

Donation to Waqfs in the Form of Crypto-Asset from Legal Perspective

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Introduction

Foundations are institutions that are established within the framework of a certain ideal, purpose and charitable thought and work for those. The fulfillment of the determined objectives requires the foundation to have economic support both in its establishment and in the process of its activity. In this respect, it is important for foundations, which have important functions for the society, to adapt to the changing financial system and to establish a sustainable waqfship system. That requires the examination of current financial developments and applications of them for the foundations. Crypto assets, which have attracted great interest in the last decade and whose market share has expanded considerably, should also be evaluated in this context. It can be seen that some foundations started to accept donations as crypto-currency such as UNICEF, Save the Children, Kızılay.

However, there is not a certain regulation regarding the crypto-assets and whether they can be used as a donation to awqaf in Türkiye. The current situation causes hesitancy in awqaf sector to accept donations in the form of crypto-assets, in addition to that problems which may arise by accepting the donations in crypto-assets such as money laundering or illegal transactions to support terrorism. It is important to know the advantages

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and risks of crypto-assets for awqaf from a legal perspective to avoid mismanagement of awqaf but at the same time not to miss financial innovations to strengthen the awqaf.

Allocation of Crypto-Currency to the Foundation as Capital

In both Swiss and Turkish law, there is no regulation that prevents crypto assets from being brought to the foundation as founding capital. However, the fact that crypto assets are not accepted as money, so that they are seen as intangible assets, necessitates the valuation of the allocated crypto-asset. The main risk here is the sudden value changes of crypto assets that do not have a fixed and centralized value. However, it is not difficult to say that even state currencies may face similar risks from time to time.

Donation to the Foundation from Crypto-Asset

Same with the above, there is no regulation on the type or quality of donations to be made in favor of foundations. In other words, foundations can accept different types of assets such as money, movables, immovable as donations, so there is no legal obstacle to donating in crypto-assets. In order for the foundation to accept donations in the form of crypto assets, it will first need to open a wallet. There is no regulation in Turkish law that would prevent the foundation from opening a wallet in this way. However, some provisions of the Turkish Regulation on Foundations regarding donations are not eligible to apply for foundations. Therefore, new aspects are compulsory to ease the donation to foundations.

Advantages and Disadvantages

Accepting a crypto-asset as a donation or establishing a foundation on an important crypto asset may have both advantages and disadvantages. There is a risk that crypto-assets might be obtained from illegal acts such as money laundering and terrorist financing and the foundation might be used as an intermediary in these illegal transactions. Although it is

expressed specifically for Bitcoin, cryptocurrencies in general are used for illegal activities in the black market. This situation may pose a risk in terms of the functioning and management of the foundation, and in serious cases, it may even cause the foundation to be terminated legally. In addition to legal risks, there might be also technical risks such as hacking or 51% attack.

On the other hand, bringing crypto assets as donations can be advantageous due to low transaction fees, no need for intermediary institutions, and transaction speed. In particular, the increase in the use of crypto assets and the widespread belief in the society can increase the processing power of these assets. This would also ease the international transfer of donations.

We aim to conclude that examining cryptocurrency as a financial source from a legal perspective is important to illustrate to awqaf and encourage them to benefit from financial innovations more without being knowingly or unknowingly a part of an illegal transaction.

Keywords: Donation, Waqf, Crypto asset, Crypto Currency