

## The Communiqué on Share-Based Crowdfunding

The Communiqué on Share-Based Crowdfunding (the “**Communiqué**”) entered into force upon its publication in the Official Gazette numbered 30907 and dated October 3, 2019. The Communiqué sets forth the rules and procedures for crowdfunding. The crowdfunding processes will be conducted by electronic crowdfunding platforms. The Communiqué defines crowdfunding platforms as corporations which perform on electronic media and mediate crowdfunding (the “**Platform(s)**”).

According to the Communiqué, the Platforms must be listed by the Capital Markets Board (the “**CMB**”) in order to operate within the scope of the Communiqué. The Platforms are required to meet the following conditions:

- must be established as a joint-stock company;
- must have a fully paid in minimum capital of TRY 1,000,000;
- all shares must be in registered form;
- must include “Crowdfunding Platform” in its trade name;
- its articles of association must comply with the provisions of the Communiqué and must contain a statement saying that it will engage exclusively in crowdfunding;
- its shareholders and members of the board of directors must meet the specific requirements provided under the Communiqué;
- its Board of Directors must consist of at least three members;
- must establish committees and units qualified in accordance with the Communiqué;
- at least one of the shareholders or board of director’s members must hold an individual participation investor license;
- internal audit, risk management, accounting, operational units and IT infrastructure must be established and relevant personnel must be employed accordingly. The Platform must be reached a decision with Central Registry Agency (the “**CRA**”) and with a custodian firm whilst IT infrastructure must be aligned with IT system of the same; and
- must establish an electronic infrastructure within the Platform where members can communicate with venture capital firms and/or entrepreneurs.

Platforms have to inform the CMB within two business days if they no longer fulfil the aforementioned conditions. The Platforms that fail to provide any approved conditions by the CMB may be delisted from the list by the CMB.

If it is determined that the financial statements and reports submitted to the CMB do not meet the conditions set out in the Communiqué, the CMB will provide the Platform with a reasonable time to meet the relevant requirements.

The Platforms which have been delisted by the CMB will not be able to apply to the CMB for crowdfunding for one year.

The Platforms under the Communiqué will exclusively be conducting crowdfunding activities. However, they may provide consultancy services to entrepreneurs and venture capital firms during the

conduct of these activities. A written crowdfunding agreement must be executed between the Platforms and entrepreneurs/venture capital firms to determine the principles of such process.

**The Communiqué requires the Platforms to:**

- create a campaign page for each venture capital firm or project which raises funds;
- take preventive measures to protect the rights and interests of the investors and prevent them from possible losses;
- fulfil the duties related to the dematerialization process of the shares at the CRA or ensure such duties are fulfilled by an investment firm; and
- comply with the public disclosure obligations set out in the Communiqué.

**The Communiqué particularly sets forth the below listed activities which cannot be performed by the Crowdfunding Platforms:**

- Save for the special provisions applicable to participating banks, the Platforms may not act as an intermediary institution for any loan or financing transaction;
- The Platforms cannot engage in crowdfunding activities for any capital market instrument other than equity crowdfunding;
- The Platforms cannot carry out crowdfunding activities for the purchase and sale of real estate and the development of real estate projects;
- Crowdfunding activities cannot be carried out to raise funds from the Turkish residents for the benefit of foreign-resident individuals or legal entities;
- The Platforms cannot provide analyses, evaluations and comments to investors;
- The Platforms cannot act as an intermediary institution in secondary market transactions regarding shares; and
- The Platforms cannot advertise any commercial products or services of projects and/or start-up companies whose campaign process is still ongoing.

**Some highlights regarding Platform membership and campaign process are as follows:**

- ❖ To participate and fund start-ups, investors must become "members" of the Platform online.
- ❖ Non-qualified investors may invest a maximum of TRY 20,000 through equity-based Crowdfunding within one calendar year. However, this limit may be applied as 10% of the annual net income declared by the investor to the Platform provided that it does not exceed TRY 100,000. There is no such restriction for qualified investors and legal entities.
- ❖ Funds can only be transferred to a venture capital firm in exchange for new shares created as a result of a capital increase. Therefore, funds cannot be raised by selling the existing shares of venture capital firms. Also, funds raised from investors must be paid in full and cash to be transferred to venture capital firms.
- ❖ A venture capital firm or an entrepreneur may only raise funds with a maximum of two campaigns in any 12 months. The amount of funds that can be raised within the 12 months period cannot exceed the issuance limit announced by the CMB. As of 2019 such amount is TRY 8,289,910.

- ❖ Additional funds can be raised at a maximum of 20% of the demanded funds under the condition that it is outlined in the crowdfunding information form and it does not exceed the issuance limit.
- ❖ For the fund's demands that exceed TRY 1,000,000, the amount corresponding to at least 10% of the targeted fund amount must have been covered by the qualified investors.
- ❖ Campaign period starts from the commencement date of the crowdfunding information form as approved by the investment committee on the campaign page.
- ❖ Campaign period cannot be longer than 60 days.
- ❖ Funds raised from investors during the campaign process must be blocked in an escrow account which has opened by an escrow agent determined by the CMB.
- ❖ Venture capital firms that will raise funds under the Communiqué must meet the following criteria:
  - engaging in technological and/or production activities;
  - being established within the last two years as of the date on which the information form has been published;
  - having a registered website that is regularly monitored and controlled; and
  - having certain financial statement items which do not exceed the thresholds set out for exclusion from the scope of the law.

### **The Legislative Proposal amending the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions and Certain Laws**

The Legislative Proposal amending the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions and Certain Laws (the "**Proposal**") has been submitted to the Presidency of the Grand National Assembly of Turkey on October 17, 2019. The Proposal brings significant changes to the regulation and supervision of payment service providers and e-money issuers and aims to reform and unify payment services.

The Proposal defines payment initiation service providers (*PISP*) and account information service providers (*AISP*) as payment services and includes in the scope of payment services. Also, services which are not currently defined as payment services will be included in the category of payment services if they reach the limits to be set by Central Bank of the Turkish Republic (the "**CBTR**"). Payment service providers will also be entitled to provide such services. The Proposal transfers the authorities of Banking Regulation and Supervision Agency (the "**BRSA**") including BRSA's duty to regulate and supervise set off and settlement transactions to CBRT. According to the Proposal, e-money issuers and all institutions providing payment services including third parties engaging in the payment systems will be supervised by the CBRT.

The Proposal authorizes the CBTR to monitor legal relations of payment service providers and to determine the rules and procedures of the legal relations therein if it deems the activities carried out by them as harmful. The Proposal also authorizes the CBRT to set the maximum limits of fees and commissions payable for payment services.

For the purposes of maintaining the continuity of payment services, the Proposal enables the CBRT to be a shareholder of payment system operators (*ödeme sistemi işleticisi*) which has a systematic importance.

The Proposal foresees the establishment of the Turkish Payment and Electronic Money Institutions Association (the “**Association**”) which will require mandatory membership by the institutions. The Association shall mainly aim to improve the current position of payment and e-money institutions.

The Legislative Proposal has been currently pending before the Commission of the Grand National Assembly of Turkey and is expected to become a law on January 1, 2020.