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Turkish Fintech Guide is Published

The Turkish Fintech Guide (**Guide**) was published by the Presidency Finance Office (**Office**) on 15.03.2023.

Guide is an introductory document that instructs start-ups, entrepreneurs and investors regarding the fintech sector in Turkey. In the Guide, under the title of “Turkish Fintech Ecosystem”, information on business models in Turkey, regulatory bodies, regulations governing fintechs, unions and communities operating within the scope of fintech, and incentives and supports that fintechs can benefit from are also included.

Guide has been prepared by considering the directly regulated organizations and indirectly regulated organizations in terms of verticals of the fintech sector. It is stated that fintech verticals that do not need regulation directly or indirectly are excluded from the scope of this Guide as they operate with the unique dynamics of the market.

Fintech business models within the Guide are as follows:

- **Payment System:** It has been defined as a structure that provides services for the realization of fund transfers as a result of transfer orders sent by three or more participants, within common rules. Examples that are widely used in Turkey are card settlement systems, payment systems such as Electronic Funds Transfer (EFT), Instant and Continuous Transfer of Funds (FAST).
- **Electronic Money Institution:** It is defined as the institution that enables customers to make payment transactions with these electronic funds before third parties as a result of transferring funds received from customers to electronic money accounts. Customers can make their payments with payment tools such as cards, mobile phones and passwords. These organizations can also offer payment services.
- **Payment Institution:** An institution that provides the infrastructure for customers to deposit and withdraw money to their payment account and performs all necessary operations for the operation of the payment account. These institutions also act as intermediaries for fund transfers and regular payment orders made with credit cards, debit cards, prepaid cards. Payment institutions also offer physical POS services for businesses and virtual POS infrastructure services used in online shopping. Payment institutions can provide payment services in areas defined in the relevant law, such as money transfer, mobile payment and bill payment, account information service provider, payment order initiation service provider. It is worth noting that payment institution can only carry out that payment service activity or activities for which it has been authorized to operate.

Payment institutions are subject to different licenses depending on the type of payment service to be operated. The types of payment services are as follows:

- **Money Transfer:** An institution that mediates fund transfers without opening an account on behalf of the sender or the receiver.
- **Mobile Payment:** The institution that provides the infrastructure for the realization of the payment transaction by reflecting the amount in the payment transaction to the telephone bill or by collecting it via prepaid lines. Customers who do not use a credit card or are not a bank customer, but shop online, pay the invoice amount to the electronic communication operator instead of the seller, and the payment institution transfers the product or service price to the goods or service provider.
- **Bill Payment:** A payment institution that mediates payments made in return for electricity, water, natural gas and communication services.
- **Account Information Service Provider:** The institution authorized to access payment account data from different account service providers through a single platform. This service is also called open banking.

- **Payment Order Initiation Service Provider:** The institution authorized to perform payment transactions for the accounts of the customer with another payment service provider on behalf of the customer, based on the consent of the customer.

Guide also includes payment services in Turkey according to the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (**Law**) No. 6493. In this context, we have briefly summarized the relevant payment services:

- **Digital Banking:** Digital banks are defined as institutions that offer banking services only in electronic form instead of physical branches. Digital banks can be established as deposit and participation banks. Fully licensed digital banks can perform all the activities that credit institutions can perform. Digital banks with limited licenses are subject to activity restrictions, and their customer portfolio can only consist of retail customers and SME customers within the scope of activity restrictions.
- **Service Model Banking:** Service model banking is defined as “providing banking services through banks by connecting third-party organizations (interface providers) with bank systems through open banking services”. With this model, interface developers can offer new products and services through the banking infrastructure.
- **Financing Company:** A credit institution that provides financing to real persons and legal entities in the purchase of goods and services. Financing companies offer flexible and fast solutions to their customers simultaneously with sales apart from banks with their staff specialized in the financing of goods and services.
- **Share-Based Crowdfunding:** Share-based crowdfunding platforms allow entrepreneurs or companies to electronically raise the funds they need for a project or venture idea. Project owners/entrepreneurs and investors come together through platforms that allow investing in return for shares.
- **Debt-Based Crowdfunding:** Platforms that allow the fund needed for a venture or project to be collected in exchange for debt instruments through crowdfunding. Crowdfunding campaigns are carried out through platforms where investors who want to invest and entrepreneurs and companies seeking investment come together.
- **Insurance and Reinsurance Broker:** Insurance and reinsurance brokers, serving in the field of comparison and sale of insurance services, enable users to access the most appropriate and comprehensive insurance they need with their online marketplace business model.
- **Distance Selling Insurance Agency:** An organization that makes it a profession to mediate insurance agreements on behalf of insurance companies based on an agreement or to make them on behalf of insurance companies, carries out the preparatory work before the conclusion of the agreement, and assists in the implementation of the agreement and the payment of compensation. Insurance agencies making distance sales mediate the insurance agreements concluded via the website, mobile applications or call center.
- **Meal Card Organization:** The organization that operates the prepaid cards and systems that employers provide to their personnel in return for catering and issued by the organizations providing this service.
- **New Generation Payment Recorder Authorized Firm:** The new generation payment recording device with EFT-POS feature is defined as a device that combines the features of payment recording devices (OKC), also known as cash registers, and POS devices used to receive payments via bank cards.

