



**Financial Action Task Force**  
Groupe d'action financière

**THIRD MUTUAL EVALUATION REPORT  
ANTI-MONEY LAUNDERING AND  
COMBATING THE FINANCING OF TERRORISM**

**TURKEY**

**23 February 2007**

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## TABLE OF CONTENTS

PREFACE.....	I
EXECUTIVE SUMMARY.....	II
<b>1. GENERAL .....</b>	<b>1</b>
1.1 GENERAL INFORMATION ON TURKEY .....	1
1.2 GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM.....	3
1.3 OVERVIEW OF THE FINANCIAL SECTOR AND DNFbps.....	5
1.4 OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS GOVERNING LEGAL PERSONS AND ARRANGEMENTS.....	12
1.5 OVERVIEW OF STRATEGY TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING .....	14
<b>2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES .....</b>	<b>25</b>
2.1 CRIMINALISATION OF MONEY LAUNDERING (R.1 & 2) .....	25
2.2 CRIMINALISATION OF TERRORIST FINANCING (SR.II).....	32
2.3 CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME (R.3) .....	35
2.4 FREEZING OF FUNDS USED FOR TERRORIST FINANCING (SR.III).....	38
2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26).....	42
2.6 LAW ENFORCEMENT, PROSECUTION AND OTHER COMPETENT AUTHORITIES – THE FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF OFFENCES, AND FOR CONFISCATION AND FREEZING (R.27 & 28).....	48
2.7 CROSS BORDER DECLARATION OR DISCLOSURE (SR.IX) .....	51
<b>3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS.....</b>	<b>55</b>
3.1 RISK OF MONEY LAUNDERING OR TERRORIST FINANCING .....	56
3.2 CUSTOMER DUE DILIGENCE, INCLUDING ENHANCED OR REDUCED MEASURES (R.5 TO 8).....	57
3.3 THIRD PARTIES AND INTRODUCED BUSINESS (R.9) .....	66
3.4 FINANCIAL INSTITUTION SECRECY OR CONFIDENTIALITY (R.4).....	66
3.5 RECORD KEEPING AND WIRE TRANSFER RULES (R.10 & SR.VII).....	68
3.6 MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21).....	72
3.7 SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 & SR.IV) .....	73
3.8 INTERNAL CONTROLS, COMPLIANCE, AUDIT AND FOREIGN BRANCHES (R.15 & 22).....	79
3.9 SHELL BANKS (R.18) .....	83
3.10 THE SUPERVISORY AND OVERSIGHT SYSTEM - COMPETENT AUTHORITIES AND SROs. ROLE, FUNCTIONS, DUTIES AND POWERS (INCLUDING SANCTIONS) (R.23, 29, 17 & 25) .....	84
3.11 MONEY OR VALUE TRANSFER SERVICES (SR.VI) .....	101
<b>4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS.....</b>	<b>102</b>
4.1 CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12) .....	102
4.2 SUSPICIOUS TRANSACTION REPORTING (R.16) .....	104
4.3 REGULATION, SUPERVISION AND MONITORING (R.24-25) .....	106
4.4 OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS - MODERN SECURE TRANSACTION TECHNIQUES (R.20) .....	107
<b>5. LEGAL PERSONS AND ARRANGEMENTS &amp; NON-PROFIT ORGANISATIONS.....</b>	<b>108</b>
5.1.1 LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33).....	108
5.2 LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34) .....	110
5.3 NON-PROFIT ORGANISATIONS (SR.VIII).....	111
<b>6. NATIONAL AND INTERNATIONAL COOPERATION .....</b>	<b>115</b>
6.1 NATIONAL COOPERATION AND COORDINATION (R.31) .....	115
6.2 THE CONVENTIONS AND UN SPECIAL RESOLUTIONS (R.35 & SR.I) .....	116
6.3 MUTUAL LEGAL ASSISTANCE (R.36-38, SR.V).....	118
6.4 EXTRADITION (R.37, 39, SR.V) .....	124
6.5 OTHER FORMS OF INTERNATIONAL COOPERATION (R.40 & SR.V).....	126
<b>7. OTHER ISSUES .....</b>	<b>128</b>
7.1 RESOURCES AND STATISTICS (R.30 & R.32) .....	128
7.2 OTHER RELEVANT AML/CFT MEASURES OR ISSUES.....	129
7.3 GENERAL FRAMEWORK FOR AML/CFT SYSTEM (SEE ALSO SECTION 1.1) .....	129
<b>TABLES.....</b>	<b>130</b>
TABLE 1: RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS .....	130
TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM .....	139
TABLE 3: AUTHORITIES’ RESPONSE TO THE EVALUATION .....	144

<b>ANNEXES .....</b>	<b>145</b>
ABBREVIATIONS.....	146
HIERARCHY OF LEGAL NORMS IN TURKEY .....	149
ALL BODIES MET ON THE ON-SITE VISIT .....	150
KEY LAWS, REGULATIONS AND OTHER MEASURES .....	152
LIST OF ALL LAWS, REGULATIONS AND OTHER MATERIAL RECEIVED.....	209
ADDITIONAL CHARTS AND TABLES .....	215

## PREFACE

### INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF TURKEY

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Turkey<sup>1</sup> was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004<sup>2</sup>. The evaluation was based on the laws, regulations and other materials supplied by Turkey, and information obtained by the evaluation team during its on-site visit to Turkey from 4 to 15 September 2006 inclusive, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Turkey government agencies and the private sector. A list of the bodies met is set out in *Annex 2* to this mutual evaluation report.
2. The evaluation was conducted by an assessment team, which consisted of members of the FATF Secretariat and FATF experts in criminal law, law enforcement and regulatory issues: Vincent Schmoll and Rachelle Boyle of the FATF Secretariat; Mr. Antonio Baldassarre, Ufficio Italiano dei Cambi, Italy, legal expert; Mr. Vladimir Nechaev, Federal Financial Monitoring Service, Russia, law enforcement expert; Ms. Alexandra Eckert, Commission Bancaire, France, financial expert; and Mr Justin Serafini, Department of the Treasury, United States, financial expert. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and terrorist financing (TF) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.
3. This report provides a summary of the AML/CFT measures in place in Turkey as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Turkey's levels of compliance with the FATF 40+9 Recommendations (*see Table 1*), and provides recommendations on how certain aspects of the system could be strengthened (*see Table 2*).

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<sup>1</sup> All references to country apply equally to territories or jurisdictions.

<sup>2</sup> As updated in June 2006.

## EXECUTIVE SUMMARY

### 1. Background Information

1. This report provides a summary of the anti-money laundering (AML) and combating the financing of terrorism (CFT) measures in place in Turkey at September 2006 (the date of the on-site visit) and also considers the new AML legislation passed in October 2006. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Turkey's levels of compliance with the Financial Action Task Force (FATF) 40 + 9 Recommendations (see attached table on the Ratings of Compliance with the FATF Recommendations). The Turkish Government recognises the importance of an effective AML/CFT regime and continues to actively update its AML/CFT framework.

2. The government of Turkey has recently passed a number of key laws relating to ML and TF. A new money laundering offence was introduced in June 2005, and the stand-alone terrorist financing offence was introduced in July 2006. The confiscation framework in Turkey appears to meet most of the standards, but has not yet produced substantial results. Turkey has weak systems for implementation of S/RES/1267(1999) and S/RES/1373(2001). The new AML law (Law 5549 of October 2006) provides, amongst other things, for a new and more comprehensive system for disclosures of cross-border movements of cash and monetary instruments to be implemented in the near future.

3. The Turkish financial intelligence unit (FIU) is the focal point for Turkish AML/CFT efforts and it is generally effective in its functions. Supervision is conducted by the FIU, the Banking Regulation and Supervision Agency, the Capital Markets Board and the Undersecretariat of Treasury. The AML/CFT system is overseen by a multi-agency Coordination Board for Combating Financial Crime. Competent authorities are capable and actively involved in the Turkish AML/CFT system. Prosecutors and judges do seem however to have limited awareness of AML/CFT issues. Turkey has generally complete international cooperation mechanisms and sound national and international cooperation in practice. Most authorities were able to provide useful statistics on AML/CFT and other matters, though these do not appear to be jointly examined by related authorities.

4. The preventive system deals with customer identification and other AML/CFT obligations and applies to a range of financial institutions and a number of designated non-financial businesses and professions (DNFBPs). While some limited systems are in place for verification of identity, a number of other customer due diligence (CDD) requirements have not been implemented. There is now a strong dematerialisation programme in place to deal with the bearer shares issued in the past. The legal concept of trust does not exist under Turkish law. Turkey has a large non-profit sector which is closely regulated but it is not reviewed periodically to assess TF vulnerabilities and authorities do not provide it with CFT-related outreach.

5. While the number of suspicious transaction reports (STRs) submitted has increased substantially, the level of reporting remains low when the size and nature of Turkey's financial sector is considered. Most STRs have been submitted by banks, and none have been submitted by DNFBPs. Supervision is generally effective, though not comprehensive in its sectoral coverage. The number of detected violations and the number of sanctions imposed are low. No systems exist for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements, and limited training and guidance has been provided to DNFBPs.

6. Turkey has a unitary secular democratic parliamentary system with a written Constitution, and its legal system follows the civil law tradition. Turkey participates in a number of international multilateral fora. Its financial sector, dominated by the banking sector, has shown good economic

growth over the past 5 years. This sector has undergone important changes, in part due to a financial sector consolidation program over the past 10 years and in part associated with anticipated accession to the European Union (EU).

7. The major sources of illegal proceeds in Turkey relate to drug trafficking, but also smuggling, qualified fraud and bankruptcy, document forgery, pillage, highway robbery and kidnapping, and serious crimes against the State. The primary methods for laundering funds are money transfers and other banking transactions, commercial transactions, accounting transactions and purchase of real estate. Turkey has been actively working to counter terrorism, primarily of a domestic nature, for some time.

## 2. Legal System and Related Institutional Measures

8. After the establishment of the Turkish Republic in 1923, certain laws and codes promulgated were strongly inspired by those of other European civil law jurisdictions. The government of Turkey has in recent years embarked on a programme of legislative renewal, in part related to anticipated accession to the EU. Overall, Turkey's legal requirements to combat ML and TF are generally comprehensive. The legislative renewal program has strengthened the AML/CFT system though, due to the recent implementation of a number of key laws, many elements of the system's effectiveness have not yet been tested.

9. The listing approach for predicate offences was in place in Turkey until enactment of the new criminal code (Law 5237) in June 2005. Predicate offences are now those for which the minimum punishment is one year or more imprisonment, and this includes most of the required offence types. The number of ML prosecutions brought under the previous offence provision was low and from these there are not yet any finalised convictions. While the scope of the new ML offence is broader than its predecessor, and it may produce better results in the future, the penalties provided for ML are low when compared to similar types of offences. No prosecutions have yet been brought using the new ML offence. Turkey has been actively combating terrorism for some years and has a counter terrorism system in place which predates the FATF standards. The new TF offence of July 2006 is generally broad, although it does not completely implement the *International Convention on the Suppression of the Financing of Terrorism* (1999). It has not yet been tested in Turkish courts. The TF offence only applies in relation to terrorism against Turkey and its interests and it only applies to funding for the commission or attempted commission of specific terrorist acts. As with the ML offence, penal sanctions for the TF offence apply only to natural persons and licence cancellation and confiscation provisions apply to legal persons.

10. The confiscation framework in Turkey appears to meet most of the standards, but has not yet produced substantial results. The new confiscation measures, introduced in June 2005, may assist in this regard. Turkey has implemented S/RES/1267(1999) and its successor resolutions via decrees of the Council of Ministers, but has not established formal procedures for, or guidance relating to, gaining access to frozen funds for necessary expenses, delisting, unfreezing or sanctions for failure to observe a freezing order. There is no system in place for communicating the decrees to DNFBPs and no deadlines are set for action by financial institutions in accordance with the decrees. In addition, Turkey does not have a mechanism that will permit it to freeze the assets of persons designated by other jurisdictions as foreseen by SR.III in the context of S/RES/1373(2001).

11. The Turkish financial intelligence unit (FIU) – *Mali Suçları Araştırma Kurulu* (MASAK) - has been a member of the Egmont Group of FIUs since 1998. MASAK receives suspicious transaction reports (STRs) and develops cases that are forwarded to the public prosecutor for action against ML. The FIU is a focal point for the Turkish AML/CFT efforts and is generally effective in its functions.

12. Turkish law enforcement authorities have comprehensive legal powers for gathering evidence and compelling the production of documents, and they can also use special investigative techniques. Nevertheless, there is little specialisation among law enforcement or prosecutorial authorities in ML or

TF financing matters. The lack of awareness shown by the representatives of the prosecution and judicial authorities met by the evaluation team and the disproportionate level of acquittals are of concern.

13. While Turkey currently has a limited declaration system relating to movement of currencies worth over USD 5,000, the new AML law (Law 5549 of October 2006) provides for a more comprehensive system to be implemented in the near future.

### **3. Preventive Measures - Financial Institutions**

14. The preventive side of the Turkish AML/CFT regime was originally instituted through the *Law on Prevention of Money Laundering* (Law 4208 of 19 November 1996), the Regulation supporting this law and four MASAK Communiqués. After the on-site visit, Turkey enacted a new AML law (Law 5549 of 18 October 2006), which replaces and strengthens a large number of the provisions contained in Law 4208. Both the new and old laws deal with customer identification and other AML/CFT obligations and apply them to a range of financial institutions and a number of DNFBPs. Turkish AML/CFT measures are not based on risk in the manner set out in the revised FATF 40 Recommendations, and in particular, do not allow for enhanced due diligence. However, recent non-mandatory guidance issued by MASAK does describe the concept of risk and appears to take different risk situations into account. There is no requirement for financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not sufficiently apply the FATF Recommendations.

15. The current law incorporates generally good customer identification requirements. Some verification of identity is also required. Turkey has a generally strong set of record keeping requirements for financial institutions. There are no requirements for customer due diligence (CDD) to be ongoing, very limited requirements for identification of beneficial owners and no requirements for application of enhanced due diligence. Measures have not yet been stipulated in relation to PEPs, correspondent banking or misuse of new technologies. Only the securities sector is subject to provisions on the use of third parties to perform CDD under Turkish law. Obligated parties are not required to investigate the purpose of complex/unusual large transactions or to keep such records. Financial institutions are required to include the name of the originator in wire transfer instructions but are not required to include other originator information.

16. The regulatory system is implemented and supervised by four primary agencies: MASAK, the Banking Regulation and Supervision Agency, the Capital Markets Board, and the Undersecretariat of Treasury; and it is overseen by the multi-agency Coordination Board for Combating Financial Crime. All competent authorities have the power to obtain documents and information without any secrecy limitations and are able to share this information.

17. While the number of STRs submitted to MASAK from 2002 to 2005 was more than three times that submitted in the previous four year period, the level of STR reporting is low when the size and nature of the financial sector is considered. Some STRs relating to TF have been submitted despite the fact that there is an incomplete obligation to report STRs on terrorism financing to MASAK. The practice of some financial institutions to automatically suspend transactions that are the subject of an STR may inadvertently alert the customer to fact that a report has been made.

18. Turkey has requirements in place for internal controls in banks, participation banks and companies operating in the capital markets. Financial and other businesses subject to AML obligations are obliged to train, conduct internal audits and assign compliance officers. Financial institutions are not however required to have internal audit procedures and policies in relation to TF, and it appears few obliged parties have appointed AML/CFT compliance officers. There are some requirements in law and regulation for banks to apply CDD and internal control systems to overseas branches, though on the whole these have not been implemented. The requirements which must be met in order to establish a bank in Turkey may make it impossible in practice to establish a shell bank,

though there is no explicit prohibition on establishment of shell banks and Turkish banks are not prohibited from having relationships with such banks.

19. The range of obliged parties subject to AML/CFT regulation is broad and includes necessary financial institutions. The focus of AML regulation is customer identification, reporting suspicious transactions, record keeping and submission of information. There is limited ongoing offsite control of financial institutions. The STR statistics reveal that almost all reports in the last five years have been submitted by banks, suggesting inadequate AML/CFT supervision of other obliged parties. There is no consolidated supervision for insurance and securities sectors. Limitations identified generally in relation to financial institutions also apply to the alternative remittance sector.

20. Regulations dealing with the ownership and/or control of banks are in place, though the qualifications and fit and proper tests for persons operating in senior roles in this sector are at times vague. The list of offences of which these persons must not have been convicted does not include the TF offence. There is no corresponding regulation dealing with the ownership and/or control of other financial sector companies.

21. MASAK is authorised to examine obliged parties to determine whether they fulfil their AML obligations, and the primary financial sector supervisors can through their controls take into consideration AML requirements. Any AML violations found by other supervisors must be communicated to MASAK for investigation. Sanctions can be applied to the persons who execute transactions which violate AML/CFT laws and regulations but not to the directors and senior managers of these companies. The number of detected violations is low, and the number of sanctions imposed where violations were detected is low compared to the number of institutions supervised. A limited range of sanctions is available, and this is not flexible and proportionate to the various potential AML/CFT violations. The availability of administrative fines under the new AML law is likely to allow for a more effective sanction system, though there is a relatively low limit on the fines that can be applied.

22. MASAK and other authorities have good relationships with the financial sector, and the banks appear to have a strong compliance culture. MASAK and the Turkish Banks Association (TBA) work cooperatively and have issued a number of non-binding guidelines to assist obliged parties to implement and comply with AML/CFT requirements. This guidance does not address all areas of the FATF Recommendations however. The non-mandatory guidelines issued by the TBA are the most extensive, though these are only produced for banks. Other competent authorities have not issued guidance for this purpose. While guidance for DNFBPs has been limited, MASAK's recently issued guideline for financial institutions and DNFBPs provides useful description and analysis by sector. MASAK does not provide feedback to parties reporting STRs, and only provides limited information to obliged parties on trends and examples drawn from the STRs via its annual activity report.

#### **4. Preventive Measures – Designated Non-Financial Businesses and Professions**

23. A number of the relevant categories of DNFBPs are covered by the AML/CFT obligations set forth in law, but there is limited indication that the currently listed obliged DNFBPs are in fact implementing preventive measures. No systems exist for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements and little training has been provided to DNFBPs. DNFBPs are not required to conduct in-house training or screen potential employees. Limitations identified generally in relation to financial institutions apply also to the DNFBP sector. No STRs have been submitted by DNFBPs. Lawyers, accountants and other legal professionals are notably absent from the list of obliged parties. They are not required to submit STRs and are not subject to other AML/CFT measures. Turkey is effectively working to move more transactions to secure payment systems.

## 5. Legal Persons and Arrangements & Non-Profit Organisations

24. Turkey has a good Trade Registry system for legal persons though there is no requirement to disclose information on beneficial ownership to the Trade Registry or to other government authorities. While the current paper-based Trade Registry has some limitations in terms of real-time access to information, it is expected that the database system which is due to be operational in 2007 will improve access and searchability. Bearer shares have been issued in the past and are thus a concern. However Turkey's strong dematerialisation programme is expected to reduce and eventually remove the risk posed by bearer shares. Only a limited range of sanctions can be applied to legal persons involved in money laundering.

25. The Turkish legal system does not allow for the creation of trusts, and the legal concept of trust does not exist under Turkish law.

26. Turkey has a large non-profit sector, primarily comprising associations and foundations, which is closely regulated. Both associations and foundations are subject to registration systems. However the evaluation team did not receive any information which demonstrates that Turkey periodically reviews the sector in order to assess TF or ML vulnerabilities. In addition, there is no outreach programme for raising the awareness of the non-profit sector about the risk of abuse by money launderers or the financiers of terrorism. Government authorities are able to search, if needed, and obtain accurate information on entities operating in the non-profit sector and persons who own, control and direct such entities. The number of associations inspected in recent years is quite low and domestic and international cooperation in this area is not strong. Sanctions are in place for non-profit organisations and those working for them who commit crimes.

## 6. National and International Cooperation

27. The Coordination Board for Combating Financial Crime provides a good means of domestic coordination at a policy level and has been an important forum encouraging recent legislative developments. Turkey's AML/CFT system would benefit from active involvement of the public prosecutors in the Coordination Board. While ongoing operational coordination and information sharing between competent authorities does occur, it could be strengthened, particularly in relation to the various reports the financial sector must make to different supervisors and the reporting by multiple supervisors direct to the public prosecutor's office.

28. Turkey has ratified *The United Nations (UN) Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988) (the Vienna Convention), *The UN Convention Against Transnational Organised Crime* (2001) (the Palermo Convention) and the *UN Convention for the Suppression of the Financing of Terrorism* (1999). Turkey is party to treaties which provide the legal basis for providing and requesting mutual legal assistance though it has not signed the Second Additional Protocol (2001) to the *European Convention on Mutual Legal Assistance in Criminal Matters*. Turkey has a generally clear and complete framework for providing international cooperation, and Turkish authorities appear to be committed to cooperating with their international counterparts. Little information was obtained however evidencing regular effective cooperation in practice. While Turkey requires dual criminality in order to apply extradition provisions and some areas of mutual legal assistance (search, seizure and confiscation), it does not define this restrictively, and neither dual criminality nor the principle of reciprocity have been used as a grounds to refuse mutual legal assistance. Turkey does not apply disproportionate or undue conditions that can hamper provision of mutual legal assistance. While Turkish authorities do appear able to assist foreign countries with measures available for domestic investigations or criminal proceedings, there are no specific provisions that extend the scope of domestic laws for mutual legal assistance purposes.

29. The new criminal code (Law 5237 of 1 June 2005) provides a robust basis to cooperate at international level in extradition matters, though the procedure for extradition does seem complex.

ML and TF are extraditable offences in Turkey. Turkey will not extradite its own nationals, but if requested by a foreign country it will instead initiate domestic proceedings.

30. Authorities in Turkey have conducted joint controlled operations with foreign counterparts. Turkey does not however have arrangements for coordinating seizure or confiscation actions with other countries. There is no asset forfeiture fund, and no indication Turkey has considered establishing one. Turkey does not share confiscated assets with other countries which have participated in coordinated action, and there is no indication it has considered establishing a system to do so.

31. Competent authorities are capable, committed and actively involved in the Turkish AML/CFT system. Prosecutors and judges do seem however to have limited awareness of AML/CFT issues. As the TF offence was enacted recently, the CFT training of all authorities and of the financial sector is so far insufficient. Competent authorities do not have an adequate structure and sufficient technical staff and other resources for full AML/CFT supervision of the insurance sector. The FIU is not adequately resourced with staff who have a law enforcement background. Also the need for a Council of Ministers decree for a MASAK memorandum of understanding to enter into force is too restrictive. The Customs service does not seem to have sufficient funding and staff for undertaking its functions, and this may lead to inadequate attention to AML/CFT issues.

32. Turkey has thorough statistics on the suspicious transactions reports received. Statistics are kept on the matters referred to the FIU by government authorities and on the referrals by MASAK to the public prosecutor and other authorities. Statistics are readily available on international wire transfers. Information on the value of currency involved in declarations made on cross border transportation of currency is not available for all declarations. Statistics on prosecutions for ML and TF, as well as related confiscation data, are maintained by Turkish authorities; however, they are not comprehensive or consistently kept in all areas, thus making it difficult to fully assess the effectiveness of these regimes. Information on extradition and mutual legal assistance does not indicate the grounds for refusal or provide an indication of the amount of time taken to respond to requests. Most supervisors were able to provide useful statistics on the number of AML/CFT inspections conducted and on the sanctions applied. Each authority in Turkey has different types of statistics that reflect different aspects of the system and these do not appear to be jointly examined by related authorities.



# MUTUAL EVALUATION REPORT

## 1. GENERAL

### 1.1 General information on Turkey

1. Turkey is located between the continents of Asia and Europe with a land area of 780,576 square kilometres. It has common borders with Georgia, Armenia, Azerbaijan, Iran, Syria, Iraq, Greece and Bulgaria. The country is a peninsula surrounded by the Black Sea, the Aegean Sea and the Mediterranean. Turkey has a central government based in Ankara and administratively consists of 81 provinces. The official language is Turkish. The population of Turkey is approximately 71,332,000 (as of 2004) and the most crowded province of the country is Istanbul. The literacy rate is 87.2% (as of 2000) and life expectancy is 74 years for females and 69 years for males. The annual population growth rate is 1.35%.

2. As a founding member of the United Nations, the Black Sea Economic Cooperation (BSEC), the Organisation of the Islamic Conference (OIC), the Organisation for Economic Cooperation and Development (OECD), the Organisation for Security and Cooperation in Europe (OSCE) and the World Trade Organisation (WTO), Turkey participates in a number of international multilateral fora. It is also a member state of the other international bodies including the Council of Europe (since 1949) and NATO (since 1952), and is currently in accession negotiations with the European Union, of which it has been an associate member since 1964.

3. Turkey has a unitary secular democratic parliamentary system with a written Constitution and a civil law system. After the establishment of the Turkish Republic in 1923, certain laws and codes promulgated were strongly inspired by those of other European civil law jurisdictions. In accordance with Article 8 of the 1982 *Constitution Law*, the President of the Republic of Turkey is the head of state and executive power is exercised by the President and the Council of Ministers. The President of the Republic of Turkey is elected by the legislative body, the Turkish Grand National Assembly (TGNA). The TGNA consists of 550 members (called 'Deputies') and elections are held every 5 years. The Prime Minister is appointed from the TGNA members by the President of the Republic of Turkey. As chairman of the Council of Ministers, the Prime Minister ensures cooperation among the ministers and supervises implementation of government policy. Turkey also has a Council of Ministers, comprising 23 members including the Prime Minister. Ministers are selected by the Prime Minister and appointed by the President of the Republic of Turkey.

4. Turkey's hierarchy of laws<sup>3</sup> comprises the Constitution, laws and international treaties, ordinances, decrees, and regulations. All legal instruments of Turkey take effect on publication in the Official Gazette. The Constitution is the highest legal document and no other legal instrument may be contrary to it. Legislative power belongs to the TGNA in accordance with the *Constitution* and its power can not be devolved. Laws are proposed by the Council of Ministers and Deputies. International treaties, conventions and agreements to which Turkey is a party are approved by the TGNA by enactment of a law. However, unconstitutionality of treaties, unlike other laws, may not be challenged. The TGNA can authorise the Council of Ministers, by special statute, to issue an ordinance on a topic. These special statutes outline the scope, principles and duration of the power to issue the ordinance. They have the effect of laws although they are issued by the executive. Decrees of the Council of Ministers are also issued by the executive and relate to administrative matters. Regulations are rules issued by the Council of Ministers and signed by the President and provide additional detail for the provisions of a law. Regulations are issued by the Council of Ministers, ministries and public corporate bodies to further detail laws and ordinances. Communiqués are regulatory instruments which are issued by government agencies under laws or regulations for the

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<sup>3</sup> See Annex 2 for more information.

purpose of explaining details on implementation of the laws and the regulations. Although not a source of law, the provisions established by communiqués are obligatory and pecuniary penalties may be incurred for non-compliance.

5. The public administration is based on fundamental principles contained in the 1982 *Constitution*, such as the separation of powers, supremacy of law, constitutional government, the integrity of administration, judicial review through both general and administrative courts, and legality of the administration. According to the structure of the *Constitution* and the principles of the administrative system, the ‘Administration’ is a separate entity within the executive branch. It operates closely with the executive and under the supervision of the executive, legislature and judiciary.

6. The public administration comprises central and local administrations. Turkey is divided into provinces and the provinces into divisions according to geographic and economic conditions as well as the need for public services. In accordance with Article 127 of the *Constitution*, provinces, municipalities and villages are administered by local government units established by law as legal public entities and are governed in accordance with the principle of self-government. Article 123 of the *Constitution* states that all levels of public administration should function in unity and coherence.

7. Judicial power is vested in the high courts (Constitutional Court, Council of State, Appeal Court, Military Appeal Court, Military High Administrative Court and Court of Disputes) and low-level courts. The Constitutional Court supervises consistency and legality of laws, the Rules of Procedure of the TGNA and decrees relating to the *Constitution*. Its decisions are absolute, are published in the Official Gazette and bind legislative, executive and judicial organs, administrative authorities, natural and legal persons. The Council of State is the highest administrative court in Turkey. Turkey accepts a decision of the European Court of Human Rights as a higher court decision.

8. The independence of the Turkish judiciary is ensured under the *Constitution*. The duties of the Supreme Council of Judges and public prosecutors are: accepting, entering upon a career of judicial and administrative judges and prosecutors; appointment and conveying, temporary delegation, promotion, decisions as to those considered inappropriate for the profession; and imposing disciplinary punishments and unseating. This Council exercises its functions in accordance with the principles of the independence of the courts and the security of tenure of judges.

9. Turkey has a growing economic structure with modern industrial, commercial and agricultural sectors. An export-led development model has been followed since 1980. Gross National Product (GNP) is USD 357.7 billion and GNP per capita is USD 4,964 (2005 figures). Sectoral shares of GNP are 10.3% in agriculture, 25.4% in industry and 64.3% in services. Germany, Italy, England, the United States and France are the main export partners and the Russian Federation, Germany, China, Italy and France are the main import partners. The economy has experienced constant growth, except during the 1999 and 2001 economic crises. The average growth rate from 2000 to 2005 was 4.3%, though it reached as much as 9.9% in 2004. The previously very high inflation rate was reduced to 7.7% by the end of 2005. Despite this recovery in inflation, unemployment remains at 11.9%.

10. Turkey is active in various international organisations involved in the fight against corruption and this has provided important input for the establishment of domestic projects to fight corruption. Turkey ratified the *Council of Europe Criminal Law Convention on Corruption* in 2004 and became a member of the Group of States against Corruption (GRECO) in 2004. Turkey has ratified the *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*. Turkey is a party to the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and is a member of the OECD Working Group on Bribery. Turkey has signed the *United Nations Convention against Corruption*.

11. Turkey has since 2001 made fighting corruption in public administration an integral part of many programmes and several dedicated projects, resulting in the 2002 Council of Ministers Decree

for the “Action Plan on increasing transparency and enhancing good governance in the public sector” and passage of a suite of new legislation and amendments to existing legislation. The *Turkish Criminal Law 5237* (TCL) makes many forms of corruption an offence, with a focus on corruption involving the public sector. All forms of bribery offences are predicate offences for money laundering (ML). Turkey has established a solid legal framework for the use of confiscation and seizure and it appears to be fully applicable to cases of corruption, in particular when corruption is connected to organised crime. Turkey’s Ethics Committee of Public Officials commenced operation in September 2004 and the arrangement including ethical rules for public officials was adopted in April 2005. Ethical codes of practice also exist for many professions, including lawyers and accountants.

## 1.2 General situation of money laundering and financing of terrorism

### Predicate offences and proceeds of crime

12. The listing approach for predicate offences was in place in Turkey until TCL Article 282 came into force on 1 June 2005. Predicate offences are now those for which the minimum punishment is one year or more imprisonment.

13. The major sources of illegal proceeds in Turkey are offences committed within the country, primarily drug trafficking, but also smuggling, qualified fraud and bankruptcy, document forgery, pillage, highway robbery and kidnapping, and serious crimes against the State. The following table shows general trends related to predicate offences and is based on ML referrals from the financial intelligence unit - *Mali Suçları Araştırma Kurulu* (MASAK) - to the public prosecutors from February 1997 to June 2006.

**Table 1: Distribution of Predicate Offences February 1997 - June 2006**

THE LAW AND ARTICLE	PREDICATE OFFENCE	NO. OF REFERRALS	%
FTCL* Article 403 – 406	Drug trafficking	104	42.20
Law 1918 on Prevention and Follow-up of Smuggling and Law No. 4926 on Combating Smuggling	Smuggling	41	16.60
FTCL Article 504 – 506	Qualified fraud and bankruptcy	31	12.60
FTCL Article 339 – 350	Forgery of documents / Forgery of identification cards	29	11.70
FTCL Article 495 – 500	Looting, highway robbery and kidnapping	14	5.60
Article 359/b of Law 213 on Tax Procedure	Producing / using counterfeit documents	13	5.20
FTCL Article 125 – 173	Serious crimes against the State	5	2.10
Law 2238 on Removal, Preservation and Transplantation of Organs and Tissues	Opposition to law	3	1.20
FTCL Article 179 – 192	Felonies against personal liberty	1	0.50
FTCL Article 332 - 333 - 335	Forging of valuable seals belonging to the State	1	0.50
FTCL Article 435 – 436	Instigation to prostitution	1	0.50
Law 6136 on Firearms and Knives	Opposition to law	2	0.80
Law 2863 on Protection of Cultural and Natural Values	Opposition to law	1	0.50
<b>Total</b>		<b>246</b>	<b>100</b>

\*FTCL indicates former *Turkish Criminal Law 765*

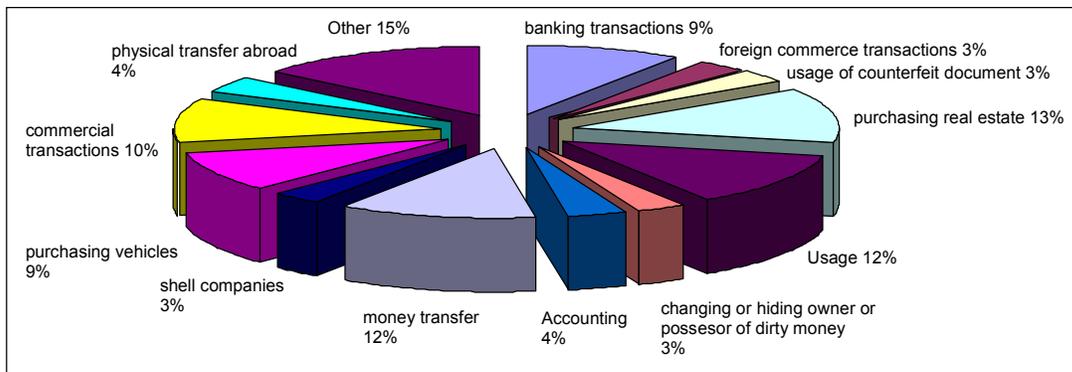
14. While the amount of ML in Turkey is not known, the illegal proceeds known to be involved in the ML referrals from MASAK to the public prosecutors between 1997 and June 2006 totals more than USD 1.7 billion<sup>4</sup>.

**The number of cases of money laundering or suspected money laundering**

15. MASAK made 246 referrals related to the ML offence to public prosecutors between 17 February 1997 and 30 June 2006, 194 of which resulted in prosecutions. Of the 194 cases in the courts of first instance, 44 were concluded: 4 with convictions and 40 with acquittals. 150 of these cases continue in courts of first instance. Thirty-four of the acquittals and all four convictions have been appealed, with five appeals concluded to date, all resulting in approval of the original acquittals. In addition to the cases from MASAK, another 161 cases were prosecuted during that period due to investigations conducted by the public prosecutor.

**Money laundering methods**

**Chart 1: Primary Money Laundering Methods Used**



16. The primary methods for laundering funds seen in these 246 referrals made by MASAK are money transfers and other banking transactions (21%), commercial transactions and accounting records (14%), purchasing real estate (13%), physical transfers abroad (4%), foreign commercial transactions (3%), shell companies (3%) and usage of counterfeit documents and invoices (3%). Other ML methods include use of exchange transactions, purchasing precious metals and structuring.

17. 92% of ML cases involved use of deposit and participation banks<sup>5</sup>. Though not widely used, off-shore banks, bureaux de change, brokerage houses and financial leasing companies have also been used. The primary designated non-financial businesses and professions (DNFBPs) used are certified public accountants and financial advisers. Also used are real estate agents (13%), auto dealers (9%), customs brokers (9%), transport companies (9%) and lawyers (4%).

18. The people or groups involved in ML are primarily fictitious exporters, drug traffickers, people working in the financial sector and people who have been fired from positions in the financial sector, customs brokers, and people without sufficient legal income, employment and social insurance. Money laundering offences are most commonly committed by individuals (55%), but also through organisations (35%) and collectively (10%).

19. Following the introduction of anti-money laundering (AML) measures, in particular customer due diligence (CDD) and suspicious transaction reporting, there has been an increase in attempts to

<sup>4</sup> USD 1,679,549,934.50 plus immovable property (not yet valued) of 28 houses, 2 shops, 19 parcels of land, 3 fields, an olive grove, a vineyard, 54 vehicles and some other items. Currency conversion rates used were valid as at 19 October 2006. See Annex 5 for a full breakdown of the illegal proceeds in these cases.

<sup>5</sup> In *Banking Law* 5411 a 'participation bank' is defined as an institution operating primarily for the purposes of collecting funds through special current accounts and participation accounts and granting loans.

open accounts in the names of third persons. A decreased use of large bank transfers and decreased use of cross-border carrying of cash has also been detected. According to Turkish authorities, the ability to conduct non-face-to-face transactions due to technological developments is seen as a ML threat on the near horizon. In addition, technology is increasingly available which allows for easy and speedy cross border transactions.

### Terrorist financing

20. Turkey has been actively working to counter terrorism, primarily of a domestic nature, for some time. Turkish authorities indicated that the PKK/KONGRA-GEL terrorist organisation receives safe harbour and monetary support from some other countries. The PKK/KONGRA-GEL organises aid campaigns through auxiliary organisations in Europe to increase its financial resources and by forcibly collecting funds from Turkish citizens living in those countries. It conducts activities abroad such as dissemination of propaganda, gaining new members and finding financial sources through cultural associations, foundations, non-governmental organisations and publishing organisations.

21. The PKK/KONGRA-GEL also engages in organised criminal activity. The organisation increasingly resorts to drug smuggling, arms and people smuggling and ML to finance its endeavours. The money obtained from drug smuggling represents a large share of the total revenues of the organisation and provides resources for the purchase of weapons, ammunition and equipment. In some drug trafficking cases the public prosecutors have found that the suspects have criminal records which include charges of aiding and abetting the PKK/KONGRA-GEL and becoming a member of it. The annual activity reports published by the General Directorate of Security's Department of Anti-Smuggling and Organised Crime confirm that the PKK/KONGRA-GEL is involved in illegal drug trafficking and the previously mentioned criminal activities. The General Directorate of Security's Department of Anti-Smuggling and Organised Crime, reports that in 333 cases between 1984 and 2005 which resulted in seizure of drugs, there were links to the PKK/KONGRA-GEL. Similarly, the General Command of Gendarmerie's Department of Anti-Smuggling and Organised Crime, reports that 81 of the 11,528 drug investigations conducted by it from 1994 to 2006 were related to the PKK/KONGRA-GEL.

22. The *Anti-Terror Law 3713 (ATL)* came into force on 12 April 1991. Article 7 of the ATL makes it a crime to found, organise and lead a terrorist organisation. Aiding and abetting members of such organisations is also punishable according to this Article. Until recently, the financing of terrorism was treated as aiding and abetting terrorists and terrorist organisations. *MASAK General Communiqué 3 of 7 February 2002* stipulates that obliged parties who "suspect or have reasonable grounds to suspect that funds are linked or related to, or is to be used for terrorism or terrorist acts" are to report this to MASAK as a suspicious transaction. The offence of terrorist financing was established as a separate offence by the *Law Regarding Amendment in the Anti-Terror, Law 5532 of 29 June 2006*, which came into force on 18 July 2006 (the AATL).

