of the prohibition regulated under 2nd paragraph of Article 4. In this context, it can be interpreted that, fund transfers to and from crypto asset platforms through banks will be possible.

#### V. Entry into Force

Regulation will enter into force on 30 April 2021. It can be interpreted that, determining a future date as the effective date is convenient considering that the owners of crypto assets will have the opportunity to consider the prohibitions in detail and to decide accordingly.

**Please contact us for detailed information.**



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*This newsletter has been prepared as of April 17, 2021 for informative purposes regarding The Regulation on the Use of Crypto Assets in Payments which published in the Official Gazette dated April 16, 2021 and numbered 31456.*

*Our assessments in this newsletter do not constitute legal recommendation or legal opinion and Aksu Çalışkan Beygo Attorney Partnership may not be hold responsible depending on these assessments. It is recommended to obtain legal opinion for your inquiries within the scope of this memorandum.*

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