- **Operator Institution:** Secure Mobile Payment and Electronic Document Management System means the system of sales, payment/collection transactions and the processes of creating, transmitting, preserving and presenting financial documents related to these transactions as electronic documents in accordance with the procedures and principles specified in the General Communiqué of VUK No. 507 by the Operating Organizations. The Operating Institution is the institution authorized to operate this system.
- **Support Service Organization:** Support service organization is the organization that perform banking activities on behalf of the bank or provide services to banks. Business models that offer credit comparison services and organizations that provide service model banking are included in this scope.
- **Participation Finance Compatible Fintech:** Although there is no direct regulation regarding participation finance compatible financial technologies, service model banking and interface provider services can be provided through digital participation banking and participation banks. In other business models, participation and finance compliance can be achieved with the preference of the relevant company. The certificate of conformity regarding participation finance compliance can be obtained through the Advisory Board of the Participation Banks Association of Turkey and the advisory committees authorized by the advisory board.

Authorized regulatory and supervisory institutions and organizations were also included in Guide. Ministry of Treasury and Finance, Ministry of Commerce, Central Bank, Banking Regulation and Supervision Agency (**BDDK**), Capital Markets Board (**SPK**), Insurance and Private Pension Regulation and Supervision Agency (**SEDDK**) and Revenue Administration are implied in Guide.

Licensing of payment system, electronic money institution and payment institution business models are run by Central Bank.

On the other hand, licensing activities for digital banking, service model banking and financing company business models are carried out by the BRSA.

CMB is authorized for share-based crowdfunding, debt-based crowdfunding, and brokerage house (stocks and bonds) licenses.

Licensing processes and all activities regarding insurance and reinsurance broker and distance selling insurance agency business models are under the supervision and control of SEDDK.

According to the data of the Interbank Card Center in December 2022, 99.3 million credit cards are used in Turkey. According to the data in the [2021 Turkey Fintech Ecosystem Information Report](#) (only available in Turkish) published by the Office, this number was 82.8 million in December 2021. As of February 2023, 739 fintechs have been established in Turkey so far. In Guide, it is stated that fintechs received a total investment of 89 million USD in 2022. With the spread of information technologies, the speed of development of fintechs gains momentum every year. This also introduces us new business models and financial concepts. The compliance process of new business models is becoming more and more important. Given that, the rapid developments in the field of fintech make a rapid integration inevitable.

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

KVKK Board Decision on TikTok: Administrative Fine of 1 million 750 thousand Turkish Liras

Personal Data Protection Board (**Board**) has published the summary of the decision regarding the data breach that occurred within the data controller TikTok Pte. Ltd. on 1 March 2023, numbered 2023/134. Board imposed an administrative fine of 1,750,000 TL for violating the first paragraph of Article 12 of the Turkish Personal Data Protection Law (**KVKK**). The relevant article concerns the “taking necessary technical and administrative measures to ensure an appropriate level of security to prevent the unlawful processing of personal data.”

It appears that the Board has made critical findings in its investigation, which was initiated ex officio on various news and complaints about unlawful activities and security vulnerabilities related to the TikTok application under the KVKK. We have assessed below the highlighted topics in the summary.

i. Protection of children’s personal data

In January 2021, TikTok announced an update to its privacy policy, which included default privacy settings for users aged 13-15. However, Board has pointed out that before the update, profiles of this age group were displayed publicly by default, and interaction was not restricted, which posed a risk of access to the personal data of users aged 13-15. Furthermore, the Board concluded that, data controller did not provide adequate measures to reduce the risk.

Board also noted that prior to the update, similarly, the display of personal information of children under the age of 13 who used the application and the collection of data about children without parental consent posed a risk of negative consequences for children. However, it is worth noting that the Board did not provide an evaluation of the adequacy of the measures taken after the update.

Although there is no specific regulation in KVKK regarding children’s personal data, the issue has been shaped by various statements published by the Personal Data Protection Authority at different times. In addition, Board has made decisions evaluating sector-specific rules such as children’s personal health data in the Regulation on Personal Health Data.

ii. The obligation to inform by the data controller.

