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New Star of the Digital World: NFT!

NFT (Non-fungible Token) is now at the top of the agenda among the world, soon after its introduction to the rapidly changing and developing digital world trade. In March 2021, the NFT artwork “Everydays: the First 5000 Days” by digital artist Mike Winkelmann, known as Beeple, was sold online at Christie’s auction house for a record price, **USD 69,346,250**.

After this sale that has made a splash, the question focused on within the debates, particularly in the art communities, has come to light as: **“What is NFT and how is it formed?”**

NFT refers to a unique token on any blockchain. The first tweet shared by Twitter’s founder and CEO Jack Dorsey on Twitter that was sold for approximately USD 3 million can be an example of these unique NFT assets. Recently in Turkey, famous comedian Cem Yılmaz has auctioned NFT works of his own drawings and earned approximately USD 40,000. Right after this sale, it was announced that the new series of actress Nurgül Yeşilçay will be offered as NFT and maximum of 50 people will be able to buy.

Uniqueness in the digital world is of capital importance due to its ability to “certificate” digital properties (image, video, music, etc.) exclusively to its owner and transferring to a third party to the extent determined in its license terms; with going beyond the copying and storage features of digital mediums. This is why NFT is used particularly for art projects to record artists’ works and to distinguish the authentic and original version of the work from its other digital copies. Thereby, the owners can prove the uniqueness of their works.

NFTs are connected with software codes in the form of “smart contract”. This contract is an open-sourced blockchain protocol that directly control the transfer of digital assets including crypto currencies or crypto assets between parties under certain terms and conditions. Smart contracts, which cannot be changed later and will continue to exist permanently in a blockchain, may contain provisions regarding the use, transfer, and commercial terms of NFTs. The smart contract may include the obligation of a certain fee to be paid to the NFT creator for each sale following the initial one. In this regard, terms and conditions determined under the smart contract related to NFT are of great importance and may directly affect the subsequent sales of NFT and economic rights of the NFT owner.

In this context, the aspects that are discussed and crucial to assess from a legal point of view lead us to certain questions that will shape the future of NFT:

■ The person who buys the NFT artwork only purchases the token on the blockchain but is also bound by various regulations related to the use of the economic rights of the work with the smart contract. It should particularly be assessed whether smart contracts fulfil the requirements of agreements related to the transfer of relevant rights within regulations on intellectual and artistic works.

■ Another important matter regarding NFTs is being in line with data security obligations. Personal data shared with NFT is stored in blockchains, which are decentralized and distributed by its nature. It is necessary to determine in which country the judicial remedy will be applied in case of conflict and also to determine who will be the data controller.

■ The NFT existence is strictly bound with the functioning of blockchain that the NFT is created. However, the continuation of the blockchain is directly related with the free will of the people to stay on the chain. In case the related chain is ceased, the existence of the NFT will also have no equivalent.

■ Although NFT provides uniqueness to the digital asset, there is no restriction for the reproduction of the same asset. Also, it should be determined what kind of limitation will be applied to the resale of the same work on another blockchain.

■ No evaluation is made as to whether the person who uploaded the NFT asset/work is the real artist who created the asset or artistic work. The identification of the owner of the NFT is also an important issue.

Although the concept of NFT has made a rapid entry into the digital world, it seems that discussions on its legal ground will continue. How NFT will develop commercially, and its continuity will only become clear in time with the approach of the users and their usage pattern.

A Rising Trend in Turkey: Venture Capital Trust (VCT)

Venture capital trusts are getting popular among businesspeople in Turkey. The reasons behind this are the inadequacy of the traditional investment methods which no longer meet the requirements of the developing innovation and start-up ecosystem in Turkey.

Companies with high growth potential may find it hard to access the funding they need. Both the insufficiency of the venture companies' capital and bank loans and the reluctance of individual investors to invest in seed-stage companies make it difficult for these companies to obtain financing. VCTs, increasingly popular for their easiness in management and tax advantages, come into play at this point and provide promising companies with the capital they need.

The mechanisms of VCT's can be explained briefly as follows:

A venture company offers an innovative project, product, or idea which has potential for growth but needs resources. VCT's, on the other hand, is a joint-stock company subject to the registered capital system, serving as a bridge between venture companies and investors. VCTs collect venture capital investments, capital market instruments, and other assets appropriate for the Capital Markets Board (**CMB**) in a portfolio, operate such portfolio, and finally invest in venture companies deemed appropriate. With the growth of the invested venture company, the shares or the debt instruments acquired in such a venture company also increase in value. VCTs, thereafter, earn profit by the exit of the invested company and, therefore, reset the investment risk it took in the first place.

