

CROWDFUNDING IN TURKEY WITH THE RECENTLY ANNOUNCED DRAFT COMMUNIQUÉ

This Briefing Note seeks to summarize the principles regarding crowdfunding platforms, crowdfunding models and operations, membership procedures as well as utilization of the collected funds envisaged under the Draft Communiqué on Equity-Based Crowdfunding No. III-35/A.1 of Capital Markets Board of Turkey.

I. Introduction

Crowdfunding is an alternative type of business funding that matches a large number of investors with the entrepreneurs for the purpose of financing a business, project or venture through an online platform.

In order to bring more transparency, Turkey, since 2016, has been eager to adapt this popular alternative funding method to its legislation and so, create a legal framework for crowdfunding. Certain types of crowdfunding platforms based on rewards-based and donation-based models have been actively operating in Turkey for almost 10 (ten) years, however, these were not regulated as crowdfunding models until 2017. After several consultations with the existing crowdfunding platforms and certain other market representatives, crowdfunding is legally recognized and defined in the Capital Markets Law No. 6362 (the "CML") following the enactment of The Law on Amending Certain Tax Laws and Other Laws No. 7061 published in the Official Gazette on 5 December 2017. Under the CML, crowdfunding is defined as raising funds from individuals through crowdfunding platforms for the financing of a project

or a company within the terms determined by the Board without being subject to any investor indemnification provisions.

On 3 January 2019, Capital Markets Board of Turkey ("CMB") has published the Draft Communiqué on Equity-Based Crowdfunding No. III-35/A.1 ("**Draft Communiqué**") to receive public opinion until 4 February 2019. Draft Communiqué mainly introduces the principles regarding crowdfunding platforms, crowdfunding models and operations, membership procedures as well as utilization of the collected funds.

2. Crowdfunding Model

Crowdfunding is a financing tool utilized by startups, SMEs or individuals for the purpose of financing their projects or ventures which may be a movie, software or an innovation, with the funds collected from a large group of individuals through campaigns. Crowdfunding takes place on an online platform and operates through different crowdfunding models.

As said, there are 4 (four) common models of crowdfunding; (i) donation-based, (ii) reward-based, (iii) lending-based and (iv) equity-based. With the Draft Communiqué, CMB only regulates the equity-based crowdfunding model where the investors are participating in startups or young enterprises through equity holding. Donation-based and reward-based crowdfunding models are not regulated by the CML or the Draft Communiqué, and therefore, we may say that the existing crowdfunding platforms that operate with these 2 (two) models are not under the supervision of the CMB and may operate subject to general principles of Turkish law. Moreover, CMB explicitly prohibits the lending-based crowdfunding model, which generates the largest funding volume in global crowdfunding industry.

3. Crowdfunding Platforms

Crowdfunding takes place through online platforms rather than standard financial intermediaries. Under the Draft Communiqué, crowdfunding platforms are required to exclusively operate for crowdfunding activity and in order to operate, each platform is required to be registered to the eligible crowdfunding platforms list published by the CMB once it meets the specific requirements set out by CMB such as share capital, business title, technical infrastructure and internal control. Among these requirements, notably, crowdfunding platforms are required to be incorporated as joint stock companies

and at least one of its shareholder and board of directors ("Board") member to be licensed as an angel investor in Turkey. Moreover, Draft requires an "investment committee" to be established by each crowdfunding platform responsible for the examination and assessment of the crowdfunding campaigns, members of whom will be appointed by the Board.

Once authorized by CMB, crowdfunding platforms may start to operate. Draft Communiqué also allows the platform to consult the entrepreneur during the campaign. CMB, however, in the Draft Communiqué, prohibits any crowdfunding specifically for real estate projects and any other brokerage activities in the secondary market of crowdfunded shares.

4. Who can be a project-owner and an investor?

Project owner may either be an individual entrepreneur, or a venture company (each "**Entrepreneur**") incorporated in the form of a joint stock company in Turkey within 2 (two) years as of the announcement date of Information Form of the project as described under 5.b below. Notably, the project owners are either required to be performing technology or production facilities, have a registered website and to be below the thresholds envisaged for public companies under the secondary legislation.