## 1.3 Overview of the Financial Sector and DNFBS

### a. Overview of Turkey's financial sector

**Table 2: Size and Composition of the Turkish Financial Sector**

FINANCIAL INSTITUTIONS	TOTAL ASSETS		% DISTRIBUTION			ASSETS/ GDP (%)
	MILLION TRY	BILLION USD	INCLUDING CBRT	CBRT EXCLUDE	ISE MAR. CAP. EXCLUDE	
Banks <sup>(1)</sup>	396,967	295.6	51.4	58.2	85.5	81.3
Participation Banks <sup>(1)</sup>	9,945	7.4	1.3	1.5	2.1	2.0
Insurance Companies <sup>(2)</sup>	5,574	4.2	0.7	0.8	1.2	1.1
Financial Leasing Companies <sup>(3)</sup>	6,708	5.0	0.9	1.0	1.4	1.4
Factoring Companies <sup>(4)</sup>	4,691	3.5	0.6	0.7	1.0	1.0
Securities Intermediary Ins. <sup>(3)</sup>	2,341	1.7	0.3	0.3	0.5	0.5

FINANCIAL INSTITUTIONS	TOTAL ASSETS		% DISTRIBUTION			ASSETS/ GDP (%)
	MILLION TRY	BILLION USD	INCLUDING CBRT	CBRT EXCLUDE	ISE MAR. CAP. EXCLUDE	
Pension Companies <sup>2</sup>	4,234	3.2	0.5	0.6	0.9	0.9
Mutual Funds	29,374	21.9	3.8	4.3	6.3	6.0
Consumer Fin. Companies <sup>(4)</sup>	1,769	1.3	0.2	0.3	0.4	0.4
Real Estate Investment Co. <sup>(1)</sup>	2,209	1.6	0.3	0.3	0.5	0.5
Securities Investment Co. <sup>(1)</sup>	488	0.4	0.1	0.1	0.1	0.1
ISE Market Capitalization <sup>(1)</sup>	218,318	162.6	28.3	32.0	-	44.7
Central Bank <sup>(1)</sup>	90,070	67.1	11.7	-	-	18.5
<b>Total</b>	<b>772,688</b>	<b>575.4</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>158.3</b>

Resource: BRSA, SPO, TT, CMB, CBRT, ISE, TSPAKB, TBA

(1) 2005 December period, (2) 2004 December period, (3) 2005 September period, (4) 2005 June period

23. Turkey's economic performance since the 2000/2001 crisis has been very strong. Financial sector consolidation has been the cornerstone of the economic programme since 1997 and progress has been achieved in restructuring the financial sector, liberalising key markets and strengthening regulatory capacity. Between 1997 and 2002, 20 banks were taken over, the bank supervisory system strengthened, and public banks were restructured and recapitalised. Turkey's financial sector provides a good payment system and has efficiently mobilised savings. The three large state banks, which required fiscal outlay of USD 22 billion (15% of 2001 gross domestic product (GDP)) in the aftermath of the 1994 financial crisis, are yet to be sold to private investors. The supervisory frameworks are still in the process of building capacity while adapting to the European Union (EU) Directives and Basel II requirements. The securities and credit markets, which to a great extent remained dormant during the time of economic volatility, are emerging. Revival in real economic activities and progress in the integration of the Turkish financial system with international markets have had a positive effect on the insurance, financial leasing and factoring sectors, including improvements in consumer financing companies as a result of need for consumer credit.

**Table 3: Institutions Conducting Financial Activities Outlined in the Glossary of the FATF 40 Recommendations**

TYPE OF FINANCIAL ACTIVITY (See the Glossary of the 40 Recommendations)	TYPE OF FINANCIAL INSTITUTION AUTHORISED TO PERFORM THIS ACTIVITY IN TURKEY
<b>A.</b> Acceptance of deposits and other repayable funds from the public (including private banking).	Deposit banks (participation banks only can accept participation funds), mutual funds, Central Bank, individual pension companies.
<b>B.</b> Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting)).	All banks (deposit banks, participation banks and development and investment banks), lenders, financial leasing companies, consumer financing companies, factoring companies.
<b>C.</b> Financial leasing (other than financial leasing arrangements in relation to consumer products).	Participation banks and development and investment banks, leasing companies.
<b>D.</b> The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds).	All banks (deposit, participation banks and development and investment banks), PTT <sup>6</sup> , Central Bank.
<b>E.</b> Issuing and managing means of	All banks (deposit, participation banks and development and investment banks),

<sup>6</sup> Post and Telegraph Organisation of Turkey.

TYPE OF FINANCIAL ACTIVITY (See the Glossary of the 40 Recommendations)	TYPE OF FINANCIAL INSTITUTION AUTHORISED TO PERFORM THIS ACTIVITY IN TURKEY
payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money).	PTT.
F. Financial guarantees and commitments.	All banks (deposit, participation banks and development and investment banks).
G. Trading in: - money market instruments (cheques, bills, certificates of deposit, derivatives, etc); - foreign exchange; - exchange, interest rate and index instruments; - transferable securities; - commodity futures trading.	Intermediary institutions (banks and brokerage houses), investment companies, mutual funds, other institutions authorised to operate in the capital markets, Central Bank.
H. Participation in securities issues and the provision of financial services related to such issues.	All banks (deposit, participation banks and development and investment banks) brokerage houses, investment companies, mutual funds, other institutions authorised to operate in the capital markets, Central Bank.
I. Individual and collective portfolio management.	Development and investment banks, brokerage houses, investment companies, mutual funds, other institutions authorised to operate in the capital markets, portfolio management companies, individual pension companies.
J. Safekeeping and administration of cash or liquid securities on behalf of other persons.	All banks (deposit, participation banks and development and investment banks), Central Bank, investment companies, mutual funds, other institutions authorised to operate in the capital markets, portfolio management companies, individual pension companies.
K. Otherwise investing, administering or managing funds or money on behalf of other persons.	All banks (deposit, participation banks and development and investment banks), Central Bank <sup>7</sup> , investment companies, mutual funds, other institutions authorised to operate in the capital markets, portfolio management companies, individual pension companies.
L. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)).	Insurance and reinsurance companies, PTT.
M. Money and currency changing.	All banks (deposit, participation banks and development and investment banks), PTT, Central Bank, bureaux de change, precious metal brokerage institutions.

### Banking sector

24. The banking sector dominates the Turkish financial sector, representing 51.4% of the financial sector when the Central Bank and Istanbul Stock Exchange (ISE) market capitalisation (market value of public companies) are included, and 85.5% when they are not included (see Table 2).

25. A measured decrease in the number of banks in Turkey has occurred over the past four years. Due to some mergers, the total number of the banks has declined from 59 to 51 (see Table 4). As at May 2006 Turkey had 3 public banks, 17 private banks, 13 foreign capitalised commercial banks, 4 participation banks, 13 investment and development banks and one saving deposits insurance fund (SDIF). As a result of this reduced number of players in the market, over this period the market share

<sup>7</sup> The Central Bank operates accounts for transfers conducted by overseas workers.

held by the five largest banks increased from 59.5% to 63%. The market share of the public banks has decreased slightly (from 34.9% to 31.4%) and the share held by private banks has increased (from 57.4% to 59.7%). One of the notable changes has been an increase of foreign interest, most notably the growth in the share of foreign banks in the system from 3.4% in 2004 to 5.2% in 2005.

26. The total assets of the banking sector reached TRY 397 billion<sup>8</sup> by the end of 2005, an increase of 29.5% compared to the previous year, due to positive economic expectations, active domestic demand and strong economic growth. The growth of the financial sector can be seen in increased numbers of branches, financial sector personnel and ATMs. In 2005 the number of deposit accounts increased by 3.6% to nearly 83 million and the number of credit consumers increased by 14.7% to nearly 29 million. Turkish banks have foreign branches or subsidiaries located in FATF member countries, members of the Commonwealth of Independent States, the Caribbean, the northern part of Cyprus and elsewhere.

27. The banking system comprises a wide range of institutions, from large full-service banks active in both the wholesale and retail sectors, to smaller institutions specialising in wholesale or merchant banking, as well as certain state-owned banks concentrating on specific sectors. Financial institutions are defined in Article 3 of *Banking Law 5411* to be “Institutions, other than credit institutions, which have been established to perform insurance, individual private pension fund or capital market activities or to engage in minimum one of the fields of activity set out in this Law, development and investment banks and financial holding companies.” Under Article 4 of that law, banks may carry out the following activities:

- Accepting deposits and participation funds.
- Granting loans, either cash or non-cash.
- Carrying out payment and collection transactions, including cash and deposit payment and fund transfer transactions, correspondent bank transactions, or use of check accounts.
- Purchasing transactions of commercial bills.
- Safe-keeping services.
- Issuing payment instruments (credit cards, bank cards and travel checks).
- Carrying out foreign exchange transactions, trading of money market instruments, trading of precious metals and stones and safekeeping such.
- Trading and intermediation of forward, future and option contracts, simple or complex financial instruments which involve multiple derivative instruments, based on economic and financial indicators, capital market instruments, goods, precious metals and foreign exchange.
- Purchase and sale of capital market instruments and repurchasing or re-sale commitments.
- Intermediation for issuance or public offering of capital market instruments. Transactions for trading previously issued capital market instruments for intermediation purposes.
- Undertaking guarantees and other liabilities in favour of other persons.
- Investment counselling services.
- Portfolio operation and management.
- Primary market dealing for purchase-sales transactions under contracts signed with Undersecretariat of Treasury (UT) and/or Central Bank and associations of institutions.
- Factoring and forfeiting transactions.
- Intermediating fund purchase-sale transactions in the inter-bank market.
- Financial leasing services.
- Insurance and individual private pension fund services.
- Other activities as determined by the Banking Regulation and Supervision Agency (BRSA).

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<sup>8</sup> 1 TRY = 0.6851 USD as at 20 October 2006.

28. Deposit banks can not accept participation funds or provide financial leasing services. Participation banks can not accept deposits, and development and investment banks can not accept deposits or participation funds. Turkish commercial banks are not allowed to engage in either trading goods or immovable property for commercial purposes or leasing.

**Table 4: Structural Appearance of the Banking Sector**

	2002	2003	2004	2005
Number of banks	59	55	53	51
Public Deposit Banks	3	3	3	3
Private Deposit banks	20	18	18	17
SDIF	2	2	1	1
Foreign Capitalized Deposit Banks	15	13	13	13
Participation Banks	5	5	5	4
Development and Investment Banks	14	14	13	13
Group Shares According to Asset Size (%)*	100.0	100.0	100.0	100.0
Public	31.9	33.3	34.9	31.4
Private	56.2	57	57.4	59.7
SDIF	4.4	2.8	0.6	0.5
Foreign	3.1	2.8	3.4	5.2
Development and Investment	4.4	4.1	3.7	3.2
Asset Distribution by Money Type (%)*	100.0	100.0	100.0	100.0
DC	56.8	62.0	63.8	68.3
Foreign Currency	43.2	38.0	36.2	31.7
Condensation by Asset Size*				
The Share of the First Five Banks (%)	58.4	60.3	59.5	63.0
Herfindahl Hirschman ndeks	883	942	949	981
Deposit Account Number (thousand)*	67,993	78,790	80,087	82,958
Natural Person	62,017	70,455	71,203	77,292
Legal Person	5,976	8,335	8,885	5,666
Total Credit Consumer Number (thousand)*	15,784	18,707	25,168	28,863
Credit Cards Consumer Number (thousand)**	11,752	13,518	19,104	20,578
Total Credit Consumers / Credit Card Consumers (%)*	74.5	72.3	75.9	71.3
Number of Branches*	6,203	6,078	6,219	6,276
Domestic	6,170	6,039	6,177	6,230
Foreign	33	39	42	46
Number of Personnel*	124,009	124,030	127,944	132,973
Domestic	123,627	123,572	127,391	132,424
Foreign	382	458	553	549
Number of ATMs*	12,035	12,726	13,556	14,529

\* Except Participation Banks.

\*\* Consumers who have credit cards from more than one bank are double counted.

### Non-bank financial sector

29. **Securities market:** The only active stock exchange in Turkey is the Istanbul Stock Exchange (ISE) which commenced operation in 1986. Despite the high rate of inflation and the financial crisis in 1994, which resulted in the collapse of three private banks, the interest of investors in the securities market has grown rapidly. The number of companies listed on the stock exchange increased from 307 in 2004 to 315 in 2005 (see Table 5). In the same period the number of active investors decreased from 1,072,663 to 1,004,551 and the number of intermediary agencies decreased from 154 to 149.

**Table 5: Companies in the Capital Markets**

	2002	2003	2004	2005
Intermediary Institutions	169	161	154	149
Brokerage houses	121	117	112	108

	2002	2003	2004	2005
Banks	48	44	42	41
Number of Companies in the CMB <sup>9</sup> Registry	629	631	626	625
Companies having listed common stocks in ISE	301	298	307	315
Mutual Funds	282	292	300	343
Domestic Mutual Funds	242	245	253	290
Foreign Mutual Funds	40	47	47	53
Investment companies	32	32	34	37
Securities Investment Co.	22	22	23	25
Real Estate Investment Co.	9	9	9	10
Venture capital Investment Co.	1	1	2	2
Portfolio Management Companies	20	21	21	19
Individual Pension Companies	-	-	11	11
Independent Auditing Companies	78	80	83	91
Real Estate Appraisal Companies	-	6	6	9
Rating Agencies	1	1	5	5

30. **Insurance Companies:** As at December 2005 Turkey had 47 insurance and 2 reinsurance companies, 2 of the insurance companies being publicly owned (see Table 6). The 47 insurance companies provide life, life/pension, mixed (life/non-life), non-life and pension insurance. At that same date there were 14,453 insurance agencies, 1,386 experts and 49 insurance brokers active in Turkey. Premium creation of insurance companies was realised as TRY 7.8 billion in 2005<sup>10</sup>. Total assets of the insurance companies was TRY 13.2 billion by September 2005 and are primarily government securities. The total assets of reinsurance companies reached TRY 958 million in 2005. Per capita private insurance premium expense was realised at USD 65 by the end of 2004. Total profitability of the companies was TRY 247.9 million and their owner's equity was TRY 4.4 million as at September 2005.

**Table 6: Companies in the Insurance Sector**

UNIT	2004	2005	30.06.2006
Total companies	48	49	45
- Insurance	47	47	44
- Reinsurance	1	2	1
Insurance companies as to capital structure	47	47	44
- Public	2	2	-
- Private	40	40	32
- Foreign Formed in Turkey	5	5	12
Insurance companies as to activities	47	47	44
- Life	9	9	9
- Life/Pension	10	10	10
- Mixed (life/non-life)	12	12	11
- Non-life	15	15	13
- Pension	1	1	1
Number of agencies	13,719	14,453	11,968
Number of experts	1,265	1,386	1,734
Number of brokers	55	49	56

31. **Financial Leasing Companies:** By the end of 2005 Turkey had 98 companies in the financial leasing sector: 84 financial leasing companies, 10 development and investment banks and 4 participation banks. From 1985 to 2004 there were 197,000 projects financed by leasing, worth approximately USD 23 billion. Despite its great potential, the financial leasing sector represents a relatively small component of the Turkish financial sector. The assets of the financial leasing sector that finance the manufacturing and service more than doubled between 2000 and 2005, reaching TRY

<sup>9</sup> Capital Markets Board.

<sup>10</sup> 1 TRY = 0.6851 USD as at 20 October 2006.

5.1 billion<sup>11</sup>. Similarly, the total paid-in capital of the financial leasing companies increased by 25.5% to TRY 1.08 billion in the 2004 – September 2005 period.

32. **Factoring Companies:** Forfeiting services are provided by factoring companies. At the end of 2005 there were 88 factoring companies in Turkey, with a total realised transaction volume of TRY 8.6 billion by June 2005. The total assets of the factoring sector increased more than three-fold from 2000 to TRY 4.7 billion in June 2005. The equity of the factoring companies at June 2005 had risen to TRY 1.1 billion, and the total paid-in capital similarly rose, to TRY 1.01 million in June 2005.

33. **Consumer Financing Companies:** Consumer financing companies lend money to buy goods and services. At the end of 2005 the 9 consumer financing companies had assets valued at TRY 1.5 billion and paid-in capital of TRY 470 million.

34. **Money Lenders:** Money lenders in Turkey are defined as those who deal with money lending activity permanently as licensed or intermediary in these activities in return for interest, mortgage or other financial assets. The activities of money lenders are regulated by the Decree 90 of 30 September 1983. As at October 2006 there were 33 active money lenders in Turkey. In 2005 these money lenders conducted 34,000 lending transactions worth a total of TRY 222 million.

35. **Bureaux de Change:** Exchange offices / bureaux de change (hereinafter referred to simply as ‘bureaux de change’) operate and are audited in accordance with *Decree Law 32 on Protection of the Value of the Turkish Currency* and Communiqué 2006–32/32 on this decree which entered into force on 22 September 2006. As at October 2006, Turkey had 759 bureaux de change with 62 branches. By the end of 2005, the total owners’ equity of the bureaux de change was TRY 508 million and they made transactions in the amount of USD 23.5 billion.

#### **Designated non-financial businesses and professions (DNFBPs)**

36. **Casinos:** In Turkey, casinos were made illegal by *Law 4302 Amending the Law on Encouragement of Tourism* which came into effect on 10 August 1997. According to this law, it is forbidden to open casinos whether affiliated to a tourism business or independently. All existing casino licenses were abolished by the same law. The *Regulation for Lottery in Virtual Environment* (published in the Official Gazette on 14 March 2006) makes it illegal to establish internet gambling businesses, to use the virtual environment for such purposes under any name, or to arrange and play lottery or other types of gaming in this environment.

37. **Real Estate Agents:** In June 2006 there were 27,798 persons in Turkey dealing with purchase and sale of real estate for commercial purpose or as intermediaries. While there is no particular law establishing the profession of real estate brokerage, provisions regarding this profession are contained in the *Turkish Commercial Code 6762 (TCC)*, the *Law of Obligation on Tradesman and Craftsman* and the Ministry of Trade and Industry Communiqué OSG-2003/59. According to these provisions:

- These professions are accepted as merchants.
- Brokers must conclude written contracts while performing this activity.
- Real estate agents are required to register in chambers of real estate brokerage.

38. **Lawyers:** There were 55,176 lawyers in Turkey as at 31 December 2005. The Turkish Bar Association issues practicing certificates to lawyers. Lawyers are prohibited from revealing information entrusted them and information obtained during performance of their tasks and performance of tasks given to them by the Bar Association and its organs. Lawyers can abstain from being witnesses without consequential civil or criminal liability. Lawyers must refuse improper or unjustifiable offers (even if they realise later that the offer is improper or unjustifiable). Lawyers are not subject to AML/CFT obligations in Turkey.

<sup>11</sup> 1 TRY = 0.6851 USD as at 20 October 2006.

39. **Public Notaries:** There were 1,454 notaries in Turkey as at June 2006. The principal role of the notary in Turkey is to certify legal acts upon request of the parties concerned. Although notaries may be involved in the transfer of property, their participation is not a requirement for the validity of the transaction. Notaries are under the supervision and auditing of the Ministry of Justice and the Turkish Notary Public Association. Notaries are under the permanent supervision of public prosecutors and they are inspected at least once a year. Notaries are required to identify the persons seeking notarisation of legal acts (including as well address, occupation and “true intention”).

40. **Accountants:** In Turkey there were 29,722 certified general accountants, 30,957 certified public accountants and 3,474 sworn-in certified public accountants as at 20 September 2004. Certified general accountants keep books, prepare balance sheets, profit and loss statements, tax returns and other relevant documents in compliance with generally accepted accounting principles and the provisions of the relevant legislation. In addition to those activities, certified public accountants also provide advisory and audit services for enterprises and business concerns owned by natural and legal persons. Sworn-in certified public accountants only conduct advisory and audit functions and do so independent from any business entity. Sworn-in certified public accountants can not keep books related to accounting, cannot establish an accounting office and cannot become partners to the accounting offices already established. All three types of accountant are prohibited from disclosing information gained in the course of their work. Accountants are not subject to AML/CFT obligations in Turkey.

41. **Precious Metals Intermediary Agencies:** Precious metals intermediary services are provided by precious metals intermediary companies and also by banks, bureaux de change, participation banks, agencies that carry out producing and marketing of precious metals, and persons and institutions resident abroad<sup>12</sup>. Intermediary agencies must be organised as joint-stock companies. Precious metal intermediary institutions are under the control and audit of the Undersecretariat of Treasury, which issues licenses to conduct transactions in the precious metals exchange. There are 55 authorised members of the precious metals exchange and 9 authorised members of the precious metals lending market.

42. **Dealers in Precious Metals and Stones:** As at July 2006 there were 1,714 enterprises dealing with sale of jewellery (wholesale or retail) and dealing with precious metals and stones.

43. **Other Parties subject to AML/CFT obligations in Turkey:** Postal service and cargo companies (1,367), ship, aircraft and vehicle dealers (12,981) and collectors, dealers and auctioneers of historical arts, antiques and art works (297)<sup>13</sup>.

#### 1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

44. Broadly, the Turkish Commercial Code (TCC) recognises two forms of legal person: partnerships and capital stock companies. The legal differences between the two relate to the liabilities of the partners. In partnerships, the partners are responsible for the debts of the company, while in capital stock companies the shareholders are proportionately liable for the debts of the company in accordance with their shareholdings. There are five forms legal persons may take in Turkey: open partnership (*kolektif  irket*), limited partnership (*komandit  irket*), joint stock company (*anonim  irket*), limited company (*limitet  irket*) and cooperative (*kooperatif  irket*).

45. **Partnerships:** Open partnerships (*kolektif  irketler*) are those established by natural persons to run a business under a trade name and are not limited by the creditors of the company. Provisions concerning open companies can be found in Articles 153, 154, 155, 156 and 157 of the TCC. Limited partnerships (or *komandit  irketler*) are those established by natural persons to run a business under a

<sup>12</sup> As such, many of the businesses providing precious metals intermediary services are financial institutions.

<sup>13</sup> The number of each type of entity is accurate as at July 2006.

trade name where, for some of the shareholders, liability is unlimited, but for others, liability is limited by their proportion of shares in the company. Principal agreements for open and limited partnerships must include at least:

- Partners' name, surname, residence and nationality.
- Type of company.
- Trade name and centre of the company.
- The business of the company.
- Amount of money undertaken as capital by each partner, value of the capital in kind and methods of appraising of it, the nature and scope of capital in labour.
- Name and surname of the person/s authorised to represent the company and indication of whether these persons are authorised to sign individually or jointly.
- For limited partnerships only: the phrase "limited partnership" (*komandit  irket*) must be used in the corporate title.

46. **Corporations:** The most common forms of legal persons in Turkey are joint stock companies and limited liability companies. These entities offer their shareholders limited liability. The structure and organisation of joint stock companies and limited companies are subject to regulation by the TCC.

- *Joint Stock Company (anonim  irket):* A joint stock company has its own trade name and a predetermined capital divided by shares. Shareholders' liability is limited to their capital. A minimum of five shareholders, either natural or legal persons, are required to form a joint stock company. Capital Markets Board regulations apply to joint stock companies with at least 250 shareholders and to those which have issued bonds or listed on the Istanbul Stock Exchange. Shares may be issued in either registered or bearer form. Registered shares are freely transferable subject to approval by the company's Board of Directors, unless prohibited by the company's articles of association. Turkey has commenced a dematerialisation process for bearer shares.
- *Limited Company (limitet  irket):* A limited company may be composed of natural or legal persons and must consist of at least two and no more than 50 partners. Capital stock is definite and all partners are personally liable for the debts of the company up to a maximum of their contribution (TCC Article 503). They are also directly exposed to the tax liabilities of the company, limited however in accordance with their contribution. Shares held in a limited company are non-negotiable and may be transferred only with the approval of the other partners. Limited companies are prohibited from engaging in banking or insurance business. A limited company differs from a joint stock company in that its capital is not divided into shares of stock and its capital is not represented by share certificates. There is no Board of Directors for a limited company.

47. For joint-stock companies, a principal agreement must be written, signed by the founders and notarised. Article 279 of the TCC specifies the requirements for principal agreements of joint-stock companies. For limited companies, agreements must be written, signed by the founding partners and notarised (TCC Article 505), and the agreement should contain the minimum matters required under Articles 506 and 510 of the TCC. Other provisions that are not contrary with the law can also be included in company agreements. To establish a joint-stock company or a limited company, the following documents are required:

- Form and petition of founding notification, completed and signed by an authorised person representing the company.
- Three copies of the principal agreement with attestation as to which copy is the original.
- Notarised circular letter with the names of persons authorised to represent the company.
- Letter of undertaking in accordance with Article 29 of the *Commercial Registry Statute*.
- Bank receipt showing payment of 0.0004 of a company's capital to the Competition Authority.

- Original certificate of joint-stock companies' founding permit issued by the Ministry in accordance with Article 5 of Communiqué 2003/3 on *Principles Relating to Transactions of Establishment and Principal Agreement Amendments of Joint Stock Companies and Limited Companies*.
- Residence certificates and copies of birth certificates of the natural persons who are the company founders.
- For any foreign natural persons among the founders: original passport or notarised copy with attestation by the relevant consulate.
- For any foreign legal persons: an original or notarised copy of the Commercial Activity Certificate provided by the chamber of industry or commerce in which the company is registered or by authorised courts.

48. **Foreign Companies:** Foreign companies may also operate through representative offices (*irtibat bürolari*) or branches (*Şubeler*) provided that they are established in accordance with the relevant legislation. The income of a branch is taxed in the same way as resident corporations. Representative offices may be used to establish a presence in Turkey, but cannot be involved in any commercial activity and must be funded by the parent company abroad. Corporations established by foreign joint venture partners with or without a Turkish partner are treated as Turkish corporations and are entitled to all rights available to Turkish companies under the TCC.

49. **Company Registry:** There is a central registry system in Turkey where titles, articles of association and other company records are registered. The Trade Registry was established through a 1957 Decree of the Council of Ministers, as amended by the Decree of the Council of Ministers 98/11548 which came into force on 28 August 1998, and in accordance with Articles 26-40 of the TCC. Announcements pertaining to changes in the registry are made through the "Trade Registry Gazette" (TCC Article 42) which is published every business day. In accordance with Article 37 of the TCC, the commercial registry is open to the public and all documents kept in Trade Registry Offices can be examined and copied by any member of the public. Anyone may also ask for a certificate to the effect that any matter is registered or not registered (Article 37 of the TCC).

50. The Trade Registry contains broad range of information related to all kind of business, whether natural or legal persons (article 42 TCC). There are 84 distinct types of notice relating to establishment or changes to companies which must be submitted to the Trade Registry. Information related to share transfer is published in the Registry.

## 1.5 Overview of strategy to prevent money laundering and terrorist financing

### a. AML/CFT Strategies and Priorities

51. Reducing the amount of the proceeds generated from criminal activity is the primary objective of Turkey's AML strategy. As tracking the proceeds of crime can be more effectively conducted in a controlled economy, preventing the unregistered economy is an associated priority (see for example the "Urgent Action Plan" issued by Cabinet on 3 January 2003).

52. Section 4.25.5 of 'Turkey's National Program on Undertaking of European Union *Acquis Communautaire*, which was accepted by Decree 2001/2129 of 19 March 2001, notes that:

- Cooperation and coordination between the competent Ministries and other public institutions will be enhanced.
- The relevant legislation will be reviewed to extend the scope of the definition of "money laundering offences" in the short term.
- EU *acquis* on the illicit use, production of and trafficking in drugs, organised crime, fraud and corruption, ML and judicial cooperation in civil and criminal matters will begin to be adopted in 2001, and international cooperation in these areas will be intensified.

- The capacity for cooperation between the judicial, financial, police and gendarmerie units in the fight against organised crime, fraud and corruption, the illicit use, production of and trafficking in drugs, and ML will be strengthened.
- Work on the collection, storage, processing, analysis and exchange of relevant information on suspicious financial transactions will be accelerated.

53. Further, the *Middle Term Program (2007 – 2009)*, approved by Council of Ministers Decision 2006/10508 of 30 May 2005, outlines strategies for increased effectiveness of the fight against terrorism and financing of terrorism, illegal immigration and asylum, human trafficking, drug trafficking and organised crime.

54. Twinning projects have commenced with the aim of strengthening technical and organisational infrastructure of the Turkish authorities. Two twinning projects have been conducted by the Ministry of Interior's General Directorate of Security with its German counterpart: *Strengthening the Fight Against Organised Crimes* and *Strengthening the Fight Against Money Laundering, Financial Sources of Crime and Terrorist Financing*. *Strengthening Capacity of The Fight Against Money Laundering*, a twinning project involving MASAK and Italian authorities, has also been conducted.

55. The Turkish International Academy Against Drugs and Organised Crime (TADOC) was established in 2000 as a cooperative effort of the Turkish Government and the UN Narcotics Control Program. The TADOC is an international education centre for countries in the region to send law enforcement personnel. The Academy aims to provide current information and to build improved communication and cooperation between Turkish and foreign law enforcement units.

56. Education programmes provided by many law enforcement units and financial institutions have commenced with the aim of increasing sensitivity towards the subject and ensuring effective implementation of AML and CFT programmes. In this respect, MASAK has given high priority to education programmes for businesses and professions subject to AML/CFT obligations, especially the financial sector. Special education programmes have been arranged for the Istanbul Gold Exchange (IGE), the Istanbul Stock Exchange (ISE), focussing on their activities as financial institutions and for banks operating in free trade zones<sup>14</sup>. Two guidelines for the banking sector have been prepared by a working group consisting of representatives from MASAK and the Turkish Banks Association (TBA) and issued by the TBA:

- *The Fight against Money Laundering and the Liabilities of Banks*, December 2003.
- *TBA Guideline for the Turkish banks on Significance of Fight Against Money Laundering of Crime Revenues and Financing of Terrorism*, electronic edition in September 2005 and hard copy in May 2006.

57. During the period of implementation of these policies and programmes, Turkey has experienced an increase in the number of suspicious transaction reports. This is a positive indicator of the impact of those programmes. 319 suspicious transaction reports (STRs) were received in the five-year period of 1997 - 2001, while 1,762 STRs have been received in the 4 years and 11 months from January 2002 to 30 November 2006, a considerable increase.

58. The government of Turkey plans to continue to strengthen measures designed to protect markets against the risk of laundering and TF. For this reason, in October 2006 it enacted the *Prevention of Laundering Proceeds of Crime Law 5549* (the new AML Law 5549)<sup>15</sup> which incorporates Articles aimed at increasing cooperation between the Government and the financial sector, especially banks and other sectors which can be exposed to ML risks.

<sup>14</sup> There are 21 free trade zones in Turkey which are deemed to be outside of the customs territory and where regulations related to foreign trade and other financial and economic areas are not applicable. Free trade zones are designed to provide a convenient business climate to increase trade volume and exports for some industrial and commercial activities.

<sup>15</sup> See Annex 3 for text of the new AML Law 5549.

**b. The institutional framework for combating money laundering and terrorist financing**

59. **Ministry of Finance (MF):** The MF is responsible for preparing and implementing fiscal policies, providing legal consultancy to the government, preparing the government budget, collecting taxation revenues, keeping the government's accounts and managing state assets.

60. **MASAK:** The *Law on Prevention of Money Laundering* 4208 (PML) entered into force on 19 November 1996 and *Mali Suçları Araştırma Kurulu* (MASAK), the Turkish FIU, was founded on 17 February 1997. MASAK is an administrative agency attached to the Minister of Finance. Its principal function is to collect data, to receive suspicious transaction reports, to analyze and evaluate them in the scope of prevention of laundering proceeds of crime and terrorist financing. It conducts and coordinates preliminary investigations of money laundering cases. It also gathers and evaluates statistics and other information related to ML and is the primary agency responsible for taking domestic and international measures to prevent ML. MASAK examines money laundering offences using various examiners from other agencies who are located at MASAK; finance inspectors, tax inspectors, customs inspectors, revenue comptrollers, sworn-in bank auditors, treasury comptrollers, BRSA experts and CMB experts. Investigators are authorised to request information and documents, conduct research and examinations, and follow up and inspect procedures and documents in accordance with the scope of their assignment. They may also use the powers given to them by other laws.

61. The duties of MASAK fall into five primary areas: information collection, research, analysis and evaluation; policy and legislation; coordination; supervision; and preliminary investigations. Article 19 of Law 5549 on the *Prevention of Laundering Proceeds of Crime*, of 18 October 2006, (the new AML Law 5549) provides the functions and powers of MASAK, which are:

- *Information collection, research, analysis and evaluation (FIU):* To collect data; receive STRs; request information and documents from natural and legal persons; exchange information and documents with counterparts in foreign countries; sign memoranda of understanding with other FIUs; analyse and evaluate information obtained; conduct research on trends relating to laundering proceeds of crime; conduct research on methods of detecting and preventing ML; and conduct sectoral studies.
- *Policy and legislation:* To develop policies and implementation strategies; prepare draft laws, ordinances and regulations; and carry out activities to raise the public awareness and support for this purpose.
- *Coordination:* To implement regulations; coordinate institutions and organisations; conduct joint activities with other public institutions; and exchange views and information to prevent ML.
- *Supervision:* To supervise compliance of obliged parties; carry out ML examinations of obliged parties; request information and documents required for examinations; scrutinise all documents relating to examinations; monitor the implementation of ML obligations; and carry out awareness raising activities.
- *Preliminary investigations:* To conduct preliminary investigations; request examination personnel from law enforcement and other relevant units when required; and send ML and TF cases to the public prosecutor's office for legal action.

62. **Ministry of Foreign Affairs:** The Ministry of Foreign Affairs is involved in international cooperation, the negotiation of international agreements, approval of international conventions and coordination activities to implement international conventions. The Ministry of Foreign Affairs presents reports addressing Turkey's implementation of counter-terrorism and CFT resolutions of the United Nations Security Council (UNSC). The Ministry of Foreign Affairs coordinates with relevant units in Turkey to evaluate requests received from other countries for cooperation and information exchange with regard to terrorism and TF.

63. **Ministry of Justice:** The Ministry of Justice publishes circulars on ML, educates prosecutors and judges and provides judicial assistance. The primary units within the Ministry of Justice involved in AML/CFT programmes are the General Directorate of International Law and Foreign Relations, which is the central authority for international cooperation, the General Directorate of Legislation, and the General Directorate of Judicial Registration and Statistics.

64. The duties of the General Directorate of International Law and Foreign Relations include:

- Provide opinions on international treaties and documents relating to the work of the Ministry.
- Assist judicial authorities in providing information and documentation concerning crimes conducted abroad which fall within the jurisdiction of Turkish courts.
- Conduct international judicial assistance, notification, rotary, extradition, transfer convicts, and transfer inquiries on civil and criminal matters.

65. The duties of the General Directorate of Legislation are to:

- Draft laws and regulations on judicial affairs and provide opinions about proposals made by the Prime Ministry.
- Investigate and research amendments to legislation.
- Provide opinions on draft laws and decrees prepared by other ministries and public institutions.

66. **Ministry of Interior:** The Ministry of Interior exercises policy control over the General Directorate of Security which is responsible for policing activity against all crimes in urban areas, the General Command of Gendarmerie which conducts policing in rural areas, and the Coast Guard Command which is responsible for Turkey's coastal waters. The ministry also prepares and implements regulations which relate to law enforcement activity such as controlled delivery. Investigations are conducted under the authority of a public prosecutor.

- *The General Directorate of Security:* Two departments within the General Directorate of Security, the Departments of Anti-Smuggling and Organised Crime, and of Anti-Terror and Intelligence, are authorised and responsible units for combating ML and TF. The Department of Anti-Smuggling and Organised Crime is responsible for gathering and evaluating intelligence, taking necessary measures for disqualification and legal follow-up, arranging operations with the aim of combating crimes that control or seize economic and managerial structure directly or indirectly to gain unjust benefit illegally by using national or international organisations for smuggling operations made from abroad to Turkey, from Turkey to abroad or within the national borders, seizing proceeds gained from these crimes, and reducing opportunities for these crimes to be committed. Additionally, in accordance with court decisions, the Department uses controlled delivery techniques and coordinates the implementation of controlled deliveries. In April 1998, the Department of Anti-Smuggling and Organised Crime established a "Money Laundering Desk" to address ML cases.
- *General Command of Gendarmerie:* The field of duties and responsibilities of the Gendarmerie is generally those outside of the duties of police, though it provides the complete policing function in provinces, towns and border areas where there is no police organisation. The civil functions of the Gendarmerie, outlined in paragraph 1/a of Article 7 of Law 2803 *Regarding Establishment, Functions and Powers of Gendarmerie* of 10 March 1983, are to: ensure, protect and watch public order; prohibit, pursue and investigate smuggling; prevent the commission of crimes; and, protect prisons and institutions executing punishments. The Anti-Smuggling and Organised Crime Department within the Gendarmerie was established under the Department of Operations on 27 October 1998. The main duty of the Department is to investigate organised crime groups at national and international level, including investigations of money laundering, terrorist financing, drug smuggling, financial crimes, organised crimes and human smuggling.

67. **The Undersecretariat of Customs:** In 1993 the Customs Service was reorganised into an autonomous undersecretariat bound to the Prime Ministry, according to Decree Law 485 on *The*

*Organisation and Duties of the Undersecretariat of Customs.* The Undersecretariat of Customs has a board of inspection and investigation, and sends reports on violations of legislation and major smuggling cases to MASAK. It is responsible for laws relating to the cross border movement of cash, and similarly sends copies of foreign currency declaration forms to MASAK. Customs enforcement units for anti-smuggling, intelligence and narcotics combat all types of smuggling cases. These and other related units investigate narcotics smuggling cases in accordance with orders of the public prosecutor in accordance with provisions of the CPL, the TCL and Law 2313 on *Control of Narcotics*. According to the 7 Article of the *Decree Law the Duties of the Directorate General of Customs* the duties of the Undersecretariat include:

- Carry out operations related to imports and ensure implementation of the import regime.
- Ensure customs obligations are implemented in relation to goods sent via post.
- Maintain customs transactions subject to border and coastal trade and audit this activity.
- Conduct customs operations in free trade areas and audit this activity.
- Conduct operations relating to customs brokers and assistant customs brokers.

68. ***Central Bank of Republic of Turkey (CBRT):*** The Duties and Powers of the CBRT are outlined in Article 4 of Law 1211. According to that Law, the CBRT's primary aim is to achieve and maintain price stability. The Bank enjoys autonomy in exercising the powers and carrying out the duties granted to it. The duties of the Bank include:

- Regulate the volume and circulation of Turkish Lira, establish payment, securities transfer and settlement systems, set forth regulations to ensure the uninterrupted operation and supervision of the existing or future systems, and, determine the methods and instruments including electronic environment for payments.
- Enhance the stability in the financial system and take regulatory measures with respect to money and foreign exchange markets.
- Implement regulations and supervise compliance with these regulations and the accuracy of the information submitted by these establishments and institutions subject to the said regulations.
- Monitor the financial markets.

69. The CBRT is able to request information and gather statistics from banks and other financial institutions and from relevant regulatory bodies.

70. ***Ministry of Industry and Trade:*** The Ministry of Industry and Trade is responsible for the law relating to legal persons and arrangements. The Ministry of Industry and Trade has a regulatory and audit role in relation to companies' activities with regard to the Trade Registry and in relation to establishment and statutory changes of joint stock and limited companies. It is responsible for keeping registers of industrial undertakings and building inventories, collecting and evaluating statistical data, managing the trade registry in accordance with the requirements of the TCC and the *Trade Registry Regulation*, making necessary controls, managing establishment and statute change of companies and requests from foreign joint stock companies which seek to establish branches or agencies in Turkey.

71. ***Banking Regulation and Supervision Agency (BRSA):*** The BRSA is an autonomous public institution, the duties of which, specified in Article 92 of *Banking Law 5411*, are to take measures to:

- Ensure trust and stability in the financial markets through regulation, permission, monitoring and audit operations for all domestic and foreign banks operating in Turkey, leasing companies, factoring companies, consumer finance companies, financial holding companies, asset management companies and company service providers.
- Ensure the credit system works effectively.
- Improve the financial sector.
- Ensure that the rights and benefits of depositors are protected.