So, what is the reason for the recent increasing interest in the VCTs? For the answer, we can look into the conveniences and benefits of VCT's as follows:

■ **Tax Incentive:** The earnings arising from the activities of VCTs, including the trading of stocks, are exempt from corporate income tax. As a rule, the earnings exempted from corporation income tax are subject to tax deductions. In VCTs, on the other hand, the withholding tax rate to be made on such earnings is determined as 0%.

■ **Comprehensive Activity Field:** VCTs not only invest in companies but also participate in the management of the invested venture companies. In this way, it supports the growth of the invested company.

■ **Variety of the Investment Methods:** VCTs may be direct shareholders in a company by acquiring share stocks. Or it can indirectly become a shareholder in the venture company through holding companies and venture capital funds located in Turkey or abroad. Also, it can acquire debt instruments of venture companies.

■ **Financial Incentive to the Managers:** VCTs can receive professional management support for the investment processes, from portfolio management companies by using incentive fee mechanisms such as performance fee (carried interest) and management fee.

■ **Share Sales:** VCTs may offer their shares to the public or only to qualified investors, on the condition that there is a provision in the articles of association. The shares of such companies, therefore, are not traded on the stock exchange.

Some points should be considered in the establishment and the operation process of VCT's can be explained as follows:

■ **Establishment Process:** Despite all its advantages, establishing a VCT is not easy due to the number of requested information and documents. In addition to the establishment, an operating permit must be obtained from the CMB for portfolio management.

■ **Qualification of Venture Companies:** Venture companies should aim to create or develop tools, equipment, materials, services, or new products, methods, systems, and production techniques with industrial, agricultural application, and commercial market potential, or should be in a position to achieve these objects with management, technical or capital support.

■ **Restriction on the Portfolio:** Shareholders, members of the board of directors and the general manager having management control in VCTs cannot invest in another company over they have management control.

■ **Subjection to Independent Audit:** If VCT offers its shares to the public, it becomes subject to continuous independent auditing and has to make special circumstances disclosure.

■ **Notification to the CMB:** If VCT offers its shares to qualified investors; it, then, has to submit the annual balance sheet and income statement and detailed independent audit report to the CMB within one month following the date of the annual ordinary general assembly meeting.

After all, VCTs may healthily continue their operation activities if the operating permits and notification obligations mentioned above are fulfilled and can carry out their activities at lower costs and with various investment instruments thanks to the incentives and advantages provided to them. For this reason, the number of VCTs established and operating in different regions of Turkey is increasing day by day and its application is expected to develop further in the upcoming years.

Amendment Regulation on Electronic Signature Entered into Force

Regulation (**Amendment**) on the Amendment of the Regulation on Procedures and Principles of Implementation of Electronic Signature Law (**Regulation**) has entered into force on 15 October 2021.

With Amendment, regulations for electronic identity authentication were incorporated into the Regulation. We compiled some significant regulations below:

■ Some technical and important definitions such as "Secure Access Module Smart Card", "Card Access Device", "Identity Authentication Notification" were added to the Regulation, with the definition of Electronic Identity Authentication System (**EIAS**). These definitions and further were included in Amendment, which amended Article 4 of the Regulation.

■ With Amendment, the third title "Certification Process" of the Regulation was changed to "Uploading, Renewal and Cancellation of Qualified Electronic Certificates on Identity Card". New extensive regulations have been brought under this title:

- ▶ Electronic Certificate Service Provider (**ECSP**) will be able to remotely upload, renew and revoke qualified electronic certificates to the identity card using its own role and secure communication certificates; and can remotely upload qualified electronic certificates and different electronic certificates using a similar infrastructure to the identity card.
- ▶ To be able to perform this, ECSP shall apply to Information and Communication Technologies Authority (**ICTA**) for obtaining role and secure communication certificates.
- ▶ Further to ECSP receiving the role and secure electronic communications certificates, ECSP will upload them to its own secure electronic signature creation tool.
- ▶ ECSP will deliver to ICTA the necessary information and documents regarding the Identity Access Device (**IAD**) which will be used for remote upload, renewal and cancellation of qualified electronic certificates.
- ▶ ECSP will not be able to charge fees to other ECSPs for role and secure communication certificates.

The identity authentication process of the applicant through the identity card will be done remotely in accordance with Regulation on TR Identity Card Electronic Identity Authentication System. Following the identity authentication process, a qualified electronic certificate can be uploaded remotely by ECSP. Likewise, the qualified electronic certificate can be renewed remotely at the request of the certificate owner.

ECSP is obliged to keep a record of all transactions related to remote qualified electronic certificate management via identity card, the time of these transactions, and the information of the persons performing the transactions. It has been regulated that these records shall be kept by ECSP for at least 20 years, ensuring the security, confidentiality and integrity of them.