Each investor is required to subscribe to the crowdfunding platform by way of entering into an online agreement with the platform. Investors may be categorized as qualified investors and non-qualified investors. Draft Communiqué imposes investment limitation for non-qualified investors with a maximum of TRY 20.000 (twenty thousand Turkish Liras) during the course of a calendar year and such investors may invest as of the 14th (fourteenth) day of their platform membership.

5. Crowdfunding Structure under the Draft Communiqué

a. Crowdfunding Campaigns

Entrepreneur initially applies to the crowdfunding platform to raise funds for its project or the company itself and once the project is approved by the investment committee of the platform, crowdfunding platform and Entrepreneur enters into a crowdfunding agreement in writing whose minimum contents are published in the Draft Communiqué.

Crowdfunding platform launches campaigns for each project that is approved by its investment committee. Each project has a target fund amount and the main purpose of the campaign is to reach this target amount. Campaign may take place for maximum 60 (sixty) days as of the date the information form is announced to public. That said, investors may withdraw the funds deposited for the campaign within 48 (forty-eight) hours as of the date of the deposit order and the funds kept under custody of the escrow agent will be released on the next business day.

b. Information Form and Report for Use of Funds

As of the date the crowdfunding campaign starts, for the respective campaign, the following documents are required to be published in the online platform and stay thereon during the campaign.

- Information form in which the details of the project are specified and approved by the investment committee, and
- Report regarding the purpose of use of the funds to be raised during the crowdfunding.

c. Blocked Accounts at Escrow Agent and Share Capital Increase

During the campaign, funds raised for each project will be transferred to the blocked accounts opened by the escrow agent in the name of the Entrepreneur at Merkezi Kayıt Kuruluşu A.Ş. (central securities depository, "MKK") and will be kept in such accounts under custody of the escrow agent.

In case the target fund is fully collected at the end of the campaign term,

- if the Entrepreneur is a venture company, it is required to issue new shares by way of share capital increase equivalent to the collected fund amount within 30 (thirty) days as of the expiry of the campaign term,
- if the Entrepreneur is an individual, he/she is required to incorporate a venture company and following that, new shares by way of share capital increase equivalent to the collected fund amount shall be issued.

The issued shares are required to be dematerialized at MKK and once the shares are dematerialized, they are transferred to the respective accounts of the investors and at the same time, the funds blocked at the escrow agent are transferred to the venture company. This is the moment the campaign will be over.

d. Audit Mechanism and Liability of Venture Company

Following successful completion of the campaign, the use of the collected funds in line with the purpose of the project will be controlled through a defined reporting mechanism until the date funds are entirely used.

6. Conclusion

Draft Communiqué leads the way to equity-based crowdfunding for young companies which seek for entry-level financing options and provide a step forward to more traditional financing methods. On the other hand, CML and the Draft Communiqué stays silent for donation-based and reward-based crowdfunding models and in a way, keeps both models out of the territory of capital markets. It is however not the same for real estate and lending based crowdfunding models and these are directly prohibited given that Turkish capital markets currently have plenty of real estate investment and lending options. Turkish crowdfunding industry currently holds a significant potential for growth and once the secondary legislation comes into force, it is expected to grow more in time.

CONTACT

Eryürekli Attorney Partnership

T: +90 212 365 9600

info@eryurekli.com

ABOUT THIS PUBLICATION

ERYUREKLI is a law firm incorporated in the form of an attorney partnership and registered by Union of Turkish Bar Associations with registration number 245.

This publication is provided by ERYUREKLI as a news reporting service to clients and colleagues. The information given in this publication does not necessarily cover every aspect of the topics with which it deals and should not be construed as legal advice.

Should you have any questions on issues reported in this publication, please contact your own counsel or [ERYUREKLI](#) for further information.