72. In order to maintain confidence and stability in financial markets, the sound operation of the credit system, the development of the financial sector and the protection of the rights and interests of depositors, the BRSA is responsible for:

- Regulation, enforcement and implementation of the establishment, activities, management and organisational structure, merger, disintegration, change of shares and liquidation of banks and financial holding companies and, with the reservation of the provisions of other laws and the related regulation, financial leasing, factoring and consumer financing companies. Monitoring, supervision and enforcement of these activities.
- Become a member of international financial, economic and professional organisations in which domestic and foreign equivalent agencies participate, signing memoranda of understanding with the authorised bodies of foreign countries regarding the matters that fall under the BRSA's field of duty.
- Fulfilling other duties assigned by the law.

73. The BRSA uses the powers assigned to it through decisions taken by the Board. The BRSA is authorised to issue regulations and communiqués regarding the enforcement of *Banking Law 5411* through Board decisions. Drafts of secondary legislation prepared by the BRSA are made public, primarily via the BRSA's website, for a minimum of seven days to inform public opinion. Specific decisions that are deemed necessary are notified directly to the affected persons and institutions and are often made public through the BRSA weekly bulletin.

74. Before issuing regulations, the BRSA consults relevant ministries, the Undersecretariat of the State Planning Organisation (SPO) and related institutions and organisations. The BRSA is authorised and obligated to prevent any transaction and practice that could endanger the rights of the depositors and the sound and safe operation of banks or could severely damage the economy, and is authorised to create and implement measures to ensure the efficient operation of the credit system. Sworn bank auditors working for the agency can be charged with researching and investigating ML activity. Public institutions and authorities are required to provide assistance to the BRSA in their fields of duty as set out in the laws.

75. **Capital Markets Board (CMB):** The CMB is the regulatory and supervisory authority in charge of the securities markets in Turkey. Empowered by the *Capital Markets Law (CML)*, which was enacted in 1981, the CMB makes detailed regulations for organising the markets and developing capital market instruments and institutions. The three primary areas within the responsibility of the CMB are: primary markets, secondary markets and financial intermediation. Its overarching objective is to take necessary measures to foster the development of capital markets and thus to contribute to the efficient allocation of financial resources in the country while ensuring investor protection. While performing its functions, the CMB implements the provisions of the CML concerning insider trading and manipulation in order to protect investors, especially small investors, and to ensure market integrity. CMB experts may be tasked with ML research and investigations.

76. The CMB licences intermediary institutions and collective investment institutions; registers corporations issuing securities; and, supervises the clearing organisation and securities and precious metal exchanges established in Turkey. As at the end of 2005, the following institutions were operating under the supervision of the CMB:

- 625 corporations registered with CMB for shares issues, of which 315 were listed on the ISE.
- 108 brokerage houses.
- 41 banks which have licences to deal in off-exchange trading and repossession transactions.
- 290 domestic mutual funds and 53 foreign mutual funds.
- 91 pension mutual funds.
- 25 securities investment companies.
- 10 real estate investment companies.

- 2 venture capital investment companies.
- 19 portfolio management companies.
- 91 independent auditing firms.
- 5 rating institutions.
- ISE and IGE.
- Takasbank (ISE Settlement and Custody Bank).
- TDE (Turkish Derivatives Exchange).
- Central Registry Agency.
- The Association of Capital Market Intermediary Institutions of Turkey.

77. ***Undersecretariat of the Treasury:*** The role and functions of the Undersecretariat of the Treasury (UT), provided in Law 4059 of 9 December 1994, include:

- Monitor the activities of SEEs (State Economic Enterprises) and other non-commercial State Institutions, be a financial creditor for their annual investment and expenditure programmes which are prepared and submitted by the UT for approval of the Board of Ministers.
- Regulate Turkey's borrowing/lending policies, employ procedures for grants and for other capital flows.
- Regulate and supervise the insurance sector, bureaux de change and money lenders. The Board of Treasury Comptrollers and Insurance Auditory Board (IAB) are the audit units of the Treasury.
- Regulate, grant and supervise the incentives for domestic and foreign direct investments.

78. ***Revenue Administration:*** The Revenue Administration was established in May 2005 to implement revenue policy fairly and impartially, to collect taxes and other revenues with minimum cost, to take necessary measures to protect the rights of tax payers and provide them with high quality services, and to act according to the basic principles of transparency, efficiency, effectiveness and with a focus on tax payers. The duties of the Revenue Administration are set out in Article 4 of Law 5345. Revenue Comptrollers can examine and investigate ML under the direction of MASAK.

79. ***Directorate General of Foundations:*** As specified in Article 2 of Decree Law 227, the duties of the Directorate General of Foundations are to:

- Economically manage the assets of the government's charitable fund and maintain ancient monument structures which belong to the charitable fund.
- Perpetuate institutions of the charitable funds in ways which are appropriate to their aims.
- Ensure the charitable fund accumulates interest.
- Appoint trustees and terminate them when necessary.
- Fulfil its duties and also fulfil beneficial, social, cultural and economical services written in the charitable fund's documents, in *vakif*<sup>16</sup> charters or scripts, certificates or *firman* (which can be used instead of a charter for a *vakif*).
- Allot immovable assets to more profitable investments provided that the legal personality of the charitable fund and its services as prescribed in the charters of *vakif* are maintained.
- Fulfil other duties and services given by laws, statutes and regulations.

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<sup>16</sup> *Waqf in Arabic.* In Turkey, a foundation is a charity with the status of a legal entity formed by real persons or legal entities dedicating their private property and rights for public use. The property or all kinds of income received or to be received from the activities, or economic values of any real person or legal entity may be endowed to a foundation. There is no membership status in foundations and no connection with religion.

80. **The Coordination Board for Combating Financial Crimes:** The Coordination Board for Combating Financial Crimes evaluates draft AML laws and regulations and coordinates implementation efforts of relevant institutions and organisations. The Board meets twice a year and comprises members from the bodies within the government which have responsibilities for combating ML (see Table 7).

**Table 7: Members of the Coordination Board for Combating Financial Crime**

INSTITUTION	MEMBER
Ministry of Finance	Undersecretary (president) President of MASAK President of the Inspection Board President of the Tax Inspection Board President of Revenue Administration
Ministry of Interior	Deputy Undersecretary
Ministry of Justice	General Director of Laws
Ministry of Foreign Affairs	General Director of Economic Affairs
Undersecretariat of Treasury	President of Treasury Comptrollers General Director of Banking and Exchange General Director of Insurance
Undersecretariat of Customs	President of Inspection Board General Director of Customs
Banking Regulation and Supervision Agency	Vice President
Capital Markets Board	Vice President
Central Bank of the Republic of Turkey	Vice President
<i>As required, representatives of other institutions and organisations may be invited to meetings of the Coordination Board (without voting rights).</i>	

#### **Financial Sector Bodies – Associations**

81. **Turkish Banks Association (TBA):** The TBA is a legal person which was founded in 1958. It is the representative body for all banks operating in Turkey. The purpose of the TBA is to: preserve the rights and benefits of banks; carry on studies for the growth of the banking sector for its robust functioning and the development; and, strengthen competition power and prevent unfair competition. It does so in line with the principles of open market economics and perfect competition and the regulations, principles and rules of banking. A joint MASAK and TBA working group has prepared guidelines on AML/CFT.

82. **The Participation Banks Association of Turkey (PBA):** Participation banks operating in Turkey are required to be members of the PBA, comply with its provisions and adopt decisions taken by authorised organs of the PBA. Participation banks are required to apply to the PBA for registration and send their last balance sheet within a month of being issued a license for operation in accordance with the Banking Law. Members that are banned from operating, that merge with another participation bank, or transfer to another participation bank will be removed from the PBA.

83. **The Istanbul Stock Exchange (ISE):** Decree 91 concerning securities exchanges was published in the Official Gazette on 6 October 1983. The regulations outlining the functions and operations of a stock exchange in Turkey were published in the Official Gazette on 6 October 1984. These regulations outline the nature and functions of members and their responsibilities as well as other aspects of trading on the ISE. The ISE was established in early 1986. It is the only securities exchange in Turkey and it provides trading in equities, bonds and bills, revenue-sharing certificates, private sector bonds, foreign securities and real estate certificates, as well as international securities. The ISE is governed by an Executive Council of five members elected by the General Assembly. As an autonomous, professional organisation, the ISE enjoys a high degree of self-regulation. Its revenues are generated from fees charged on transactions, listing procedures and miscellaneous services. The profits of the ISE are retained to meet expenses and to undertake investments and are not distributed to third parties.

84. ***ISE Settlement and Custody Bank / Takasbank:*** The Settlement and Custody Bank is the central securities depository and national numbering agency of Turkey. It was originally a department of the ISE but commenced operation as a separate company, the ISE Settlement and Custody Bank, in January 1992. This company was transformed into a specialised bank and named ‘Takasbank’ (ISE Settlement and Custody Bank Inc.) in 1996. It is a clearing and settlement centre for the ISE. Apart from these unique services for the Turkish Capital Market, the Takasbank provides ISE members with a range of banking services, including securities lending and borrowing, while also providing foreign institutions with domestic custody and settlement service. Related to its core functions, the Takasbank provides; domestic and international transfer services for securities and cash, cash credits, the lending and borrowing market for Takasbank securities, and, international services for foreign and domestic institutions. The credit services provided by the Takasbank cover securities purchasing loans and the Takasbank money market. The Takasbank is a member of leading international securities market organisations.

85. ***Istanbul Gold Exchange (IGE):*** Banks, bureaux de change, precious metals intermediary companies, agencies that carry out producing and marketing of precious metals, persons and institutions resided abroad and participation banks can be members of the IGE and carry out transactions at the Exchange. There are 55 members of the IGE. These are primarily banks and bureaux de change. The transaction volume for the companies on the IGE was USD 5.8 billion in 2005. The IGE also runs the precious metals exchange.

86. ***Turkish Derivatives Exchange (TDE):*** The TDE began its activities on 4 February 2005. There are eight different derivative contracts on commodity and financial products needed by real sector and financial markets. The barter of the related transactions is realised by the ISE Settlement & Custody Bank. The TDE has 57 members; 42 intermediary agencies and 15 banks. The transaction volume increased to its highest value in October 2005 in monthly 346,361 with a value of TRY 560 million.

87. ***The Association of Capital Market Intermediary Institutions of Turkey:*** The Association of Capital Market Intermediary Institutions of Turkey was established according to the *Capital Market Law 2499* to act as a self-regulatory organisation in Turkish capital markets. The *Statute of the Association of Capital Market Intermediary Institutions* became operational through a Government Decree on 8 January 2001. Brokerage houses and banks that are authorised to operate in the capital market are members of the association. As at July 2006 the association had 149 members: 108 brokerage houses and 41 banks. The aims and duties of the association include:

- Enhancing the professional knowledge in the sector.
- Establishing professional rules and regulations.
- Setting safety measures aimed at preventing unfair competition.
- Cooperating with relevant organisations with the objective of imposing disciplinary action.
- Monitoring and inform members of professional developments and changes in rules and regulations.
- Evaluating complaints against its members and inform the CMB of the results.

88. ***Association of Insurance and Reinsurance Companies of Turkey:*** The *Statute of the Association of Insurance and Reinsurance Companies of Turkey* came into force on 10 June 1976. *Law 3379 Regarding the Insurance Supervision* of 11 June 1987, changed the status of the association to that of a public institution and required that the elections of the association’s organs be made under judiciary supervision. Later, on 30 January 1989, the *Regulation Relating to the Working Principles of the Association of the Insurance and Reinsurance Companies of Turkey* came into force. All insurance and reinsurance companies operating in Turkey, local or foreign, and all branch offices of foreign companies in Turkey are obliged to be members of the association within three months following their being licensed by the UT. As at July 2006 the association had 55 members: 53 insurance and 2 reinsurance companies. As stated in the law, the main purpose of the association is to;

ensure development of the insurance profession, secure solidarity among insurance companies, and, adopt and implement all necessary measures needed to control unfair competition.

89. **Notaries Union of Turkey:** The Notaries Union of Turkey, which is a public institution and a legal person, was set up according to *Notary Law 1512* which came into force in May 1972. The aim of the law is to ensure notary services are provided in accordance with: the purposes of the profession; professional unity and solidarity; and development of the profession.

90. **Credit Bureau of Turkey (CBT):** The CBT is a private company, independent of the contributing institutions, which manages information on behalf of its members to allow them to benefit from the potential of the information. To do this the CBT provides: technical information and training to members while they contribute their consumer credit data to CRS Database; reports on the quality of data provided by members; technical support to members to facilitate database access; and support to members with the application process, information capture, verification and analysis.

**c. Approach concerning risk**

91. The Turkish AML/CFT system is not based on risk assessment in the manner contemplated in the revised FATF 40 Recommendations. However, some steps have recently been taken to provide some advice to industry on a risk-based approach. Within *The Project on Strengthening the Capacity of Fighting against Money Laundering* carried out in MASAK in cooperation with Italian Ministry of Economy and Finance, representatives from banks and financial sector were involved with the authorities in preparation of the MASAK *Suspicious Transactions Guideline* of July 2006. This guidance focuses on notes the following subjects and provides some explanation the scope of risk-based approach:

- Customer acceptance policy.
- Customer identification and know your customer policy.
- Keeping and updating the records.
- Sharing AML/CFT regulation and paying attention to international transactions.
- Internal audit and risk management systems.

92. In addition, the July 2006 MASAK guideline provides a set of suspicious transaction indicators, with sectoral breakdowns and it informs parties which are subject to AML/CFT obligations of changes to the FATF NCCT list, requesting that they ensure due diligence is applied to persons and the institutions in these regions.

93. MASAK has organised training programmes for the sectors considered as the most risky. In this framework, MASAK experts have provided banks, participation banks, intermediary agencies and insurance companies with training. Furthermore, MASAK provided training for bank personnel working in the free trade zones. Turkey recognises that there are potential risks, particularly of smuggling and VAT evasion, associated with the absence of customs restrictions in free trade zones and MASAK has conducted a workshop for bank staff operating in the zones specifically regarding the problems of this sector and proposals for action. MASAK has also provided training to bank employees working in those zones which covered:

- Reasons for combating money laundering.
- Trading, banking and money laundering in free zones.
- Customer identification and suspicious transaction reporting in combating money laundering.
- The role of banks in combating money laundering.
- Internal control and money laundering risk management in banks.

*d. Progress since the last mutual evaluation*

94. Turkey was the twenty-sixth member country of FATF to be examined during the second round of mutual evaluations. The primary deficiencies in its system identified in the second FATF Mutual Evaluation Report in 1999 were:

- **Legislation:** Limited statistics were available on ML; the mental element of the ML offence required knowledge or intention; the 1990 Council of Europe Convention had not been ratified; and the value-based confiscation system was only in place for a narrow range of offences.
- **The financial sector:** No legal obligations existed requiring credit or financial institutions to have internal controls or run training programmes; financial institutions were not required to identify beneficial owners where transactions were undertaken on behalf of legal persons; the ML law did not protect institutions and their employees from criminal or civil liability when reporting their suspicions in good faith; and, the volume of STRs received was low, probably due to limited AML awareness in the reporting entities.
- **Supervision:** Supervision of the financial sector and other entities subject to AML obligations had not begun; the non-financial businesses subject to AML obligations were not supervised; limited AML efforts had been applied in the bureaux de change sector; no formal provisions existed concerning feedback to institutions which submit STRs; no guidance had been issued to the financial sector and other institutions; and the correspondent accounts maintained by the Central Bank in banks in foreign countries for Turkish citizens working abroad were a potential area of risk.
- **The FIU:** The financial supervision role of the FIU would be better undertaken by other agencies; it should take on responsibility for confiscation; the FIU had insufficient financial analysis and law enforcement expertise; remuneration was not sufficiently attractive to retain skilled staff; insufficient online access had been gained to other databases; and, simultaneous submission of STRs to the FIU and public prosecutor were impacting on the effectiveness of the system.
- **Law enforcement and customs:** Awareness of proceeds of crime should be further developed; consideration should be given to establishing a dedicated proceeds of crime unit; confiscation of property held by third parties was not possible; the Police did not have experts in financial crimes or officers dedicated to recovery of criminal assets; and, a very limited disclosure system existed for cross border money movements.
- **Domestic and international cooperation:** Working level cooperation between government agencies and financial sector institutions was weak; limited AML training had been provided to staff in government ministries and agencies; there was no overall strategic plan to coordinate the domestic agencies involved in AML activities or to address issues of import to various agencies; oversight and coordination of efforts of government were ineffective; the FIU could not share information with international counterparts in the absence of judicial authority or an MLAT; and Turkey could not share assets or receive confiscated assets from other countries.

95. The report of the second round mutual evaluation of Turkey concluded that Turkey had taken some significant steps forward since its first mutual evaluation. The results achieved by 1998 were limited but this may have been due to the legislation only having been in force for about one year. Since the 1999 second round mutual evaluation, Turkey has made significant progress updating its legal framework against ML. Since that time it should be noted that:

- On 1 June 2005 the TCL introduced a threshold approach to defining predicate offences (Article 282 refers). Predicate offences are now defined as all offences penalised by minimum imprisonment of one year. Explicit confiscation provisions were also specified in the TCL and deficiencies in the confiscation system identified in the 1998 mutual evaluation were addressed.
- The CPL, which also came into effect on 1 June 2005, implemented provisions regarding investigation and prosecution of crimes. Provisions regarding investigation techniques such as

detecting, intercepting, recording and technical follow-up of communication may apply to ML offences.

- Article 4 of the *Regulation Regarding the Implementation of the Law* (RRIL) has since 1 February 2000 required that banks conduct customer identification where business relations with the bank are being established. Financial and other businesses subject to AML obligations are now obliged to train, conduct internal audits and assign compliance officers. Further detail and the implementation principles relating to these liabilities are in MASAK *General Communiqué 4*.
- Education programmes have been implemented for financial and other businesses subject to AML obligations and for law enforcement units.
- Statistical data, including suspicious transaction reports, case referrals and results of investigations, is specified in MASAK's annual activity reports, which are made public.
- The special correspondent banking agreements between the CBRT and overseas banks, which had been established for overseas workers' accounts, were terminated on 29 September 2006.
- The *Project on Strengthening the Capacity of Fighting against Money Laundering*, undertaken by MASAK in the framework of Financial Cooperation Programme between Turkey and EC, is expected to finish in 2007. The project is composed of twinning, technical assistance and investment. The twinning and technical assistance components have been completed and the provisional acceptance of the investment component of the project was concluded on 20 October 2006. As part of this project, training activities for MASAK personnel, parties subject to AML obligations and public institutions were conducted. Amongst other matters, the project aims to strengthen the STR system in the reporting entities and in the FIU, produce guidance for the financial sector, establish electronic connections between domestic government agencies, and, strengthen domestic and international cooperation.
- On 11 October the new AML Law 5549 was enacted. The law came into force on 18 October 2006, and while certain provisions must be further clarified by regulations to be issued within six months, existing regulations remain in effect if they do not contradict the new law. This law provides a legal basis for certain measures that had only been based on regulation, and it also has some new and enhanced provisions intended generally to strengthen the previous AML/CFT requirements in Turkey. It covers matters including customer identification; suspicious transaction reporting; disclosures to customs; training, internal control and risk management systems required in obliged parties; MASAK's duties and powers; the role of the Coordination Board; provision of information to MASAK, record keeping; inspections of compliance with AML/CFT obligations; protection of those who report suspicions; information protection; international information exchange; seizure of documents; and sanctions.

## 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### **Laws and Regulations**

#### **2.1 Criminalisation of money laundering (R.1 & 2)**

##### ***2.1.1 Description and Analysis***

##### ***Recommendation 1***

96. *The United Nations (UN) Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988) (the Vienna Convention) was ratified by Law 4136 on 22 November 1995 and *The United Nations Convention Against Transnational Organized Crime* (the Palermo Convention) was ratified by Law 4800 on 30 January 2003.

97. Money laundering has been an autonomous offence in Turkey since 1996. The original offence included a wide range of activities: legitimising proceeds of crime; acquisition and possession, hiding the source, nature, possessor or owner; and, concealing or bringing the property across borders or transferring it in order to help the predicate offender evade the legal consequences of the specified crimes. The list of predicate offences included many crimes, such as drug trafficking, smuggling offences including those in relation to items of cultural or natural value, offences involving illegal trade in weapons and explosives or in organs and tissues, terrorism and other felonies against the State, certain tax offences, and a large number of offences against the Criminal Code such as kidnapping, blackmail, counterfeiting, and other types of fraud. The offence was punishable with imprisonment from two years to five years and a fine of the same value as the money laundered.

98. A new ML offence, Article 282 of the TCL, came into effect on 1 June 2005. It replaced the previous listing approach with a minimum threshold approach for defining predicate offences. All crimes which are punishable by a minimum sentence of imprisonment of one year or more now constitute predicate offences for ML. This has significantly expanded the scope of predicate offences under Turkish law, although it does not correspond exactly to the option under the threshold approach whereby all offences punishable by a minimum penalty of *more than six months* imprisonment should be included. Most of the designated categories of offences defined in the 40 Recommendations are nevertheless covered in the TCL and other relevant laws (see Table 8 below) despite the fact that their minimum penalty is a year or more.

**Table 8: Coverage of Predicate Offences in Turkish Law**

CATEGORIES OF OFFENCES IN THE 40 RECOMMENDATIONS	TURKEY'S PREDICATE OFFENCES
Participation in an organised criminal group and racketeering.	Article 220 of the TCL.
Terrorism, including terrorist financing.	Article 314 TCL. Articles 3, 4, 5, 6 and 8 of the ATL (as amended by Law 5532).
Trafficking in human beings and migrant smuggling.	Articles 79 and 80 of the TCL.
Sexual exploitation, including sexual exploitation of children.	Article 227 of the TCL.
Illicit trafficking in narcotic drugs and psychotropic substances.	Articles 188, 190, 191 of the TCL.
Illicit arms trafficking.	Articles 12 and 14 of Law 6136 on Firearms and Knives.
Illicit trafficking in stolen and other goods.	Turkish legislation does not specifically criminalise "illicit trafficking in stolen goods" but "robbery" (Articles 141 and 142 of the TCL) covers this offence where it is conducted by a person involved in the robbery <sup>17</sup> .
Corruption and bribery	Articles 235, 236, 247, 250, 252 and 257 of the TCL and Article 13 of Law 3628 on The Declaration of Properties and Fight with Bribe and Corruption.
Fraud	Articles 157 and 158 of the TCL.
Counterfeiting currency	Article 197 of the TCL.
Counterfeiting and piracy of products	Article 73/A of Decree Law 551 on the Protection of Patent Rights. Article 48/A of Decree Law 554 on the Protection of Industrial Design. Article 24/A of Decree Law 555 on the Protection of Geographical Signs. Article 61/A of Decree Law 556 on the Protection of Trademarks. Articles 71, 72, 73 and 81 of Law 5846 on Intellectual and Artistic Works.

<sup>17</sup> Where the person handling the stolen goods was not involved in the robbery, the offence of "purchase or acceptance of property acquired through committing an offence" in Article 165 of the TCL applies. However, Article 165 of the TCL is not covered in the scope of the ML predicate offences, as its minimum penalty is 6 months (which is below the one year threshold required by the FATF standards).

CATEGORIES OF OFFENCES IN THE 40 RECOMMENDATIONS	TURKEY'S PREDICATE OFFENCES
Environmental crime	Articles 181(2), 182(2) and 184 of the TCL.
Murder, grievous bodily injury	Articles 81 to 83, 86 and 87 of the TCL.
Kidnapping, illegal restraint and hostage-taking	Articles 109 of the TCL.
Robbery or theft	Articles 141 and 142 of the TCL.
Smuggling	Articles 5 and 6 of Anti-Smuggling Law 4926.
Extortion	Articles 107, 148 and 149 of the TCL.
Forgery	Articles 204, 205, 207, 208 of the TCL and Article 359/b of the Tax Procedure Law 213.
Piracy	Articles 223 and 224 of the TCL.
Insider trading and market manipulation	Article 239 of the TCL and Article 47 of the Capital Market Law 2499.

99. Turkish legislation does not specifically incorporate a distinction between crimes and misdemeanours. Paragraph 2 of Article 49 of the TCL classifies penalties of a maximum of one year or less imprisonment as the “short period of imprisonment” category, and in accordance with Article 50(1) of the TCL only short periods of imprisonment may be commuted to other measures such as fine, compensation or community service. According to Turkish authorities, the offences requiring a minimum of one year or more imprisonment in Turkish legislation may as a result be considered to be serious offences. They therefore believe that all predicate offences are covered as ‘serious offences’ as well. However, there is no definition of ‘serious offences’ in the TCL and Article 49 of the TCL does not refer to offences but to commuting penalties. In addition, due to the minimum threshold of one year, some categories of predicate offences are not covered. In particular, purchase or accepting of property acquired through committing an offence (Article 165 of the TCL – minimum imprisonment 6 months) and intentional environmental pollution (Article 181(1) of the TCL – minimum imprisonment 6 months).

100. The elements of the new ML offence are stipulated in Article 282(1) of the TCL as either transferring the proceeds of any predicate offence abroad, or subjecting the proceeds of predicate offences to any *transaction* for the purposes of disguising their illicit source and disguising them so that they seem to be derived from legitimate sources. While the English translation of Article 282(1) refers to *transaction*, in Turkish texts the term used is *içlem*. Turkish authorities explained that *içlem* is a very broad term which encompasses all activities, operations or procedures. The evaluation team could not independently verify that this term has such a broad meaning in practice, as there is not yet any case law involving this new offence. If this broad interpretation is accepted, the new ML offence would seem to cover any dealing with the proceeds of crime, although not possession.

101. With regard to elements of the new Turkish ML offence, although they do not strictly follow the definition of the Vienna and the Palermo Conventions, Turkish authorities believe that Article 282 of the TCL is broad enough to cover the situations referred to in Article 3(a) and 3(b) of the Vienna Convention and Article 6(a) of the Palermo Convention. The evaluation team believes that it does not explicitly cover ‘possession’, and, depending on the translation of *içlem*, may not cover ‘use’. Due to its recent enactment, this new ML provision has not yet been tested in court. Therefore there are some doubts as to whether the Turkish ML offence has been criminalised in accordance with Article 3(1)(c)(1) of the Vienna Convention and Article 6(1)(b)(i) of the Palermo Convention.

102. Under Article 21 of the TCL, committing a crime in Turkey depends directly on the existence of intention. According to Turkish law, intention means carrying out the elements of the crime knowingly and willingly. As regards the mental element required for the ML offence in Article 282 of the TCL, the act of “transferring abroad” is punishable if committed with a *common intention*

(knowledge of the illicit origin of the proceeds), whereas the act of "subjecting any transactions..." must be committed with *special intention* (for the purpose of disguising illicit sources of the proceeds and presenting them as if they were derived from legitimate sources).

103. There is no definition of property in Article 282 of the TCL. There appear to be no limitations in the law as to the nature and the value of the property constituting the proceeds of crime. It is stated in the legal ground for Article 282 that the proceeds obtained from crime constitute the subject of ML, and the proceeds may be derived directly or indirectly from committing a crime. Moreover it should be noted that it is possible in Turkey to confiscate property that is directly or indirectly the proceeds of crime (Articles 54 and 55 of the TCL). Thus it appears the offence of ML may extend to any type of property which is directly or indirectly the proceeds of crime, regardless of its value.

104. No distinction is drawn in this offence as to whether the person committed the predicate offence or not. The provisions in Article 282 are applied to both those who commit the predicate offence and launder their own proceeds as well as those who launder funds but are not involved in the predicate offence. Self-laundering is explicitly covered in the ML provision of the new AML Law 5549 which applies to "whoever" commits the *actus reus*.

105. The evaluation team were informed that while proving the ML offence requires that the proceeds are derived from a predicate offence, there is no need to have a conviction for the predicate offence to commence judicial proceedings for ML. In practice, separate prosecutions are carried out for both the predicate offence and ML offence. Two convictions for ML (for the pre-2005 offence) have been obtained in courts of first instance for defendants who had not been convicted of a predicate offence.

106. Committing the predicate offence in a foreign country does not prevent the prosecution for the laundering offence committed in Turkey. Committing the laundering offence in Turkey is sufficient to initiate proceedings. Dual criminality concerning the predicate offence is however required (see Chapter 6 for further discussion on this issue). Turkish authorities informed the evaluation team that they have in fact investigated cases in Turkey based on predicate offences committed abroad, and one decision in a court of first instance on this was provided. In addition, pursuant to Articles 11 to 13 of the TCL, the Turkish Criminal Court has broad jurisdiction over the serious crimes committed in a foreign country, and Turkish courts may prosecute predicate crimes even if they were committed abroad.

107. Attempt, complicity, solicitation, aiding and their sanctions are established in the general provisions of the TCL and thus all apply to the ML offence. "Attempt", "complicity", being a "perpetrator" and "aiding" are established in Articles 35 to 41 of the TCL. A person is charged with attempt if s/he starts to conduct relevant acts directly in order to commit the intended crime, even if s/he does not complete it. Each person who perpetrates the act together may be charged as a perpetrator. Anyone who uses another as a means to commit the crime will be charged as a perpetrator. A person will be charged with aiding if s/he abets or supports the decision to commit the crime or promises to aid after commission of the crime, guides another on how to commit the crime or provides means used in committing the crime, or facilitates the crime by aiding before or during its commission.

## ***Recommendation 2***

108. The ML offence defined in Article 282 of TCL, which came into force on 1 June 2005, applies to natural persons who perpetrate criminal acts knowingly.

109. The principle of personality of criminal liability is stipulated in Article 38 of the *Constitution*, ("Criminal responsibility shall be personal"). Paragraph 2 of Article 20 of the TCL, titled "personality

of penal liability”, similarly states that “Penal sanctions cannot apply to legal persons”<sup>18</sup>. Therefore, the ML offence defined in Article 282 applies to natural persons only. Where the offence is committed for the benefit of a legal person with the participation of its management or through its representatives abusing the power given to them, some penalties (*security measures*, or *güvenlik tedbirleri*) may be applied to the legal person by criminal courts. In particular, the license of a legal person may be cancelled and confiscation provisions may apply (Articles 60 and 282(4) of the TCL). If implementation of these sanctions generates results disproportionate with the act perpetrated, then the judge has the discretion not to impose these measures, however the judge does not have the option of imposing lesser sanctions. No statistics were provided to the evaluation team on the actual sanctions applied to legal persons in ML cases.

110. Under Article 21 of the TCL, committing a crime depends on the existence of intention. According to this article, it is necessary that the perpetrator has knowledge of all elements of crime by thinking and conceiving of the illegal act and its result in advance.

111. Where the first element of the ML offence – “transferring the proceeds of any predicate offence abroad” - is committed, Article 282 states that it should be known that the proceeds being transferred abroad are derived from crime. For the second element of the offence – “subjecting the proceeds of predicate offences to any transaction for the purposes of disguising their illicit source and disguising the proceeds so that they seem to be derived from legitimate sources” – the specific purposes of “disguising illicit sources” and “so that they seem to be derived from legitimate sources” require proof of intention. On the basis of the current provisions of the TCL there is no explicit legal mechanism to alleviate the burden of proof related to the intentional element of ML. Turkish authorities stated however that the requisite intention can in part be inferred from objective factual circumstances. As no prosecutions have yet been brought for this offence, it is nevertheless not clear how this will be interpreted by the Courts. Alternatively it would be possible to prosecute an offence on the basis of possible intent (*dolus eventualis*), that is, when the individual conducts the act foreseeing that the elements of the crime could occur. In such cases the punishment would be lowered.

112. The penalty for ML is from 2 to 5 years and a judicial fine of between TRY 100 (approximately USD 68) and TRY 2,000,000 (approximately USD 1.37 million)<sup>19</sup>. Where this offence is committed by public servants or particular professionals the penalty is multiplied by 1.5. Where it is committed in the context of activities of a criminal organisation it is multiplied by 2. In addition, confiscation is executed in accordance with Articles 54 and 55 of the TCL. Under Article 282 any and all proceeds derived from crime, regardless of value, are in the scope of the ML offence.

113. While the penalties applicable for ML are in line with provisions for other financial offences in Turkey (from 2 to 5 years for insider trading; from 3 to 5 years for operating as a bank without permission), the penalty for ML is low when compared to other offences in the TCL (for example from 4 to 12 years for bribery, from 3 to 8 years for fraudulent bankruptcy and from 2 to 12 years for counterfeiting money). The penalty for ML, particularly its maximum of 5 years, may also be somewhat low in comparison to the international norm.

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<sup>18</sup> In the context of the 2004 review of Turkey’s implementation of the *OECD Foreign Bribery Convention*, Turkish authorities advised the OECD review team that Article 38 of the *Turkish Constitution* does not preclude the criminal responsibility of legal persons. They further advised that the Turkish Constitutional Court recognised the principle of criminal liability of legal persons and its compatibility with Article 38 of the *Constitution*. In the context of that review Turkey also indicated that the criminal liability of legal persons has been established in respect of other offences such as Articles 15 and 16 of Law 3167 (Regulation of the Payments through cheques and protection of the bearer of the cheques) and Article 7 of the ATL. In the context of the FATF evaluation Turkish authorities have advised that a draft law has been prepared by the Ministry of Justice to remove the criminal liability for legal persons currently existing in Law 3167.

<sup>19</sup> The general principles and procedures on calculating judicial fines are established in Article 52 of the TCL. Judicial fines are calculated by multiplying the number of days (which must be equal to or between 5 days and 730 days) and the amount assessed for a day, unless stated otherwise. The amount of judicial fine per day (as minimum TRY 20 and maximum TRY 100) is assessed by considering economic and other personal situations of the person. Thus the lower limit of judicial fines is TRY 100 and the upper limit is TRY 2,000,000. Conversion rates to USD are valid as at 20 October 2006.

114. Those who assist the authorities in seizing the proceeds of crime may gain immunity from prosecution under this section. Under the provisions of solicitation established in Article 38 of the TCL, a person who solicits another to commit a crime will be sentenced to the penalty of the crime. The penalty for a perpetrator who uses other persons who are unable to discriminate as a means to conduct the crime is increased from one third up to half of it. Aiding commission of a crime (for those crimes punishable by imprisonment) is penalised by a sentence half that of the sentence for the crime. However, this penalty may not exceed eight years. Attempt is penalised by a sentence between  $\frac{1}{4}$  and  $\frac{3}{4}$  that of the ML sentence. With the maximum penalty of 5 years for ML, those convicted of attempting such conduct would be subject to a maximum penalty of between  $1\frac{1}{4}$  and  $3\frac{3}{4}$  years. This seems to be low.

### Statistics

115. Turkish authorities provided two case examples indicating that penalties of 2 years imprisonment and a fine equal to the money laundered were levied by courts of first instance in money laundering cases. In 2002 the Turkish authorities changed the way they keep statistics relating to prosecutions. After that time statistics are based on the number of suspects rather than cases. It is thus not known how many cases were successful and how many cases resulted in acquittals or were quashed. Moreover, Turkish authorities were not able to provide the assessment team with approximate figures on the basis of cases. It is not possible therefore to gain a clear current picture of whether the law enforcement and prosecution system for ML and TF cases have been effective based on the available statistics. Nevertheless, some of the statistics available to the evaluation team appear to indicate a high proportion of acquittals for first level court decisions for ML prosecutions (see Table 10 below).

**Table 9: Cases Related to Money Laundering**

YEARS	NO. OF CASES	NO. OF SUSPECTS		
		MALE	FEMALE	TOTAL
1999	27	46	2	48
2000	30	61	0	61
2001	37	95	8	103
2002	66	361	28	389
2003	52	177	9	186
2004	79	267	37	304
2005	64	185	7	192

**Table 10: Decisions Given by Courts of First Instance in Cases Related to Money Laundering**

YEARS	NO. OF DECISIONS	TYPES OF DECISIONS			
		CONVICTION	ACQUITTAL	QUASHED	OTHER*
1999	8	0	5	0	3
2000	7	2	1	1	3
2001	18	3	9	0	6

YEARS	NO. OF DECISIONS	NO. OF SUSPECTS				TOTAL NO. OF SUSPECTS
		CONVICTION	ACQUITTAL	QUASHED	OTHER*	
2002	26	14	32	9	56	111
2003	29	3	62	0	48	113
2004	33	11	52	0	52	115
2005	44	40	28	5	21	94

Prior to 2002 data on decisions was kept on the basis of number of cases. Since that time the data has been kept on the basis of the number of suspects involved.

Other suspects not prosecuted due to, for example, lack of jurisdiction, lack of charge, combining, revoking according to Article 119 of the FTCL and ones excluded as a result of adjournment according to the Law 4616 and the suspects in the cases given in line with Article 46 of the FTCL.

116. Between 17 February 1997 and 30 June 2006 MASAK sent 246 potential ML cases to the public prosecutor, from which 194 prosecutions were initiated. All of these prosecutions related to the

previous ML offence in the *Law on Prevention of Money Laundering* 4208 of 19 November 1996. Only four of the cases have resulted in convictions (at courts of first instance) to date and all four are the subject of ongoing appeals in the Court of Appeal.

117. No prosecutions have yet been brought under the ML offence introduced in Article 282 of the TCL which came into effect on 1 June 2005. It is therefore too early to assess the effectiveness of the new offence.

### 2.1.2 Recommendations and Comments

118. Turkey has a ML offence that fulfils most of the physical and material elements of the offence as referred to in the UN Conventions and has generally implemented the requirements of Recommendations 1 and 2. However, the offence does not clearly cover possession and use, and transfer is only covered when it is cross-border or when it is conducted domestically with specific intention. The 5 year maximum penalty for ML (or 10 years if committed in the context of a criminal organisation) is relatively low in comparison with comparable offences in Turkey. There are limited penalties available for legal persons which conduct ML, and the sanctions do not include fines. It is recommended that Turkey increase the maximum penalty for ML and broaden the range of sanctions available for legal persons, including adding fines as a possible penalty for legal persons involved in the ML offence. The approach to defining predicate offences is a threshold approach which covers most of the required predicate offence types as well as a broad range of other offences, but it sets the threshold at 1 year. Thus it is recommended that Turkey reduces the predicate offence threshold to 6 months to ensure that all predicate offences specified by the FATF standards are covered.

119. The number of ML prosecutions in Turkey is very low, and no finalised convictions have yet been achieved. The new ML offence, the scope of which is broader than the previous offence, is as yet untested. This may provide for an increase in the number of prosecutions in future. The evaluation team suggest that the Turkish public prosecutors become more closely involved with MASAK and other agencies in the government's AML programmes and that they take an active role in increasing the number of ML prosecutions conducted.

