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# The Triangular Contractual Structure and Information-Form Liability in Equity- and Debt-Based Crowdfunding Under Turkish Law

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**Abstract**

Turkish crowdfunding combines a regulated campaign process with private-law relationships among the platform, fundraising party and investors. This working paper distinguishes the exemptions in Capital Markets Law No. 6362 from the continuing obligations in Communiqué III-35/A.2. It separates application from company formation and issuance, information-form approval from signature liability, general pre-emptive-right rules from the special voting regime for dematerialised funded companies, and oversight in equity-based crowdfunding from oversight in debt-based crowdfunding. I develop the contractual analysis presented in my doctoral thesis, in which I characterise the platform agreement as a mixed innominate contract. The three-party structure is used as an analytical framework for separate relationships, without assuming that they form one legal contract.

**Keywords:** Crowdfunding; Platform agreement; Mixed contract; Information-form liability; Pre-emptive rights; Turkish private law

## Scope and method

I examine the private-law relationships in equity- and debt-based crowdfunding through a doctrinal analysis of Law No. 6362 and Communiqué III-35/A.2, together with the relevant provisions of the Turkish Code of Obligations and the Turkish Commercial Code. I draw on the contractual analysis in my doctoral thesis (2023, pp. 85–91) and distinguish the platform agreement, investor membership and issuance relationships. The discussion addresses the statutory framework and contractual classification; monetary limits subject to annual revaluation fall outside its scope.

## 1. Separate exemptions and continuing supervision

Platforms intermediating equity-based or debt-based crowdfunding require permission from the Capital Markets Board of Türkiye (Sermaye Piyasası Kurulu, SPK; CMB) for their establishment and operation (Capital Markets Law No. 6362 [CML], Art. 35/A(1)–(2)). Within this regulatory framework, crowdfunding and related transactions fall outside investment and ancillary services under Articles 37–38 and the stock-exchange and market-operator provisions (Art. 35/A(4)); debt-based crowdfunding is excluded from banking legislation under Art. 35/A(1). The exclusions from the public-company and issuer definitions (Art. 3(1)(e), (h)), the prospectus or issue-document exemption (Art. 4(1)), the 500-shareholder rule (Art. 16(1)), and the non-application of investor-compensation provisions (Art. 3(1)(z)) are distinct rules. They do not remove all capital-markets obligations. Private-

law relationships among platforms, fundraising parties and investors remain subject to general provisions (Art. 35/A(5)). Reward- and donation-based crowdfunding activities fall outside the scope of Communiqué III-35/A.2 (Art. 2(2)).

## 2. Application, contracting and acquisition of investor rights

Both entrepreneurs and venture companies may apply to a crowdfunding platform to conduct an equity-based or debt-based crowdfunding campaign (Communiqué III-35/A.2, Arts. 4(1)(g), 11(2), 17(1), 20(1)). The entrepreneur definition includes resident natural persons and legal persons constituted as limited liability or joint-stock companies. Application, successful fundraising, company formation or conversion, and issuance are separate stages. Proceeds from equity-based crowdfunding are transferred against new shares after the required joint-stock formation or conversion (Arts. 16(1), 17(7)). Debt-based crowdfunding campaigns by entrepreneurs also provide for subsequent joint-stock formation; limited liability venture companies complete conversion under Art. 20(7). Investor funding requests and payments occur during the campaign and are subject to the 48-hour withdrawal rules (Arts. 17(4), 20(4)); acquisition through dematerialised issuance is a later step (Art. 27). Article 11(2) and Annex 4 govern the written campaign agreement; Article 14 and Annex 3 govern investor membership.

The campaign agreement's existence does not depend on reaching the funding target: preliminary review, campaign publication, confidentiality and custody coordination already require performance. Conversely, a funding request or payment must not be described as immediate acquisition of shares. In both models the Communiqué distinguishes requests, withdrawal, campaign success, company formation or conversion, issuance and refund if the process fails (Arts. 11, 17, 20, 27). Article 20(7)(a) expressly contemplates a joint-stock company being formed after a successful entrepreneur-led debt-based crowdfunding campaign. The published CMB entrepreneur information form also asks for the planned funded company.