You can find the full text of Amendment [here](#) (only available in Turkish).

Uniform Rules for Digital Trade Transactions has been Published

While international trade continues to grow rapidly, digitalization for trade transactions has become inevitable. “Uniform Rules for Digital Trade Transactions” (**URDTT**), published on 1 October 2021, has concluded the work of the International Chamber of Commerce (**ICC**) lasting in this context since December 2018. Version 1.0 of URDTT, which was adopted following 6 drafts and evaluation of more than 1500 comments received from National Committee of ICC, sets standards to be applied to fully digitalized trade transactions.

URDTT, which defines digital trade transaction as a process whereby electronic records are used to evidence the underlying sale and purchase of goods or services, shall become binding upon parties determining the terms and conditions of digital trade transaction that such rules will be applied. Due to the legal certainty provided to parties of digital trade transactions, it is predicted that URDTT will have wider application than it is expected.

URDTT does not merely regulate the principles on payment obligation, payment undertaking, transfer of these obligations and undertakings and liabilities in case of force majeure; it also regulates the concept “electronic record” in

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detail. As per ICC's accounts, adoption of electronic documents in trade is expected to generate roughly a 25% increase in the revenue of small and medium sized enterprises, which explains the significance of the issue clearly.

To briefly mention the regulations on electronic records; first of all, it must be stated that unless applicable law requires otherwise, electronic record is intended to replace the requirement that information regarding commercial transactions should be in writing. In case of issuing an electronic record that does not comply with the terms and conditions of the digital commerce transaction, URDTT envisages an information obligation for the addressee of the electronic record. Given this, in case of not informing, the electronic record received shall be considered as accepted. In case the addressee complies with obligation to inform, the electronic record may be amended, replaced or the noncompliant electronic record may be accepted. Finally, in case of a data corruption, which renders electronic record unreadable in whole or in part, there is again obligation to inform envisaged for the addressee of electronic record.

Hereby, URDTT is an exciting development in the area of regulatory work on digital trade. As it is stated in the introduction part of UDRTT, it is the first internationally applicable regulation on fully digitalized transactions, including payment method, unlike the uniform rules already published by ICC Banking Commission for the digitization of trade transactions. Also, the fact URDTT not relying on a certain platform that trade transactions will take place; being comprehensive to include technologies such as artificial intelligence, data analytics, smart contracts and the internet of things; and being designed to be compatible with UNCITRAL Model Laws indicate that it will continue to be part of legal systems with updated versions.

You can find the full text of URDTT [here](#).

Personal Data Protection Authority's Announcement on PCR Test Results and Vaccination Data

The public announcement (**Announcement**) on PCR test results and vaccination data has been published on Personal Data Protection Authority's (**Authority**) website on 28 September. Announcement includes Authority's assessment on requests directed to Authority for PCR test results and vaccination information within the scope of Turkish Personal Data Protection Law (**Law**).

Announcement first sets forth the decisions of Ministry of Labor and Social Security (**Ministry**) on (i) reporting of Covid-19 vaccination information and/or negative PCR test result information by people who want to participate in activities where people assemble and (ii) allowing of employer/workplace to require the employees who are not vaccinated against Covid-19 to take a PCR test in a mandatory manner once a week and recording of this vaccination information.

Announcement also emphasizes that Covid-19 vaccination information and PCR test information are deemed as special categories of personal data according to Law and repeats once more that these data shall be processed in accordance with Law.

The core issue in Announcement is the explanations that were made with reference to Article 28(ç) of Law. According to this Article, data processed by public institutions and organizations authorized by law in the scope of preventive, protective and intelligence services on matters concerning national defense, national security, public safety, public order or economic security fall out of the scope of Law.

In this context, Authority states that *(i)* since Covid-19 threatens public security and public order, public institutions and organizations within the scope of the mentioned article can process Covid-19 test information PCR test data within the scope of preventive and protective services of authorized public institutions and *(ii)* organizations and activities that do not serve or exceed the purpose of protection of public safety and public order still remain within the scope of Law.

Announcement is being criticized for not making a clear statement on the processing of PCR test results and vaccination data by employers who are not public institutions and organizations authorized by law. Although there are different interpretations of Announcement, the prevailing one is that processing of PCR test results and vaccination data of their employees by private institutions and organizations falls under the activity of Ministry, which is an authorized public institution. In such a case, it is possible to say that employers' obligations arising from Law while obtaining Covid-19 vaccination, such as obligation to inform and obligation to obtain explicit consent and PCR test results, are eliminated.

You can find the full text of Announcement [here](#) (only available in Turkish).

Answers. Not theories.

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