### 2.1.3 Compliance with Recommendations 1 & 2

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.1	PC	<ul style="list-style-type: none"> <li>• The threshold for predicate offences is too high as it only captures offences penalised by minimum imprisonment of 1 year or more.</li> <li>• Not all elements required by the relevant UN conventions appear to be covered, in particular; possession and possibly also use.</li> <li>• There are doubts about the effectiveness of Turkey's criminalisation of ML; prosecutions under the old ML offence (in effect up to June 2005) have produced a disproportionately high number of acquittals, and there have not been any final convictions for ML under this offence.</li> <li>• Effectiveness of the new ML offence cannot be assessed as it was introduced relatively recently (June 2005).</li> </ul>
R.2	LC	<ul style="list-style-type: none"> <li>• It has not been clearly demonstrated (through prosecution or case-law) that the intentional element of the ML offence can be inferred from factual circumstances though this has not yet been tested in a prosecution, and this does not appear to be supported by case-law.</li> <li>• The 5 year maximum penalty for ML (or 10 years if committed in the context of a criminal organisation) is relatively low in comparison with similar types of offences.</li> <li>• Only a limited range of sanctions can be applied to legal persons.</li> <li>• There are questions of effectiveness in this area.</li> </ul>

## 2.2 Criminalisation of terrorist financing (SR.II)

### 2.2.1 Description and Analysis

120. Turkey has signed and ratified 12 United Nations conventions and protocols concerning the fight against terrorism, including the *UN Convention for the Suppression of the Financing of Terrorism* which was ratified by Turkey through Law 4738 on 10 January 2002.

121. Article 1 of the *Anti-Terror Law*, 3713 of 12 April 1991 (ATL), provides the definition of terrorism, terrorist crimes, crimes committed for the purpose of terrorism and penalties to be imposed on persons aiding members of terrorist organisations. The provision defines terrorism as "... any kind of act attempted by one or more persons belonging to an organisation with the aim of changing the characteristics of the Republic as specified in the *Constitution*, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by using pressure, force and violence with one of the methods such as terror, intimidation, oppression or threat."

122. Amendments to the ATL came into force on 18 July 2006 including widening the scope of the offence of terrorism and the offences committed for the purpose of terrorism. Importantly, these amendments have incorporated the offence of financing terrorism as a separate offence. The relevant provision in the ATL is Article 8: "Whoever knowingly and wilfully provides or collects fund for committing partially or fully terrorist crimes, shall be punished as a member of an organisation. The perpetrator is punished in the same way even if the funds have not been used. 'Funds' cited in the first paragraph of this Article shall mean money or all types of property, right, credit, revenue and interest, value of which may be presented by money, and benefit and value that was collected as a result of conversion thereof." Attempt, complicity, organising or directing others and contributing to TF are offences according to the general principles of the TCL and apply to the TF offence.

123. Article 7 of the ATL, as amended by Law 5532 on 18 July 2006, establishes various penalties for those involved with terrorist organisations: 1 to 5 years for making the organisation's propaganda; 18 months to 10 years for making the organisation's propaganda through the media; 10 to 15 years for leading or founding the organisation; and 5 to 10 years for being a member of a terrorist organisation. Moreover, according to Article 39 of the TCL, persons who aid another in the commission of an offence can be subject to imprisonment, the term of which is dependant on the penalty for the primary offence.

124. Setting up an organisation for the purpose of committing criminal activity is stipulated as a crime in paragraph 7 of Article 220 of the TCL. According to this Article, persons who do not belong to the hierarchical structure of the organisation but aid the organisation knowingly and willingly are punished as members of the organisation. The provisions of Article 220 also apply to armed organised crime groups, as defined in Article 314 of the TCL.

125. The terrorist financing offence is related to funds used to carry out "terrorist crimes", which are defined in Article 3 of the ATL as the offences envisaged in the Articles 302, 307, 309, 311, 312, 313, 314, 315, 320 and 310 of the *Turkish Penal Law* 5237 of 26 September 2004. In addition, whenever the felonies noted below are committed in the context of activities of a terrorist organisation founded in order to commit crimes for terrorist purposes, they are deemed as terrorist crimes according to Article 4 of the ATL:

- Felonies indicated in Articles 79 - 84, 86, 87, 96, 106 - 109, 112 - 118, 142, 148, 149, 151, 152, 170, 172 - 174, 185, 188, 199, 200, 202, 204, 210, 213 - 215, 223, 224, 243, 244, 265, 294, 300, 316 - 319, and 2nd paragraph of Article 310 of the TCL.
- Felonies defined in the Law on Firearms and Knives, and Other Tools 6136 of 10 July 1953.

- Felonies of intentionally burning a forest, defined in the 4th and 5th paragraphs of the Article 110 of the Law on Forests 6831 of 31 August 1956.
- Felonies defined in the Anti-Smuggling Law 4926 of 10 July 2003 which require a prison sentence.
- Felonies in relation to acts causing proclamation of State of Emergency in those regions, where the State of Emergency was proclaimed as per the Article 120 of the Constitution.
- Felonies defined in Article 68 of the Law on Protection of Cultural and Natural Heritage 2863 of 21 July 1983.

126. Therefore the TF offence seems only to cover the financing used to commit specific terrorist acts, and not more general support to terrorism. It also only covers funding provided to individual terrorists in limited circumstances (for example, when acting in the name of [but not being a member of] a terrorist organisation). Article 8 of the ATL provides that any person who knowingly provides or collects fund for commission of terrorist crimes, will be punished as a member of an organisation. Some of the ‘terrorist crimes’ to which Article 8 refers may be crimes conducted by individuals but this list of crimes is limited and is focussed on threats, violence or military action against the Turkish government and State. Thus, the TF offence does not cover general support to terrorism and does not cover support to the individual terrorist, other than support to individual terrorists for a limited set of violent criminal acts directed at the government and State of Turkey. The definition of “funds” in the TF is broad and includes all types of funds outlined in the *UN Convention for the Suppression of the Financing of Terrorism*, whether from legitimate or illegitimate sources.

127. Those who commit the offence of TF are liable for 5 to 10 years imprisonment. As such, the new offence of TF is a predicate offence for ML. The amended ATL also provides that TF conducted by public servants attract 1.5 times the normal penalty.

128. Under Article 8/AB, and in accordance with Article 60 of the TCL, if TF is committed in connection with a legal person, security measures (*güvenlik tedbirleri*) of loss of license and application of confiscation provisions apply. Turkish authorities have advised that penal provisions are not applied to legal persons, as Article 38 of the *Constitution* states that criminal responsibility “shall be personal”.

129. In respect of terrorism against Turkey and its citizens, if a person financing terrorism is in Turkey but the terrorist/s, terrorist organisation and the place where the crime is committed are outside of Turkey, Articles 11 and 12 of the TCL apply. Under Article 11, if a Turkish citizen commits an offence in a foreign country which requires a punishment with a minimum of one year imprisonment under Turkish laws, and the offender is located in Turkey, he is punished according to Turkish law. Under Article 12, if a foreigner commits an offence in a foreign country which requires a punishment with a minimum of one year imprisonment under Turkish laws and the offender is located in Turkey, s/he is also punished according to the Turkish law. Turkish authorities advised the evaluation team that, regardless of whether the terrorists, terrorist organisation and the place where the crime is committed are in Turkey, the subject is likely to be evaluated within the scope of the provisions of the TCL. Where a person financing terrorism is located in another country, but the terrorists, terrorist organisation and the place where the crime is committed are in Turkey, Turkish authorities will send an extradition request to the relevant country.

130. The scope of the TF offence is limited to the acts of terrorism involving Turkish interests. In fact the definition of “terror” (Article 1 of the ATL) does not include acts directed against foreign countries or international organisations as required by the *UN Convention for the Suppression of the Financing of Terrorism*. Turkish authorities explained that mutual legal assistance requests are in any case actioned as Turkey has ratified the *UN Convention for the Suppression of the Financing of Terrorism* and this has become part of domestic legislation in accordance with Article 90 of the *Constitution*, which states that international agreements duly put into effect bear the force of law. However, as specific TF provisions have been introduced in the domestic law as a consequence of

ratification of this convention, it would appear that specific provisions are in fact implemented in Turkish law to comply with international conventions Turkey has ratified. In addition, the listed offences in Articles 3 and 4 of the ATL as constituting “terrorist crimes” do not include offences against representatives of foreign states (Articles 340 and 342 of the TCL). These are offences implemented in Turkey in accordance with the *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons*. As such, the ATL does not criminalise the financing of terrorism directed at the interests of foreign states.

131. The TF offence requires that the person acted “knowingly and wilfully” and thus requires intent. No information was received by the evaluation team to suggest that this could be inferred from objective factual circumstances.

### ***Recommendation 32 (terrorist financing investigation/prosecution data)***

132. As the TF offence is new, there are no statistics on TF investigations, prosecutions, property frozen/seized or convictions as yet. One prosecution was brought under Article 7 of the ATL in relation to a foundation audited by the General Directorate of Foundations in 2001 which is suspected of assisting members of a terrorist organisation. The action to close down the foundation is continuing, although it should be noted that this action is not a prosecution for TF under the new provision. Turkish authorities provided statistics on cases involving prosecutions for Article 7 of the ATL (see Table 11). While some of these cases may have involved TF, Turkish authorities could not provide a further breakdown from those cases involving other types of aiding of terrorism. There have not yet been any successful prosecutions under the new autonomous TF offence (Article 8 of the ATL).

133. As at September 2006, MASAK had received five STRs from banks in relation to TF. After preliminary investigations, MASAK decided not to pursue four of these matters further and one preliminary investigation continues.

**Table 11: Cases in Criminal Courts in Relation to Article 7 of Law 3717**

YEARS	NO. OF CASES CONCLUDED	NO. OF SUSPECTS CONVICTED					NO. OF SUSPECTS ACQUITTED	NO. OF SUSPECTS IN OTHER CASES	TOTAL NO. OF SUSPECTS	NO. OF SUSPECTS WHOSE PENALTY IS ADJOURNED
		IMPRISONMENT	FINE	IMPRISONMENT & FINE	OTHER MEASURES	TOTAL CONVICTIONS				
2003	44	2	6	24	15	47	38	4	89	0
2004	364	9	54	49	113	225	781	230	1236	1
2005	720	67	61	101	270	499	311	826	1636	0
<b>Total</b>	<b>1128</b>	<b>78</b>	<b>121</b>	<b>174</b>	<b>398</b>	<b>771</b>	<b>1130</b>	<b>1060</b>	<b>2961</b>	<b>1</b>

### ***2.2.2 Recommendations and Comments***

134. Very recent amendments to the ATL established the offence of terrorist financing as a separate offence in Turkey. The offence seems only partially in line with the UN Convention on TF. It is lacking in two key respects: the TF offence only covers the financing of specific terrorist acts, and the scope of the TF offence is limited to the acts of terrorism involving Turkish interests. In addition, it requires specific intention. As with the ML offence, a limited range of sanctions apply to legal persons for the TF offence and it does not seem possible for the intentional element to be inferred from objective factual circumstances.

135. It is recommended that Turkey broaden the TF offence to apply to the financing of terrorism, not simply to terrorist acts, and should apply to the financing of individual terrorists as well as terrorist organisations. It is further recommended that Turkey apply its terrorist financing offence to terrorism directed against the interests of any jurisdiction or international organisation and that it classifies

offences against foreign diplomats as “terrorist offences” in the ATL. The intentional element of the offence should clearly be able to be inferred from objective facts, and a broader range of sanctions should be available to be levied against legal persons involved in TF.

136. As the new TF offence is less than a year old it has not yet been tested in Turkish courts. While a stand-alone TF offence did not previously exist in Turkey, the offence of providing assistance to members of terrorist organisations was used extensively.

### 2.2.3 Compliance with Special Recommendation II

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
SR.II	PC	<ul style="list-style-type: none"> <li>• The TF offence is incomplete as it applies to terrorist groups only in the financing of the commission or attempted commission of specific acts.</li> <li>• The TF offence does not apply to support to the individual terrorist, other than support to the individual terrorist for the commission of a limited set of criminal offences.</li> <li>• The offence only applies in relation to terrorism against Turkey and its citizens.</li> <li>• It does not cover all of the offences required by Article 2 of the UN <i>Convention on the Suppression of the Financing of Terrorism</i> (including offences in the <i>Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons</i>).</li> <li>• The intentional element of the offence cannot be inferred from factual circumstances.</li> <li>• The range of sanctions which can be applied to legal persons is limited.</li> <li>• Due to the recent enactment of the autonomous TF offence, its effectiveness cannot be assessed.</li> </ul>

## 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

### 2.3.1 Description and Analysis

137. Considerable amendments were introduced on 1 June 2005 to Turkey’s criminal and procedure laws which characterise confiscation as a security measure. “Confiscation of goods” and “confiscation of benefits” are established in Articles 54 and 55 of the TCL respectively. Both include provisions for confiscation based on value.

138. Article 54 provides for confiscation of goods used in or allocated for commission of a deliberate offence or derived from a crime. In addition, goods whose production, disposition, usage, transportation, purchase and sale constitute a crime are to be confiscated. Goods prepared for use in commission of an offence may be confiscated where there is danger to public security, public health or public morality. If these goods have been removed, transferred or consumed, or if confiscation of them is for some other reason impossible, an equivalent value of the goods will be confiscated. However, if the Court considers that the confiscation would be disproportionate to the offence committed, the confiscation may not be ordered. With regard to goods belonging to joint owners, only the share of the person participating in the crime will be subject to confiscation. Further, when a partial confiscation of any Article is required, confiscation will occur as long as this value can be separated without harm to the whole of the good involved.

139. Article 55 states that the material benefits derived from committing a crime, constituting the subject of the crime or provided for committing the crime, along with the economic proceeds obtained by the holding or conversion of them, will be confiscated. The Article states that confiscation of the economic proceeds obtained directly or indirectly through committing crime is possible. In the cases where materials or earnings are not confiscated, the corresponding value is subject to confiscation. Thus, in respect of the economic proceeds constituting the subject of confiscation, all potential material benefits and values are covered. In accordance with Article 60/2 of the TCL, the provisions of confiscation apply to legal persons if the crime is committed in favour of them. Further, Article 64 of the TCL provides that confiscation will occur if the suspect or convict is deceased.

140. The confiscation provision in Article 54 does not apply to property used in, or reserved for use in, commission of an offence if the property belongs to *bona fide* third parties, and this is explicitly stated in the article. Article 55, which deals with the confiscation of pecuniary benefits, does not explicitly mention protection of the assets of *bona fide* third parties, although Turkish authorities indicated that the same protection would nevertheless apply. Further, Article 131 of the CPL notes that if it is not necessary to keep seized goods, and these assets are not to be subjected to confiscation, the goods should be returned to the suspect, accused, victim or third party from whom they were seized. Contracts between parties are not binding on Turkish courts, with the exception of any rights of *bona fide* third parties to property or benefit. Legal contracts which are found to include unlawful provisions, including any provisions relating to third party interests in property, are however invalid and ineffective with regard to law.

141. The CPL provides for searches to be conducted to collect criminal evidence (Articles 116 to 122) and seize assets which are material evidence, or which are the subject of confiscation (Articles 123 to 134). General principles and procedures on decisions to seize are in Article 127 which provides that law enforcement agencies can seize assets by means of judicial decision or decision of a public prosecutor in cases where it is necessary to avoid delay or decisions of the chief of the law enforcement agency in cases where the public prosecutor is not contactable. Necessary procedures are also outlined.

142. Article 128 of the CPL allows that when there is a strong suspicion that the offence subject to prosecution or investigation has been committed, the assets belonging to the suspect or accused which were gained from the offence may be seized. Article 17 of the new AML Law 5549 specifically extends the scope of Article 128 CPL to apply in ML and TF cases. It is possible that this requirement for a “strong suspicion” could limit the availability of asset seizure for ML and TF cases.

143. Paragraph 9 of Article 128 of the CPL provides that only a judge can give a decision on seizure. According to Article 17 of the new AML Law 5549, the public prosecutor may however issue seizure orders in cases where a delay may hinder the investigation. Any seizure order applied without a judicial order must be submitted for approval by the judge on duty no later than within 24 hours. The judge has another 24 hours in which to decide on whether to approve the order. In cases of non-approval, the order of the public prosecutor becomes void.

144. Similarly, according to Article 129 of the CPL, items within any kind of postal institution may be seized by means of a warrant given by a judge, or by a public prosecutor in cases where it is necessary to avoid delay. The procedure and power of issuing search warrants of searching the offices of lawyers and seizing their assets are established in Article 130. The power to take over the management of a company and the power of judges to appoint a trustee to operate the company are stated in Article 133. The power to search computers, computer programmes and registries, and to copy and seize are established in Article 134.

145. Article 3 of the PML, which originally established the functions and powers of MASAK, authorised the agency to ask for any type of information or document related to ML from natural and legal persons, including public institutions and establishments. It also authorised MASAK to carry out preliminary investigations in order to determine whether ML offences have been committed, and if serious circumstantial evidences exist about ML, in cooperation with the law enforcement authorities, request procedures, including search and seizure, be carried out. Article 3 of the PML has now been replaced by Article 19 of the new AML Law 5549, which enumerates the largely the same duties and powers for MASAK with regard to both ML and TF (outlined previously in chapter 1).

146. The functions and powers of the public prosecutors are set out in the CPL and under Article 161 of the PML. A public prosecutor may conduct any kind of inquiry directly or through judicial law enforcement officers and request any kind of information from all public officials. Under Article 63 of the CPL, when expertise and special or technical knowledge are necessary, Judges and courts are authorised to appoint experts. Those who are eligible for appointment as experts are listed in Article

64. Public prosecutors may also execute this power in inquiry stage and this power is likely to be executed in inquires determining the criminal proceeds.

147. Articles 135 to 140 of the CPL concern the monitoring of communication through telecommunication, confidential investigators and tracking by means of technical devices, which are important methods used to detect and track assets suspected to be derived from crime. The CPL also contains provisions in relation to specific inquiry methods such as use of confidential investigators and tracking by means of technical devices.

#### *Additional elements*

148. There is no civil forfeiture system in Turkey. Still, while it is necessary to have committed a crime in order for a confiscation judgement to be issued, conviction for that crime is not required. Article 54 of the TCL states that confiscation is a security measure. On this account, although it is necessary that a crime was committed in order to undertake confiscation, it is not required that there be a conviction for that crime in order to confiscate the object. This measure appears to apply only to dangerous items, however, and not to other types of assets.

149. Confiscation of the property of criminal and terrorist organisations is possible in Turkey. Article 220 of the TCL stipulates a penal sanction for persons who establish, manage or become members of criminal organisations. Articles 54 and 55 may be applied to the assets related to this offence.

150. Suspects are required to prove that the assets were acquired in conformity with laws and public morality, in accordance with Article 4 of Law 3628. Similar provisions may be found in Article 137 and Provisional Article 11 of *Banking Law* 5411.

#### *Statistics*

**Table 12: Assets Frozen or Seized, 1997 to 2005**

	YEARS	17.02.1997- 31.12.2001	2002	2003	2004	2005	TOTAL
AMOUNT OF MONEY	TRL	140,550,448,064	77,381,924,279	9,956,867,562	34,274,593,189	766,862,447,963	1,029,026,281,057
	USD	25,525,441.82	311,894.59	98,224.08	-	1,308,247.39	27,243,807.88
	DEM	300,485.03	310,541.61	1,063,700	-	35,000	1,709,726.64
	EUR	13,805	71.03	0.77	91,246.57	-	105,123.37
	GBP	4.83	-	-	-	-	4.83
	NLG	278.98	-	-	-	-	278.98
	BFR	6,800,000.13	-	-	-	-	6,800,000.13
REAL PROPERTIES (UNIT)	Residence	106	30	2	16	10	164
	Flat	40	4	28	1	4	77
	Apartment	1	1	1	-	-	3
	Villa	12	-	-	-	-	12
	Building	1	12	1	4	1	19
	Shop Business -Store Office	51	2	1	1	5	60
	Hotel	2	-	-	1	-	3
	Ground	26	41	15	10	11	103
	Field / Garden / Grove / Vineyard	27	33	4	28	15	107
	Farm	1	-	-	-	-	1
OTHER	Vehicle, Tractor Trailer (Unit)	37	57	18	5	18	135
	Stock (Unit)	2,508	-	-	-	309,555,022	309,557,530

YEARS	17.02.1997-31.12.2001	2002	2003	2004	2005	TOTAL
Not Classified	USD 91,566 rent claim, 2 motorcycles, TRL 14trillion in stocks, 4 buildings, stocks of 2 companies, office blocks, commercial yacht, share of building society.	-	Share of building society, 1 floor flour mill.	-	Share of building society, bank accounts, right of residence use, assets belonging to various companies, company stock, triplex, pensionable pay.	-

151. Three confiscation matters have commenced since 1997 and no final decisions have yet been taken in these matters. In 2002, assets totalling TRL 334,281,500,000 were confiscated. In 2005, assets totalling TRY 25,000 were confiscated. In 2006, assets totalling BFR 6,800,000.13 were confiscated. All three decisions are being appealed.

### 2.3.2 Recommendations and Comments

152. The Turkish legislation provides for confiscation of the proceeds of crime and instrumentalities used in or intended for use in the commission of ML, TF and predicate offences. Powers exist for prompt freezing and seizing of property, which have recently been extended to use in relation to cases of ML and TF. The rights of *bona fide* third parties are protected in relation to confiscation of goods and material benefits used in commission or attempted commission of a serious offence, though this is not explicitly expressed in relation to pecuniary benefits or economic gains obtained through such crimes.

153. While the confiscation framework in Turkey appears to meet most of the standards, it has produced limited results. Despite the concerns that the requirement of “strong suspicion” could potentially limit use of powers of seizure, statistics on seized property demonstrate the effectiveness of Turkey’s precautionary measures as a whole. However, it is not possible to determine the effectiveness of the confiscation system vis-à-vis the money laundering offence due to the low number of confiscation cases. The new legal grounds for confiscation, introduced in June 2005, may produce better results in the future. It is nevertheless necessary for Turkey to examine its approach to confiscation as related to ML cases to increase the number of successful confiscation actions.

### 2.3.3 Compliance with Recommendation 3

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.3	LC	<ul style="list-style-type: none"> <li>The rights of bona fide third parties may not be fully protected.</li> <li>The effectiveness of Turkey's confiscation system to date is questionable: The number of confiscation proceedings is very limited (only 3), and no final confiscation action has occurred up to now.</li> <li>New confiscation powers for ML and TF are too recent to test their effectiveness.</li> </ul>

## 2.4 Freezing of funds used for terrorist financing (SR.III)

### 2.4.1 Description and Analysis

154. In order to implement UN Security Council Resolution 1267(1999) (S/RES/1267(1999)) relating to freezing the assets of persons and institutions connected with the Taliban, Al-Qaida and Osama Bin Laden and its successor resolutions, nine decrees of the Council of Ministers have been issued and published in the Official Gazette: 3483 of 22 December 2001, 3873 of 21 March 2002, 4206 of 16 May 2002, 4896 of 1 October 2002, 5426 of 28 March 2003, 6876 of 18 February 2004,

8685 of 4 April 2005, 10356 of 17 April 2006 and 10365 of 17 April 2006. Three of these decrees also note that they implement S/RES/1373(2001) in respect of freezing assets of the persons and the entities financing terrorism and terrorist organisations, but those three decrees do not list any additional entities to those from the S/RES/1267(1999) list. These nine decrees required that any assets of these persons and entities be frozen and information on their existence and location be conveyed to relevant authorities.

155. Upon a decision of the UN Security Council in relation to S/RES/1267(1999) or its successor resolutions, the Ministry of Foreign Affairs circulates the information to other Ministries and government agencies. The Ministry of Foreign Affairs disseminates the information to the Ministry of Justice, the Ministry of National Defence, the Ministry of Interior (General Directorate for Security, General Command of Gendarmerie, Coast Guard Command), the Ministry of Finance, the Ministry of Industry and Trade, the Ministry of Public Works and Settlements, the Undersecretariat of Treasury, the Undersecretariat of Customs, the Banking Regulation and Supervision Agency, the Capital Markets Board and the National Intelligence Organisation. These authorities liaise with the private sector and collect information on whether assets relating to the individuals listed in S/RES/1267(1999) exist in Turkey.

156. In the event that a person on the list is found to have assets in Turkey, a Council of Ministers decree is issued. The decree comes in effect after the publication in the Official Gazette and no other action is necessary to implement the freezing order. If the person has no assets in Turkey, the Council of Ministers decree implementing the decision of the UN Security Council is usually not issued immediately but will wait until a number of such decisions are in existence. A Council of Ministers decree will thus be issued which consolidates a number of UN Security Council decisions which relate to persons who do not appear to have assets in Turkey. According to the Turkish authorities, the rationale of this procedure is to avoid frequent amendments of the decrees; in other words, the Council of Ministers is involved only after having informal knowledge of the presence in Turkey of property belonging to designated persons.

157. These decrees take the form of a covering memo seeking all natural and legal persons to freeze assets relating to the listed entities and attach the relevant list. Turkish authorities affirmed that these decrees are legally binding instruments, although there is no overarching law that permits the Council of Ministers to issue such decrees. The UN Security Council Resolutions are directly applicable under Turkish law through the ratification by Turkey of the UN Charter. The decrees expressly refer only to freezing the claims and rights of the “persons and organisations” included in the attached list. Consequently there is no explicit legal basis to freeze (1) property jointly owned or controlled, directly or indirectly, by designated persons, or (2) funds or other assets generated from property belonging to designated persons.

158. When a Council of Ministers decree is issued requiring freezing of assets, banks should already have examined their information, have reported the existence of identified assets and be ready to freeze those assets. The decrees request that all funds, financial assets, economic resources, rights and claims including the content of safe deposit boxes of the terrorist organisations, persons and entities listed by the UN Security Council Resolution are frozen. Banks then instruct their branches to freeze the assets of the persons and the entities stated in the list attached to the decree.

159. Where assets are detected, Turkish authorities advised that this process actually takes around one month from UN Security Council decision until the Council of Ministers decree is issued. Where assets are not detected through the pre-notification process, and consolidated decrees are issued dealing with more than one amendment to the UNSC list, the process takes longer, potentially as long as one year from the time of issuance of the UN Security Council Resolution until the issuance of the Council of Ministers decree<sup>20</sup>. The lag between the update of the UNSC list and the issuance of the

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<sup>20</sup> For example, the UN 1267 Committee listed entities on 17 March 2004 but the first decree of the Council of Ministers after that date was Decree 8685 of 4 April 2005.

Council of Ministers decree appears to be inconsistent with the requirement for “freezing without delay” in Special Recommendation III.

160. While the Council of Ministers Decisions have binding force for natural and legal persons in Turkey, including the DNFBPs, there is no system in place for communicating action taken by the authorities under the freezing mechanisms to DNFBPs.

161. In addition, no guidance has been issued to the private sector on freezing funds in accordance with the UNSC Resolutions and no deadlines are set for action by financial institutions in accordance with the decrees. Furthermore, there are no procedures in place for meeting de-listing requirements, for gaining access to frozen funds for necessary expenses or for unfreezing. The decrees do not provide for sanctions if the freezing order is violated or there is failure to comply with the decree, though public officials who do not comply with their obligations as part of the freezing mechanism may face penal and administrative sanctions in accordance with Article 11 of *State Personnel Law 657*.

162. While there are no procedures for the Ministry of Finance to grant access to funds or other assets frozen pursuant to S/RES/1267(1999) if necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses, in accordance with Article 125 of the *Constitution*, recourse to judicial review is available against all actions and acts of the administration. Persons and institutions subjected to freezing action do therefore have a right to administrative appeal, and through this mechanism may gain access to the frozen funds for necessary expenses.

163. There is no specific system for examination and, if appropriate, giving effect to, freezing orders of other jurisdictions. Mutual legal assistance procedures must be followed by overseas authorities seeking to carry out an investigation in Turkey in relation to freezing operations commenced in their country or seeking to freeze the assets of related persons and entities in Turkey. Dual criminality is required.

164. The assets of one natural person and two legal persons (approximately USD 2 million) in the list issued in the enclosure to S/RES/1267(1999) have been located and frozen under the decrees of the Council of Ministers. In July 2006 the Council of State 10<sup>th</sup> Division decided in favour of a plaintiff who challenged a freezing action taken in accordance with these decrees, citing a lack of legal basis for using decrees of the Council of Ministers as the instrument to implement UNSC Resolutions. In detail, the Council of State noted in its decision that the PML and Law 4422 on *Combating Organisations Pursuing Illicit Gain* require a court decision in order to intervene regarding property rights. Therefore the Council of State concluded that it was unconstitutional to freeze the rights and claims of the plaintiff without a judicial decision and using an authority not stated in the Constitution. This July 2006 decision of the Council of State suspended the freezing action against the plaintiff. This decision was appealed and in October 2006, a decision was handed down by the Council of State Plenary Session of the Administrative Law Divisions suspending the 10<sup>th</sup> Division decision and upholding the Government position. This decision stated that the Council of Ministers’ decrees have sufficient legal basis by virtue of Turkey’s ratification of the UN Charter; thus UN Security Council Resolutions are legally binding within Turkey without any further legal instrument.

165. The last decision of the Council of State Plenary is an interim one, and a final decision on this matter is therefore still forthcoming. Turkish authorities stated that the Council of State Plenary rarely issues a final decision which contradicts its interim decision and it is more than likely the Council of State will decide along the same lines outlined in its interim decision. If the final decision does however go in favour of the plaintiff, that is, definitively lifting the freezing order regarding his assets, the decision would only apply to his case and not to the freezing system as a whole. However, it would provide an argument for others to use in similar cases challenging Council of Ministers decrees which implement S/RES/1373(2001).

166. Turkey does not prepare a national list of persons and/or institutions financing terrorism, nor does it have any other system for implementing the requirements to freeze terrorist assets through non-judicial means as one of the measures contemplated by SR.III (and S/RES/1373(2001)).

167. With regard to freezing of terrorist assets through judicial means, since the implementation of a separate offence of TF on 18 July 2006, the Turkish seizure and confiscation provisions, Articles 54 and 55 of the TCL, also apply to assets involved in the commission of TF. All rules for freezing, seizing and confiscation of terrorist assets through ordinary judicial means (as contemplated under R.3) could be applied. Article 17 of the new AML Law 5549 provides that where there is strong suspicion that the offences of ML or TF have been committed, the asset values may be seized in accordance with the procedure in Article 128 of the CPL. This is somewhat limited in scope due to the limited scope of the TF offence itself. Due to the relatively recent enactment of the TF offence, no such cases have occurred yet. Turkey does not have a system that will permit it to freeze the assets of persons designated by other jurisdictions as foreseen by SR.III in the context of S/RES/1373(2001) – where there is a strong suspicion that TF has occurred – other than through mutual legal assistance procedures and judicial process.

### ***Recommendation 32 (terrorist financing freezing data)***

168. Two seizure actions have been taken to date in relation to S/RES/1267(1999) involving the assets of one natural person and two legal persons, with a total value of USD 2 million. One of these cases was challenged by the Council of State 10<sup>th</sup> Division decision mentioned above.

#### ***2.4.2 Recommendations and Comments***

169. Turkey has implemented S/RES/1267(1999) and its successor resolutions via decrees of the Council of Ministers. The decrees provide the Ministry of Foreign Affairs with implementation authority; however, there are still a number of associated measures or procedures that are not detailed formally, such as for gaining access to frozen funds for necessary expenses, for unfreezing, or for sanctions if the freezing order is violated. Furthermore, the decrees do not provide a basis for freezing property jointly owned or controlled, directly or indirectly, by designated persons, nor for funds or other assets generated from property belonging to designated persons. There is the possibility that assets will not be frozen without delay in cases where the assets are not detected immediately following an UNSC amendment to the S/RES/1373(2001) list. There is no system in place for communicating the decrees to DNFbps and no deadlines are set for action by financial institutions in accordance with the decrees. Turkey does not have a delisting process. The freezing of assets in Turkey under this procedure has been challenged in Turkish courts, and a final decision has not yet been handed down. A decision against the government however appears to be unlikely.

170. In addition, Turkey does not have a system that will permit it to freeze the assets of persons designated by other jurisdictions as foreseen by SR.III in the context of S/RES/1373(2001) – where there is a strong suspicion that TF has occurred – other than through mutual legal assistance procedures. It is recommended that Turkey conduct a review of its system for implementing these United Nations Resolutions and then establish clear and where required publicly-known rules and procedures with regard to freezing of assets under both S/RES/1267(1999) and its successor resolutions, as well as S/RES/1373(2001).

#### ***2.4.3 Compliance with Special Recommendation III***

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
SR.III	PC	<ul style="list-style-type: none"> <li>• There are deficiencies in many areas relating to the freezing of funds in accordance with the UNSC Resolutions.</li> <li>• There are no formal procedures in place for, or guidance relating to, gaining access to frozen funds for necessary expenses, delisting, unfreezing or sanctions for failure to observe a freezing order.</li> </ul>

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
		<ul style="list-style-type: none"> <li>• There is no system in place for communicating the decrees to DNFBPs and no deadlines are set for action by financial institutions in accordance with the decrees.</li> <li>• There is no provision for giving effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions (as related to S/RES/1373(2001)) other than through judicial or mutual legal assistance mechanisms.</li> </ul>

## **Authorities**

### **2.5 The Financial Intelligence Unit and its functions (R.26)**

#### **2.5.1 Description and Analysis**

171. *Mali Suçları Araştırma Kurulu (MASAK)* is Turkey's financial intelligence unit. It was established in accordance with the PML and commenced operations on 17 February 1997. MASAK is attached directly to the Minister of Finance and situated within the administrative structure of the Ministry of Finance. It is fairly independent in its activities. At the same time, MASAK has to attract external experts from different units of the Ministry of Finance (financial experts – auditors) to perform its examination function. During the on-site visit MASAK presented a new structure for the organisation, implementation of which began on 26 September 2006. It is expected that while it adds another level of bureaucracy, this new structure will better respond to MASAK's needs. In 2005 MASAK had a budget allocation of TRY 3,480,000.00 and 124 staff.

172. Article 19 of the new AML Law 5549 provides that the functions and powers of MASAK are:

- *Information collection, research, analysis and evaluation (FIU):* To collect data; receive STRs; request information and documents from natural and legal persons; exchange information and documents with counterparts in foreign countries; sign memoranda of understanding with other FIUs; analyse and evaluate information obtained; conduct research on trends relating to laundering proceeds of crime; conduct research on methods of detecting and preventing ML; and conduct sectoral studies.
- *Policy and legislation:* To develop policies and implementation strategies; prepare draft laws ordinances and regulations; and carry out activities to raise the public awareness and support for this purpose.
- *Coordination:* To implement regulations; coordinate institutions and organisations; conduct joint activities with other public institutions; and exchange views and information to prevent ML.
- *Supervision:* To supervise compliance of obliged parties; carry out ML examinations of obliged parties; request information and documents required for examinations; scrutinise all documents relating to examinations; monitor the implementation of ML obligations; and carry out awareness raising activities.
- *Preliminary investigations:* To conduct preliminary investigations; request examination personnel from law enforcement and other relevant units when required; and send ML and TF cases to the public prosecutor's office for legal action.

173. Paragraph 1 of Article 4 of the new AML Law 5549 provides the obligation to report suspicious transactions to MASAK - "In case that there is any information, suspicion or reasonable grounds to suspect that the asset, which is subject to the transactions carried out or attempted to be carried out within or through the obliged parties, is acquired through illegal ways or used for illegal purposes, these transactions shall be reported to the Presidency [MASAK] by the obliged parties." The procedure for reporting suspicious transactions is established in Article 14 of the RRIL.

174. Although the ATL does not mention any powers or responsibilities of MASAK in relation to countering terrorism, with introduction of the new AML Law 5549, MASAK gained, in addition to its existing functions, formal authority to receive STRs and other information on TF and to conduct analysis in relation to TF. Previously, MASAK *General Communiqué* 3 of 10 November 2002 specifically added a twentieth suspicious transaction type relating to the financing of terrorism or terrorist acts. MASAK had in fact received five STRs from banks in relation to TF based on the suspicious transaction types provided in MASAK *General Communiqués* even before the legal requirement to submit such reports was introduced.

175. The suspicious transaction reporting obligation in Article 4 relates to transactions and attempted transactions of assets “acquired through illegal ways or used for illegal purposes”. It is not clear that “used for illegal purposes” in fact covers licit money used to finance terrorism. Even with the new AML Law 5549 however, MASAK’s overall efficiency could be jeopardised as regards combating TF by the fact that the obligation to report STRs related to TF is limited and is not mentioned explicitly in the AML law but can only be inferred from the fact that terrorist financing is a predicate offence for money laundering (i.e. “money or convertible assets used for illegal purposes” in Article 4 of the new AML Law 5549). The ATL establishes that terrorist financing is equivalent to participation in a terrorist group. This does not cover all the instances when the source of funds may be legal although they are intended for use in terrorist financing, and it does not cover individual terrorists (only individuals acting on behalf of terrorist organisations).

176. Relevant arrangements for the qualifications and examinations to be undertaken to become a MASAK expert are specified in Article 21 of the new AML Law 5549 and in the *Regulation of Duties and Working Procedures of Financial Crimes Investigation Experts*. They must graduate from a Turkish university undergraduate programme of at least 4 years, and must score 80 points or more on the public service entrance exam. MASAK holds entrance examinations composed of two sections (written and verbal) after the usual selection exam for Government service. The exam topics include economy, finance, law, accounting and foreign languages. The verbal exam, along with the above subject knowledge, evaluates the candidate’s intelligence, articulation, general culture, attitude and behaviour. A similar, though less intensive programme is in place for assistant experts and they are provided training programmes, with lectures provided by MASAK experts and experts from other institutions, in addition to on-the-job training. While MASAK’s recruitment programme is designed to, and appears in fact to, result in recruitment of highly intelligent and capable staff, this may not be matched by pay and conditions of a sufficient level to minimise staff turnover.

177. According to Article 19 of the new AML Law 5549 and paragraph 1 of Article 22 of the RRIL, MASAK’s examination function is carried out with the assistance of examiners seconded from other agencies including finance inspectors, auditors, revenue comptrollers, sworn-in bank auditors, treasury comptrollers, CMB experts, Customs inspectors and BRSA experts<sup>21</sup>. Procedures for assignment of examiners are established in Article 22 of the RRIL. While this provides strong financial and audit expertise to complement that of the MASAK experts, MASAK does not have staff with law enforcement skills and experience who can contribute to performance of its analysis and preliminary investigation functions.

178. MASAK issues communiqués which function as mandatory regulatory guidance (enforceable means) for obliged parties in the specific areas covered by them. Four such communiqués have been issued: two in 1997 and two in 2002. Two of these communiqués relate to suspicious transaction reporting, one to customer identification and another to customer identification, internal controls and training programmes within reporting entities. Further (non-mandatory) guidance issued since 2003 importantly includes *Guidance for Anti-Money Laundering and Liabilities of Banks*, issued by MASAK and the TBA in December 2003, *Guidance for Importance of Fighting against Laundering Proceeds of Crime and Financing Terrorism and Implementation in Banking System*, issued by the

<sup>21</sup> The last two groups of examiners have been made available to MASAK under the new AML Law 5549 of October 2006.

TBA in cooperation with MASAK in September 2005, and the *Suspicious Transactions Guideline*, issued by MASAK in July 2006..

179. MASAK has direct access to two critical government databases. The Revenue Administration's *Vergi Dairesi Otomasyon Projesi* (VEDOP) database of tax identification numbers is accessible by MASAK, as is the database of identity information of the General Directorate of Census (Central Population Management System-MERNİS). MASAK also receives regular reporting from the Central Bank and the Undersecretariat of Customs in relation to international movements of currency. The records of international transfers exceeding USD 50,000 or equivalent are sent to MASAK by the CBRT each quarter and the Undersecretariat of Customs sends copies of foreign currency declaration forms and reports on violations of legislation and major smuggling cases to MASAK. According to the new AML Law 5549 (Article 16), the Customs authority is formally obliged to send to MASAK the reports on suspicious cases when there is a false or non-disclosure in relation to physical cross-border currency transportation

180. Work to gain access to additional databases of public institutions is being conducted within the *Project on Strengthening the Capacity of Fighting against Money Laundering* which is being conducted as part of the Turkey-EU 2002 Pre-accession Financial Cooperation Programme. In this scope, a protocol for the purpose of providing the information and statistics from the Turkish Land Registry and Cadastre Information System (TAKBİS) database was signed between MASAK and the General Directorate of Land Registry on 3 May 2005. In addition, an information sharing protocol between MASAK and the Department of Smuggling, Intelligence, Operation and Collecting Information of the Ministry of Interior (KİHBİ) was signed on 13 October 2005. Under the protocol, MASAK gives monthly information to KİHBİ on cases being prosecuted based on MASAK investigation reports and KİHBİ regularly provides MASAK with the criminal records held in its database, with the exception of those marked "wanted".