Board examined TikTok’s privacy policy and assessed the fundamental issues regarding obligation to inform under KVKK. According to the Board’s evaluation, TikTok’s privacy policy fails to provide clear information on the purposes and legal basis for processing personal data, despite mentioning all processing conditions. In fact, Board requires data controllers to inform data subjects about which personal data is being processed, the purposes for which it is being processed, and the legal basis for processing it.

In addition, the Board notes that the privacy policy used as a substitute for explicit consent, does not comply with the principle “explicit consent should be given separately from the privacy policy” set out in the Communiqué Regarding the Procedure and Principles to be Followed in Fulfilling the Obligation to Inform.

Board had previously addressed these issues in its earlier decisions. Consistent with its previous decisions, the Board instructs the data controller to make the privacy policy KVKK-compliant and to provide adequate information in compliance with the Communiqué Regarding the Procedure and Principles to be Followed in Fulfilling the Obligation to Inform, within 3 months. Rather than imposing an administrative fine, Board has exercised its power to instruct data controllers.

iii. **Terms of service shall be written in Turkish**

Board has determined that users who continue to create a TikTok account will be deemed to have accepted the terms of service and privacy policy. Thus, Board stated that the terms of service were not provided in Turkish. In connection with the fulfillment of the obligation to inform, it was evaluated that the content was not presented to users in an easy and understandable way due to terms being in a foreign language.

As a result of this evaluation, it was decided to instruct the data controller to translate the terms of service into Turkish within 1 month.

This decision is significant in regard to obligation to inform, considering the Board evaluated a document which regulates the terms of use of the application.

iv. **Cookies used by the data controller**

According to the Cookie Applications Guide published by the Personal Data Protection Authority in 2022, explicit consent from the data subject is required for the use of cookies other than the strictly necessary (mandatory) cookies that ensure the proper functioning of the website/application. Strictly necessary cookies can be defined as cookies that are necessary to perform an information society service requested by the user, such as logging in, filling out a form, and remembering privacy preferences.

In this regard, the Board has determined that TikTok uses cookies for profiling purposes and has decided that the data processing activity carried out without obtaining explicit consent from the relevant persons is unlawful. Profiling cookies are cookies that allow the analysis of user behavior patterns and do not fall into the category of “strictly necessary cookies” that are necessary for the functioning of the website/application. Although there is no explicit regulation on cookies in the Turkish Personal Data Protection Law, data controllers are expected to comply with the general regulations in the Law, and they are also expected to take into account the relevant guide. Therefore, the decision indicates that the issue of cookies is on the Board’s radar.

In conclusion, TikTok’s activities have been subject to investigations and sanctions even before the Turkish Board’s sanction decision by many data protection authorities, including those in the Netherlands, South Korea, and the United States, due to concerns about the improper processing of personal data belonging to children. In this context, the summary of the decision published by the Board can be regarded as a reflection of the global concern about TikTok’s processing of personal data.

You can access the full text of the decision summary [here](#) (only available in Turkish).

Silicon Valley Bank Bankrupted

Silicon Valley Bank (**SVB**), one of the biggest banks in the United States of America (**USA**), attracted attention with its unexpected collapse on 10 March 2023, despite being one of the leading and reliable names in the financial world. The bankruptcy of SVB is expressed by experts as the biggest crisis in the USA since the 2008 crisis.

Although SVB is preferred by start-ups and technology companies both in USA and around the world; it also worked with the vast majority of tech startups funded by venture capital-backed companies in USA.

To briefly mention the reasons for the collapse of SVB; as USA Federal Reserve (**FED**) increased interest rates, investors tended to take less risk. As a result, it has created significant challenges for SVB's largest client portfolio, which consists of technology startups. SVB announced on 9 March 2023 that as a result of the FED's decision to raise interest rates, it suffered a loss of approximately \$1.8 billion occurred in the sale of USA Treasury bonds and mortgage-backed securities, in which it invested, due to the rapid depreciation of bonds. However, the fact that approximately 97% of SVB deposits are made up of unsecured deposits, combined with the shock effect of the announced loss, has seriously damaged investor confidence in SVB.

As a result of all these negative situations, investors started to be concerned about their deposits and the rapid withdrawal of depositors from SVB brought about the collapse. Following the closure of SVB by the California Department of Financial Protection and Innovation, the Federal Deposit Insurance Corporation (**FDIC**) was appointed as the trustee of SVB.

On 12 March 2023, the statement was made on the FDIC's official website regarding the status of depositors. According to the related statement, all insured depositors will have full access to their insured deposit accounts until at least the morning of 13 March 2023.

