Global Financial Services Regulatory Guide - Türkiye

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

Türkiye has six main regulators that authorize and supervise bank and non-bank financial institutions.

The Banking Regulatory and Supervisory Authority (*Bankacılık Düzenleme ve Denetleme Kurumu* or the BRSA) regulates deposit banks, participation banks, investment and development banks, branches and representative offices of non-Turkish banks, and certain non-bank financial institutions, such as factoring companies, financial leasing companies and finance companies.

The Capital Markets Board of Türkiye (*Sermaye Piyasası Kurulu* or the CMB) regulates brokerage firms, portfolio management companies, mutual funds, pension funds, investment companies, investment advisory firms, stock exchanges, real estate valuation companies, crowdfunding platforms, banks operating in capital markets, and rating firms offering services to institutions operating in capital markets.

The Insurance and Private Pension Regulatory and Supervisory Authority (*Sigortacılık ve Özel Emeklilik Düzenleme ve Denetleme Kurumu* or the IRSA) regulates insurance and private pension companies and intermediaries, such as insurance agents, brokers and private pension intermediaries.

The Central Bank of the Republic of Türkiye (*Türkiye Cumhuriyet Merkez Bankası* or the Central Bank) regulates payment and electronic money institutions. It also plays a complementary role in regulating the banking industry as it implements policies related to the protection of the value of the Turkish currency and financial stability. For example, the Central Bank determines the overnight and weekly repo interest rates; calculates reserve and liquidity requirement ratios; supervises the implementation of maximum interest rates applied by banks on deposits and loans; and supervises maximum interest rates in credit card agreements. Banks operating in Türkiye must provide their financial statements to the Central Bank periodically. The Central Bank is the regulator of payment and securities settlement system operators.

The Financial Crimes Investigation Board's (*Mali Suçlar Araştırma Kurulu* or MASAK) primary function is to fight against the offense of money laundering, which is the processing of criminal proceeds to disguise their illegal origin and prevent terrorist financing offences. MASAK is organized under the Turkish Ministry of Treasury and Finance. MASAK conducts investigations, prepares sectoral studies regarding the offense of money laundering, develops measures, establishes policies, develops implementation strategies, drafts laws, bylaws and regulations in line with the adopted policies and performs other activities to raise public awareness.

The Savings Deposit Insurance Fund (*Tasarruf Mevduatı Sigorta Fonu*) is responsible for protecting the rights of depositors and restructuring banks experiencing financial difficulties. It implements various measures imposed by the BRSA, such as restructuring or taking over the management or ownership of a bank with a weak financial structure or failing to comply with banking laws in rare cases.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

Türkiye has various framework laws for financial institutions and services, including the following:

The Banking Law No. 5411

The Capital Markets Law No. 6362 (CML)

The Insurance Law No. 5684

The Private Pension Savings and Investment System Law No. 4632

The Financial Leasing, Factoring and Financing Companies Law No. 6361

The Payment and Security Settlement Systems, Payment Services and Electronic Money Institutions Law No. 6493

The Debit Cards and Credit Cards Law No. 5464

The BRSA, the CMB, the IRSA and the Central Bank set detailed rules and guidelines applicable to companies and activities they regulate in the form of regulations, communiqués, respective board resolutions, circulars, sector announcements and guidelines. The BRSA, the CMB, the IRSA and the Central Bank's rules and guidelines are prudential regulations that include audit requirements, capital adequacy ratios, corporate governance requirements, financial statements and reporting standards, internal systems, regulators’ audits, record retention, and provisioning requirements.

Although not a member, Türkiye is a candidate for full European Union membership and has been in accession negotiations since 2005. It is also active in harmonizing its financial services legislation with the *acquis*. Türkiye has its financial market infrastructure, securities markets and investment services regulations aligned with the *acquis* with the enactment of Banking Law No. 5411 and the CML and their secondary regulations. Türkiye has also adopted Basel II and some Basel III principles in the Turkish banking sector.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

Türkiye strictly regulates a broad range of financial services and activities. Financial institutions must be authorized by their regulators (i.e., the BRSA, the CMB, the IRSA and the Central Bank) for incorporation and authorization. These services include the following:

Accepting deposits – This covers typical retail banking activities involving the operation of current and deposit accounts.

Accepting participation funds – This covers Islamic banking activities involving the operation of current and participation accounts (i.e., accounts paying a yield of profit share under Islamic banking principles).

Extending loans – This covers both cash and non-cash loans extended to legal entities, individuals and consumers.

Providing factoring and financial leasing services.

Issuing electronic money – Electronic money is a prepaid electronic payment product accepted as a payment instrument by its issuer and other individuals and legal entities.

Carrying out payment services – This includes deposits and withdrawals from payment accounts, fund transfers, issuing or accepting payment instruments and money transfers.