## 3. Contractual classification and the three-party analytical framework

In my doctoral thesis, I characterise the platform agreement as a mixed innominate contract, rather than a sui generis contract in the narrower classification of innominate contracts (2023, pp. 85–91, especially pp. 89–91). Brokerage-like intermediation is combined with continuing digital publication and communication duties. That combination supports identifying the applicable rules by the obligation at issue. I consider mandate rules applicable only insofar as they are compatible with the relationship, including TCO Art. 502(2), and reject the automatic application of all features of an ordinary mandate.

The campaign agreement, investor membership agreement and investor–funded-company relationship are treated here as three related sides of a transaction. Economic coordination does not by itself prove that they are a single compound contract, that one agreement's invalidity automatically invalidates the others, or that all arise at campaign success. The legal result requires examining their terms, purpose, statutory links and stage of performance. The written minimum terms in Annexes 3 and 4 operate alongside the campaign provisions and general private law, not in place of them.

## 4. Approval, signatures and liability

Investment committee approval, publication and signature of the information form are separate acts (Communiqué Art. 11(7)–(10)). Article 11(10) requires signatures by the natural-person entrepreneur, authorised representatives of the legal-person entrepreneur or venture company, and investment committee members. CML Art. 35/A(6) establishes joint and several liability of natural and legal persons signing the form for damage caused by inaccurate, misleading or incomplete information. An approval vote must not be equated with signing or representative capacity: actual signatures and the persons represented must be established. Joint and several liability does not by itself establish liability without fault. Product status, material contracts, financial information and use of proceeds require documentation; damage, causation and other liability conditions require separate assessment.

The signature requirement in Communiqué Art. 11(10) provides the specific legal link between committee membership and execution of the form. A committee vote is separately recorded under Art. 11(7). Where a person signs for a legal entity, personal and representative capacities must be analysed without treating every approving person as an additional signatory. The solidarity rule and the applicable fault regime require separate analysis.

## 5. Pre-emptive rights and the special company regime

Proceeds from equity-based crowdfunding are transferred against newly issued shares, not sales of existing shares (Communiqué Art. 16(1)). Exercise, assignment or non-exercise of existing pre-emptive rights differs from formal restriction. Under the general regime of Article 461(2) TCC, a general assembly resolution restricting or excluding existing shareholders' pre-emptive rights requires justified grounds and affirmative votes representing at least 60% of share capital; this is a voting threshold, not an attendance quorum. Rules other than that threshold also apply to board decisions under registered capital, and the explanatory and premium-calculation report must be registered and published. For funded companies with dematerialised shares, CML Art. 35/A(2) and Communiqué Art. 25(5) require separate attention: subject to stricter articles, two thirds of the participating voting shares must approve without an attendance quorum, or a majority of participating voting shares suffices where at least half the voting capital is present. The general 60% threshold therefore cannot be applied to every crowdfunding transaction.

The general and special regimes must be located at the relevant stage. A company issuing shares before becoming a funded company with dematerialised shares and a later general assembly of such a funded company cannot automatically be assigned the same voting rule. CML Art. 35/A(2) refers specifically to Arts. 29, 30(2) and 30(5), subject to CMB rules; it does not import the whole public-company regime. Communiqué Art. 25(5) also addresses authority to restrict pre-emptive rights under registered capital and capital reduction, preserves stricter articles, and excludes interested shareholders from voting as specified there.

## 6. Oversight after campaign completion

For equity-based crowdfunding campaigns, a CMB-listed independent audit firm prepares a special-purpose independent audit report on the use of proceeds (Communiqué Art. 21(4)–(6)). For debt-based crowdfunding campaigns, the investment committee prepares the audit report (Art. 22(4)–(6)). The reporting actors are different. Publication of reports and the funded company board's

responsibility follow the provisions applicable to each model (Arts. 21(5), (7), 22(5), (7)). No fixed monetary reporting threshold is reproduced here because annual revaluation and CMB decisions must be checked separately.

The difference in oversight actors is a substantive distinction, not a change in terminology: an investment committee report in the debt-based crowdfunding model must not be called an independent audit firm's report. Both models retain the board's responsibility for the announced use of funds. The relevant provisions also specify preparation, delivery and disclosure of reports; the applicable current monetary threshold and any later CMB decisions must be checked for the particular campaign.

## Relationship to earlier writing

This paper expands my earlier blog note:

- Platform agreements and venture company obligations in equity- and debt-based crowdfunding under Turkish law.

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