

TURKEY REGULATED CROWDFUNDING

Nowadays, Crowdfunding has attracted a considerable interest in Turkey as it is in all over the world and it is expected to be a multi-billion-dollar industry. In the most general sense, Crowdfunding is an alternative financing option by which organizations, businesses -including start-ups- and individuals could receive funding from public through online platforms to finance or re-finance their activities. As an alternative financing option, Crowdfunding can be a value for the development of Turkish economy.

Although charity-based Crowdfunding has been implemented in Turkey for a while, the development of Crowdfunding in the financial markets has not been seen due to lack of appropriate regulation. The Law numbered 7061 published in Official Gazette numbered 30261 and dated 15.12.2017 aims to regulate Crowdfunding in Turkey in order to meet this deficiency.

The provisions of The Law numbered 7061 (“The Law No: 7061”) have been outlined below.

A general definition of, and considerable explanations regarding Crowdfunding are included in the “General Preamble” of The Law No: 7061. According to the definition, Crowdfunding is a new-generation financial instrument which allows a number of individuals, who could not have a considerable impact individually per se, to provide funding for an enterprise through small amounts and donate via online platforms. The Law No: 7061 aims to create an investment environment in which an entrepreneur could access to the crowd and *vice versa*, through regulated online platforms. Since Crowdfunding is aimed to serve individuals/institutions which need seed capital and early stage financing, the regulation of Crowdfunding is exempted from a considerable number of provisions of The Capital Market Law numbered 6362 (“**CML**”) to create a cost-effective environment.

The Law No: 7061 sets the general framework of Crowdfunding, and confers power to the Capital Markets Board of Turkey (“**CMB**”) to introduce secondary legislations for the details of the system.

The Article 107 of The Law No: 7061, which amends the sub-clauses (e) and (f) in the first sub-article of Article 3 of the CML, regulates that *the fundraiser of the Crowdfunding Platforms shall not be considered as an issuer or a publicly-held corporation*. Additionally, the definition of Crowdfunding is incorporated as the sub-clause (z) into the first sub-article of Article 3 of the CML. Accordingly, ***Crowdfunding is fundraising from the public via the Crowdfunding Platforms in order to raise funds for a project or a company according to the rules determined by the CMB without being subject to the provisions related to the investor compensation schemes of the CML***. As it is stated in the Preamble of the Article, Crowdfunding is exempted from the costs and bureaucracy that issuers and publicly-held corporations are subjected. Crowdfunding transactions are also exempted from the investor compensation provisions of the CML. So long as the Crowdfunding Platforms do not provide any custodian service for cash and capital market instruments, this exemption will not create any problem.

Article 108 of the Law No: 7061, which adds a sentence to the Article 4 of the CML, states that without prejudice to the provisions of other regulations concerning charity and donation collection, ***the fundraising through Crowdfunding will be carried out by the Platforms licensed by the CMB and, is not subject to the provisions of the CML related to the requirement of preparing a prospectus or an issue document***. The Preamble of the Article also states that fundraising through Crowdfunding is exempted from the requirement of preparing a prospectus or an issue document. This approach shall be seen as the result of the aforementioned definitions which mention that the fundraiser shall not be deemed an issuer or/and a publicly-held company. Nevertheless, it would be appropriate to introduce rules and mechanisms by the secondary legislations to prevent Platform operators and fundraiser to present the inaccurate and misleading information to the public.

The Article 109 of The Law No: 7061, which amends the sub-article 1 of the Article 16 of the CML, states that even if the corporations', which raised fund through Crowdfunding from public, shareholders' numbers exceed five hundred, **their shares shall not be deemed to be**

offered to the public. This regulation should also be seen as the result of the definition which states that the fundraiser shall not be deemed a publicly-held company.

The Article 110 of The Law No: 7061, which adds Article 35/A to the CML, regulates the main principles and rules of the Crowdfunding Platforms. Accordingly, ***the Crowdfunding Platforms are defined as institutions which are intermediaries as to Crowdfunding and provides services through the Internet.*** Crowdfunding Platforms are required to obtain authorization from the CMB to be set up and operated. The CMB shall regulate many issues related to the Crowdfunding Platforms through secondary legislations, including conditions of the establishment, their shareholders, share transfers, and employees, the limitations as to the amount may be invested by each fund provider or the maximum amount may be collected through Crowdfunding, and other rules and procedures of their operations and principles regarding the control and supervision of whether collected funds are used in line with purpose declared. It is expected that these secondary regulations also ensure and develop rules and mechanisms to protect investors. Besides, this Article also regulates that the illegal activities and transactions of Crowdfunding Platforms shall be subject to the Article 96 of the CML which regulates the illegal activities and transactions of the Capital Market Institutions.

The same Article also regulates that ***Crowdfunding and transactions associated with it as well as the Crowdfunding Platforms shall not be considered within the scope of investment services and activities and ancillary services.*** Thus, ***it is possible to argue that this approach paves the way for the people and institutions, which are not investment institutions, to establish and operate these Platforms.***

Although there is no explicit provision in The Law No: 7061 to clarify whether investment institutions (banks and brokerage houses) could establish these Platforms, nothing prevents the CMB to authorize investment institutions to establish and operate them.

The same Article regulates that ***Crowdfunding and transactions associated with it as well as Crowdfunding Platforms shall not be subject to the provisions of the CML with respect to the exchanges, market operators and other organised market places.*** As stated in the Preamble of the Article, Crowdfunding is different from the exchanges and it should be regulated more flexible than exchanges, market operators and other organised market places.

Besides, *the relationships between the Crowdfunding Platforms and the fundraiser and the individuals/institutions investing through the Platforms shall be subject to the General Provisions.* These relationships are not regulated by The Law No: 7061 intentionally with the aim of subjecting these relationships to especially the Turkish Commercial Code and Turkish Code of Obligations as well as other general provisions.

Finally, the Article 111 of The Law No: 7061 which amends the fourth sub-article of Article 99 of the CML regulates that in case it is determined that the money is collected from public through Crowdfunding Platforms without the permission of the CMB or fx transactions or derivative transactions which are subject to same provisions with the fx transactions are conducted abroad via internet for persons residing in Turkey, the Information and Communication Technologies Authority shall bar access to the relevant websites upon the request of the CMB.