Operating payment and securities settlement systems – This covers operating a platform for the realization of clearing and settlement transactions in connection with the fund and security transfer orders given by three or more participants.

Banks’ asset management – This covers purchasing and selling banks and other financial institutions’ non-performing loans.

Issuing debit and credit cards and providing related payment services – This covers financial institutions’ provision of debit and credit card services.

Trading and carrying out intermediation activities in securities and other capital markets instruments – This covers banks and brokerage firms engaging in proprietary trading that also receive and route orders for the sale and purchase of securities.

Underwriting and intermediation of public offering of capital markets instruments.

Providing investment advice – This is a regulated activity under Turkish law.

Asset management – Managing investments on behalf of third parties is a regulated activity under Turkish law, requiring specific permission in relation to investment companies, mutual funds and non-Turkish collective investment schemes (e.g., alternative investment funds or US management investment companies).

Establishing, operating and winding up investment companies and mutual funds (i.e., collective investment schemes under Turkish law).

Share-based and debt-based crowdfunding – This covers intermediation activities concerning share-based and debt-based crowdfunding on electronic media. Crowdfunding activities can be conducted via crowdfunding platforms, which can be a joint stock company solely providing crowdfunding services, or investment institutions that are development and investment banks, participation banks, or intermediary institutions.

Providing custody services – Custody services related to assets that include investments is a regulated activity. Specific permission is required to act as the custodian of a collective investment scheme (i.e., investment companies and mutual funds).

Carrying out insurance business (effecting and carrying out both life and non-life insurance contracts) – Each insurance branch (e.g., accident insurance, health insurance) requires a separate license.

Carrying out private pension business (can also engage in life and personal accident insurance business with separate licenses).

Insurance and private pension intermediation activities – This covers insurance agents and brokers as well as private pension intermediaries.

In addition, the activities of financial institutions that constitute ancillary financial services (e.g., deposit banks’ capital markets activities or private pension companies’ life and personal accident insurance business) may require separate permits from the regulator overseeing those activities.

For the time being, the issuance or trade of crypto assets and crypto currencies do not require a license. However, with the Regulation Prohibiting Payments with Crypto Assets (Crypto Assets Regulation), the CBRT banned payments with crypto assets. The Crypto Assets Regulation defines crypto assets as intangible assets that are created virtually using distributed ledger or similar technologies and distributed over digital networks, that are not qualified as money, registered money, electronic money, payment instrument, security or any other capital market instrument. According to the Crypto Assets Regulation, crypto assets cannot be used directly or indirectly for payments, and services regarding the direct or indirect use of crypto assets in payments are prohibited. Moreover, payment services and electronic money institutions are prohibited from intermediating (i) the transfer of funds to platforms that offer trading, custody, transfer or issuance services regarding crypto assets and (ii) the transfer of funds from these platforms. Following the publication of the Crypto Assets Regulation, a new regulation amending the Regulation on Measures for Prevention of Laundering Proceeds of Crime and Financing of Terrorism (the Measures Regulation) entered into force and expanded the scope of Measures Regulation and defined crypto asset service providers as obliged persons. Accordingly, crypto asset service providers must comply with certain obligations regulated under Law No. 5549 on the Prevention of Laundering Proceeds of Crime and the Measures Regulation, including, but not limited to, identification of clients and beneficiaries, notification of suspicious transactions, and provision of continuous information.

On the other hand, there is a draft bill (the "**Draft Bill**") that aims to amend the CML to set the legal framework regarding crypto assets and crypto exchanges. The Turkish Parliament is working on the Draft Bill, which is expected to be enacted in 2024[1](file:///C%3A/Users/bmsgdg/Downloads/Turkey%20%281%29%20and%20Turkey%20-%20ELES%20-%20KG%20-%20KE%20comments%28445564856.1%29.docx#_ftn1).

With the enactment of the Draft Bill, the CMB will have the authority to regulate crypto assets, the CBRT will be able to regulate crypto assets regarded as electronic money within the scope of payment services and electronic money legislation, and the Ministry of Trade of the Republic of Türkiye will be able to regulate crypto assets that aim to access or represent a product or service offered.

Apart from the recently introduced Crypto Assets Regulation, the new provisions set forth under the Measures Regulation, crypto assets and activities relating to crypto assets are still not regulated under Turkish law.

[1](file:///C%3A/Users/bmsgdg/Downloads/Turkey%20%281%29%20and%20Turkey%20-%20ELES%20-%20KG%20-%20KE%20comments%28445564856.1%29.docx#_ftnref1) The Draft Bill has not been made public. Furthermore, the Parliament can make further changes to the version of the Draft Bill. As of January 2024, there is a new version of the Draft Bill.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

The activities of a firm outside Türkiye relating to a client or counterparty located in Türkiye might be subject to Turkish law. A service provider located abroad needs to consider whether it is triggering a Turkish licensing obligation and complying with Turkish marketing rules.