As a result, in the face of this crisis, FED and other authorized institutions felt under pressure to support the banking system and reduce the impacts of the panic situation in the markets. Since SVB's bankruptcy, both the authorities and investors are concerned that other medium-sized banks will follow suit. As a result, FED and other authorities appear eager to establish an effective collateral system for all bank deposits. One of the first steps taken towards this situation is that; together with FED, United Kingdom, Japan, Canada, European and Swiss Central Banks made a joint statement that "the liquidity value of the dollar will be increased" in coordination.

Elon Musk Decision from Turkish Competition Board

Elon R. Musk's purchase of Twitter, which made a big impact in the technology world in the last period of 2022, also attracted the attention of the Competition Authority. Turkish Competition Board (**Board**) conducted an ex officio examination regarding the acquisition of sole control of Twitter Inc. by Elon R. Musk. As a result of the examination Board decided as follows:

- It has been decided that the transaction is subject to permission within the scope of the article regulating "Mergers or Acquisitions" processes of the Law on the Protection of Competition (**Law**) and the Communiqué on Mergers and Acquisitions Requiring Authorization from the Competition Board (**Communiqué**) issued based on this article.

- Since *there was no significant reduction* in effective competition as a result of the transaction, it concluded with approval of the transaction.
- Due to the fact that the transfer transaction was carried out without the permission of the Board, it was decided to impose an administrative fine of one thousandth of the gross income obtained in Turkey for the year 2022, to Elon R. Musk, the transaction party in the position of transferee.

In accordance with the Law, the permission of the Board is required prior to the completion of certain transactions. In addition, according to Article 11 of the Law, Board has the authority to examine a merger/acquisition transaction ex officio that is required to be notified but not notified in any way. Although Elon R. Musk has not applied for the takeover in Turkey, Board has the authority to examine the transaction ex officio.

Within the scope of the Communiqué, it is mandatory to obtain permission from the Board for transactions that lead to a permanent change in control and exceed the turnover thresholds specified in the Communiqué. In this context, the turnover thresholds are as follows;

- It is regulated that the total Turkish turnover of the transaction parties exceeds 750 million TL and the Turkish turnover of at least two of the transaction parties separately exceeds 250 million TL, or
- In acquisition transactions, it is regulated that the Turkish turnover of the transferred asset or activity exceeds 250 million TL and the world turnover of at least one of the other transaction parties exceeds 3 billion TL.

According to the Communiqué, in transactions regarding the acquisition of **technology enterprises** operating in the Turkish geographical market or having research and development activities or providing services to users in Turkey; it is stated that the thresholds of 250 million TL specified in the above articles will not be sought”.

Twitter is a technology enterprise. However, it is also understood from the decision that Elon Musk’s global turnover exceeds 3 billion TL.

You can reach the relevant decision [here](#).

End of Rise: Meta Ends its NFT Features

Meta, which has previously gained attention for its work on blockchain and Web 3.0, has even changed its name due to these studies. It was also eagerly anticipated what Meta would do after these major moves. Since Meta had made huge investments in blockchain infrastructures, it had become one of the sector’s pioneers.

In this context, Meta started allowing Instagram and Facebook users to display their Non-fungible Tokens (**NFT**) on the platform in May 2022. Meta, which provides this feature to its users in over a hundred countries, stated that it will allow users to produce and sell NFTs on their platforms in a short time. However, the recent downturn in the cryptocurrency and NFT markets has negatively impacted Meta’s plans.

It was expected by the public that Meta, which announced that it would shrink in the past days and also laid off thousands of employees, would shelve some of its projects. In this context, Meta announced that it will curtail its NFT support on Facebook and Instagram after a significant decrease in interest in the crypto money and NFT sectors and a decrease in market volume.

The interest in NFTs with the rapid increase in prices last year has been dwindling particularly in the last few months. Many companies have reduced their investments in blockchain and NFT in this direction. It can be stated that whether NFTs, whose value and popularity has decreased, will revert to their previous levels in the future. However, it is known that many of the companies that had previously invested in this field have suspended their initiatives for now and will act in accordance with the sector's situation.

Voice Communication Module in TURKPatent is Implemented

Turkish Patent and Trademark Institution (**TURKPatent**) has announced its new system where applicants and patent and trademark attorneys can communicate with TURKPatent employees regarding their industrial property applications. In this context, the Electronic Communication System at TURKPatent was opened on 5 December 2022. While in the first version of the system, only written communication was possible, a voice communication option was also introduced recently. Voice communication is carried out through the Skype application, which is one of the most used online conversation tools. Through these innovations, people will be able to meet with TURKPatent officials much more easily and the processes will progress much faster.

Answers. Not theories.

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About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

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