181. Institutions which register wealth components are being encouraged to set up central or regional data processing systems and provide MASAK with access to these systems. This is intended to enhance MASAK's ability to collect and analyse data. This will be complemented by activity being conducted under the Turkey-EU 2002 Pre-accession Financial Cooperation Programme which is focussed on enhancing MASAK's information technology system.

182. As outlined in Article 7 of the new AML Law 5549, MASAK has the power to access financial and administrative information from public administrations, natural and legal persons. These entities may not refrain from providing this access and information. Under Article 7 of the RRIL, these parties are obliged to comply with MASAK's requests within seven days and cannot claim exemption due to secrecy provisions.

183. A requirement for the protection of information held by the FIU existed in Article 6 of the PML and was reaffirmed by Article 22 of the new AML Law 5549. This provides that the President, Vice President(s), experts, assistant experts and other officials of MASAK, members of the Coordination Board of Combating Financial Crimes, other public officials, natural and legal persons may not disclose information which they acquired while exercising their functions and may not make use of that information for their own or third parties' benefit. This obligation continues even after the termination of the assignments of the persons stated above. No information was available to the evaluation team about how this requirement to protect information works in practice.

184. MASAK became a member of Egmont Group of Financial Intelligence Units in 1998. MASAK carries out exchange of information with the members of Egmont Group using the Egmont Secure Web and in accordance with the *Statement of Purpose* of the Egmont Group and its *Principles for Information Exchange*.

### Statistics

185. Turkey has thorough statistics on the number of suspicious transactions reports received with breakdown by type of reporting institutions. Statistics are also kept on the matters referred to the FIU by government authorities and on the referrals by MASAK to the public prosecutor and other authorities. These statistics are published in MASAK's annual report, in Turkish and English, on MASAK's website.

**Table 13: Suspicious Transaction Reports (STRs)**

SOURCE	17.02.1997 - 31.12.2001	2002	2003	2004	2005	2006 (6 MONTHS)	TOTAL
Banks	265	193	177	288	349	320	1592
Bureaux de change	52	-	-	-	-	-	52
Insurance institutions	1	1	-	-	-	-	2
Brokers	1	-	-	1	1	-	3
Private financial institutions	-	-	3	1	2	14	20
<b>Total</b>	<b>319</b>	<b>194</b>	<b>180</b>	<b>290</b>	<b>352</b>	<b>334</b>	<b>1669</b>

186. In addition, MASAK receives reports from public authorities, including from the Ministry of Finance, the Undersecretariat of Customs and the General Directorate of Security. Under Article 282 of the TCL, offences requiring a minimum of one year or more imprisonment are predicate offences. As such, any reports regarding predicate offences prepared by relevant public examiners are conveyed to MASAK according to Article 28 of RRIL. For instance, the reports on: customs smuggling, as prepared by Undersecretariat of Customs; banking offences, as prepared by the BRSA; and insider trading and manipulation, as prepared by the CMB, are sent to MASAK for examination in respect of money laundering (see Table 14 below).

**Table 14: Reports Made by Public Authorities to MASAK**

DATE	NO. OF REPORTS
17.2.1997 -31.12.2001	323
2002	105
2003	103
2004	127
2005	157
1.1.2006 - 14.9.2006	85
<b>Total</b>	<b>900</b>

**Table 15: Evaluations of STRs by MASAK (17.02.1997 - 30.06.2006)<sup>22</sup>**

STRs		TRANSFERRED FROM PREVIOUS YEAR	NO. OF FILES OPENED	TOTAL NO. OF FILES	NUMBER OF FILES COMPLETED		
YEAR	NO. OF STRs				OUT OF SCOPE	CONVEYED TO INVESTIGATION	REFERRALS TO PUBLIC PROSECUTOR
1997 - 2001	688	N/A	14	23	5	6	3
2002	194	-	9	9	1	-	-
2003	180	8	38	46	15	8	-
2004	290	23	66	89	28	11	-
2005	352	50	169	219	53	25	1
2006	334	140	148	288	39	19	1
<b>Total</b>	<b>2038</b>		<b>444</b>		<b>141</b>	<b>69</b>	<b>5</b>

Note: The number of evaluations initiated based on STRs includes reports sent by Customs.

<sup>22</sup> STRs and other information received by MASAK is analysed and evaluated by MASAK experts. This process is called an "evaluation". If serious evidence is detected as a result of an evaluation, one of the eight examiner groups attached to MASAK from other agencies is assigned to examine the case within the scope of the new AML Law 5549. This process is called an "examination". Accordingly, Table 15 indicates the number of evaluations carried out by MASAK experts and Table 16 indicates the number of examinations conducted by the examiners attached to MASAK.

**Table 16: Examinations of STRs by Examination Staff Attached to MASAK (17.02.1997 - 30.06.2006)**

STRs		TRANSFERRED FROM PREVIOUS YEAR	NO. OF FILES OPENED	TOTAL NO. OF FILES	NO. OF FILES COMPLETED	
YEAR	NO. OF STRs				OUT OF SCOPE	REFERRALS TO PUBLIC PROSECUTOR
1997 - 2001	688	52	76	128	35	4
2002	194	37	31	68	18	2
2003	180	48	7	55	26	1
2004	290	28	14	42	10	3
2005	352	29	18	47	6	2
2006	334	39	14	53	2	-
<b>Total</b>			<b>160</b>		<b>97</b>	<b>12</b>

Note: The number of examinations initiated based on STRs includes reports sent by Customs.

**Table 17: Results of the Examinations (STRs and Other Reports)**

	17.02.1997 - 31.12.2001	2002	2003	2004	2005	30.06.2006	TOTAL
Started Preliminary Investigations	425	155	192	270	384	220	1646
Ongoing Preliminary Investigations*	-	1	3	48	235	197	361
Completed Preliminary Investigations	368	125	142	221	283	146	1285
- Cases determined to be out of the scope of PML	160	66	93	137	205	91	752
- Within the scope of PML	208	59	49	84	78	55	533
- Conveyed to investigation	176	56	48	79	65	47	471
- Laundering offence referral	32	3	1	5	13	8	62

Note: Since 30 June 2006 information on ongoing examinations is held according to the year the examination commenced.

**Table 18: Inventory of the Examination Files**

YEAR	TRANSFERRED FROM PREVIOUS YEAR	NO. OF FILES OPENED	TOTAL NO. OF FILES	NO. OF FILES COMPLETED	RESULT		TRANSFERRED TO NEXT YEAR
					OUT OF SCOPE	WITHIN SCOPE	
1997	-	15	15	1	1	-	14
1998	14	45	59	23	15	8	36
1999	36	106	142	18	11	7	124
2000	124	115	239	63	48	15+1*	176
2001	176	131	307	73	60	13	234
2002	234	102	336	81	60	21+1*	255
2003	255	68	323	104	73	31+1*	219
2004	219	121	340	92	49	43	248
2005	248	75	323	82	49	33+2*	241
30.06.2006	241	38	279	19	12	7+1*	260**
<b>Total</b>		<b>816</b>		<b>556</b>	<b>378</b>	<b>178+6*</b>	

\* Indicates ongoing files.

**Table 19: Examination Results**

	17.02.1997 - 31.12.2001	2002	2003	2004	2005	30.6.2006	TOTAL
Cases passed to Investigation	412	102	68	121	75	38	816
Investigations completed	178	81	104	91	82	19	556
- Laundering offence not determined	135	60	73	49	49	12	378
- Laundering offence referral	43	21	31	42	33	7	178
Ongoing Investigation*	20	26	27	95	74	38	260
- Laundering offence referral	1	1	1	1	2	1	6
<b>Total Denunciations</b>	<b>44</b>	<b>22</b>	<b>32</b>	<b>43</b>	<b>35</b>	<b>8</b>	<b>1184</b>

Note: Since 30 June 2006 the distribution of ongoing examinations is recorded according to the year the examination commenced.

**Table 20: MASAK Case Referrals from STRs (17.02.1997 – 31.03.2006)**

PHASE	MONEY LAUNDERING CASES REFERRED TO THE PUBLIC PROSECUTOR	PROSECUTIONS	PROCEEDINGS DISMISSED
Pre Investigation	4	3	-
Investigation	12	10	1
<b>TOTAL</b>	<b>16</b>	<b>13</b>	<b>1</b>

### 2.5.2 Recommendations and Comments

187. As stated above, with introduction of the new AML Law 5549 in October 2006, MASAK gained, in addition to its existing functions, formal authority to receive information and conduct analysis in relation to TF. While MASAK had in fact received five STRs from banks in relation to TF based on the suspicious transaction types outlined in MASAK *General Communiqués*, the new AML law now provides a clear basis for reporting of TF suspicions to MASAK. This requirement is however indirect since the new law appears only to require reporting when funds are suspected to have derived from illegal sources or used for illegal purposes. The offence is also covered through the fact that TF is a predicate offence for ML. In any case however, not all aspects of the offence are covered as the provision does not clearly cover TF derived from licit sources in all situations required by the FATF standards. This may jeopardise the overall efficiency of MASAK in relation to TF and possibly affect its capabilities in international cooperation in such cases.

188. MASAK has a strong team of experts supplemented by examiners seconded from the Ministry of Finance and elsewhere. They are able to obtain all the necessary information they need from the obliged parties. MASAK does not however have staff with law enforcement skills and experience and should consider hiring staff with this background to aid both analysis of the incoming STRs and the conduct of preliminary financial investigations. While MASAK's recruitment programme is designed to, and appears in fact to, result in recruitment of highly intelligent and capable staff, this may not be matched by pay and conditions of a sufficient level to minimise staff turnover. The new law may help with this; however, MASAK should look closely at its recruitment policies – as well as salary structure – and make necessary adjustments to ensure that staff turnover does not become disruptive to the mission of the agency.

189. The statistics provided by the Turkish authorities reveal a low level of STR reporting to MASAK when the size and nature of the financial sector is considered. It is recommended that the regulation to be promulgated by April 2007 in support of the new AML law detail the STR reporting requirements, including in relation to terrorist financing, and the means of protecting sensitive information held by the FIU.

190. MASAK does not acknowledge receipt of STRs and the only feedback it provides to reporting entities are in MASAK's annual activity reports, which include a range of statistics. Obligated parties would benefit from an enhanced system of more regular feedback incorporating additional information such as case studies, typologies and trends. MASAK's new structure, implemented from September 2006, established a 'Department of Inspection and Training of Obligated Parties' which may help in this respect.

### 2.5.3 Compliance with Recommendation 26

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.26	LC	<ul style="list-style-type: none"> <li>The efficiency of MASAK in relation to TF could be jeopardised due to limitations in the scope of the reporting obligation for TF.</li> <li>The quality of financial analysis is in question as only a small number of files are referred to the public prosecutor.</li> <li>Reports on typologies and trends are not publicly released.</li> </ul>

## **2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 & 28)**

### **2.6.1 Description and Analysis**

#### **Recommendation 27**

191. MASAK carries out ML examinations. It conducts the function through eight groups of examiners seconded from other agencies. Under Article 7 of the new AML Law 5549, these examiners are authorised to request information and documents, search and conduct inquiries, and scrutinise documents. MASAK sends ML cases to the public prosecutor for prosecution. MASAK and its examiners are unable to postpone or waive the arrest of suspects or seizure of assets in order to identify persons involved in a case or to gather evidence, though the examiners may examine transactions carried out through accounts which are subject to investigation.

192. Under Articles 160 to 169 of the CPL, the function of conducting ML prosecutions rests with public prosecutors. They carry out these functions directly or through police units. In this context, public prosecutors are responsible for conducting all investigations, including investigations of ML and TF, and for bringing suit in accordance with Article 170 of the CPL.

193. Public prosecutors may, either directly or through the judicial law enforcement units under their command, conduct any inquiries and may request any information from any public servant. The General Directorate of Turkish National Police, General Command of Gendarmerie, Undersecretariat of Customs and Department of Command of Coast Guard carry out inquiries as judicial law enforcement units. A judge may carry out inquiries in the event that a public prosecutor is not available, in cases of *flagrante delicto*, or if delay may cause inconvenience. In this context, the judge must inform the public prosecutor of his/her inquiries and of any arrests which have been made without delay.

194. Under a broad reading of Article 127 of the CPL, it allows public prosecutors discretion as to when to apply for seizure orders. Similarly, Article 170(1) of the CPL provides that the duty to bring a prosecution rests with the public prosecutor. Turkish authorities advise that since it is up to the public prosecutor to apply to the court to conduct an arrest, the public prosecutor has the discretion to postpone or waive arrests in ML cases in order to gather evidence and identify suspects.

195. Similarly, decisions to seize or confiscate goods and proceeds in accordance with Articles 54 and 55 of the TCL are taken by authorised Judges, public prosecutors or judicial law enforcement units and are implemented in accordance with Articles 123 to 134 of the CPL by the law enforcement agency which conducted the main criminal inquiry. While the Judge and prosecutors who met with the evaluation team during the onsite visit were unable to demonstrate clear knowledge on ML matters, the training department in the Ministry of Justice has indicated that a series of seminars, workshops, study visits and training courses relating to ML, TF and related issues have been provided to the judiciary and prosecutors since 2005.

196. Two departments within the Ministry of Interior's General Directorate of Security, the Departments of Anti-Smuggling and Organised Crime, and of Anti-Terror and Intelligence, are authorised and responsible units for combating ML and TF. They conduct investigations under the authority of a public prosecutor.

197. The Department of Anti-Smuggling and Organised Crime is responsible for combating crimes that gain unjust proceeds through national or international organisations involved in smuggling. It is empowered to gather and evaluate intelligence, take measures for disqualification and legal follow-up, seize proceeds of crime, and take other action to reduce opportunities for these crimes to be committed. Additionally, in accordance with court decisions, the department uses controlled delivery techniques and coordinates the implementation of controlled deliveries. The department has almost

5,000 staff across its units in 81 provinces and 28 districts. It is considered an important part of the General Directorate of Security's structure and operations. Protection of the confidentiality of information obtained by the General Directorate of Security is required and breaches may result in administrative sanctions in accordance with the *Discipline Statute of General Directorate of Turkish National Police* or judicial sanctions under the TCL.

198. The Financial Crimes Division of the Anti Smuggling and Organised Crime Department deals with the financial sources of the abovementioned offences, and also serious fraud and large cases of corruption/corruption-related crimes. The Department is not able to monitor accounts as part of their investigations, but in ongoing investigations account information can be obtained through a request to financial institutions from the public prosecutor responsible for coordinating the investigation (Article 160/2 of the CPL). The Ministry of Justice issued Circular 457 on 9 December 1996 to assist investigators to detect ML during their investigations. The circular provides questions to be asked by investigators which are designed to reveal ML activity. The power to inspect how local units execute the items stated in the circular rests with the Department of Anti-Smuggling and Organised Crime of the General Directorate of Turkish National Police. In April 1998, the Department of Anti-Smuggling and Organised Crime established a dedicated "Money Laundering Desk" to address ML cases. No specific statistics relating to the work of this desk were available, including on resulting prosecutions, convictions or acquittals.

199. Between 17 February 1997 and 14 September 2006 the General Directorate of Security sent 110 referrals to MASAK. Only 20 of these referrals have been made in the past 4.5 years; 7 referrals in 2002, 7 in 2003, 2 in 2004, 2 in 2005 and 2 in the first half of 2006. From 1999 to 2004, 291 ML cases were prosecuted, including 194 referred by MASAK and 97 additional cases brought suit by the public prosecutor based on its own investigations. Of the 194 cases in the courts of first instance, 44 were concluded: four with convictions and 40 with acquittals. 150 of these cases continue in the court of first instance. Thirty-four of the acquittals and all four convictions have been appealed, with five appeals concluded to date, all resulting in approval of the original acquittals. The low conviction rate viewed in connection with the high number of acquittals may call into question the effectiveness of the investigative / prosecutorial process.

200. Stringent recruitment criteria are set by the General Directorate of Security. After recruitment, only those persons who successfully complete the smuggling and organised crime training are employed in the Department of Anti-Smuggling and Organised Crime and its provincial divisions. Personnel employed in the Department are supported by on-the-job training, primarily from the Turkish International Academy Against Drugs and Organised Crime (TADOC). Training has also been provided to Turkish law enforcement units under the twinning projects "Strengthening the Struggle Against Organised Crime", and "Strengthening the Struggle Against Money laundering, Financial Sources of Crime and Financing of terrorism" which have been conducted by the Turkish National Police and German authorities. The General Directorate of Security also has a Police Academy, which has the status of a University, and Police Vocational Schools, which have the status of Colleges. These institutions provide training on policing, law and foreign languages.

201. The General Directorate of Security, the Gendarmerie, the Undersecretariat of Customs and ultimately the public prosecutors have important roles in ensuring that ML and TF offences are properly investigated. While some law enforcement bodies do have areas dedicated to investigation of economic crimes of terrorism, there are no specialist areas dedicated to ML or TF other than the ML desk within the Department of Anti-Smuggling and Organised Crime. The representatives from the prosecution and judicial authorities met by the evaluation team did not seem to understand how to deal with ML cases, and there seem to be a high level of acquittals in ML cases, which is of concern. During the on-site visit, Customs noted that their human resources are insufficient, and it is possible this lack of resources may preclude the service from monitoring exports and imports thoroughly.

202. The Undersecretariat of Customs, established by Decree 485 of 2 July 1993 is responsible for laws relating to the cross border movement of cash. Customs Enforcement Units for Anti-Smuggling,

Intelligence and Narcotics combat all types of smuggling cases. These and other related units investigate narcotics smuggling cases in accordance with orders of the public prosecutor in accordance with provisions of the CPL, the TCL and Law 2313 on *Control of Narcotics*. The Undersecretariat of Customs sends copies of foreign currency declaration forms and reports on violations of legislation and major smuggling cases to MASAK. Between 17 February 1997 and 14 September 2006 the Undersecretariat of Customs sent 314 cases to MASAK for examination. Of these, there were 31 referrals in 2002, 46 in 2003, 60 in 2004, 51 in 2005 and 25 so far in 2006.

203. High standards are sought for customs experts, customs comptrollers and customs inspectors working for the Undersecretariat of Customs. To enter this profession, graduation from a 4 year Turkish university undergraduate programme, or equivalent from abroad, is required. In addition, a satisfactory grade must be gained on “the Examination for Selecting Public Officials” and at least 70% grade on the foreign language section of the exam (Article 7 of the *Regulation Concerning the Exam of Customs Assistant Expert and the Principles and Procedures of Education and Working* and Article 11 of the *Regulation regarding selection exam for those who want to take entrance exam for Assistant Customs Inspector of the Undersecretariat of Customs and Assistant Comptroller of General Directorate*). Training in relation to ML is given to new assistant customs inspectors and to assistant comptrollers within their broader training programmes.

#### *Additional elements*

204. Article 2 of the PML defines when controlled deliveries may be conducted. This includes controlled deliveries of the funds or proceeds related to narcotics and psychotropic substances and any goods smuggled or suspected to be smuggled that would be the source of proceeds of crime, for the purposes of identifying the perpetrators, finding and collecting evidence and confiscating the goods and funds. In terms of international joint investigations, requests to conduct controlled deliveries in Turkey are considered by Judges and authorised where there is sufficient evidence provided by the foreign enforcement unit to justify this action.

205. Special investigative techniques are established in Articles 135 to 140 of the CPL and these Articles provide that technical surveillance, undercover investigations and telecommunications monitoring and recording may be conducted to progress ML prosecutions. All of these special investigative techniques are applied through a decision given by a Judge, or, when it is necessary to avoid delay, by a public prosecutor, and may only be applied when there is strong suspicion that an offence has been committed and there is no other way to obtain evidence.

206. While there is no limitation in Turkish law to establishing permanent or temporary specialist investigative groups to deal with ML or TF, with the exception of the Department of Anti-Smuggling and Organised Crime’s “Money Laundering Desk”, this has not occurred in Turkey. If established, such specialist groups would operate under the authority of a public prosecutor.

207. The Coordination Board of Combating Financial Crimes provides high level coordination among relevant institutions. In addition, law enforcement agencies provide their staff with on-the-job training in respect of the amendments to the laws and new trends in committing crime, including those relating to ML and TF. Experts from other institutions can participate in the programmes as instructors. Also, circulars and instructions are issued to disseminate information on investigative techniques and compliance with these circulars and instructions is controlled through inspections.

#### ***Recommendation 28***

208. Investigative authorities have the power to compel production of documents and the power to search persons and premises and seize and obtain documents. As outlined previously, in Article 7 of new AML Law 5549, MASAK has the power to access any financial and administrative information from public administrations, natural and legal persons. These parties are obliged to comply with investigative authorities’ requests and cannot claim exemption due to secrecy provisions. MASAK

may also, in cooperation with law enforcement authorities, request that search and seizure action be taken.

209. The provisions for search and seizure are established in Articles 116 to 134 of the CPL which provide that Judges and public prosecutors can authorise search warrants of any premises and seizure of documents found during search warrants. Article 128 of the CPL lists the offences in relation to which proceeds of crime and other items may be seized. This list of offences does not include the ML offence or the new TF offence. However, Article 17 of the new AML Law 5549 makes Article 128 also applicable in cases where there is a strong suspicion that the offences of ML or TF have been committed. This inconsistency in the legislation might mislead enforcement authorities.

210. The CPL also provides Judges with powers to make decisions about seizure of assets, searches of lawyers' offices, seizing management of a company, appointment of trustees to operate companies and about searching of computers, computer programmes and registries. In urgent cases, public prosecutors may make these decisions. Article 17 of the new AML Law 5549 provides that judges and, in urgent cases, public prosecutors, may impose freezing orders where there is serious circumstantial evidence about ML or TF.

211. Articles 43 to 61 of the CPL detail the powers of public prosecutors to take witness statements and the appropriate procedures to be employed. Public prosecutors may take witness statements under oath in court proceedings or under oath during the investigation process.

### **2.6.2 Recommendations and Comments**

212. As stated above, MASAK, the General Directorate of Security, the Undersecretariat of Customs and ultimately the public prosecutors have responsibility for ensuring that ML and TF offences are properly investigated. The lack of awareness shown by the representatives of the prosecution and judicial authorities met by the evaluation team and the, perhaps related, low conviction rate and acquittal rate is of concern. The situation might be improved if there were specialisation among law enforcement bodies and prosecution to deal with ML and TF cases and further training for them. The resources of other authorities – for example, of the Customs service – may also need to be addressed.

213. As the offence of TF was introduced in July 2006 it is too early to assess the effectiveness of the investigations into this offence.

### **2.6.3 Compliance with Recommendations 27 & 28**

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.27	PC	<ul style="list-style-type: none"> <li>• There is a very low level of convictions in ML cases. Almost all cases result in acquittals and of the small number where convictions have been recorded, all were on appeal at the time of the visit.</li> <li>• The awareness of the public prosecutors and judges on ML matters seems to be poor.</li> <li>• The new TF offence has not yet been tested therefore its effectiveness could not be judged.</li> </ul>
R.28	LC	<ul style="list-style-type: none"> <li>• The new TF offence has not yet been tested.</li> </ul>

## **2.7 Cross border declaration or disclosure (SR.IX)**

### **2.7.1 Description and Analysis**

214. At the time of the on-site visit, Turkey had only a limited declaration system relating to movement of domestic and foreign currencies, which was established for the purposes of exchange control. This system did not, according to Turkish authorities, correspond exactly to the disclosure system foreseen by SR.IX. Nevertheless, they indicated that some of the current measures originally designed for exchange control were still in place and did satisfy certain elements of this requirement.

Article 4(a) of Decree 32 on the *Protection of the Value of the Turkish Currency* provides that importation of foreign currency to Turkey is free and 3(a)(ii) and 4(f) provides that travellers may take abroad up to USD 5,000 or its equivalent in domestic or foreign currency banknotes. Non-residents and those Turkish citizens working abroad who are still considered residents of Turkey, may take foreign currency banknotes abroad on their person in an amount exceeding this threshold provided that a declaration had been made upon entry to Turkey. Passengers entering Turkey are not required to declare currency, but may complete a currency declaration form if they require one. For example, this form is required if foreign currency is to be sold to banks. Residents in Turkey may similarly take more than USD 5,000 equivalent in foreign currency banknotes abroad on their person providing they certify that the foreign currency banknotes have been purchased from banks.

215. Under Article 7(c) of Decree 32 on the *Protection of the Value of Turkish Currency*, travellers are allowed to bring in and take out non-commercial articles made of precious metals and stones, such as personal jewellery, to a value of not more than USD 15,000. Travellers may take out personal jewellery above this limit on the condition that they have made a declaration when they entered Turkey or they are able to authenticate that it has been purchased in Turkey. If Decree 32 is violated, Article 3(c) of the Law 1567 on *Protection of the Value of Turkish Currency* provides for penalties of fines in an amount equal to the market value of the smuggled valuables or half of that amount for each of those who colluded in such activity.

216. The system described above was recently strengthened through enactment of the new AML Law 5549. Specifically, Article 16 of the new law stipulates that “Passengers who carry Turkish currency, foreign currency or instruments ensuring payment by them to or from abroad, shall disclose them fully and accurately on the request of Customs Administration.” This introduces a legal basis for the obligation to disclose information if requested by customs authorities, and makes it an offence to not provide information or to provide false or misleading information. While this provision applies since the introduction of the law, it is to be further elaborated by a regulation which is to be issued within 6 months from the date the law came into effect (18 October 2006). Prior to enactment of this law the powers of customs authorities to ask for information were rather limited. Under Article 82 of the *Regulation of Customs Enforcement 25282* of 7 November 2003, where there is a suspicion or a belief that persons have contraband items or materials on them, in their bags or in their vehicles, they are required to make a declaration. This applies to both inward and outward bound passengers. Under Article 69 of the regulation, all public officials, natural and legal persons must comply with requests by customs officials for information and documents. It should be noted that neither the old system nor the new one foresee measures dealing with funds sent or secreted within cross-border postal or cargo container transportation. Nevertheless, if there is a suspicion that the funds may be of criminal origin, the whole amount may be seized by Customs, and these funds could then be subject to confiscation if the subsequent investigation proves the suspicion to be true.

217. All information in customs declarations are held on customs’ Computerised Customs Affairs system and information about invoice cost and customs value, method of payment and mediator bank pertaining to transfer of cost is stated in customs declarations related to export and import.

218. Where a currency declaration form is completed, customs sends a copy to MASAK and this is entered onto the MASAK database. In addition, in accordance with Article 9 of the RRIL, customs reports to MASAK all infractions of the law regarding the physical transfer of gold, Turkish Lira, foreign currency and convertible monetary instruments by passengers. Moreover, according to Article 16 of the new AML Law 5549, all cases where there is no explanation as to the origin of the funds and all cases where false information was given to customs are regarded as suspicious and are to be reported to MASAK and MASAK evaluates the reports for possible ML or TF. If the matter is not within its competence, the reports are sent to the relevant competent authorities. In such cases, one tenth of the carried amount or the difference between declared and real amount can be charged as a fine. This amount appears to be excessively small, especially since these provisions do not apply if the difference between the actual and declared values does not exceed TRY 1,500. This exemption

from sanctions, small as it is, could be exploited for illegal purposes, which is a particular concern considering the small amounts of money which may be involved in TF.

219. Under Article 113 of the *Regulation of Customs Enforcement* 25282, cases of smuggling, trafficking, organised crime and terrorism are investigated by the police and gendarmerie jointly and where necessary in cooperation with other institutions having functions of preventing, tracking and inquiring into smuggling. Five investigations relating to cross-border movements of currency were conducted by the Police between 2002 and 2006.

220. Monthly meetings of contact persons are held with customs, police and gendarmerie contact persons of foreign countries in order to exchange ideas in respect of new methods of capturing drugs, routes and the methods of transporting and concealing. They may exchange information as to criminal proceeds linked with drug trafficking when necessary.

221. Agreements on cooperation and mutual assistance as to customs subjects have been signed with several customs administrations. These agreements are based on the provisions of the Nairobi Convention, to which Turkey is a party, and they follow the agreement template of the World Customs Organisation. The aim of the agreements is to provide enhanced cooperation between customs administrations, to facilitate and to encourage running of goods and passengers and to combat the crimes committed against customs laws and social and financial interests of both countries. Through these agreements, exchange of personnel and expert, technical information and information between customs administrations are carried out.

222. Turkey is a party to the South Eastern Cooperation Initiative (SECI) initiated in January 1997 to facilitate peace and stability in the Balkans, promote relations between the countries in the region and lessen current issues and obstacles. Also, mutual administrative assistance agreements have been signed with 40 countries and protocols of mutual assistance have been signed with 8 countries. If there is an agreement in place relating to assistance between the customs authorities in the country of origin and Turkey, relevant information is transmitted to Customs Administration of the related country.

223. Under Article 3 of Law 1567 on *Protection of the Value of the Turkish Currency* (PVTC), a violation by natural or legal persons of matters in decrees can result in fines of between TRY 2 billion and TRY 25 billion (YTL 2,000 to 25,000 or approximately USD 1,300 to 17,100) and seizure of the goods and valuables being smuggled. These values applied in 2003 when the last amendment was made to Article 3. The values are indexed and increase annually. If this violation relates to smuggling of extremely valuable items, the fine will be increased up to the value of the goods or valuables. For the offence of attempt to smuggle, the penalty will be 50% of the full penalty for the offence. Those who do not repatriate the credits from their imports/exports are liable under this article to be fined 5% of the market value of the goods they were importing/exporting. 789 cases relating to violations of Article 3 of Law 1567 were prosecuted in 2004 – 2005; 160 of these relating to bureaux de change and 629 relating to import/export transactions. The examples of these cases provided to the evaluation team indicate outcomes of such cases include a fine imposed by the Istanbul Third Criminal Court of First Instance of YTL 1,604,903 (approximately USD 1.1 million) for a series of fictitious foreign currency and transfer transactions and cases where prepayments of money as agreed with the public prosecutor resulted in no fine being imposed by the court.

224. Under additional Article 1 of the PVTC “Inspectors and assistant inspectors of finance, auditors and their assistants, exchange controllers and exchange control offices are entitled to make enquiries regarding infringement of the provisions of this Law and if elements of offence are found during the enquiry, to carry out the necessary formalities according to the provisions concerning confiscation and search of the CPL as regards the accused persons who seem to have a connection with the offence.” If these authorities detect any offences outside those provided in the PVTC, including ML or TF, a report is transmitted to the public prosecutor in accordance with Article 279 of the TCL.

**Recommendation 32****Table 21: Number of Foreign Exchange Declaration Forms<sup>23</sup>**

YEAR	NUMBER	YEAR	NUMBER
1998	5,804	2003	12,622
1999	5,746	2004	15,985
2000	3,936	2005	23,886
2001	3,773	2006	2,592
2002	7,395		
<b>Total = 81,739</b>			

225. Statistics are readily available on international wire transfers and on the limited range of declarations made on cross border transportation of currency. While the number of foreign exchange declaration forms is known, complete statistics are not available for the value of currency involved in these declarations. Turkish authorities are not able to provide total amounts of currency to which these declaration forms related as less than one third of all foreign currency declaration forms are recorded in a database and the amount of currency involved is only known for the forms so recorded.

**2.7.2 Recommendations and Comments**

226. Turkey has a limited declaration system relating to movement of domestic and foreign currencies under which persons taking out of Turkey currency worth over USD 5,000 are required to make a declaration. The information that is obtained is recorded and shared with the FIU and other agencies. Law enforcement officials can search, obtain further information and seize money in cases where they have a suspicion of non-declaration or criminal activity. The new law provides a legal basis for implementing a more comprehensive system; however, the implementing regulations have yet to be issued. Turkey should take steps to develop and issue regulations to fully implement the new disclosure obligations.

227. Sanctions are in place for non-compliance with declaration requirements and some systems for international exchange of information are in place. The new AML Law 5549 establishes a more formal system of penalties for a failure to observe the new obligations. Fines can be levied for non-disclosure or for false or misleading disclosure. It appears that the potential fines are low for these violations, and it is unclear the degree to which relevant funds could be confiscated in practice. Turkey should consider eliminating the exemptions from STR reporting and sanctions where the difference in the declared and actual value of the currency is TRY 1,500 or less.

**2.7.3 Compliance with Special Recommendation IX**

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
SR.IX	LC	<ul style="list-style-type: none"> <li>Regulations to implement the new disclosure requirement have not yet been issued.</li> <li>The exemption from STR reporting (when the difference is less than TRY 1,500) foreseen by the new law and the low sanctions available (maximum of 1/10 of the amount transported) are concerns that call into question the potential overall effectiveness of the new measure.</li> </ul>

<sup>23</sup> As at July 2006.

### 3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

#### **General**

228. Prior to October 2006 (and at the time of the mutual evaluation on-site visit), AML/CFT preventive measures applicable to the Turkish financial system were set forth in the PML, the RRIL and four MASAK General Communiqués issued from 1997 to 2002<sup>24</sup>.

229. On 11 October 2006, a new AML law was enacted – Law 5549 on the *Prevention of the Laundering of the Proceeds of Crime*. This new law expands on and, in some circumstances, replaces certain provisions of the PML<sup>25</sup>. The new law came into force at its publication on 18 October 2006; however, several provisions require the issuance of further regulation to come fully into force and effect<sup>26</sup>. These regulations must be issued within six months of the date of coming into force of the new law. For existing regulations, the new law stipulates that their provisions “that are not contrary to this [the new] law” are to remain in effect. Therefore, where there are still currently valid and applicable regulations according to this provisional article of the new law, these have been taken into account for the purposes of rating in this assessment.

230. A MASAK Guideline (which should be differentiated from MASAK’s Communiqués, which constitute ‘other enforceable means’), issued by MASAK in July 2006 concerning suspicious transaction reporting, covers both ML and TF issues. The Turkish Banking Association has also issued guidelines (September 2005) covering a broader range of AML/CFT preventive issues. These guidelines are, however, recommendations for good practice and do not constitute binding requirements on obliged parties.

231. According to the RRIL, the AML/CFT preventive measures apply to 23 types of “obliged parties”:

- Banks.
- Participation banks.
- Card issuing organizations.
- Money lenders, consumer finance companies and factoring companies operating within the framework of the legislation regarding money lending transactions.
- Insurance and reinsurance companies operating within the framework of the Insurance Supervision Law 7397.
- Istanbul Stock Exchange (ISE) Settlement and Custody Bank Inc..
- Capital market intermediaries and portfolio management companies.
- Mutual funds.
- Investment companies.
- Precious metals exchange intermediaries
- Precious metal, stone and jewellery dealers.
- Bureaux de change operating within the framework of exchange legislation.

<sup>24</sup> These MASAK General Communiqués are: No. 1, issued on 31 December 1997, on customer identification; No. 2, issued on 31 December 1997, on suspicious transaction reporting; No. 3, issued on 7 February 2002, amending Communiqué No. 2; and No. 4, issued on 10 November 2002, on customer identification and duties and responsibilities of the compliance officer.

<sup>25</sup> Law 5549 abolished the following provisions of the PML (Law 4208): Articles 1, 3, 4, 5, 6, 7, 8, 9, 12, 14; subparagraphs [a], [b], [d] and [e] of Article 2; the first and third paragraphs of Article 13; and the first and third paragraphs of Article 15 (see *Annex 3* for the text of this law).

<sup>26</sup> These include paragraphs [d] and [e] of Article 2, as well as Articles 3, 4, 6, 7, 11, 15, 16, 19 and 20 of the new law (see *Annex 3* for the text of this law).

- Every kind of postal service and cargo companies including General Directorate of Post.
- Financial leasing companies.
- Real estate agencies or persons intermediating buying and selling of real estate.
- Lottery hall managers.
- Ship, aircraft and vehicle-including construction machines-dealers.
- Collectors of historical arts, antiques and art works as well as dealers or auctioneers.
- Sports clubs.
- General Directorate of National Lottery (customer identification obligation pursuant to the Article 4 of the RRIL and STR reporting obligation pursuant to the Article 12 of the RRIL).
- Turkish Jockey Club (customer identification obligation pursuant to the Article 4 of the RRIL and STR reporting obligation pursuant to the Article 12 of the RRIL).
- Notaries (STR reporting obligation pursuant to the Article 12 of the RRIL).
- Directorate of Land Registry (STR reporting obligation pursuant to the Article 12 of the RRIL).

232. The new AML Law 5549 appears to define obliged parties in a similar way as the RRIL, with just one exception; notaries are also obliged to conduct customer identification in accordance with Article 2(d) of the new AML Law 5549. The new AML Law 5549 also allows for expansion of the list of obliged parties to “other fields determined by the Council of Ministers”.

233. Article 5 of the RRIL determines the exemptions on customer identification. According to this Article obliged parties are not required to conduct customer identification for transactions carried out with central and local public administrations, state economic enterprises and quasi-public institutions established by law, or for transactions carried out between banks and participation banks themselves.

234. Sanctions are available for obliged parties which do not carry out their required customer due diligence procedures. In accordance with Article 13 of the new AML Law 5549, those who not comply with identification requirements will be sentenced to an administrative fine of TRY 5,000. If the obliged party is a bank; finance company; factoring company; money lender; financial leasing company; insurance or reinsurance company; pension company; capital market institution; or bureaux de change; the administrative fine can be doubled. In addition, failure to carry out know your customer requirements is punishable with a pecuniary fine in accordance with Article 47/A of the *Capital Markets Law*. Obligated parties which do not determine and/or record tax identification numbers may be sentenced to imprisonment from three months to one year. Persons who conceal tax identification numbers or knowingly make false statement on this issue or submit counterfeit or misleading documents may be imprisoned from three months to 10 months under Article 5 of Law 4358 *Concerning the Expansion of the Usage of Tax Identity Number*.

### **3.1 Risk of money laundering or terrorist financing**

235. The application of the Turkish AML/CFT measures to the financial system and to DNFBPs is not based on risk assessments in the manner contemplated in the revised FATF 40 Recommendations. However, guidance issued by MASAK describes the concept of risk (*Suspicious Transactions Guideline*, issued 15 July 2006) and appears to take different risk situations into account (as for example dealing with legal, public confidence [reputation] and operational matters) with regard to this category of obliged entities.

## 3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

### 3.2.1 Description and Analysis

#### *Recommendation 5*

236. As stated in the introduction to this chapter, AML/CFT preventive measures were until October 2006 based on the PML. The law contained general AML provisions, which were implemented through the RRIL. Many of the measures contemplated by R. 5 – including customer due diligence – were mentioned by the law but not set out in explicit terms except in the RRIL. Certain other requirements are contained in other legislation or regulations. With the enactment of the new AML Law 5549 in October 2006, the Turkish legislature provided a clearer legal basis for applicable customer due diligence among other things. While these measures must still be further developed in regulations to be issued within a six-month delay, the law provides for the continued force of existing regulations (for example, the RRIL), which were based on the previous law as long as there is no contradiction between them and the new AML Law 5549. In short, this means that the new law should theoretically fill in some of the missing legal basis for certain due diligence requirements that only exist explicitly in regulation.