Foreign financial service providers must take no action that would create an impression that they are providing financial services in Türkiye. However, they can respond to reverse inquiries where the Turkish resident customer has initiated the relationship. Foreign financial service providers must avoid any promotion, distribution, marketing or other solicitation of their services and products in Türkiye that may be subject to licensing in Türkiye.

There is no exact definition of “marketing, promotion and solicitation of financial products and services” under Turkish financial services regulations. Marketing, promotion and solicitation cover all initiatives to market financial products and services, including passive marketing. For instance, a foreign bank calling or emailing a customer resident in Türkiye to provide information on its products and/or services without the customer asking first is considered to be marketing its services and products in Türkiye.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

Generally, foreign financial service providers that wish to enter the Turkish market need to incorporate a subsidiary or branch in Türkiye and apply with the respective regulator to obtain an incorporation permit. An applicant seeking incorporation permits for financial services must satisfy the conditions set out by the regulator supervising the applicant’s planned activity. The conditions can vary depending on the intended regulated activities (e.g., banking, insurance or capital markets brokerage) and, in particular, whether the applicant will be regulated by the BRSA, the CMB, the IRSA or the Central Bank. Generally, the following conditions need to be satisfied:

**Company type and registered offices** – Financial institutions incorporated in Türkiye are generally required to be formed as joint stock companies (*anonim şirket*). Banks and insurers located abroad can establish branches in Türkiye with the BRSA's and the IRSA’s approval, respectively, without incorporating a Turkish entity. Other non-Turkish financial institutions seeking to operate in Türkiye are required to incorporate a Turkish entity.

**Constitutional documents** – The applicant's articles of association must be in line with the laws and regulations of the activities planned to be conducted and the regulator must approve them.

**Capital requirements and financial adequac**y – The regulator must be satisfied that the applicant has adequate financial resources to carry out the activities. The minimum capital requirement varies depending on the extent of the services a financial institution provides (e.g., higher for banks compared to capital markets brokerage firms), which can be increased upon the regulator’s request after assessing the application.

**Founders’ and directors’ suitability** – The applicant's founders and directors must be financially sound, reputable and proper (i.e., financial and criminal records must evidence their adequacy to be shareholders/directors of the financial service provider).

**Viable business model** – The regulator will examine the applicant’s business model, the business's economic aspects and the applicant’s projections.

**Transparent shareholding structure** – The regulator will examine the applicant’s shareholding structure, its shareholders’ financial adequacy, and documentation on the financial institution’s direct and indirect shareholding.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

Under Turkish law, certain financial institutions (e.g., payment and electronic money institutions and system operators) are required to obtain one single permit to be authorized to operate in Türkiye. In contrast, others (e.g., banks, insurance companies, private pension companies and brokerage firms) are required to obtain both incorporation and operation licenses.

An applicant for an operation license must undergo a formal process to obtain authorization, which involves completing and submitting required application documents, forms, undertakings and supporting information. The BRSA, the CMB, the IRSA or the Central Bank may require additional documents from applicants if necessary.

In most cases, the regulator responds to the applicant within three to six months from receipt of the complete application. This period can be extended, depending on the regulator’s assessment and satisfaction with the applicant’s documents.

The documents, forms, undertakings and supporting information required will depend on the nature of the regulated activities being conducted. Generally, however, a financial institution must satisfy the following conditions to obtain an operation license:

**Required capital** – The minimum required capital (or any higher amount the regulator deems necessary) must be fully paid in cash, and shares must be issued in registered form (*nama yazılı*). Any other payable fees or contributions to the government must also be paid before obtaining the license.

**Corporate governance** – A financial institution must comply with the corporate governance requirements set by its regulator, such as having a certain number of independent board members and publishing quarterly and annual reports.

**Internal systems** – A financial institution must set up required internal systems, such as internal control, internal audit, and risk management systems.

**Technical infrastructure** – A financial institution’s technical infrastructure, such as its IT systems, must be in place to carry out its activities and protect customer privacy and other confidentiality requirements.

**Personnel requirements and qualifications** – A financial institution must have an adequate number of personnel with sufficient qualifications. Directors, managers and other designated officers, such as portfolio manager and internal control director, must meet certain qualifications depending on the financial institution. The applicant will need to submit forms providing information that enables the regulator to assess their fitness and propriety to perform their roles.

There are no regulatory sandboxes in operation in Türkiye and fintechs are not exempt from authorization requirements.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

Although Türkiye is a candidate for full membership, it is not a member of the EU or the European Economic Area, nor is it a party to any agreement for passporting financial services across Europe. Therefore, a Turkish financial institution cannot passport its authorization into EEA member states or any other jurisdiction, and foreign financial institutions cannot operate without required licenses in Türkiye.

# 8. Authors and contact information

## Authors and contact information

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