Changes in Anti-Money Laundering Legislation in the First Half of 2021

The first six months of 2021 have witnessed significant amendments to the legislation on the prevention of money laundering and financing of terrorism. In fact, this trend started by the end of 2020. The Law on the Prevention of the Financing of the Proliferation of Weapons of Mass Destruction No. 7262 was published in the Official Gazette on December 31, 2020, and introduced substantial changes to numerous legislation such as the Turkish Commercial Code, the Law on Cheques, Law of Associations and in particular the Law on the Prevention of Laundering Proceeds of Crime No. 5549 ("Law No. 5549"). Therefore, the regulations enacted to arrange the procedures and principles regarding the implementation of the United Nations Security Council's sanction resolutions for the prevention of the financing of the proliferation of weapons of mass destruction have provided a series of legal changes in many fields.

The scope of the obliged parties defined in the Law No. 5549 has been expanded

Self-employed attorneys have been included into obliged parties for certain activities provided that their obligation does not contradict with the legislation on the right of defense. Also, the "Financial Group" has been introduced to Turkish Law and defined as a group consisting of financial institutions resident in Turkey and their branches, agencies, representatives, commercial agents, and similar affiliates affiliated with or under the control of a parent institution that has headquarters in Turkey or abroad. By virtue of these changes, financial groups have also become obliged to comply with the obligations stipulated for them in the Law No. 5549.

Another noteworthy amendment to the Law No. 5549 has been in Article 13 on the administrative sanctions to be applied in case of violation of the obligations. Accordingly, those who do not comply with the obligations to establish training, internal audit, control, and risk management systems and to take other measures set forth under Article 5 of the Law No. 5549 will face strict and gradual sanctions starting with an administrative fine of TRY 500,000 imposed by the Financial Crimes Investigation Board ("MASAK") that may be

followed by suspension of business activities and cancellation of operating licenses in case of persistence on the violation. Likewise, the amendment to Article 13(3) stipulates that an administrative fine will be imposed on the responsible board member or senior executive who does not comply with the mentioned obligations. Additionally, the Law states that those who do not comply with the customer identification obligation and the obligation to provide continuous information will be imposed an administrative fine of TRY 30,000 and an administrative fine of TRY 50,000 will be applied in violation of reporting suspicious transactions. Besides, Article 14 of the Law No. 5549 regulates that that disclosure of suspicious transaction reporting to third parties and violation of the obligations of information and document provision, and preservation and submission shall be subject to imprisonment of one year to three years and judicial fine corresponding to up to five hundred days. Therefore, compliance with the obligations and implementations regarding the establishment of training, internal audit, control and risk management systems, and implementation of other measures, the procedures and principles of which are determined by the Ministry of Treasury and Finance, has become essential.

Two significant changes in the secondary legislation: The Measures Regulation and the Compliance Program Regulation

Furthermore, major changes to two regulations issued based on the Law No. 5549 have been enacted. First, certain articles of the Measures Regulation Regarding the Prevention of Laundering Proceeds of Crime and Financing of Terrorism ("Measures Regulation") have been amended. After being published in the Official Gazette dated February 24, 2021, the amendment entered into force and numbered 31405 and synchronised the Law No. 5549 and the Measures Regulation by setting out self-employed attorneys among the obliged parties for specific activities. Another critical implementation of the Measures Regulation is the application of several obligations primarily envisaged for obliged financial parties also for the obliged parties classified under the heading of "Certain Non-Financial Businesses and Professions." Accordingly, the obliged parties who are also classified among "Certain Non-Financial Businesses and Professions" are dealers of precious metals, stones or jewellery and intermediaries of such transactions, dealers of immovable

properties for commercial purposes and intermediaries of such transactions, notaries public, self-employed attorneys[1] only for purchase and sales of immovable property, establishment and release of limited real rights, financial transaction regarding the establishment, merger, management, transfer and dissolution of companies, associations or foundations, management of bank, security and all kinds of accounts and the assets in these accounts provided that it does not contradict with other legislation on the right of defense and except for the information obtained due to professional work performed within the scope of the first paragraph of Article 35 of the Advocacy Act, self-employed accountants, certified public accountants and sworn-in certified public accountants, independent audit institutions authorized to conduct audit in financial markets. In addition, obligations that previously bound financial institutions only, such as taking precautions against technological risks and transactions with risky countries, or the obligation for tightened measures under Article 26/A of the Measures Regulation have now become mandatory for the above businesses and professions.

Another regulation published in the Official Gazette numbered 31471 on May 1, 2021 and entered into force added crypto asset service providers and saving finance companies into the obliged parties under the Measures Regulation. MASAK's guideline on crypto asset service providers defines them as businesses that mediate the purchase and sales of crypto assets through electronic trading platforms.