237. Turkish authorities stated that obliged parties in Turkey cannot open fictitious or anonymous accounts. There is no general prohibition applicable for all obliged parties, but some provisions which apply to banks and brokerage houses. According to Article 76 of *Banking Law 5411*, banks may not open deposit, investment fund, credit or other accounts, may not sign contracts, and may not provide remittance and foreign exchange services and other banking and financial services to clients who do not document their identities and tax numbers. Moreover, this issue has been incorporated in non-binding guidance for banks under Section 5 *Customer Due Diligence* of the *TBA Guideline* which provides that banks should refuse to open an anonymous account or an account in a fictitious name or pseudonym. Up until 30 January 1997, banks in Turkey were entitled to issue certificates of deposit in a bearer form, thus providing a form of anonymous account. However, CBRT Communiqué 97/1 *Regarding Certificates of Deposit*, issued in January 1997, prohibits banks from issuing certificates of deposit. In terms of the securities industry, Article 58(j) of CMB Communiqué V 46 (which constitutes ‘other enforceable means’) provides that the brokerage houses can not open ‘fictive accounts’. There do not appear to be similar provisions applying to other obliged parties in Turkey and there appears to be no provision prohibiting any obliged parties from issuing numbered accounts.

238. Article 3 of the new AML Law 5549, which came into force on 18 October 2006, provides customer identification requirements. It provides that obliged parties must identify the persons carrying out transactions and also the persons on the behalf of or on the account of whom the transactions are conducted before the transactions are conducted. While the English translation of this provision refers to ‘transactions’, in Turkish texts the term used is ‘i $\ddot{t}$ lem’. Turkish authorities explained that ‘i $\ddot{t}$ lem’ is a very broad term which encompasses all activities, operations and transactions and which includes account opening. *TBA Guideline*

239. Article 4 of the RRIL, which pre-dates the new AML Law 5549 and remains in force in so far as it does not conflict with that new law, provides that obliged parties and their branch offices, agents, representatives, commercial deputies and their units in Turkey to identify their customers and those who carry out transactions on behalf of the customers before they carry out transactions (*i $\ddot{t}$ lem*). This must occur for each transaction they are involved in either as one of the parties or as an intermediary, including all kinds of purchase and sale, remittance, payment, storage, clearance, barter, lending, borrowing, debt transfer, transfer of claims, renting, renting out, depositing into or withdrawing from current or deposit accounts or participation accounts, collecting cheques and deeds, transactions pertaining to securities and any transaction that exceeds TRY 12,000 (approximately USD 8,000) or equivalent in foreign currency. This obligation applies regardless of amount before transactions relating to insurance, financial leasing and deposit box services and before opening deposit, profit and loss, participation, current, repo (‘repurchase’) and similar accounts.

240. The customer identification requirements of the new AML Law 5549 and in the RRIL appear to implement many of the elements on Recommendation 5, but only if the very broad interpretation of *i¶em* (encompassing account opening and all dealings with assets) is accepted and only for transactions above the TRY 12,000 threshold. In addition, there is no mention in law or regulation of identification of customers carrying out several transactions below the TRY 12,000 threshold that appear to be linked (see discussion below for SR.VII).

241. Article 12 of the RRIL provided that suspicious transaction reports should be submitted to MASAK “after making customer identification.” The STR reporting provision contained in Article 4 of the new AML Law 5549 does not note that customer identification is to be conducted by obliged parties when submitting STRs. This is supported by MASAK *General Communiqué 2* on suspicious transaction reporting which is designed to further elaborate on the provisions of the RRIL. The provisions of the RRIL remain in force until regulations supporting the new law are implemented insofar as they do not contradict the provisions of the new law. It is not possible to say whether this customer identification element of the provision in the RRIL would be considered to be active. As a result, it is now unclear, with the new AML law, that customers have to be identified when there is a suspicion of ML or TF, or when there are doubts about the veracity or adequacy of provided customer identification data.

242. According to Article 12 of CMB Communiqué V 46 capital market intermediary institutions must obtain identity information of their customers prior to opening an account. According to Article 13 of CMB Communiqué V 46, brokerage houses have to conclude a written agreement with their customers prior to providing intermediation services for sales and purchases, portfolio management, investment consultancy, off-exchange purchase and repurchase transactions, intermediation in sales of derivative instruments, margin trading, lending and borrowing of securities and short sales. According to Article 15 of CMB Communiqué V 59, companies must gather identification information on their clients before an agreement is signed.

243. According to Article 6 of the RRIL customer identification is made by receiving legible photocopies of originals or certified copies of the documents indicated below or by writing down the information about the identity on the back of the documents related to the transactions. During the identification process, the address declared by the natural person who carries out the transaction should also be registered. Documents to be used in identification are:

- For natural persons who are Turkish citizens: ID-card, driving license or passport.
- For natural persons who are the citizens of foreign countries: passport issued by his/her country or residence permit.
- For legal persons registered in Trade Registry: a copy of the registration document and the certificate authorising the person to represent the legal person and the authorised signature document.
- For foundations: documents certifying the registration to the General Directorate of Foundations.
- For associations: documents verifying that they are registered in the association registry kept by the security directorates of the provinces.
- For organisations that are not corporate bodies: documents certifying authorisation to manage them.

244. The preceding measures would seem to cover part of the customer due diligence requirements called for; however, the regulation is silent regarding the separate issue of verification of the identity. While there is an implicit verification requirement called for in Article 6 of the RRIL where it states that all natural persons must present a national ID card or passport, this requirement only minimally complies with the Basel standards on customer verification, as described in Basel Committee on Banking Supervision’s February 2003 *General Guide to Account Opening and Customer Identification*. While obliged parties may verify national ID card information by checking the

VEDOP and *Merkezi Nüfus İdaresi Sistemi* (MERNIS) government databases, there is no requirement to do so. Turkish law does also not explicitly call for any risk assessment to be done on the extent to which an obliged party should further verify customer identification. For legal persons, including associations and foundations, there is no verification requirement. Furthermore, there is not a clear requirement in the law or regulation to verify that the person acting on behalf of another (natural or legal) person is authorised to do so, nor is there a clear requirement for identification of the ultimate beneficial owner in law or regulation.

245. Turkish authorities indicated that there were a number of measures to support this regulation in non-mandatory guidance issued by the Turkish Banking Association (general principles of the customer acceptance policy). “In order to establish a bank-customer relationship it is important to have sufficient information on the categories below. It is recommended that this information be compared with official records.

- Determination of the customer’s real identity and address.
- Coherency of the customer’s documents and information.
- The reason of the customer’s preference of the bank and the purpose of opening an account.
- Profession, main revenue-raising activities, and professional principles of the customer.
- Profile and capacity of the customer’s transactions.
- Suppliers and buyers of the customer.
- Location of customer business office and activity.”

246. Neither the previous provisions (in the PML) nor those in the new AML Law 5549 require customer due diligence (CDD) beyond customer identification and verification of the identification documents provided. Many banks have voluntarily implemented a broad range of CDD procedures as outlined in the non-binding *TBA Guideline*, as there is a strong culture of compliance by Turkish banks with guidance from the TBA. However this does not fulfil the requirements of the Recommendation. The new law provides a legal basis for customer identification and verification of identification documents, but it is too early to determine any changes in obliged parties’ CDD activities which may result.

247. In accordance with Law 4358 on *Generalising Usage of Tax Identification Number*, public administrations and establishments and the other natural and legal persons are obliged to determine the tax identification numbers of natural and legal persons which are party to transactions and must indicate the tax identification number in documents, accounts and records relating to these transactions. The tax identification number must be obtained before the completion of the transactions. The determination and usage of tax identification number is regulated by *General Communiqués I and II on Tax Identity Number* issued by the Ministry of Finance. According to Communiqué II, obliged parties must determine tax identification number, identity, address and other information and use this number in documents, accounts and records. According to the same Communiqué, tax identification numbers must be obtained before making transactions in banks and capital markets, money lenders, bureaux de change, postal services, financial leasing and insurance companies. Banks are also obliged to determine the tax identification number of remitters before making a domestic or international remittance exceeding TRY 19,107 or equivalent<sup>27</sup>.

248. Obligated parties have the right to request tax identification numbers from the VEDOP database and information regarding identities from MERNIS database for verifying identification. In addition, in practice, if there is a suspicion about the identity of the customer, financial institutions can request another identity document.

249. The Turkish system does not require identification of the beneficial owner, only identification of the person who carries out a transaction and the person on the behalf of or account of whom the

<sup>27</sup> Approximately USD 13,090 using currency conversion rates applicable as at 20 October 2006.

transactions are conducted (Article 3 of the new AML Law 5549). The Turkish authorities consider that the identification of the person ‘on account of whom’ a transaction is carried out covers the beneficial owner, though it has not yet been fully implemented as the regulation supporting this law has yet to be enacted. The evaluation team is not convinced by this explanation, as it only requires identification of the natural or legal person who is the account holder. The identification requirement in such instances involves the obliged party obtaining the Trade Registry certificate for any legal person which is an account holder or is operating the account but it does not involve gathering information on those who own or control the legal person, other than what is described in the Trade Registry certificate<sup>28</sup>. Thus, in the case of legal persons or arrangement where there is a cascade of ownership or control by other legal persons or arrangements, Turkish AML/CFT requirements do not result in identification of the ultimate beneficial owner, nor do they result in understanding the ownership and control of the legal person. Besides, obliged parties are not required to determine actively whether their customer is acting on behalf of another natural person. Rather, Article 15 of the new AML Law 5549 places the burden on customers to declare whether they are acting on behalf of or on account of another person. Obligated parties have only to verify if the person acting on the behalf of a legal person registered in the Trade Registry is so authorised (Article 6 of the RRIL).

250. In the event that the transactions are carried out on behalf of another natural person, legal person or an establishment which does not have legal personality, those on behalf of whom the transactions are carried out are also to be identified. Section 5 *Customer Due Diligence* of the *TBA Guideline* (non-mandatory guidance) stresses that banks should verify that the person who purports to act in the name of the customer is in fact so authorised, should determine his/her identity, and should monitor whether the accounts are actually used by the person in whose name the account has been opened.

251. According to Article 6 of the RRIL and MASAK General Communiqué 4, a copy of the registration document of trade registry and the certificate authorising the person to represent the legal person along with authorised signatures are required in customer identification of legal persons before any transaction can be conducted. Where transactions are conducted for associations and foundations, the RRIL does not require presentation of a certificate authorising the person to represent the association or foundation, just the association’s / foundation’s registration certificate. Such a requirement does exist in the MASAK General Communiqué, but as this does not constitute a law or regulation, it is not sufficient for this Recommendation. Also according to Article 6, the natural person who carries out transactions on behalf of legal persons, associations, foundations and establishments which are not legal persons must also be identified. The Trade Registry Gazette publishes names of persons authorised to transact on behalf of companies. Identification of the person who transacts on behalf of a legal person is made by:

- If they are so named in the Trade Registry Gazette: Obtaining their identification information.
- If they are not named in the Trade Registry Gazette: Obtaining their identification information and a legible photocopy of the original or the notarised copy of the proxy document.

252. For a legal person, a copy of the registration documents is required for customer identification. The registration documents are the Trade Registry Gazette, Trade Registry certificate, a certificate of authority and the articles of association. These documents contain detailed information on the legal person such as the founders of the legal person, partners, address of founders and business, registration date, range of activities and representatives (directors).

253. The *TBA Guideline* (again, non-mandatory guidance) recommends that customer identification and recording of addresses should comprise:

- Verification of the customer’s legal identity and structure, name or title, address, managers, company documents regarding the definition of authority and other related conditions binding

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<sup>28</sup> These certificates contain the names of the founders of the legal person, partners, address of founders and business, registration date, range of activities and representatives (directors).

the legal person through comparing such information with official records and with the information received from the customer.

- Verification that the person purporting to act in the name of the customer is authorised, along with determination of his/her identity.
- Carrying out the customer identification procedures in compliance with the documents and obligations defined under laws.

254. Obligated parties must monitor the business relationships with their customers in the framework of the principles regarding suspicious transactions (Articles 12, 13 and 14 of the RRIL). According to Article 16 of the RRIL, obliged parties must employ inspectors to examine customers' transactions for criminal activity. Consequently, banks and participation banks continuously monitor the business relationships as part of their internal control procedures. Further, according to the STR types provided in MASAK *General Communiqué 2*, obliged parties must consider submitting an STR when information provided by the customer on its financial situation is misleading or when the transaction is not compliant with the purpose declared. Twenty suspicious transaction types have been set forth as guidance for the obliged parties by MASAK. In order to be able to identify activity of the kind described in STR types 3, 4, 7, 10, 11, 12, 16 and 17, obliged parties need to conduct ongoing due diligence. This partly covers the requirement to know the purpose and intended nature of the business relationship; however, it is not sufficient to meet the ongoing customer due diligence requirements that should have a more generalised applicability (i.e., applicable to all customers and not only those for whom suspicious transaction reports are submitted).

255. Capital market intermediary institutions and portfolio management companies pay attention to their customers and monitor the business relationships in accordance with Article 12 of CMB Communiqué V 46 and Article 15 of CMB Communiqué V 59. Intermediary institutions and portfolio management companies must prepare standard forms, update the information and maintain these forms in order to have necessary information about the risk-return preferences, investment instruments and the financial capacity of clients. According to Article 4 of CMB Communiqué V 6, the intermediary institutions are obliged to keep all kinds of correspondence, contracts, commitments, guarantees, documents such as other promissory notes and court announcements that were received or made due to capital market activities, and any customer identification documents.

256. Section 5 'Customer Due Diligence' of the *TBA Guideline* (non-mandatory guidance) recommends that customer acceptance policies include the provision for enhanced due diligence on customer identification, recording of address and determination of other legal and personal information and documents based on the type of customer and the types of banking services to be provided. The Guideline outlines natural and legal persons and risky banking products requiring enhanced diligence during acceptance. These are correspondent banking, resident or associated customer transactions in risky geographical territories, sensitive business sectors in ML, cash transactions, electronic transfers, accepting the personal checks drawn on foreign banks for collection, internet, call centre and ATM transactions, foundations and societies (charity organisations based on donations and grants).

257. Turkish legislation does not allow for simplified and reduced CDD Measures where the AML/CFT risk is low or where customers are resident in other countries, though the July 2006 MASAK *Suspicious Transactions Guideline* (which is non-mandatory guidance), does note that this is possible. There is a customer identification exemption in Article 5 of the RRIL applicable where the customer is a Turkish public administration, state economic enterprise, a quasi-public institution, a bank or a participation bank established in Turkey. Where these organisations are carrying out transactions between themselves and on their own behalf customer identification is not required. In practice, this exemption is absolute, and even where an STR is submitted, financial institutions do not identify these customers. As this is an exemption from customer identification, it cannot be considered to be a form of reduced or simplified CDD.

258. There is no specific provision requiring obliged parties in Turkey to terminate or suspend transactions where customer identification, or other customer due diligence procedures, determines there is a risk. This decision belongs to the financial institution. Financial institutions advised that their IT systems do not allow for account opening or certain types of transactions to occur until identification information is entered into the system.

259. Accounts in the capital markets are rendered inactive if identity information is not entered into the system within 7 days (CMB Communiqué V 46) and new transactions will not then be allowed by the system for Turkish natural and legal persons.

260. As stated in section IV of *Communiqué Regarding Tax Identification Number II* issued by the Ministry of Finance, in cases where there is any suspicion or suspicious situation regarding the presented tax identification number, banks and other financial institutions are required to complete a tax identification number reporting form, send it to the authorised tax administration and carry out processing according to the tax identification number they then receive from the tax administration.

261. The first suspicious transaction type outlined in the MASAK Guideline is “In the case that there is an attitude showing unwillingness in giving information that is required for everyone normally while a transaction is carried out; in the case that difficulties to acquire information of identity are met with; in the case that insufficient or false information is given; in the case that documents which are suspected of being counterfeit are given; in the case that misleading information concerning financial situation is declared; in the case that the transaction is not in compliance with the purpose declared”. Obligated parties make customer identification whenever submitting an STR under Article 12 of the RRIL though this is not expressly required in the STR reporting requirement in the new AML Law 5549. It is unclear whether this customer identification element of the STR provision in the RRIL still stands now that a new STR reporting provision has been implemented in the new AML Law 5549.

262. According to Article 6 of the RRIL, whenever a transaction is made, after a customer has been identified, the information on the customer's identification Card must be obtained and compared with the information previously recorded by the financial institution. If there has been any change in the identity information, the obliged parties' records are updated. There are no verification requirements relating to existing customers, and other than the July 2006 MASAK *Suspicious Transactions Guideline*, no official guidance on applying CDD on a risk sensitive basis for existing customers.

### ***Recommendation 6***

263. Turkey does not have any statutory or regulatory measures to address requirements under Recommendation 6. Under the *TBA Guideline* (non-mandatory guidance), banks are urged to implement the following measures regarding Politically Exposed Persons (PEPs):

- Appropriate risk management systems to determine whether a customer is a PEP.
- Work flows which require the authorisation of a top executive in order to initiate a transaction with such customers.
- Required measures to determine the sources of the funds and material assets.
- A system for constant and complete supervision.

264. Turkey signed the 2003 *UN Convention against Corruption* on 10 December 2003 and ratified it on 18 May 2006.

### ***Recommendation 7***

265. Turkey does not address correspondent banking in law or regulation. In relation to correspondent banking, the *TBA Guideline* notes that in addition to ascertaining whether the institution has in the past been subject to any investigation regarding ML or TF, a bank which is considering establishing a correspondent relationship with a counterpart should:

- Obtain complete information about the subject of activity, reputation and sufficiency of the audits carried out by the correspondent financial institution.
- Assess the correspondent financial institution's ML and TF controls.
- Obtain approval from the top manager of the correspondent financial institution, and document the obligations of each organisation.
- Obtain a guarantee that the counterpart institutions conducts customer identification, that attention is paid to customers who have direct access to the accounts of the correspondent bank and that customer identification information can be submitted to the counterpart institution upon request.

266. For this purpose, banks are expected to apply specific customer acceptance rules including, but not limited to, the requirement that financial institutions applying to open correspondent accounts complete a survey form containing the information listed above, and implement specific work flows approved by their senior executive.

### ***Recommendation 8***

267. Article 76 of *Banking Law 5411* and CMB Communiqué V 46 include provisions on threats posed by new technologies. Banks are not permitted to open deposit, participation fund, credit or other accounts, sign contracts, provide remittance and foreign exchange services and other banking and financial services for clients that do not document their identities and tax numbers. Thus even where customers conduct transactions via telephone and internet banking, financial institutions have to have opened the account and identified the customers in advance of such transactions. Account opening only occurs in person.

268. Similarly, in accordance with Article 49 of CMB Communiqué V 46, brokerage houses may only accept orders from their customers via electronic media in order to transmit to the exchange after they have signed a contract with these customers and opened an account. These agreements are made face-to-face.

269. The *TBA Guideline* states that transactions using the Internet, call centres and ATMs which do not require the customers to face the bank personnel should be monitored carefully by the officers in charge of accepting the customers and by internal audit departments. Conformity of the transactions of the customers to the issues included in the information and documents submitted by them during the opening of their accounts should be monitored, and the flow of their transactions should be reviewed periodically in order to disclose suspicious transactions. The *TBA Guideline* also notes that it is important for banks to maintain control and safety of the transactions carried out through these channels, and that there should be transaction limits and hours and password applications to prevent the fraud attempts and the laundering of crime revenues.

270. In cases where the customer avoids face-to-face contact with the officers of the bank branch, rejects appointment requests, follows his business activities via different persons, always makes his transactions through ATMs, deposits money always through ATMs consecutively during a certain period or he draws cash from ATMs at the upper limit, though there is a bank branch in that region, the *TBA Guideline* notes this is a potential terrorist financing risk and advises banks to report this to competent authorities.

### **3.2.2 Recommendations and Comments**

#### ***Recommendation 5***

271. There is no explicit prohibition on anonymous accounts in sectors other than banking and capital markets, although the tax legislation may essentially achieve the same result. It is

recommended that the laws relating to other obliged parties be updated to specifically prohibit anonymous accounts.

272. The current law requires customer identification explicitly, however it only has limited coverage of verification for natural persons and no verification requirements for legal persons. Thus, financial regulators only examine whether records on customer ID were kept and it is unclear how regulators will audit financial institution compliance on customer verification. It is recommended that Turkey issue regulations under the new AML Law 5549 to expand the scope of verification, explicitly require obliged parties to obtain information on the purpose and intended nature of the business relationship, and to require obliged parties to conduct ongoing due diligence and scrutiny of transactions with regard to the obliged parties' knowledge of the customer. They should be adapted to apply not only to single transactions but to several transactions that appear to be linked in order to comply with the specific provisions of the SR.VII and its interpretative note. The threshold for identification (TRY 12,000) should be removed and obliged parties should be required to keep the documents, data or information collected under the identification process up-to-date and relevant.

273. There are no explicit requirements to conduct ongoing customer due diligence. There is no requirement in Turkish law to identify if a natural person is acting on behalf of a legal person. Where it is understood that a natural person is acting on behalf of a legal person, the Turkish system does not require identification of the beneficial owner, only identification of the person who carries out the transaction on the behalf of another. In the case of a legal person or arrangement where there is a cascade of legal persons or arrangements, Turkish laws do not result in identification of the ultimate beneficial owner or understanding the ownership and control of the legal person. It is recommended therefore that the regulation to be promulgated in relation to the new AML Law 5549 clearly require obliged parties to take measures to understand the ownership and control and determine who the natural person(s) are who ultimately own and control the legal person or arrangement. Further, this regulation should require obliged parties to keep records on whether transactions are for the customer or on behalf of another. In addition, the first STR type should be extended to cover incomplete CDD where a person, who is not a client, refused to provide information.

274. Turkish laws do not deal with issues of enhanced due diligence, and the exemption of certain organisations from any CDD measures is inconsistent with the Recommendation's allowances for simplified due diligence of low risk customers. There are also no requirements on obliged parties relating to PEPs or correspondent banking. The new AML Law 5549 does not include a risk-based approach and does not allow for enhanced due diligence. It does not resolve deficiencies in Turkey's system relating to PEPs, cross-border correspondent banking relationships, including payable through accounts, non face-to-face transactions, introductions by third persons and complex/unusual large transactions. It is recommended that Turkey implement legislation to deal with these issues. Rules should also be adopted governing the CDD for existing customers regarding the risk they represent.

275. It is recommended that Turkey modify its CDD exemption relating to transactions with Turkish public administration, state economic enterprise or a quasi public institution or a bank or participation bank to specify that the exemption is only in relation to identification and verification of the shareholders in the institution.

### ***Recommendation 6***

276. There are no requirements in Turkish law in relation to PEPs. The *TBA Guideline* issued in September 2005, is non-binding and unenforceable, but does provide for procedures regarding PEPs. This guideline is only issued for banks, many of which have in fact implemented basic policies in relation to PEPs. It is strongly recommended that Turkey implement legislation in relation to the procedures to be undertaken by obliged parties in relation to PEPs.

**Recommendation 7**

277. Turkey has not implemented Recommendation 7. Again, the TBA has issued guidance on this issue, but that guidance is unenforceable and it is only issued to banks. While TBA guidance is implemented in fact by many banks in Turkey it does not deal with payable through accounts or the share of responsibilities between the institutions involved in the transaction are dealt. In practice, the Turkish authorities and representatives of the private sector indicated that Turkish banks have no correspondent banking relationship with foreign banks, nor payable through accounts relationships. It is strongly recommended that Turkey implement Recommendation 7.

**Recommendation 8**

278. Turkish legislation and regulations do not require obliged parties to have policies to prevent misuse of technologies developments for ML or TF. CMB Communiqué V 46 and the *TBA Guideline* do not mention the need for policies or equivalent measures to prevent the misuse of technological developments, but deal only with monitoring and safety of these transactions. While Turkish authorities interpret the *Banking Law* provisions which require customer identification documents as thus requiring that account opening occur in person, there is no provision which makes the presence of the client for account opening mandatory. Similarly, there is no provision prohibiting the opening of an account in a non-face to face manner. Thus, it is recommended that Turkey amend its legislation to implement Recommendation 8, particularly requiring policies to prevent misuse of technology for ML or TF and determining which financial acts may occur in other than a face-to-face transaction.

**3.2.3 Compliance with Recommendations 5 to 8**

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.5	NC	<ul style="list-style-type: none"> <li>• The only explicit CDD requirement is customer identification. It is not specified whether identification must be conducted for linked transactions below the TRY 12,000 threshold.</li> <li>• Customer verification of natural persons only partially complies with international standards. There are no verification requirements for legal persons, associations, and foundations.</li> <li>• Documents authorising a natural person to conduct transactions on behalf of a legal person are required as part of customer identification in accordance with primary or secondary law for legal persons registered in Trade Registry, but not for foundations or associations.</li> <li>• There is only a very limited provision, which is not yet implemented in supporting regulation, requiring the identification of the beneficial owner, and financial institutions are not required to take reasonable steps to understand the layers of ownership and control of legal persons which are their customers.</li> <li>• Measures for collection of information on the purpose and nature of the relationship for legal persons are only contained in unenforceable guidelines. There is no provision applicable for insurance.</li> <li>• Measures for enhanced CDD for sensitive countries, sensitive business and higher risk customers, are only contained in non-mandatory and unenforceable guidelines and this is largely undefined.</li> <li>• There are no clear CDD requirements for the financial sector other than those for banks.</li> <li>• The exemption of requirements for identification for transactions carried out with central and local public administrations, state economic enterprises, quasi public institutions, banks and participation banks are overly broad.</li> <li>• There are no clear requirements to conduct ongoing CDD.</li> </ul>
R.6	NC	<ul style="list-style-type: none"> <li>• Turkey has not implemented AML/CFT measures concerning establishment of customer relationships with PEPs.</li> </ul>
R.7	NC	<ul style="list-style-type: none"> <li>• Turkey has not implemented AML/CFT measures concerning establishment of cross-border correspondent banking relationships.</li> </ul>
R.8	PC	<ul style="list-style-type: none"> <li>• Turkey has not implemented adequate AML/CFT measures concerning risks in technology or the establishment of non face-to-face business transactions (in the latter category, other than for banks and brokers).</li> </ul>

### 3.3 Third parties and introduced business (R.9)

#### 3.3.1 Description and Analysis

279. The issue of reliance on third parties is not addressed in Turkish legislation. Article 12 of CMB Communiqué V 46 states that brokerage houses must request from foreign banks and brokerage firms a written undertaking that they would provide identification details of the customers on behalf of whom the transaction is to be made, before getting their buy and/or sell orders. However, even this does not seem to meet all of the R. 9 requirements. There is no other requirement nor practices of the securities companies concerning other CDD measures, the time limit to provide the information on the identification of the customer, the quality of the third party, the ultimate responsibility for identify and verify the identity of the customer.

#### 3.3.2 Recommendations and Comments

280. There is no law, regulation or other guidance outside of the securities' sector on the use third parties to perform CDD under Turkish law. However, since there is no apparent prohibition on the use of the use of third parties and financial institutions appear to use them in practice, it is recommended that Turkey implement Recommendation 9 in its entirety.

281. Turkey should determine which financial institutions are allowed to rely on third parties and should regulate the relation between the financial institution and the third party. The written agreement should concern not only identification but all CDD measures and the time limit to provide information. The implementation measure should determinate equivalent countries and should differentiate between regulated and supervised third parties and others. The issue of the ultimate responsibility of identification and verification of the identity of the customer should be addressed.

#### 3.3.3 Compliance with Recommendation 9

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.9	NC	<ul style="list-style-type: none"> <li>There is no law, regulation or enforceable guidance, outside of the securities' sector, on the use of third parties to perform CDD under Turkish law.</li> </ul>

### 3.4 Financial institution secrecy or confidentiality (R.4)

#### 3.4.1 Description and Analysis

282. Article 239 of the TCL provides that “The person who gives or discloses the information and documents being privy to trade secrets, banking secrets or customer secrets because of his/her position or duty, profession or art to the unauthorised persons shall be sentenced to imprisonment from one year to three years and up to five thousands day judicial fine”. This information can however be given to persons and organisations authorised by law.

283. In accordance with Article 14 of *Decree Law 90 on Lending Affairs*, natural and legal persons (money lenders, financing companies and factoring companies in accordance with Article 2) are obliged to give all kinds of information, present books and documents and keep them ready for investigations. Article 16 of Communiqué 2006-32/32 regarding Decree 32 *Regarding Protection of the Value of Turkish Currency* states that the activities and the transactions of exchange offices (including bureaux de change) can be inspected by the Auditors and Exchange Directorates authorised to make investigation and interrogation pursuant to Law No 1567, and in the case of bureaux de change, also by the Central Bank. Bureaux de change are obliged to provide information and to present the documents and the books requested by the supervisory authorities.

284. In accordance with Article 5 of the PML and Article 7 of the RRIL, public administrations, natural and legal persons are obligated to submit information and documents requested by MASAK and the investigators and to provide them with adequate support. Natural and legal persons from whom information and documents are requested by MASAK and the other authorities may not refrain from submitting information and documents by claiming privacy concerns, provided that the provisions related to the right of defence are reserved. In accordance with Article 21 of the RRIL, investigators assigned by MASAK have powers to carry out investigation and examination of ML crimes. In addition to their powers under their own special laws, investigators make use of the powers under Article 5 of the PML to conduct assigned investigations.

285. Under sub-paragraphs 2 and 10 of Article 3 of the PML, MASAK's duties and powers specifically include domestic and international cooperation. MASAK provides counterpart FIUs with information and documents obtained from other domestic institutions, natural and legal persons in accordance with Article 5 of the PML, on the condition that the information is treated as confidential and is used only for intelligence purposes.

286. According to Article 95 of *Banking Law 5411* the BRSA is authorised to request any information, including that classified as confidential, which it deems relevant to the provisions of the Banking Law from banks and their subsidiaries, from the undertakings where they hold qualified shares, from the undertakings they control jointly, their branches and representative offices, their outsourcing institutions and from other natural and legal persons. It may also review their ledgers, records and documents and the parties from whom information is requested is obliged to provide the information requested, have records and documents ready for examination and make their information systems available to the BRSA staff during on-site supervision. Public institutions and agencies, the CBRT and similar institutions must promptly provide the BRSA with any information, including confidential information, which may be requested by the BRSA in connection with its onsite supervision duties

287. The BRSA may sign memoranda of understanding with counterpart bodies of foreign countries and fulfil information requests and requests to audit Turkish branches of their institutions within the framework of the principle of reciprocity (Article 93 of *Banking Law 5411*).

288. The provisions of the CML and other laws related to the capital market are supervised and enforced by the CMB (Article 45 of the CML 2499). Natural and legal persons from which information is requested are not able to refuse to provide information by claiming confidentiality and secrecy provisions. According to Article 22 of the CML, collaborating in any way and exchanging information regarding the capital market with equivalent foreign authorities is allowed.

289. Besides the regulations stated, Article 5 of the *Tax Procedure Law 213* explicitly states that requested information and documents can be given regarding the legal and administrative inquiries carried out by public officials.

290. According to Article 98 of *Banking Law 5411*, the BRSA, the Undersecretariat of Treasury, the Undersecretariat of SPO, SDIF and CBRT should exchange views regarding the implementation of monetary, credit and banking policies and the BRSA, the SDIF and the CBRT are to have access to each others' databases within the framework of the principles of confidentiality, in order to fulfil their duties under the Banking Law.

#### **3.4.2 Recommendations and Comments**

291. Competent authorities have the power to obtain documents and information without limitation due to secrecy and are able to share this information. It is recommended that Turkey provide for sharing information between financial institutions in relation to correspondent banking, when financial institutions rely on introductions of a third party or in relation to identification of customers involved in cross-border or international wire transfers.

### 3.4.3 Compliance with Recommendation 4

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.4	LC	<ul style="list-style-type: none"> <li>Financial institutions are not authorised to share information in the implementation of Recommendations 7 and 9 and SR.VII.</li> </ul>

## 3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

### 3.5.1 Description and Analysis

292. According to Law 3167 on the *Arrangement of Payments by Cheques and Protection of Cheque Holders*, all documents related to financial transactions must be kept for five years following completion of the transaction by banks and participation banks. Original letters received and activity-related documents, or proper copies where the originals are not available, as well as photocopies of letters written, must be kept for a period of 10 years (Article 42 of *Banking Law 5411*). These documents may be kept in the form of micro films or in electronic or magnetic environments.

293. In accordance with Article 8 of the new AML Law 5549, obliged parties and their branch offices, agents, representatives, commercial deputies and their units in Turkey must keep documents for eight years from their drawn up date, must keep books and records for eight years from the last record date, and must keep identification documents for eight years from the last transaction date. Turkish authorities interpret ‘last record date’ as encompassing account closure date.

294. Intermediary institutions are required to register accounting records related with securities transactions in one day (Article 3 of CMB Communiqué V 6). In Article 4, the intermediary institutions are obliged to keep all kinds of correspondence, contracts, commitments, guarantees, and documents such promissory notes and court announcements that were received or made due to the activities of capital market, and the documents received or arranged as part of identification procedures. They must also notify changes in address information of account holder customers to the ISE Settlement and Custody Bank Inc. within two days. When required, identity and address information of customers must be submitted to the Board and those charged by the Board.

295. Under Article 27 of Communiqué V 59, portfolio management companies must keep books and registrations and first class merchants have to keep, arrange the documents and comply with the regulations of Board on registration, documents and transactions of accountancy related with its operating, within the framework of provisions of legislation on TCC and the *Tax Procedural Code*. Although accounts are kept at these companies’ headquarters, they must keep and make available the books and registrations and information on movements of cash and security at the relevant branch office. The company has to save documents it has received such as letters, writing, telegraphs, schedules and bills, and copies of the letters, writing and telegraphs it has written, and the contracts, commitment, bailment, bills of guarantee and court notices in a systematic and classified way. For the retention period of these documents, paragraph one of Article 68 of TCC applies. It is obligatory to keep all records of disputed transactions in their original form until the dispute is settled.

296. In accordance with Article 253 of *Tax Procedure Law 213*, those who are obliged to keep books must save the books they kept and all documents for five years from the beginning of the calendar year following the related year.

297. Records of obliged parties concerning transactions are in the character of available evidence in the inquiries of criminal acts. According to the article 66 of the TCC merchants must keep books as required by the character and the importance of the enterprise, with a view to establish the economic and financial situation of the enterprise, receivables and payables of enterprise and the results obtained in the course of each year. In addition, all merchants must keep, in the form of files, the documents and papers such as letters, notes, telegrams, invoices, statements, bills received in connection with

affairs concerning the enterprise, vouchers indicating payments, copies of letters, notes and telegraph sent, contracts and instruments such as letters of engagement and of guarantee and other letter of guarantee and decision of court. According to Article 96 of *Banking Law* 5411, institutions and their shareholders, subsidiaries, undertakings where they hold qualified shares, undertakings they jointly control, branches and representative offices, and independent audit, valuation and outsourcing institutions, must provide the BRSA with any information and document, including those classified as confidential, to be requested by the BRSA in connection with the implementation of the *Banking Law*.

298. Public entities and natural and legal persons must continuously, regularly and in a timely manner provide the BRSA with any information, documents or books, including those considered confidential, requested by the BRSA and must submit the books and documents requested, keep their ledgers, records and documents ready for examination, make their information systems available to BRSA personnel for audit purposes, ensure the security of their data, and submit all the ledgers, records and statements that they have to keep as well as the micro chips, micro film, magnetic tapes, compact disks and other records for examination.

299. Regardless of whether the transaction was completed, the “Customer Order Form” and the documents related with the orders received in the electronic environment are kept for 5 years following the date of arrangement. Tape records related with the oral orders are kept to the end of the year which comes after the date the order was received. It is obligatory that any conflicting records be kept during this period without amendment until the conflict in question is concluded.

300. Records of the Turkish Interbank Clearing-Electronic Funds Transfer System (TIC-RTGS) are kept for a 10 year period as required by legislation. The data can be provided on demand to relevant institutions or authorities.

301. Where not otherwise specified in laws, under Article 68 of the TCC, those persons, and their successors, who are obliged to keep books for a certain period must apply a time period commencing from the date of the last record made and those persons, and their successors, who are obliged to other accounts and papers for a certain period must do so for 10 years from the date written on them.

302. In all documents and records that are to be kept, it is obligatory to use non-erasable writing tools, to not to erase or scrape on them, to not amend the document in a way that hides the original, and to not have any space lines.

303. Article 14 of the new AML Law 5549 introduced a judicial penalty applicable for persons who act contrary to Article 8 of that law, which specifies record retention requirements for obliged parties. Obligated parties which do not retain, and submit to MASAK when requested, all documents, books and records, including identification documents, for eight years from the drawn up date, last record date or last transaction date may be sentenced to imprisonment from one year to three years, and a judicial fine of up to five thousand days (ie up to TRY 500,000 or USD 340,000)<sup>29</sup>. Those who do not comply with the requirement of determining the tax identification number and indicating it on documents, accounts and records set forth by the Ministry of Finance can be punished with special illegality in accordance with Article 353(7) of *Tax Procedure Law* 213 and may be sentenced to imprisonment from three months to one year. Those who conceal the tax identification number or misrepresent willingly or present false or misleading documents contrary to the *Tax Procedure Law* may be sentenced to imprisonment from three to 10 months.

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<sup>29</sup> Using currency conversion rates applicable at 20 October 2006.

**Special Recommendation VII****Table 22: Number of International Money Transfers**

YEAR	OVER 50,000 USD	OVER 200,000 USD	OVER 500,000 USD	OVER 1MILLION USD	OVER 5MILLION USD	OVER 10MILLION USD	OVER 20MILLION USD	OVER 50MILLION USD	OVER 100MILLION USD
2001	37,704	13,210	6,916	4,386	1,225	716	500	194	173
2002	43,241	15,673	7,905	4,546	949	369	114	21	1
2003	63,743	25,470	13,368	7,765	1,315	470	91	28	-
2004	89,757	38,365	21,213	13,069	2,727	1,116	202	28	11
2005	110,770	51,944	32,113	20,678	4,585	1,950	472	97	23
2006	19,741	10,001	6,596	4,534	1,048	494	222	33	16

As of 31 May 2006

304. In accordance with Article 8 of the new AML Law 5549 and Article 4 of the RRIL, obliged parties identify their customers and those who carry out transactions on behalf of the customers before they carry out transactions, and they keep related documents for eight years starting following the last transaction date for each transaction they are involved in either as one of the parties or as an intermediary. This applies to all remittance transactions that exceed TRY 12,000<sup>30</sup>. According to Article 76 of *Banking Law* 5411, banks may not open deposit, participation fund, credit or other accounts, sign contracts, provide remittance and foreign exchange services and other banking and financial services for clients that do not document their identities and tax numbers. Again in accordance with Law 4358 and *Tax Identification Number General Communiqué 2* Regarding the Implementation of Law 4358, the tax identification numbers should be recorded for transactions carried out by banks and other finance institutions.

305. The Turkish domestic payment system - TIC-RTGS - is a real-time gross settlement system owned and operated by the CBRT in which transfer instructions in TRY are executed and settled individually on a transaction by transaction basis in the participants' accounts at the CBRT. There are currently around 48 direct participants in TIC-RTGS (including four participation banks). When using the TIC-RTGS it is compulsory for the financial institutions to include the names of both the originator and beneficiary and the account number of the beneficiary within the transaction record, regardless of the amount of transaction. It is not required to include the originator's account number in the TIC-RTGS records. The originator's tax or national identity number, address and telephone number are optional fields. In the TIC-RTGS system, low-value payments are grouped at the sending banks and submitted to the centre as a single bulk message. The bulking parameters (like amount and message type) are set by the CBRT. Each payment within a bulk message has a unique transaction reference number (see TIC-RTGS & ESTS User Guide, Section 3.2 and Appendix E) and their details are preserved. No batch transfers are conducted in the TIC-RTGS system.

