

## Formation and Licensing of an Electronic Money Institution in Turkey

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### Introduction

The internet is used more than ever all over the world due to rapid growth of the technology. As a result of this excessive usage, e-commerce has become a highly demanded sector and this also led the digitalization of the money. As the concept of electronic money has emerged, new payment service providers, namely Payment Institution (“PI”) and the Electronic Money Institution (“EMI”) have been introduced in Turkey with the enactment of the Law on Payment and Security Settlement Systems, Payment Services and Electronic Money Institutions (the “Law”, Law No. 6493”) in June 2013.

Electronic money is defined in the EU Directive 2009/110/EC as “*electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions.*” EMI on the other hand, is a legal entity that has been granted authorization, in addition to providing and executing payment services, to issue electronic money.

### Scope of Services

EMIs provide wide range of services such as prepaid cards, virtual POS (Point of Sale), money transfer, bill payments etc.

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The Law regulates the scope of services of Payment Service Providers (EMIs, PIs, Banks and National Postal Service Company) under its heading of Payment Services. These services are as follows;

- ❖ Account operation services including cash deposits and withdrawals on a payment account,
- ❖ Money remittance,
- ❖ Direct debit transactions including one-off debits
- ❖ Payment transactions via a payment card or a similar device,
- ❖ Transfer of funds including standing orders,
- ❖ Serving bill payment services as an intermediary,
- ❖ Initiating the submitted order of payment concerning another user's account upon the user's request,
- ❖ Submitting user's information regarding his/her accounts on online platforms, provided that the user's consent was taken,
- ❖ Other services and transactions that reaches the level which was set by the Central Bank of the Republic of Turkey ("CBRT") in terms of an importance or impact.

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Currently there are 18 institutions serving as EMI including well-known brands such as Turkcell and Vodafone. These institutions offer various services. For example, an EMI belonging to the Istanbul Metropolitan Municipality only provides services for the public transportation as well as other services where it acts as a monopoly. Six of the institutions issue prepaid cards and provide virtual POS services. Two telephone operators in the list of EMIs provide online payment service for phone bills.

### **Licensing Requirements**

EMIs should obtain a license to operate in the country. CBRT is the competent authority to grant operation license.

In order to obtain the operation license, EMI should meet the following conditions;

- (i) It should be established in the form of a Joint Stock Company,

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- (ii) The paid-up capital of the company should not be less than TRY 5,000,000. The capital shall be paid in cash only and free from any sort of encumbrances,
- (iii) The company must have a sound and prudent management as well as adequate personnel and technical equipment, and establish departments handling complaints and objections to be asserted by users.
- (iv) The company must take the necessary measures for the continuity of the operations, and for security and privacy of the funds and information relating to users.
- (v) Shareholders who own 10% or more of the shares and controlling rights must possess the same qualifications required for being a bank founder as laid down in the Banking Law No. 5411.
- (vi) Share certificates must be issued in exchange for cash and in the form of registered shares,
- (vii) The company must have a transparent shareholding structure and organizational chart that will not hinder the efficient supervision of CBRT.

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### License Application

Applications shall be made to CBRT, accompanied by information and documents evidencing the fulfilment of the eligibility requirements and qualifications mentioned above.

The required documents notably include; board of directors' resolution, activity program, business plan, financial statements, and independent audit report. In case the applicant company is an affiliate or subsidiary of a non-Turkish bank or financial institution, further documentation with regard to such bank/financial institution (e.g. resolutions of the competent organs, consolidated independent audit report, permission of the regulatory authority, etc.) is required.

Upon submission of the application file, CBRT shall assess the applicant's eligibility for licensing, in light of the opinion to be taken from the Central Bank of Turkey. The assessment process shall be completed within 6 months following the date of application. If the application is successful, the EMI should commence its operations

within 1 year following the issuance of the license and inform CBRT of the date of inception.

### **Compliance Obligations**

As is the case with licensing, CBRT holds the authority to supervise EMIs in respect of their organization and activities. In this regard, CBRT is entitled to conduct on-site inspections and distant surveillance activities. To be able to function in compliance with multitudinous operational requirements, EMIs should have a robust corporate governance and devise a clear organizational structure, adequate internal control and risk management mechanisms in proportion to the volume, nature and complexity of the business.

### **Corporate Governance**

The board of directors of an EMI must consist of at least 3 members, including the CEO of the company. Board members and the CEO should possess the qualifications required for being a bank founder as set out in the Banking Law No. 5411. The CEO must have a bachelor's degree and at least 7 years of professional experience in the field of business administration or finance.

The appointment, resignation and dismissal of the board members or of the CEO must be notified to CBRT within one month of the date thereof.

### **Internal Control and Risk Management**

EMIs are required to establish both internal control and risk management departments separately, and employ at least one personnel for each department since duties relating to internal control and risk management cannot be carried out by the same person as per the regulations. Such personnel have to conduct their duties without assuming an executive role, and serve directly under the supervision of the board of directors or one of the board members other than the CEO.

The formation of the above departments as well as the designation of the concerning personnel and definition of their duties, powers and responsibilities should be realised prior to the license application.

## Share Acquisition and Share Transfer

Share acquisitions and share transfers above the specified thresholds as well as other certain transactions are subject to permission to be granted by CBRT. These are;

- Direct or indirect acquisition of 10% or more stakes in the company;
- Acquisitions whereby a shareholder's direct or indirect ownership of stakes in the company exceeds 10%, 20%, 33%, or 50%;
- Transfers whereby a shareholder's direct or indirect ownership of stakes in the company falls under 10%, 20%, 33%, or 50%;
- Creation or termination of usufruct rights over 10%, 20%, 33% or 50% of the voting shares.

The issuance or transfer of privileged shares granting right to nominate a board or audit committee member are also subject to CBRT permission, regardless of the percentage of such privileged shares. Furthermore, share transfers which result in a change of control in a legal entity shareholder having 10% or more stakes in the EMI are subject to CBRT permission too.

All transferees taking part in the abovementioned transactions should possess the qualifications required for being a bank founder.

## Conclusion

Turkey has a very well-developed financial services infrastructure and continuously invests in new technologies and automation. The applicable legal framework regarding payment services is largely in line with the EU standards, and with the introduction of PIs and EMIs to the payments ecosystem, the payment services industry is expected to grow expeditiously in the near future. As there are still relatively few players participating in the payment services market, foreign payment service providers can quickly achieve a good market penetration in Turkey.

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