These changes in the Measures Regulation are considered to have substantial impacts in practice. Accordingly, for example, within the scope of the limited activities set out above - e.g., establishment of a company or a pledge - self-employed attorneys as listed among the obliged parties will have to identify their customer or those who act on the customer’s behalf by obtaining the identity information and confirming its accuracy and take necessary measures to reveal the beneficiary of the transaction in question, regardless of the amount of the transaction in continuous business relations and regarding electronic transactions or other transactions if the amount of a single transaction of the total amount of more than one transaction exceeds TRY 7,500 and TRY 75,000, respectively. However, it should also be noted that the

new Article 6/A of the Measures Regulation allows for remote identification of real persons. As another example, those who act as intermediaries in the purchase and sales of immovable properties for commercial purposes as counted in the non-financial businesses and professions must pay particular attention to transactions they will be involved with the citizens of risky countries. Furthermore, upon the May 1, 2021, dated legislation, saving finance companies and crypto asset service providers will also have to identify their customers and report suspicious transactions. Non-compliance with the obligations under the regulation may result in administrative and judicial fines and imprisonment for real persons and security measures for legal entities.

Another secondary legislation following the amendments to the Law No. 5549 has been with the changes in the Regulation on the Program of Compliance with the Obligations Regarding the Prevention of Laundering Proceeds of Crime and the Financing of Terrorism ("Compliance Program Regulation"). Defining financial groups in detail, the Regulation obligates businesses that are considered as financial groups to create a compliance program and corporate policy. In addition to financial groups, the obligation of the compliance program and corporate policy has also been introduced for group A establishments specified under the currency exchange legislation, financing, factoring and financial leasing companies, portfolio management companies, intermediary firms for precious metals, electronic money institutions, and payment service providers. Parties with the obligation for the compliance program also need to appoint a compliance officer and assistant to the compliance officer until June 1, 2021. The deadline for the compliance program and submission of the corporate policy commitment form to MASAK is July 1, 2021.

One step behind

Prior to this change, the scope of the obligation for compliance program was limited to several institutions and organizations such as banks, capital market intermediary institutions, insurance and pension companies; therefore, the implementation of compliance program was not as frequent. However, these recent changes will increase the number of institutions and organizations to create a compliance program.

More details

Whereas all the obliged parties that are required to run a compliance program have to appoint a compliance officer and an assistant to the compliance officer, some are required to appoint a compliance officer and an assistant to the compliance officer only. These are the institutions that are authorized to issue debit or credit cards other than investment banks, development banks, and the Central Bank of Turkey, group B establishments specified under the currency exchange legislation, reinsurance companies, asset management companies, payment institutions (those who offer exclusive service of invoice payment brokerage, payment order initiation or information provision regarding payment account), courier companies, and the institutions providing settlement and custody services under the capital markets legislation. The obliged parties classified as certain non-financial businesses and professions in the Measures Regulation, except for the above, are required to appoint neither a compliance officer nor an assistant to the compliance officer. Nonetheless, the Regulation stipulates that they conduct monitoring and control practices to determine, track and mitigate the risks of compliance with the obligations under the Law No. 5549, regulations, and communiqués.

MASAK's General Communiqués

The Communiqué No. 18 amending the General Communiqué of MASAK No. 5 was published in the Official Gazette dated February 26, 2021, and numbered 31407. The Communiqué No. 5 regulates the application of simplified measures regarding the customer identification obligation in specific transactions and updated the monetary limits for each transaction below which simplified measures may be applied. In addition, the General Communiqué No. 19 prepared by MASAK was published in the Official Gazette No. 31470 on April 30, 2021. The Communiqué has allowed room for remote authentication of the customer without identifying physically. Both Communiqué entered into force on May 1, 2021.

As a conclusion

The recent legislation at the law and regulation level presents changes that will likely significantly impact business life within the scope of combatting money

laundering. In consequence, the scope of obliged persons, institutions, and organizations have been expanded considerably; crypto asset service providers, saving finance companies, and self-employed attorneys – only for a limited number of activities – have been mentioned among the obliged parties and significant obligations, particularly the obligations of customer identification and suspicious transaction reporting, have become mandatory for them. The obliged parties that are responsible for running a compliance program and appointing a compliance officer and an assistant to compliance officer augmented and severe sanctions that might affect companies' business activities and even their executives have been envisaged for violations in this regard. Therefore, we consider that it is vital for the persons, institutions, and organizations that fall within the scope of the obliged parties to operate in compliance with these regulations.

Special thanks to Latif Aktaş for his contributions.

[1] You may find MASAK's guideline on the principals of the obligations envisaged for self-employed attorneys at https://ms.hmb.gov.tr/uploads/sites/12/2021/04/AVUKATLAR-EL-KITABI.pdf