306. With regard to electronic transfer, Turkey has not implemented specific obligations, however, as contemplated by SR.VII. The *TBA Guideline* (non-mandatory guidance) advises banks to:

- Take measures to include in messages which accompany transfers the full name and address information of the payers in a transfer transaction, and full name and address information and/or account numbers of the payees.
- Subject the transfer messages received to a detailed and scrupulous examination for the above stated information of the payer and payee of the transfer transaction with enhanced diligence to the missing information under suspicious transactions, and to ensure the related departments record and maintain the identity and address information of the persons and entities receiving payments as payees of these transfers.
- To subject the bank, payer and payee information to a detailed examination in case of a suspicion relating to Treasury bill and Government bond transfers by non-customer third persons to the name of a customer having an investment account at any branch of the bank, or

<sup>30</sup> Approximately USD 8,222 using currency conversation rates applicable at 20 October 2006.

such transfers by a customer to his own investment account at any branch of the bank, through Electronic Securities Transfer system from another bank or brokerage company.

307. Some Turkish banks routinely process SWIFT transfers on behalf of financial institutions of a neighbouring jurisdiction since these institutions do not have a specific national SWIFT code assigned to them and are therefore excluded from using the SWIFT system directly. The SWIFT messages accompanying such transactions are therefore incomplete. In particular, they appear to recipient jurisdictions to have originated in Turkey.

### **3.5.2 Recommendations and Comments**

#### **Recommendation 10**

308. Turkey has a generally strong set of record keeping requirements for financial institutions. While Turkish laws and regulations do not provide indication on the sufficiency of the records in order to rebuild transactions, the records books must be kept and are available to authorities conducting inquiries into criminal activity. According to Article 4 of the RRIL, previously identification data was to be kept for five years starting from the year following the last transaction date<sup>31</sup>. The new law extends the length of record keeping for identification documents (amongst other documents) from five to eight years from the last transaction date.

#### **Special Recommendation VII**

309. Turkey has not implemented Special Recommendation VII. Consequently the general rules have to be applied. For both domestic and cross-border transfers, according to Turkish authorities, the systems require at least the name of the payer, regardless of the amount. The threshold for the verification of the identity of the originator through tax identity numbers is TRY 19,107, or approximately USD 13,000. For domestic transfers, the only mandatory originator information is the name of the originator. The Turkish authorities explained that there is no batch transfer system, but for low-value transfers (the threshold was not provided to the evaluation team), the information on the originators of the transfers is grouped in a bulk message. For international transfers, little information was obtained by the evaluation team. The Turkish authorities have averred that all mandatory areas of the SWIFT forms have to be completed, and there is evidence that Turkish banks will originate SWIFT transfers on behalf of foreign banks that do not have SWIFT codes. It is strongly recommended that Turkey implement Special Recommendation VII.

### **3.5.3 Compliance with Recommendation 10 and Special Recommendation VII**

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.10	C	<ul style="list-style-type: none"> <li>Recommendation 10 is fully observed.</li> </ul>
SR.VII	NC	<ul style="list-style-type: none"> <li>Turkey has not implemented SR.VII.</li> </ul>

<sup>31</sup> Note that it is the broad term of 'içlem' which is being referred to here.

## **Unusual and Suspicious Transactions**

### **3.6 Monitoring of transactions and relationships (R.11 & 21)**

#### **3.6.1 Description and Analysis**

##### ***Recommendation 11***

310. Financial institutions in Turkey are not required to pay special attention to complex, unusual large transactions or unusual patterns of transactions which have no apparent economic or visible lawful purpose. Turkey relies instead on the STR process to identify these types of financial activities. In Communiqué 4, MASAK defines 20 transaction types that are suspicious and should result in STRs being submitted. The list is complemented by an extensive, although not legally binding, list of suspicious transaction types under the *TBA Guidelines*.

311. Some banks in Turkey use unusual and suspicious transaction detection software. These programmes monitor daily and monthly average usage of credit cards and daily and monthly transaction amounts in deposit accounts and they report large variations via electronic messages to the bank's compliance officer. In addition, banks can monitor money transactions over certain amounts by means of their information technology systems. Suspicious transaction types 2, 3, 7, 10, 11 and 16, provided in MASAK General Communiqué 2, relate to complex, unusual large transactions and unusual patterns of transactions which have no apparent or visible economic or lawful purpose. The list is complemented by a more comprehensive list of suspicious transaction types provided for in the *TBA Guideline* and the indicators of suspicious transactions are given in further depth in the MASAK guidance released in July 2006 *Suspicious Transactions Guideline*. These are taken into account by financial institutions which seek to have effective systems in place to detect this activity.

##### ***Recommendation 21***

312. MASAK has had a process in place whereby it notifies regulatory bodies of changes to the FATF list of non-cooperative countries and territories. The regulatory bodies in turn ask financial institutions to pay special attention when they enter into business relationships with persons and institutions resident and located in the countries and territories that do not comply with the FATF Recommendations. To do this, MASAK sends official letters to the BRSA, CMB, Undersecretariat of Treasury, General Directorate of Post and to the TBA, informing them of relevant FATF decisions. It is not clear what process is then followed by the regulatory bodies to communicate with the obliged parties, nor is it clear how financial supervision authorities check for and enforce compliance with this measure.

313. This matter has been specified in suspicious transaction type 2 listed in MASAK General Communiqué 2 which notes that "Transferring large amounts of money from countries or to countries in which there are illegal activities regarding narcotic substances, smuggling or in which there are terrorist organisations and, transferring large amounts of money from or to offshore centres" may be suspicious and obliged parties should consider submitting an STR relating to such transactions.

314. Further, the *TBA Guideline* suggests that banks "pay specific attention and care for their business relations and transactions with citizens, companies, and financial institutions of the countries which do not adopt, or adopt only partly, the FATF Recommendations, and are therefore included to the list of FATF/Non-cooperative Countries. It is also important that if transactions with these countries have no apparent legal and economic purpose, the fundamentals and purposes of such transactions should be investigated and the findings of this investigation should be recorded in order to assist the competent authorities."

### 3.6.2 Recommendations and Comments

#### Recommendation 11

315. Obligated parties are not required to investigate the purpose of complex/unusual large transactions and thus to keep record of the written findings. There is no requirement to establish the purpose and background of unusual transactions or to maintain this information in writing and keep records which will be accessible by authorities. It is strongly recommended that Turkey implement Recommendation 11.

#### Recommendation 21

316. There is no requirement for financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not sufficiently apply the FATF Recommendations. On page 17, the July 2006 MASAK *Suspicious Transactions Guideline* notes that “special attention must be given to the transactions carried out the non cooperative countries, off-shore regions and regions where terrorism activities are intense”. MASAK also sends a letter on this issue to supervisory authorities, though the evaluation team cannot be sure that this is systematically forwarded to financial institutions and there seems to be no monitoring or control on this issue. This letter asks that ‘special attention’ be paid to such transactions but ‘special attention’ is not defined in Turkish laws or regulations and there is no obligation to examine the operations which have no apparent economic purpose. There is no information to hand which suggests Turkey has ever adopted counter-measures. It is strongly recommended that Turkey implement Recommendation 21.

### 3.6.3 Compliance with Recommendations 11 & 21

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.11	NC	<ul style="list-style-type: none"> <li>Recommendation 11 has not been implemented.</li> </ul>
R.21	NC	<ul style="list-style-type: none"> <li>Recommendation 21 has not been implemented.</li> </ul>

## 3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

### 3.7.1 Description and Analysis

#### Recommendation 13 and Special Recommendation IV

317. The obligation to submit STRs is now provided explicitly in Article 4 of the new AML Law 5549, adopted in October 2006. The law additionally reinforces the general obligation to submit information requested by MASAK. Pursuant to Article 27 of that law, underpinning regulations must be issued within six months of passage of the law and during the intervening period the provisions of the RRIL and other regulations remain in force. The definition and reporting procedure of suspicious transaction is provided in Article 4 of the law and in MASAK *General Communiqués* 2, 3 and 4. According to Article 4, if there is any information, suspicion or condition to suspect that property involved in transactions carried out or attempted to be carried out by or through the obliged parties was acquired by illegal ways or used for illegal purposes, the transactions are to be reported to MASAK. The RRIL adds that this should occur after carrying out customer identification. Suspicious transactions according to Article 14 of the RRIL are reported to MASAK within ten days from the date the transaction was conducted. MASAK is authorised to set forth the types of suspicious transactions and has done so in MASAK *General Communiqués* 2 and 4<sup>32</sup>.

<sup>32</sup> See Annex 3 for the text of the MASAK *General Communiqués*.

318. According to Section C of MASAK *General Communiqué 2* on suspicious transaction reporting, when obliged parties encounter a suspicious transaction they complete the STR form by considering the information and the findings acquired through investigating the suspicious transaction as far as possible within their authority and they send it to MASAK. Where the obliged party acquires new information and findings concerning the transaction reported, the reporting form is completed again and sent to MASAK with a statement that it is an annex to the original report.

319. The new AML Law 5549 establishes the authority of MASAK to conduct analysis and preliminary investigations relating to TF. There is not however a direct requirement to report STRs related to TF to the FIU. While this obligation can be inferred to apply to TF involving funds from illegal sources (the text refers to assets “acquired through illegal ways or used for illegal purposes”), this does not clearly cover TF involving assets derived from legal sources. Of particular concern therefore, is the lack of coverage of licit funds used to finance licit activities which are linked to terrorism. In its *General Communiqués*, MASAK requires STRs to be submitted in relation to terrorism and TF, and as at the end of 2005, five such STRs had been submitted. Suspicious transaction types 2 and 20 of MASAK *General Communiqué 2* relate to terrorism and TF. Specifically, suspicious transaction type 20 appears to cover TF in its full meaning: “If it is suspected or there are reasonable grounds to suspect that funds are linked or related to or are to be used for terrorism or terrorist acts.” Even this suspicious transaction type can be seen to be incomplete due to the limited definition of terrorism (see discussion in section 2.2). In any case, as this Communiqué is not law or regulation, its STR reporting obligation for potential cases of TF is not sufficient for this Recommendation.

320. In accordance with the provisions of the RRIL, suspicious transactions are reported regardless of the amount of the transaction, regardless of whether they may involve tax matters and without directly referencing which criminal act they may relate to. However, the MASAK STR forms do seek indication of whether the obliged party believes the suspicious activity may relate to terrorism or terrorist financing.

**Table 23: Suspicious Transaction Reports (STRs)**

SOURCE	17.02.1997 - 31.12.2001	2002	2003	2004	2005	2006 (6 MONTHS)	TOTAL
Banks	265	193	177	288	349	320	1592
Bureaux de change	52	-	-	-	-	-	52
Insurance institutions	1	1	-	-	-	-	2
Brokers	1	-	-	1	1	-	3
Participation banks	-	-	3	1	2	14	20
<b>Total</b>	<b>319</b>	<b>194</b>	<b>180</b>	<b>290</b>	<b>352</b>	<b>334</b>	<b>1669</b>

**Table 24: Reports Made by Public Authorities to MASAK**

PUBLIC AUTHORITIES	17.2.1997 - 31.12.2001	2002	2003	2004	2005	1.1.2006 - 14.9.2006	TOTAL
General Directorate (GD) of Security	90	7	7	2	2	2	110
Undersecretariat of Customs	101	31	46	60	51	25	314
Undersecretariat of Treasury	19	5	3	5	11	5	48
Ministry of Justice	4	1	1	8	5	2	21
Prime Ministry	4	2	-	5	1	1	13
Capital Market Board	8	-	2	5	12	4	31
Undersecretariat of Foreign Trade	12	4	2	1	-	1	20
Gendarmerie	3	2	-	-	-	1	6
Revenue Departments	6	4	1	-	-	-	12
Ministry of Interior	3	1	1	5	6	4	20
Turkish General Staff	1	16	2	-	-	-	19
Ministry of Finance	63	18	20	22	33	21	177
- Directorate of Private Office	7	1	4			2	14
- Revenue Administration	29	12	4	6	18	4	73
- Auditors Board	4	1	2				7

PUBLIC AUTHORITIES	17.2.1997 - 31.12.2001	2002	2003	2004	2005	1.1.2006 - 14.9.2006	TOTAL
- Inspectors Board	11	2	5	5	3		26
- GD of Judicial Affairs and Legal Advisors	7				1		8
- GD of Budget and Financial Audit		1					1
- GD of Personnel			1				1
- Advising Office for Press and Public Relations					2		2
- Directorate of Judicial Affairs of Istanbul	4	1					5
Governor's Offices	-	2	2	3	4	1	12
National Intelligence Agency	2	1	-	-	-	3	6
Municipalities	1	-	-	-	-	-	1
BRSA	3	3	3	4	11	6	30
Ministry of Foreign Affairs	3	5	10	7	17	4	46
Turkish Presidency	-	1	1	-	-	-	2
Directorate Bankruptcy	-	1	-	-	-	-	1
Associations	-	-	1	-	-	3	4
Turkish Grand National Assembly	-	-	1	-	2	-	3
Ministry of Industry and Trade	-	-	-	-	-	1	1
Ministry of Energy and Natural Resources	-	-	-	-	2	-	2
Ministry of Culture and Tourism	-	-	-	-	-	1	1
<b>Total</b>	<b>322</b>	<b>105</b>	<b>99</b>	<b>116</b>	<b>148</b>	<b>70</b>	<b>860</b>

Table 25: Other Reports Filed to MASAK (17.02.1997 - 30.06.2006)

SOURCE	1997 - 2001	2002	2003	2004	2005	2006	TOTAL
Public Prosecutor	403	168	171	218	178	46	1184
Public Institutions	323	105	103	127	157	55	870
Banks	7	4	7	30	18	11	77
Press	13	1	1	4	8	4	31
Natural persons/companies	117	112	94	98	135	155	711
Abroad	19	3	4	6	4	3	39
<b>Total</b>	<b>882</b>	<b>393</b>	<b>380</b>	<b>483</b>	<b>500</b>	<b>274</b>	<b>2912</b>

#### **Recommendation 14**

321. The new AML Law 5549 establishes in Article 10, entitled “Protection of obliged parties”, that natural and legal persons which are fulfilling their legal obligations in accordance with that law can in no way be subject to civil or criminal sanctions. Moreover, where obliged parties report suspicious transactions in good faith, they are protected from criminal liability and civil responsibility in accordance with the Civil Law and the TCL. The provisions in the Civil Law and the TCL were the only protections in place before the enactment of the new AML Law 5549 in October 2006. In accordance with Article 3 of the Civil Law, “Where the Law enables judgment based on good-faith, then good-faith is regarded as the essence of the case.” Article 24 of the TCL provides that those who fulfil a legal obligation can not be punished and responsible for this action. It is not clear whether “directors, officers and employees” are explicitly protected by this measure.

322. A specific safe harbour provision was included in Article 10(2) of the new AML Law 5549, which directly forbids disclosure of information “about the persons reporting suspicious transaction” to any third parties other than courts. In practice, even before enactment of this law, the identities of the persons reporting suspicious transactions were kept secret. For example, the investigators carrying out ML investigations based on STRs are required by official letters of MASAK not to attach copies of STRs to the investigation reports and not to include the information that the investigations are initiated based on STRs.

323. ‘Tipping off’ is explicitly forbidden in Article 4 of the new AML Law 5549 which states; “the obliged parties may not give the information to anybody, including the parties of the transaction, that they report the suspicious transaction to” MASAK. This provision does not apply to information

provided to examiners conducting inspections of the obliged party nor to information provided to courts during legal proceedings. Article 12 of the RRIL also provides that tipping off is not allowed; “Persons, institutions and establishments reporting the suspicious transactions to the Presidency of the Financial Crimes Investigation Board or the employees executing and managing the transaction, as well as their legal representatives, are not allowed to warn their customers.” It should be noted however that in practice some financial institutions automatically suspend transactions that are the subject of an STR. This circumstance could then constitute an indication of an STR to the customer involved in the transaction and may therefore limit the effectiveness of the ‘tipping off’ prohibition.

324. Further, Article 73(3) of *Banking Law 5411* reads: “Banks’ partners, members of board of directors, employees, representatives and officials shall not disclose confidential information relating to any bank or clients thereof which they have received in connection with their positions and duties to any authority other than those which has been expressly authorised by law. This provision shall apply also to the institutions from which banks procure outsourcing as well as the employees of such institutions. This obligation shall continue after leaving office, too.”

### ***Recommendation 19***

325. The new AML Law 5549 (in Article 6) foresees a system whereby obliged parties are required to report transactions exceeding an amount “determined by the Ministry to the Presidency”. This is one of the elements of the new law that is to be implemented within six months of the October 2006 enactment of the law through the issuance of relevant legislation. No further information on this system was available to the evaluation team.

326. As far as other existing systems, Turkish authorities mentioned that in accordance with Articles 3(c) and 4(e) of Decree Law 32 *Regarding the Protection of the Value of Turkish Currency* and within the framework of CBRT directives, banks are obliged to inform the CBRT of transfers abroad exceeding the threshold of USD 50,000 or its equivalent in Turkish Lira or other foreign currencies, excluding payments for import, export, invisible transactions and capital movements, within 30 days from the date of transfer. This information is stored in the database of the CBRT. The data collected in this manner on transaction basis is sent to the Ministry of Finance (MASAK, Revenue Administration) monthly and to the Undersecretariat of Treasury quarterly. CBRT takes measures to protect the data.

### ***Recommendation 25***

327. MASAK issues *General Communiqués* which are other enforceable means. Four such Communiqués have been issued; two in 1997 and two in 2002. Two of these communiqués related to suspicious transaction reporting, one related to customer identification and another related to customer identification, internal controls and training programmes within reporting entities. In addition to these, guidance issued since 2003 importantly includes *A Guidance for Anti-Money Laundering and Liabilities of Banks*, issued by MASAK and the TBA in December 2003, *A Guidance for Importance of Fighting against Laundering Proceeds of Crime and Financing Terrorism and Implementation in Banking System*, issued by the TBA in cooperation with MASAK in September 2005, and, *Suspicious Transactions Guideline*, issued by MASAK in July 2006.

328. Prior to the release of the MASAK *Suspicious Transactions Guideline*, no guidelines were issued to the DNFBP sector. That guidance provides information on ML methods and on liabilities of obliged parties. It also provides indications of suspicious transactions relating to various sectors including for: bureaux de change; money lenders; post offices and cargo companies; and real estate.

329. MASAK does not provide case by case feedback to the obliged party that sends a suspicious transaction report, the recent trends and methods and techniques to launder money observed, but only provide general statistics on the number of STR received, published in the annual report, and the nature of the financial institutions author of the STR.

### 3.7.2 Recommendations and Comments

#### **Recommendation 13**

330. Article 4 of the new AML Law 5549 requires the submission of STRs to MASAK. The law describes suspicious transactions as those relating to funds suspected of having illegal origin or being used for illegal purposes. It establishes the authority of MASAK to conduct analysis and preliminary investigations relating to TF. The RRIL authorises MASAK to set forth the types of the suspicious transactions as a form of guidance to the obliged parties and this is done via the MASAK General Communiqués. There is not however a direct requirement to report STRs related to TF to the FIU. While the STR reporting obligation in Article 4 applies to TF involving funds from illegal sources (the text refers to assets “acquired through illegal ways or used for illegal purposes”), this does not clearly cover TF involving assets derived from legal sources and certainly does not cover licit funds used to finance licit activities which are linked to terrorism. While a MASAK *General Communiqué* dealing with STR reporting does appear to cover TF in its full meaning, this communiqué does not constitute law or regulation.

331. While the obligation to report STRs applies without a threshold, many of the types of STR described in the MASAK *General Communiqués* concern transactions of large amounts. This may in fact result in an implicit threshold being applied in practice in relation to some forms of financial activity. Here, the expression “large amount” seems to be absolute; it is not specify that transactions have to be comparing to them normally realized by one customer. Moreover, using this expression may allow each obliged party determine what a large amount transaction is, and thus there is a risk that they determine too high amount in order to avoid reporting transactions. The statistics provided by the Turkish authorities reveal a very low number of STRs compared to the size of the sector, the number of accounts and transactions. It is possible that the focus on large amounts in the STRs types has contributed to this low level of reporting. It is recommended that the provisions of the new AML Law 5549 be amended to provide a more explicit STR reporting obligation for TF. It is also recommended that, in addition to defining additional STR types and reviewing the necessity of focussing on large value transactions in the STR types, Turkey should focus on a programme to increase the level of reporting by obliged parties.

#### **Recommendation 14**

332. Prior to the enactment of the new law in October 2006 the safe harbour provision was very general and was noted as lacking. The new AML Law 5549 provides in Article 10 that obliged parties who fulfil their liabilities in accordance with the law can not be subject to civil or criminal sanctions. It is unclear if this provision will shield obliged institutions from private civil actions, although Turkish authorities state that the provision would apply to private actions as well. This provision could be interpreted as covering the suspicious transaction reports. It does not explicitly provide protection to the natural persons within obliged parties. It is recommended that the safe harbour provision in the new AML Law 5549 be further elaborated in the regulations to be issued to support that law so as to explicitly provide protection to the natural persons within obliged parties when submitting STRs.

333. As noted above, with regard to ‘tipping off’ the practice of some financial institutions in automatically suspending transactions that are the subject of an STR may constitute an indication of an STR to the customer involved in the transaction. This practice may therefore limit the effectiveness of the ‘tipping off’ prohibition.

334. Article 4 of the new AML Law 5549, where it provides that “the obliged parties” may not tip off others to their STR submission, may be interpreted as not prohibiting tipping off by the natural persons employed within obliged parties. It is recommended that the regulations to be promulgated in support of the new AML Law 5549 specifically address this issue.

**Recommendation 19**

335. Turkey has a system in place for financial institutions to report large international transactions to the CBRT but there is not yet a system for financial institutions to report large domestic transactions. Turkey may want to reconsider the high threshold placed on the transactions reported to the Central Bank and should implement the system for reporting large transactions. As the requirement to report large transactions to MASAK contained in the new AML Law 5549 need to be determined by the Ministry of Finance and implemented through regulation, it is too early to determine the effectiveness of the new requirement.

**Recommendation 25**

336. MASAK and the TBA issue guidance for the obliged parties and the banks respectively. Limited guidance has been provided to the DNFBP sector to date. MASAK does not acknowledge receipt of STRs and the only feedback on STRs it provides to reporting entities is collated information contained in MASAK's annual activity reports. These parties would benefit from an enhanced system of more regular feedback incorporating additional information such as case studies and typologies. It is recommended that MASAK provide greater feedback to the obliged entities.

**Special Recommendation IV**

337. Financial institutions are required to report suspicious transaction, realised or attempted, where there is any information, suspicion or reasonable ground to suspect that the asset stemmed from illegal activities or is being used for illegal purposes (Article 4 of the new AML Law 5549). This does not explicitly cover TF. The duties and powers of MASAK, as amended by Article 19 of the new AML Law, do provide for MASAK's role in receiving information and STRs, analysing and providing cases to the public prosecutors in relation to TF. The narrow definition of terrorism, requiring terrorist activity against the interests of Turkey, may limit the scope of STRs that can be filed in relation to TF. MASAK has released guidance to the financial sector on reporting of STRs relating to terrorism and 5 TF STRs have been submitted to date. Banking representatives stated that almost all of these TF STRs related to name matches on international terrorism lists. It is recommended that the STR reporting requirement for obliged parties be amended to explicitly include reporting of suspicions of TF and that the definition of terrorism be broadened.

**3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV**

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.13	PC	<ul style="list-style-type: none"> <li>• There is no express obligation to report STRs on terrorist financing and the limited definition of terrorism means the full range of terrorist financing activities is not covered by the definition of what matters STRs may relate to.</li> <li>• Many of the STR types relate to high value transactions.</li> <li>• The level of STR reporting is low when the size and nature of the Turkish financial sector is considered.</li> </ul>
R.14	LC	<ul style="list-style-type: none"> <li>• In practice, the practice of some financial institutions in automatically suspending transactions that are the subject of an STR may inadvertently alert the customer to the fact that a report has been made, thus limiting the effectiveness of the 'tipping off' prohibition.</li> </ul>
R.19	C	<ul style="list-style-type: none"> <li>• Recommendation 19 is fully observed.</li> </ul>
R.25	PC	<ul style="list-style-type: none"> <li>• MASAK does not provide specific feedback to obliged parties on STRs submitted, nor does it provide information on the trends and methods observed in the STRs received.</li> <li>• The number of STRs received is low when the size and nature of the Turkish financial sector is considered.</li> </ul>
SR.IV	PC	<ul style="list-style-type: none"> <li>• There is no explicit requirement in law or regulation for obliged parties to submit STRs relating to terrorism or TF, other than that conduct that involves assets "acquired through illegal ways</li> </ul>

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
		<p>or used for illegal purposes” and the limited definition of terrorism means the full range of terrorist financing activities is not covered by the definition of what matters STRs may relate to.</p> <ul style="list-style-type: none"> <li>• Only 5 STRs were received as at 1 January 2006 based on a suspicion of terrorism, which seems to call into question the effectiveness of the existing requirement viewed against the potential size of the terrorism problem in Turkey.</li> </ul>

### **Internal controls and other measures**

#### **3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)**

##### ***3.8.1 Description and Analysis***

##### ***Recommendation 15***

338. In line with the procedure introduced by Articles 3 and 8 of the new AML Law 5549, Articles 4 to 6 of the RRIL and MASAK General Communiqués 1 and 4, financial institutions must carry out customer identification and keep records. In addition, Article 4 of the new AML Law, Articles 12 and 14 of the RRIL and MASAK General Communiqués 2 to 4 lay down the procedures for reporting suspicious transactions. According to Article 16 of the RRIL, the obliged parties which are required to employ inspectors in order to inspect their organisation’s transactions for compliance with the provisions of laws and regulations must carry out their inspections in accordance with the obligations stated in the PML and the RRIL. No further information was available to the evaluation team on exactly which parties are included under the purview of the new law.

339. *Banking Law 5411* Article 29 requires banks to establish and operate adequate and efficient internal control, risk management and internal audit systems that are in harmony with the scope and structure of their activities, that can respond to changing conditions and that cover all their branches and undertakings in order to monitor and control the risks that they encounter. The principles and procedures applicable to the establishment, functioning and adequacy of internal control, risk management and internal audit systems; the units to be established; the activities to be performed; the duties and obligations of senior management; and the reporting to be made to the BRSA are set by the Coordination Board.

340. *Banking Law 5411* Article 30 goes on to require that, as part of their internal control systems, banks: (i) ensure the execution of their activities in compliance with the legislation, internal regulations and banking ethics; (ii) secure the integrity and reliability of accounting and reporting systems and timely accessibility of information through continuous control activities to be complied with and performed by the personnel at all levels; (iii) ensure the functional distribution of the duties and the sharing of powers and responsibilities the fund payments, the reconciliation of transactions, protection of assets and control of liabilities; (iv) identify and evaluate any risks encountered and prepare infrastructure for managing such risks; and (v) establish an adequate information exchange network. Internal control activities must be carried out by an internal control department working under the board of directors.

341. Companies operating in the capital markets are required (CMB Communiqué V 68) to have internal control policies and procedures and, in Article 20, requires that an independent auditing company be engaged to verify their adherence to required internal control policies and procedures.

342. The RBICRMS was issued in order to monitor and control the risks banks encounter. In accordance with Article 3 of that Regulation, banks have internal audit and risk management systems which must be of high quality, well resourced and efficient and able to change whenever the provisions of the Regulation change. According to Article 20 of RBICRMS ‘prevention of money laundering’ is a major control area.

343. Article 14(A) of the RRIL and MASAK General Communiqué 4 require banks and participation banks to assign compliance officers. According to the communiqué, the compliance officer must be a high level position directly connected to the general director or the deputy general director in the organisation structure. Since the compliance officers are high level staff responsible to the general director or the deputy general director, they can act independently and they have timely access to customer identification data and other CDD information, transaction records and other relevant information. Obligated parties are required to employ enough personnel to assist the compliance officer to meet the workload involved and to ensure that the duties of compliance officers are conducted completely and on time. Compliance officers evaluate the STR forms completed by their organisation's staff taking into consideration the laws, regulations and communiqués, and after evaluation they decide whether to submit an STR to MASAK. The compliance officer function in banks is inspected by the BRSA. Of the 20 banks inspected by the BRSA in 2005 (13 Turkish banks and 7 foreign banks), 6 were found to have not fulfilled their obligations relating to the appointment of compliance officers.

344. In practice, the working process of banks' compliance officers is explained by MASAK General Communiqué 4. Other compliance officers work under the Department for Compliance with Legislation.

345. According to Article 3(f) of the TBA *Code of Banking Ethics*, banks are advised to collaborate with other institutions, establishments and competent authorities in order to effectively combat ML, corruption and similar offences. This collaboration provides an information exchange network for the internal audit functions, compliance officers and other staff. Similarly, the *TBA Guideline* recommends that internal audit personnel follow the laws and regulations about proceeds of crime and that they pay attention to international developments and official and scientific publications on new products and laundering methods.

346. Obligated parties report the statistical results of their internal audit programmes to MASAK at the end of March each year, as requested in MASAK General Communiqué 4, Section IV. These reports include information on the number of agencies controlled, customer identification and the number of STRs submitted.

347. According to MASAK General Communiqué 4, the banks that are obliged to employ inspectors and the participation banks that have inspection boards are obliged carry out inspections of whether their organisation is obeying the rules in communiqués and regulations.

348. Under Article 16(A) of the RRIL and MASAK *General Communiqué 4*, banks and participation banks are required to train their employees in relation to matters in the regulation. Training programmes must cover:

- The transactions that required to be identified, customer identification procedures and record keeping.
- Recognising suspicious transactions and the reporting procedure.
- The procedure of presenting the required information and documents.
- The penalties to be imposed in the event of not complying with the obligations.

349. Training programmes should be continually reviewed and provided on a regular basis to ensure the knowledge of staff is up to date. Reports are made to MASAK at the end of March each year on the training provided to staff. In addition to the in-house training programmes of banks and participation banks, the TBA provides AML/CFT training to staff of banks and participation banks.

350. The TBA *Code of Banking Ethics* notes that bank employees should have knowledge and a sense of responsibility. To ensure this, banks are expected to support their employees by providing training courses, seminars and similar facilities for the purposes of having their employees attain the information level required by contemporary business world and the banking profession.

351. The new law on AML makes provision for the Ministry of Finance to determine the obliged parties and the methods and procedures of implementation for the purpose of constituting training, internal control, control and risk management systems in line with the purpose of the law and providing compliance with the liabilities established in the law.

352. In accordance with CMB Communiqué VIII 34 on *Principals Regarding Licensing and Registration for the Professionals Engaged in Capital Market Activities* the specialist staff working in intermediary institutions must be licensed. Licenses are gained through an examination processes and are renewed every four years after participating in the ‘License Renewal Education Programme’.

353. Articles 23 and 25 of *Banking Law 5411* provide for the composition and procedures of banks’ boards of directors, the qualifications required by members of the board and the information about the board which must be provided to the BRSA. The responsibilities of the board of directors include ensuring the establishment, functionality, appropriateness and adequacy of internal control, risk management and internal audit systems in conformity with the applicable legislation; securing financial reporting systems; and specification of the powers and responsibilities within the bank.

#### *Additional elements*

354. MASAK *General Communiqué 4* provides that compliance officers should be high level positions directly connected to the general director or the deputy general director in the organisation structure.

#### **Recommendation 22**

355. The requirement that financial institutions ensure their foreign branches and subsidiaries observe the same AML/CFT standards as required in Turkey is incorporated in *Banking Law 5411*, the RRIL and RBICRMS. As at December 2006 there were a total of 92 branches of Turkish financial institutions overseas, as well as 4 overseas contact offices and 1 overseas branch of brokerage houses<sup>33</sup>. In addition, two brokerage houses have agency agreements with two banks<sup>34</sup>. According to Article 20 of CMB Communiqué V 46, brokerage houses’ field offices comprise their branches, contact offices and agencies, which they set up with one or more banks.

356. Article 32 of *Banking Law 5411* requires banks to establish internal audit systems that involve all of their units, branches and undertakings. Article 28 of the RBICRMS further provides that banks are to take all necessary measures to ensure that its inspection unit is able to audit all transactions and units of its subsidiaries under its control without any restriction. Audit guidelines must be established by the head office of the bank which controls such subsidiaries and branches and they must be applicable to subsidiaries and overseas branches.

357. In Article 41, the RBICRMS also requires banks to monitor the financial performance of subsidiaries under their control and to monitor the risks these domestic and overseas subsidiaries are exposed to.

358. According to Article 4 of the RRIL, customer identification requirements may also be applied by MASAK to the overseas branches and agencies of obliged parties whose head offices are in Turkey in terms of the transactions carried out with Turkey, including fund transfers from or to Turkey.

<sup>33</sup> Located in Austria, Germany, Kazakhstan, USA and the northern part of Cyprus.

<sup>34</sup> Located in the northern part of Cyprus and Russia.

### **3.8.2 Recommendations and Comments**

#### **Recommendation 15**

359. There are requirements in place for internal controls in banks, participation banks and companies operating in the capital markets but there is no provision requiring internal control procedures to be adopted in other financial institutions. Banks and participation banks are required to maintain internal procedures, policies and controls to prevent ML but there is no requirement that controls be in place to prevent TF. BRSA inspections of 20 banks in 2005 found that 6 had no appointed compliance officers in accordance with requirements. The access to information by compliance officers in banks and participation banks is inferred from their position in the organisation structure rather than being specifically provided for in any law, regulation or other enforceable means. While brokerage houses are required to adopt internal audit policies and procedures, this does not specifically relate to AML/CFT.

360. No information was available to the evaluation team which would indicate that there are internal control requirements for the insurance sector or other specific types of institutions such as, for example, bureaux de change. AML/CFT compliance officers do not exist in this sector despite Article 14 of the RRIL which applies to the insurance and reinsurance companies and provides; “the liable parties shall assign compliance officer at administrative level for the purpose of performing their reporting obligation in accordance with the provisions of this Regulation”. It is recommended that the internal control requirements for banks, participation banks and companies operating in the capital markets be strengthened and that similar requirements be put in place for all other obliged parties.

361. AML and CFT issues are within the scope of internal control requirement but there is no specific requirement concerning the designation of an AML/CFT compliance officer. Banks and securities companies do appear however to have established AML/CFT compliance officers. Other than the obligation for banks and participation banks to designate compliance officers, there are neither provisions nor recommendations in place dealing with the number of staff and resources to be allocated to this function.

362. Article 16 of the RRIL requires banks and participation banks to conduct in-house training to ensure employees are aware of the obligations in that regulation. As this is limited in scope it is recommended that Turkey provide a training requirement in Law which requires all obliged parties to provide in-house training with content encompassing the entire AML/CFT system.

363. The *Banking Law*, along with the *TBA Code of Banking Ethics*, provide requirements as to the knowledge and capabilities of employees in the banking sector. The CMB Communiqué 34 provides a licensing system for persons operating in the capital markets. It is recommended that Turkey implement requirements for all obliged parties to have screening procedures to ensure high quality recruitment.

364. Article 5(1) of the new AML Law 5549 provides the Finance Ministry the authority to determine principles and procedures to be applied by obliged parties including establishment of compliance officers, internal training, internal control and risk management systems. As this authority has not yet been exercised, it is too early to assess the effectiveness of this new provision.

#### **Recommendation 22**

365. The *Banking Law* and the RBICRMS require that banks’ internal controls and risk management systems apply to subsidiaries and branches located abroad without restrictions but they do not deal with what should be done when local requirements differ from the Turkish laws and regulations. There are no provisions relating to overseas branches of other obliged parties. Article 4 of the RRIL provides the possibility to apply customer identification requirements to overseas branches and subsidiaries, but this article has not been implemented in practice. These provisions do not provide for

particular attention to be paid where branches and subsidiaries are in countries which do not or insufficiently apply the FATF Recommendations. They do not provide that the higher of the two countries' standards be applied. And they do not require financial institutions to inform supervisors when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures due to host country restrictions. The evaluation team obtained information which suggests that despite the absence of these requirements some financial institutions do in fact have such policies and procedures in place. It is recommended that Turkey strengthen the provisions in place for banks to deal with the matters noted above and that it implement requirements across all obliged parties.

### 3.8.3 Compliance with Recommendations 15 & 22

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.15	PC	<ul style="list-style-type: none"> <li>Financial institutions are not required to establish adequate internal audit procedures and policies in relation to TF.</li> <li>The access to information by compliance officers in banks and participation banks is only inferred from their position in the organisation structure.</li> <li>While brokerage houses are required to adopt internal audit policies and procedures, this does not specifically relate to AML/CFT.</li> <li>Insurance companies and other obliged parties are not required to have internal controls or compliance officers.</li> <li>In-house training and screening requirements only apply to the banking and securities industries. Training requirements for banks do not exist in relation to the full breadth of AML/CFT issues and obligation.</li> <li>Effectiveness issue: Of the 20 banks inspected by the BRSA in 2005 (13 Turkish banks and 7 foreign banks), 6 did not fulfil their obligation on the appointment of compliance officer.</li> </ul>
R.22	NC	<ul style="list-style-type: none"> <li>Article 4 of the RRIL providing for application of customer identification requirements to overseas branches and subsidiaries has not been implemented.</li> <li>Internal control provisions for overseas branches and subsidiaries only exist for banks, not for any other obliged parties.</li> <li>There is no requirement to pay particular attention where branches and subsidiaries are in countries which do not or insufficiently apply the FATF Recommendations.</li> <li>There is no requirement to apply the higher of the two countries' standards.</li> <li>There is no requirement to inform supervisors when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures due to host country restrictions.</li> </ul>

## 3.9 Shell banks (R.18)

### 3.9.1 Description and Analysis

366. No explicit provision in Turkish law or regulation prohibits the establishment or operation of shell banks. However, Article 7 of *Banking Law 5411* specifies requirement for banks established in Turkey, and Turkish authorities interpret that provision on establishment and operation of banks as *de facto* prohibiting the establishment of shell banks in Turkey. Turkish banks must:

- Be joint stock companies with shares issued against cash and to name.
- Have paid-up capital of no less than TRY 30 million in cash.
- Have articles of association which do not conflict with the provisions of the *Banking Law 5411*.
- Have founders and members of the board of directors who meet qualifications as specified in *Banking Law 5411*.
- Have a planned financial, managerial and organisational structure appropriate for its activities. Have work-plans, budget projections and an activity programme which includes internal control, risk management and internal audit systems.
- Have a transparent and open partnership structure and organisational chart which allow for efficient supervision of the institution.

367. There is also no express provision prohibiting Turkish banks from entering into or continuing correspondent relationships with shell banks. According to the *TBA Guideline* however, banks should avoid to accept as customers, or to act as intermediaries in indirect and direct transactions of, shell banks which:

- Do not have any physical address and at least one employee working on full-time basis.
- Are not subject to the audit of and licensing by an official authority regarding its banking transactions and records.
- Are not subsidiaries of reputable banks subject to the acceptable regulations and audit procedures regarding the prevention of ML and the general banking transactions.

368. The provisions of the *Banking Law* do not explicitly prohibit shell banks though they would make it unlikely that a shell bank could be successfully established in Turkey. There is no prohibition on establishing customer or correspondent banking relationships with shell banks or on realising transactions involving shell banks. Turkish banks are not required to verify with respondent institutions that they do not have accounts used by shell banks.

369. The *TBA Guideline* for banks does deal with some of these issues. However, this guideline is non-binding guidance, though there is a strong culture of compliance by banks with these guidelines in practice.

### 3.9.2 Recommendations and Comments

370. It is recommended that Turkey explicitly prohibit the operation and establishment of shell banks, that it prohibit establishment correspondent banking relationship with shell banks and that it require Turkish banks to verify with respondent institutions that they do not have accounts used by shell banks.

### 3.9.3 Compliance with Recommendation 18

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.18	PC	<ul style="list-style-type: none"> <li>• There is no explicit prohibition on establishment of shell banks.</li> <li>• There is no provision that prohibits Turkish banks from entering into, or requiring them cease, operations with shell banks.</li> <li>• There are no provisions requiring Turkish financial institutions to verify that their respondent institutions do not have accounts used by shell banks.</li> </ul>

## **Regulation, supervision, guidance, monitoring and sanctions**

### 3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

#### 3.10.1 Description and Analysis

##### *Authorities/SROs roles and duties & Structure and resources - R.23, 30*

371. The *Banking Law* 5411, the new AML Law 5549, the PML, the RRIL and MASAK General Communiqués 1 to 4 contain the obligations for financial institutions on ML. In addition, particular provisions which may be applied to combating ML and TF exist in the laws and regulations of regulatory bodies for the financial sector, including the *Capital Markets Law* 2499, PVTC, *Decree Law on Money Lending* of 30 September 1983, *Insurance Supervision Law* 7397, *Regulation Regarding the Establishment and Working Procedure of Insurance and Reinsurance*, *Regulation Regarding the Principles on Granting Membership Certificate for Precious Metals Market and Establishment and Operation Conditions of Precious Metals Exchange*, *Financial Leasing Law* 3226,

*Regulation Regarding the Establishment and Operations of Financial Leasing Companies, Communiqué 2006-32/32 attached to Decree 32 Regarding The Protection Of The Value Of Turkish Currency and CMB Communiqués V 46 and 68.*

372. MASAK, the CMB, the BRSA and the UT are the primary financial sector regulators. Within the UT, the Insurance Audit Board is its supervisory arm and the General Directorate of Insurance is a regulatory arm for the insurance sector.

#### MASAK

373. Article 11 of the new AML Law 5549 relates to inspections of the obligations provided by that law and other legislation by various bodies: finance inspectors, tax inspectors, customs inspectors, revenue comptrollers, sworn-in bank auditors, treasury comptrollers and capital market board experts. MASAK may request an inspection in the scope of either a single case or as part of an inspection program. MASAK determines the body in charge of the inspection and this must be approved by the Minister responsible for the body so designated. In the course of an inspection, inspectors are allowed to request all kinds of information, documents, books and records and to receive information from the relevant authorities verbally or in writing.

374. Article 16 of the RRIL provides that MASAK is authorised to examine whether the obliged parties fulfil their AML obligations. Banks, capital markets intermediary institutions, insurance companies, financial leasing, factoring, consumer finance companies and bureaux de change are subject to MASAK regulations. MASAK has issued communiqués regarding obligations such as customer identification, suspicious transaction reports, compliance officer, internal audit and training. It investigates and examines ML offences through various investigators from other agencies who are located at MASAK; finance inspectors, auditors, revenue comptrollers, sworn-in bank auditors, treasury comptrollers and capital market board experts. These examiners are authorised to request information and documents, conduct research and examinations, and follow up and inspect procedures and documents in accordance with the scope of their assignment.

375. As the primary agency in Turkey responsible for AML/CFT matters, MASAK provides awareness raising seminars and training to obliged parties and to government agencies. The training programmes cover both national legislation and international requirements relating to ML and TF. MASAK's new 'Department of Inspection and Training of Obligated Parties', established as part of the September 2006 organisational restructure, may provide enhanced support for the training programmes provided in future.

**Table 26: MASAK Training 2004**

TRAINING	NUMBER	NO. OF PARTICIPANTS	
		TRAINER	TRAINEE
Taken by MASAK	22	-	38
Given by MASAK	17	23	
- To Obligated Parties	6	6	-
- To Law Enforcement Agencies	11	17	
MASAK On-the-Job Training	9	14	46
<b>Total</b>	<b>48</b>	<b>37</b>	<b>107</b>

**Table 27: MASAK Training 2005**

	NUMBER	NO. OF PARTICIPANTS	
		TRAINER	TRAINEE
Taken by MASAK	79	-	530
Given by MASAK	16	19	
- To Obligated Groups	3	4	-
- To Law Enforcement Agencies	13	15	
MASAK On-the-Job Training	21	23	45
<b>Total</b>	<b>116</b>	<b>42</b>	<b>1142</b>

**Table 28: MASAK Training 2006**

	NO. OF COURSES	NO. OF PARTICIPANTS	
		TRAINER	TRAINEE
Given by MASAK	28	50	
- To Obligated Parties	22	38	1,993
- To Law Enforcement Agencies	6	12	
MASAK On-the-Job Training	4	4	46
<b>Total</b>	<b>32</b>	<b>54</b>	<b>2,039</b>

### *Banking Regulation and Supervision Agency*

376. The BRSA is a public legal person with administrative and financial autonomy. The BRSA consists of the Banking Regulation and Supervision Board and the Chairman's Office. The independence of the BRSA is ensured in the *Banking Law 5411* which provides that it independently performs and uses the regulatory and supervisory duties and rights assigned to it under its own responsibility. The decisions of the BRSA can not be audited for compliance. No organ, authority or person can give instructions and orders to influence the decisions of the BRSA. The BRSA independently uses the financial resources allocated to it and sets its own budget within the framework of the principles and procedures laid down in the *Banking Law 5411* and the *Public Financial Control and Management Law 5018*. Property of the BRSA is deemed to be state property and can not be seized or pledged (*Banking Law 5411 Article 82*).

377. The Banking Regulation and Supervision Board is the decision-making organ of the BRSA. It comprises seven members, including a chairman and a vice chairman. The chairman of the Board is the chairman of the BRSA. Where the chairman is absent the deputy chairman acts as the chairman. In cases where the deputy chairman is also absent, a member determined by the Board chairs the Board (*Banking Law 5411 Article 83*). The Board has the following duties and powers (*Banking Law 5411 Article 88*):

- Preparation of secondary legislation.
- Setting the strategic plan, performance criteria, goals and objectives and service quality standards of the BRSA. Establishment of the human resources and policies of the BRSA.
- Making decision on the BRSA's budget in line with the strategic plan and goals and objectives.
- Approval of reports on the performance and financial standing of the BRSA.
- Appointment of the vice chairman and department heads upon the proposal of the chairman.
- Decisions regarding the purchase, sale and leasing of immovable properties.
- Other duties assigned to it by laws.

378. In order for the establishment of confidence and stability in financial markets, the sound operation of the credit system, the development of the financial sector and the protection of the rights and interests of depositors, the BRSA is responsible for:

- Regulation, enforcement, monitoring and supervision of banks and financial holding companies and, with the reservation of the provisions of other laws and related regulations, financial leasing, factoring and consumer financing companies.
- Being a member of international financial, economic and professional organisations in which foreign equivalent agencies participate, signing memoranda of understanding with authorised bodies of foreign countries regarding matters in the BRSA's field of duty.
- Fulfilling other duties assigned by the Law (*Banking Law 5411 Article 93*).

379. The BRSA is responsible for: (i) supervision of the implementation of the *Banking Law 5411* and other laws applicable to the institutions it supervises and onsite supervision of all transactions of these institutions; (ii) onsite and offsite supervision of the relations and balances between the consolidated and non-consolidated risk structures, internal control, risk management and internal audit systems of the institutions it supervises and their assets, receivables, funds, debts, profit and loss

accounts, liabilities and commitments, and any other factors that affect their financial structures; and (iii) supervision of conformity of supervised institutions to corporate governance principles (*Banking Law 5411 Article 95*). The BRSA is authorised and obligated to prevent any transaction and practice that could endanger the rights of depositors and the sound and safe operation of banks and severely damage the economy and to implement measures to ensure the efficient operation of the credit system.

380. For onsite supervision, the chairman appoints an examination team consisting of eligible sworn bank auditors and assistant sworn bank auditors, banking experts and assistant banking experts, information experts and assistant information experts, legal experts and assistant legal experts. The professional staff of the BRSA authorised to conduct onsite supervision must take an oath at the Ankara Basic Commercial Court. The chairman also has the authority to commission independent audit firms to examine specific matters that require expertise where s/he deems necessary. These independent auditors can exercise the powers available to BRSA professional which relate to audits and are subject to confidentiality obligations.

381. The BRSA is authorised to issue regulations and communiqués regarding enforcement of *Banking Law 5411*, through Board decisions. Before putting into force regulatory procedures, other than internal regulations, the BRSA consults the relevant Ministry, the Undersecretariat of SPO and other institutions and organisations. Drafts of secondary legislation prepared by the BRSA are made public through appropriate means, in particular via the BRSA website, for a minimum of seven days to inform public opinion. Specific decisions taken by the BRSA are notified directly to the related persons and institutions and are made public through the BRSA's weekly bulletin if deemed appropriate.

382. BRSA also provides and receives some training; however, no specific information on the nature or audience of this training was provided.

**Table 29: BRSA Training**

YEAR	COURSES TAKEN	PARTICIPANTS TRAINED	COURSES PROVIDED	PARTICIPANTS TRAINED
2004	4	8	1	36
2005	3	6	1	39
2006	2	3	1	57

383. The service units of the BRSA include main service, advisory and support service units organised in the form of departments. The chairman has up to five advisors in areas such as law, press and public relations, management and finance. Service units are provided for in a regulation and put in force upon the proposal of the BRSA and the approval of the Council of Ministers. The Strategy Development Department is a main service unit. The Support Services Department conducts human resources and training, administrative, financial and similar activities. Upon a Council of Ministers Decree, the BRSA may establish up to three representative offices in provinces where the sector regulated and supervised by the BRSA is concentrated (*Banking Law 5411 Article 91*).

384. BRSA personnel include sworn bank auditors and assistant sworn bank auditors, banking experts and assistant banking experts, legal experts and assistant legal experts, information experts and assistant information experts, and other administrative personnel. The required qualifications of BRSA personnel are outlined in Article 84 of Law 5411. Vice chairmen, department heads, directors, chairman's advisors and the professional staff are employed under contracts. The BRSA personnel employed under contracts are subject to the *Civil Servants Law 657* for all matters other than their remuneration, financial and social rights. Other personnel are subject to the *Civil Servants Law 657* in terms of all their rights and obligations (*Banking Law 5411 Article 92*).

385. BRSA staff are recruited through central competition exams. Those who received a high grade on the foreign language proficiency examination may after three years at the BRSA sit an examination to become experts. Those who pass and have their thesis study accepted by the jury as appropriate, qualify for appointment as an expert. Principles and procedures applicable to the proficiency and

competition tests of the BRSA's professional and administrative staff, their qualifications and their working principles and procedures are contained in a human resources regulation issued by BRSA Board. According to Article 92 of the *Banking Law* 5411, the BRSA may also employ experts with a minimum ten years of experience in the sector and a PhD degree in a relevant discipline, under contract, provided that these experts do not constitute more ten percent of the BRSA's professional staff. The BRSA personnel may not be temporarily appointed to other public institutions and agencies.

386. Article 73 includes provisions regarding confidentiality of information. BRSA personnel are prohibited from disclosing confidential information that they acquire as part of their duties to anybody other than those who are authorised to receive it. The BRSA is not held responsible however for disclosure of confidential information and documents over which a court judgment has been issued. Outsourcing institutions from which the BRSA receives support services and the employees of such institutions are also subject to the confidentiality provisions. These provisions continue to apply after leaving the employ of the BRSA.

387. An exception to the confidentiality requirements exists for information and documents provided by the BRSA under memoranda of understanding signed with equivalent foreign supervisory authorities. The Board is responsible for keeping the confidentiality of information and documents obtained through such exchanges. Confidential information and documents obtained by the BRSA may be used for the purposes of issuing establishment and operating permissions, supervision of activities, monitoring compliance with the legislation, and for the administrative lawsuits to be filed against the decisions of the Board. Such confidential information and documents must not be disclosed to any person or institution.

#### *Capital Markets Board*

388. Article 45 of the CMB Law provides that application of the CML and other laws to the capital market, and all kinds of capital market operations and transactions is supervised and enforced by experts and assistant experts of the CMB. The experts and assistant experts of the CMB are authorised to: request information from the issuers, capital market institutions, their affiliates and institutions and other natural and legal persons; examine and obtain copies of their books, records and documents and other information sources; audit their transactions and accounts; obtain written and oral information from related persons; and prepare reports. The institutions are required to give copies of requested information, documents, books and other information to the CMB and to provide written and oral information and sign the written reports of the CMB.

389. According to Article 17 of the CML the CMB is a public legal person with administrative and financial autonomy. Its board comprises seven members, including the chairman and the deputy chairman. The Board use its authority independently under its own responsibility. The relevant Minister presents the annual financial reports and annual activity report of the CMB to the Council of Ministers.

390. Article 28(b) of the CML provides for a special fund from which all the expenditures of the CMB are to be paid. Institutions operating in the capital markets pay to this fund a fee corresponding to three per thousand of the issuance value of the capital market instruments to be sold by them upon registration with the Board. This ratio may be reduced by the Council of Ministers. In the event that the income of the fund is not sufficient to cover the expenditures of the Board, any deficit can be met through assistance from the Ministry of Finance.

391. Article 26 of the CML states that the fundamental and continuous duties required for the functions of the CMB are to be performed by civil servants appointed by the Board for full-time service. If required, the Board may employ specialised personnel on a contract basis.

392. The procedures and principles regarding standards for CMB professional employees and the training to be provided to them are outlined in the Personnel Regulation. Instructional and on-the-job training programmes are provided for the assistant professional employees. The training is designed to build skills relating to controlling the capital markets, financial analysis methods, research, report writing and foreign languages and to provide knowledge of professional legislation, economical and financial subjects. After a minimum of three years experience at the CMB candidates may sit a proficiency examination to become a CMB Expert or CMB Legal Expert.

393. Confidentiality requirements are outlined in Article 25 of the CML and Article 118 of the *Regulation Regarding the Establishment, Duties and Working Procedures of Capital Markets Board*. The chairman, members and personnel of the CMB, as well as auditing officials who have been appointed in accordance with the CML, may not disclose confidential information that they have obtained during the performance of their duties. This obligation continues after the termination of their duties.

#### *Undersecretariat of Treasury*

394. The Undersecretariat of Treasury (UT) supervises the activity of bureaux de change, insurance companies, money lenders and precious metals exchange intermediary institutions. It carries out its off-site supervisory authority through the General Directorate of Banking and Exchange (GDBE) and the General Directorate of Insurance (GDI) and its on-site supervisory authority through the Insurance Audit Board and the Board of Treasury Comptrollers. As at the time of the onsite visit, the UT had 81 treasury comptrollers authorised to inspect bureaux de change, insurance companies, money lenders and precious metals exchange intermediary institutions. High professional standards are also sought for the treasury comptrollers and insurance inspection experts.

#### ***Authorities Powers and Sanctions – R.29 & 17***

395. Article 5 of the PML, Article 96 of *Banking Law 5411* and Article 45 of the CML provide regulatory authorities with the authority to require information from the institutions they supervise.

396. The primary regulators (CMB, BRSA, UT) responsible for financial sector supervision under the PML take into consideration ML legislation while carrying out their supervision functions and, in the event of determining an activity contrary to legislation, send their reports related to potential ML violations to the MASAK according to Article 28 of RRIL.

397. In accordance with Article 11 of the new AML Law 5549, inspection of AML obligations is carried out by finance inspectors, tax inspectors, customs inspectors, revenue comptrollers, sworn-in bank auditors, treasury comptrollers and capital markets board experts. MASAK may request at any time that one of these units conduct an inspection of an obliged party. The examiners assigned to conduct such an inspection are authorised to request all kinds of information, documents and legal books from natural and legal persons including the public institutions and organizations, and unincorporated organizations, to examine all kinds of documents and records within them and to receive information from the relevant authorities verbally or in writing. They may also use the powers given to them by other laws. The examiners report detected violations of AML obligations to MASAK.

398. Sanctions for not complying with AML obligations are provided in Articles 13 and 14 of the new AML Law 5549. According to Article 13, infringements of customer identification obligations (Article 3) and suspicious transaction reporting (Article 4(1)), training, internal control and risk management systems and other measures (Article 5) and periodic reporting (Article 6) are punishable by an administrative fine of TRY 5,000, and this fine can be doubled where the infringement is by a bank, finance company, factoring company, money lender, financial leasing company, insurance or reinsurance company, pension company, capital market institution or bureaux de change. Pursuant to the provisions of Article 14, imprisonment from one to three years and to judicial fine up to 5,000 days

may be ordered for: tipping off (Article 4(2)); violation of the requirement to provide information, documents and records requested by MASAK or the inspectors (Article 7); and violation of record keeping requirement (Article 8). Legal persons which commit these offences may additionally be subject to security measures, or *güvenlik tedbirleri*, applied by criminal courts. In particular, the license of a legal person may be cancelled and confiscation provisions may apply (Article 60 of the TCL). If implementation of these security measures generates results disproportionate with the act perpetrated, then the judge has the discretion not to impose these measures, however the judge does not have the option of imposing lesser sanctions. In contrast to the sanctions available for legal persons which commit the AML offence in Article 282 of the TCL (see section 1.1), a range of sanctions are available for legal persons which do not comply with obligations relating to: customer identification: suspicious transaction reporting: training: internal control and risk management: and periodic reporting.

399. Article 12 of the PML provides that persons violating AML requirements may be sentenced to imprisonment and a fine. The fines specified in the Law have been increased every year in accordance with the inflation rate (see Table 31 below). Law 5252, which came into force on 1 June 2005, amended the procedure for calculation of fines and reduced the lower and upper limits by approximately one half compared to their 2004 limits. The new AML Law 5549 has introduced a fine (without lower or upper limits) of TRY 5,000, with a provision that this is to be doubled if the violation is by an obliged party.

**Table 30: Fines Imposed for Violations of Obligations<sup>35</sup>**

YEAR	LOWER LIMIT	UPPER LIMIT
1999	12	120
2000	146	1,460
2001	228	2,278
2002	349	3,490
2003	555	5,549
2004	713	7,130
2005	348	3,480
2006	5,000	

#### *BRSA*

400. Article 95 of the *Banking Law 5411* authorises the BRSA to conduct monitoring and onsite audit of implementation by banks of the provisions of that law and of the provisions in other laws applicable to the institutions in the scope of the Banking Law. The BRSA is authorised to request any information, including that classified as confidential, which it deems relevant from banks and their subsidiaries, from the undertakings where they hold qualified shares, from the undertakings they control jointly, their branches and representative offices, their outsourcing institutions and from other natural and legal persons. The BRSA can review banks' ledgers, records and documents including those related to taxation. Banks must provide any requested information; keep their ledgers, records and documents ready for examination; make their information systems available to the professional staff of the BRSA responsible for onsite supervision; ensure the security of their data; and submit all ledgers, records and statements as well as micro chips, micro film, magnetic tapes, compact disks and other records for examination. If requested during BRSA examinations, banks must provide any support including the commissioning of staff of the internal control, risk management, and internal audit units. Copies of the reports and studies prepared by auditors are provided to the BRSA. The BRSA evaluates the structure, conformity and reliability of the annual financial reports prepared by independent audit firms.

401. In addition, *Banking Law 5411* Article 96 provides that all supervised institutions and their shareholders, subsidiaries, undertakings where they hold qualified shares, undertakings they jointly

<sup>35</sup> Figures given in New Turkish Lira and rounded to nearest whole YTL amount.

control, branches and representative office, independent auditors, valuation and outsourcing institutions must provide the BRSA with any requested information and documents, including those classified as confidential. Public entities and natural and legal persons are required to continuously, regularly and in a timely manner provide the BRSA with any information, documents and books, including confidential material, requested by the BRSA. Supervised institutions are also required to keep their ledgers, records and documents ready for examination, make their information systems available to BRSA personnel for audit purposes, ensure the security of their data, and submit all the ledgers, records and statements that they have as well as micro chips, micro film, magnetic tapes, compact disks and other records for examination.

402. Public institutions and authorities are required to provide assistance to the BRSA in their fields of duty. Public institutions and agencies, the CBRT and other institutions are required to promptly provide any information, including confidential information, requested by the BRSA in connection with their duties. While the BRSA is entitled to audit the implementation of all laws regarding banks, in those cases where the audits result in detection of a violation of other laws, the audit officials must promptly notify the relevant authorities of the violation.

403. From November 2005 to September 2006 the BRSA conducted 213 inspections of supervised entities, including 29 ML inspections. These 213 inspections resulted in the Board levying administrative fines on 24 banks worth a combined total of TRY 967,182. The inspections also resulted in 14 reports being sent to MASAK where ML violations were detected. From those 14 reports, two cases have been sent to the public prosecutors where customer identification violations were detected. Between 2001 and September 2006 the BRSA also conducted 45 inspections of participation banks, four of which were ML inspections.

#### *CMB*

404. Under Article 45 of the CML the CMB is empowered to apply the provisions of the CML and other laws related to the capital market, and to supervise and enforce all businesses operating in the capital market. The experts and assistant experts of the CMB are authorised to: request information related to the CML provisions and to other laws related to the capital market from the issuers, capital market institutions, their affiliates and institutions and other natural and legal persons; examine and obtain copies of all books, records and documents and other information sources; audit transactions and accounts; obtain written and oral information from relevant persons; and prepare the required written reports. All natural and legal persons so supervised are required to provide copies of the requested information, documents, books and other information and are required to provide written and oral information and sign off on written reports.

405. From 2002 to 2005 the CMB conducted 1,266 inspections of supervised bodies. In 2002, 11 of these inspections related to ML obligations; in 2003, 14 of the inspections related to ML obligations; in 2004, 19 inspections related to ML obligations; and in 2005, 9 inspections related to ML obligations. As a result of the ML inspections eight cases were reported to the public prosecutors.

#### *Undersecretariat of Treasury*

406. The Undersecretariat of Treasury is the regulatory and supervisory authority in charge of bureaux de change in Turkey. As at October 2006, there were 759 bureaux de change operating in Turkey, with 62 branches. In the 2005 calendar year they conducted transactions worth a total of USD 23 billion. The Undersecretariat of Treasury's General Directorate of Banking and Exchange (GDBE) supervises bureaux de change, but this supervision role is limited to obligations under the foreign exchange legislation and does not relate to any AML obligations. Inspections of bureaux de change are conducted by treasury comptrollers, foreign exchange directorates, police departments and the tax inspectors of the Ministry of Finance. The focus of these inspections is to examine compliance with the provisions of legislation on the protection of the value of Turkish currency. Where violations are detected they are reported to the GDBE in order to initiate investigations of the bureaux de change.

Since 2001 there have been 256 inspections of bureaux de change have been conducted by the Treasury Comptrollers and since 2002, exchange directorates, police departments and tax inspectors of the Ministry of Finance have conducted 277 inspection of bureaux de change. The number of inspections of bureaux de change has increased markedly from 5 in 2004 to 191 in 2005. This focus on inspections was due to an increase in staffing within the Undersecretariat of Treasury, allowing for a more comprehensive inspection programme, and also due to a decision taken jointly by the Undersecretariat, the GDBE and MASAK to increase the inspection of bureaux de change during the 2005 inspection programme to support Turkey's focus on CDD and foreign exchange requirements.

**Markey entry – R.23**

407. This issue has been regulated by Articles 8, 18, 23, 25, 26 of *Banking Law 5411*, Articles 5-7 and 12 of the *Decree Law on Lending Money*, Articles 2, 3, 4 and 30 of Law 7397 on *Insurance Supervision*, Articles 33/1-f and 36/1-f of Capital Markets Law 2499, Article 9/1-d of *Capital Market Communiqué on Principles Regarding Intermediary Activities and Intermediary Institutions*, Article 5/1/h-2 of CMB Communiqué V 59, Articles 5 and 7 of the Regulation Concerning the Principles of Issuance of Precious Metals Exchange Membership Certificate and the Conditions of the Foundation and Operation of Principles of Precious Metals Exchange Brokerage Houses, Article 5 of Communiqué 2006-32/32 Attached to the Decree Law 32 *Regarding The Protection of the Value of Turkish Currency*.

*Financial institutions*

408. According to Article 93(a) of *Banking Law 5411*, the powers of BRSA include regulation of the establishment, activities, management and organisational structure, merger, disintegration, change of shares and liquidation of financial leasing, factoring and consumer financing companies.

409. Banks are licensed by the BRSA. Banking licenses may be revoked by the BRSA under Article 11 of *Banking Law 5411* where:

- The license was based on false information or declarations.
- The bank failed to apply for operating permission within nine months of the issue of its license.
- The banks seeks waiver of its license.
- Eligibility qualifications are no longer held.
- The bank has failed to obtain operating permission.
- The bank has undergone voluntary liquidation.
- The bank has been involved in a merger.
- Liquidation or bankruptcy proceedings have been conducted under the *Banking Law*.

410. Arrangements regarding the qualifications of senior managers and directors have been regulated in Articles 8, 23 and 25 of *Banking Law 5411*. Article 8(d) of *Banking Law 5411* provides that founders of Banks must not have been:

- Sentenced to imprisonment of more than five years pursuant to the repealed FTCL or other laws, even though pardoned, with the exception of offences of negligence,
- Sentenced to imprisonment of more than three years pursuant to the TCL or other laws.
- Convicted of a violation of the provisions of the repealed *Banking Law 3182*, of the repealed *Banking Law 4389*, of *Banking Law 5411*, the CML or legislation on lending transactions, which requires imprisonment.
- Convicted of infamous crimes such as embezzlement, extortion, bribery, theft, swindling, forgery, breach of trust, fictitious bankruptcy, smuggling offences (other than those of using and consuming), fraudulent acts in official tenders and trades, ML, crimes against the State, unveiling State secrets, offences against the sovereignty of the State or the prestige of its organs,

offences against the security of the State, offences against the constitutional order or the functioning of the constitutional order, offences against national defence, offences against the secrets of the State, espionage, offences against relations with other States, tax evasion and other offences under the repealed FTCL, the TCL and other laws.

411. Shareholders with qualified shares are required to meet the criteria applicable to founders of the bank. If they do not meet these qualifications and hold more than ten percent of the capital of the bank, they are entitled to dividends but not to any additional shareholder rights.

412. Articles 25 and 26 of *Banking Law 5411* provide the qualifications required for general managers, deputy general managers and other senior positions in banks. General managers must have at least undergraduate degrees in the disciplines of law, economics, finance, banking, business administration, public administration and related fields or an undergraduate degree in engineering with a graduate degree in the aforementioned fields. They must have at least ten years of professional experience in the field of banking or business administration. Deputy general managers must have at least seven years of professional experience and at least two thirds of the general managers must have an undergraduate degree in the specified disciplines. Even if employed with different position titles, other executives whose authority and duties are comparable to a deputy general manager or who occupy senior executive positions must meet the requirements for a deputy general manager. In respect of the qualifications required, managers of the head office in Turkey of a bank established abroad are considered to be equivalent to general managers.

413. Those who are to be appointed to the position of general manager or deputy general manager of a financial institution must submit documents to the BRSA proving that they meet these qualifications. Such persons may carry on with their positions if the BRSA does not communicate any negative view within seven days following the notification. In case of the resignation of a general manager or deputy general manager, the reasons for such resignation must be reported to the BRSA within seven working days. Banks are required to immediately revoke the signing authorities of these persons if they fail to meet the prescribed qualifications. In addition, the signing authority of any bank employee against whom legal proceedings have commenced for infringement of provisions of the *Banking Law* or other applicable laws or for endangering the operations of the bank must be temporarily revoked upon decision of the BRSA.

414. Article 18 of *Banking Law 5411* provides permission and reporting requirements relating to significant changes in share structure of banks. Any acquisition of shares which results in a shareholder directly or indirectly gaining shares representing ten percent or more of the capital of a bank require the permission of the BRSA. Similarly, when shares held directly or indirectly by a single shareholder exceed 10%, 20%, 33% or 50% of the bank's capital and when assignments of shares result in a shareholding falling below these percentages, the permission of the BRSA must be sought. The Board's authorisation is also required for assignment and transfer of preferential shares with the right of promoting a member to the board of directors or audit committee, and for issue of new shares with privilege which result in shareholdings above the limits noted above. BRSA permission is granted on the condition that the person who acquires a substantial shareholding meets all qualifications required for the founders of the bank. In cases where the shares are transferred without the permission of the BRSA, the shareholder rights stemming from these shares, other than dividends, transfer to the BRSA. Applications for permission of the BRSA for these changes must be accompanied by a transfer fee valued of 1% of the nominal value of the transferred shares.

415. According to Article 7 of *Banking Law 5411*, any bank to be established in Turkey must be a joint stock company. According to Article 277 of the TCC a joint stock company should have at least five shareholders. Therefore the numbers of shareholders of banks in Turkey may not be less than five. Any transactions resulting in the number of shareholders falling below five are considered null and void.

*Financing and factoring companies*

416. Article 93(a) of the *Banking Law* 5411 provides that financing companies and factoring companies may only be established with the authorisation of the BRSA. Financing companies and factoring companies should apply to the BRSA to acquire operating permission, not later than 180 days beginning from their establishment is registered in trade registration. Permission will not be given to those who do not apply within application period. The companies should:

- Be joint stock companies.
- Have no less capital than the amount designated by the BRSA.
- Have partners who hold ten per cent or more share of the capital stock, members of the board of directors, general managers, assistant general managers, and those with signing authority who meet all qualifications and fit and proper person requirements of Article 6 of the Decree.

*Capital markets companies*

417. Articles 33(1)(f) and 36(1)(f) of the CML provides that founders of intermediary institutions and investment companies must be certified as never having been subject to legal prosecution due to bankruptcy or other relevant felonies (often termed ‘infamous offences’ in Turkish law) such as embezzlement, misappropriation, extortion, bribery, theft, swindling, breach of trust, forgery, bankruptcy, smuggling offences (other than smuggling for their own consumption), treachery in public bid tenders and purchases, disclosure of State secrets, tax evasion or attempted tax evasion.

418. Article 9 of CMB Communiqué V 46 applies a fit and proper person test to directors and senior management of institutions in the capital markets. It provides that these companies’ partners, managers, expert personnel, inspectors and auditors must never have been sentenced for a violation of capital market legislation, the *Banking Law* 4389, the PML or any AML provisions which may be sanctioned by imprisonment for over five years, even if pardoned. This includes crimes of embezzlement, misappropriation, extortion, bribery, theft, cheating, forgery, breach of trust, fraudulent bankruptcy, smuggling (other than smuggling for consumption purposes), frauds relating to award of official contracts and sale contracts, revealing State secrets, tax evasion and attempted tax evasion. In addition, all shareholders must not having been previously dismissed from membership of the Stock Exchange, not having been involved in a liquidation proceedings and not having had trading restrictions placed on them.

419. According to Article 5 of CMB Communiqué V 59, applications to the CMB for licenses to operate in the capital market require that:

- No shareholder or institution of which shareholders are unlimited liability partners can have been declared bankrupt.
- All shareholders meet the requirements stipulated in Article 9 of CMB Communiqué V 46. This includes a requirement that those who contribute 10% or more of the company’s capital must provide proof that it was derived from a legitimate source.

420. Further, the same article provides that for a license to be issued by the CMB for a company to operate in the capital market:

- The company must be a joint stock corporation.
- All shares must be in registered form and must be issued in return for cash.
- The amount of its paid in capital should not be less than YTL 250,000.
- Its founders must have the necessary financial capacity, esteem and experience.
- The founders and shareholders whose direct or indirect share is 10% or more of the company’s capital must not tax or social security payments due to the government.
- The funds put into the company as capital must be derived from legitimate sources.

- Shareholders can not have been declared bankrupt nor can any institution of which they are unlimited liability partners. They must satisfy the fit and proper requirements in Article 9 of the communiqué (noted above).

#### *Bureaux de change*

421. In addition, Article 5 of Communiqué 2006-32/32 related with the Decree 32 on *Protection of the Value of Turkish Currency* states that founders of bureaux de change must not have been declared bankrupt or sentenced to imprisonment of more than 5 years, even if pardoned. This provision does not include offences of negligence. The founders must also not have been convicted of felonies such as embezzlement, misappropriation, extortion, bribery, theft, swindling, forgery, breach of trust, forgery, bankruptcy, smuggling offences (other than smuggling for their own consumption), treachery in public bid tenders and purchases, disclosure of State secrets, tax evasion or attempted tax evasion and laundering of the proceeds of crime.

#### *Precious metals intermediary institutions*

422. The *Regulation Concerning the Principles of Issuance of Precious Metals Exchange Membership Certificate and the Conditions of the Foundation and Operation Principles of Precious Metal Exchange Brokerage Houses* regulates precious metals exchange intermediary institutions. According to Article 7 of this regulation, the intermediary institutions must apply to the Undersecretariat of Treasury (UT) for a license to operate in the precious metals exchange. The UT may demand additional information and documents when it deems necessary.

423. Precious metals brokerage houses and bureaux de change are required to apply to the UT with the following documents:

- A copy of the Trade Registry Gazette where their statute was published.
- A document issued by the relevant governorship certifying that their work-place is equipped with sufficient physical security measures.
- The members of Board of Directors, auditors and the signatories: (1) must prove through a document issued by the relevant public prosecutor's office that they were not previously convicted of violating the laws and regulations concerning lending money or of any indecent crime, and (2) must document that they have not been subject liquidation. This provision also applies to the companies to which they have been partners.
- Copies of insurance policies certifying that the cash and other assets entrusted with the brokerage house have been insured against fire and theft risks.

424. The information and documents presented to the UT must bear the signatures of the persons authorised to represent the intermediary institution and have to fulfil the conditions prescribed by the regulations. This initial application, if successful, results in a preliminary license being issued to the institution. Where the brokerage house does not apply to the UT within 180 days of obtaining the licence of foundation, the preliminary licence permit awarded to it will be cancelled. Brokerage houses cannot operate in offices except for the work places that are approved by the Undersecretariat. They cannot open branches.

425. Intermediary institutions must then apply to become members of the previous metals exchange within 60 days starting of obtaining the licence of operation. New members of the exchange are announced in the precious metal exchange's daily bulletin. For such institutions which were established overseas, documents issued by the government of the countries their head office resides in must be presented. These documents must provide evidence of their permission to operate and the fact that there are no limitations to their operations, and must be accompanied by financial statements.

*Insurance companies*

426. According to Articles 2 and 3 of the *Insurance Supervision Law 7397*, establishment of an insurance or a reinsurance company in Turkey, or operation in Turkey of an overseas insurance or reinsurance company, is subject to permission from the Ministry responsible for Treasury. Insurance and reinsurance companies are obliged to obtain license from the Undersecretariat of Treasury before they commence operation. Separate licenses are issued for each branch of the company. They are registered in the trade register and notices of licenses issued are published in at least two newspapers with national circulation.

427. According to Articles 2(2) and 4(6) of *Insurance Supervision Law 7397* founders of insurance and reinsurance companies to be established in Turkey and chairmen, members of boards of directors, executives, auditors, general managers, assistant general managers and persons who are authorised to sign on behalf of the company must not have been sentenced to imprisonment of more than five years or have been subject to a large fine due to violations of insurance legislation. Further they must not have been committed of crimes of embezzlement, misappropriation, bribery, extortion, theft, swindling, forgery, breach of trust, fraudulent bankruptcy, fraudulent acts in official contract bids and trading, smuggling crimes (except smuggling for own use and consumption), disclosing State secrets, tax evasion or attempted tax evasion. They must not have been declared bankrupt or have had a legal dispute with their creditors. These requirements apply even where the persons have been pardoned, but do not apply to offences of negligence. For pension companies, Article 8(g) of Law 4632 on the *Individual Pension Savings and Investment System* provides that founders may not have been convicted of the money laundering offence.

428. Insurance and reinsurance companies' licenses may be cancelled by the Undersecretariat of Treasury, either permanently or for a temporary period not exceeding one year, where:

- Insurance and reinsurance companies have not concluded a new insurance and reinsurance contract for a period of more than one year.
- The conditions relating to establishment and issuance of the license cease to exist.
- It is deemed necessary due to the company not having the securities or other financial reserves required in Article 20 of the *Insurance Supervision Law 7397*.
- The company concludes an agency agreement with persons it is not enabled to delegate authorities to, as defined in the *Insurance Supervision Law 7397*.
- The company is found to have endangered the operation of the company or the rights of the insured parties by any action contrary to the insurance legislation.

*Money lending and remittance*

429. Institutions which are authorised to conduct money remittance must obtain the permission from supervisors in order to transfer money in accordance with:

- Articles 7 and 10 of the *Banking Law 5411* for banks and participation banks,
- Decree Law 233 on *Public Economic Enterprises*, *Postal Law 5584* and *PTT Regulation on Remittances for General Directorate of PTT*.

430. Bureaux de change must also obtain permission from UT, but they are not authorised to conduct money remittance transactions (See Articles 4-10 of Communiqué 2006-32/32 related with the Decree 32 on *Protection of the Value of Turkish Currency*).

431. Persons seeking to operate as money lenders must obtain permission from the Undersecretariat of Treasury in accordance with Article 5 of Decree Law 90 *Concerning Money Lending*. To gain this permission a declaration must be submitted to the Undersecretariat. Lenders who receive operating permission must then within 30 days apply to the Trade Registry to be registered. Article 6(d) of states that permission to operate a money lending business will not be granted to a person who has

been convicted of a crime and sentenced to imprisonment of more than 5 years, or convicted of embezzlement, misappropriation, extortion, bribery, theft, swindling, counterfeiting, breach of trust or indirect bankruptcy. Article 7 provides for revocation of licenses.

432. The only institutions which conduct money transfers in Turkey are banks, participation banks and the Post and Telegraph Organisation (PTT), in accordance with Articles 3 and 4 of Decree 32 on *Protection of the Value of Turkish Currency*, Article 5(b) of Communiqué 91-32/5 attached to Decree 32 and CBRT Circular I-M. Banks, participation banks and postal institutions are subject to supervision as they are obliged parties.

#### ***Ongoing supervision and monitoring – R.23 & 32***

433. According to Article 93(a) of the *Banking Law*, one of the powers of BRSA is to regulate, enforce and ensure the implementation of the establishment, activities, management and organisational structure, merger, disintegration, change of shares and liquidation of financial leasing, factoring and consumer financing companies, and monitor and supervise enforcement of such.

434. Article 14 of Decree 90 provides for supervision and audit of financing and factoring companies by the BRSA and supervision and audit of money lenders by the Undersecretariat of Treasury. The Ministry of Finance also has the authority to audit natural and legal persons governed by Decree 90.

435. According to Article 13 of the *Regulation Concerning Foundation and Operation Principles of Precious Metal Exchange Brokerage Houses*, precious metals intermediary institutions are subject to monitoring and auditing of the Undersecretariat of Treasury. During the performance of monitoring and auditing duties, the intermediary institutions are obliged to present the relevant books, records and documents to the officials in charge of performing such duties and furnish any information that they may require and to sign the minutes prepared by such officials and to provide them with all facilities that may be required.

436. According to Article 30 of *Insurance Supervision Law 7397*, insurance and reinsurance companies, and natural and legal persons concluding insurance transactions or operating in the field of insurance, are subject to the supervision of the Insurance Audit Board (IAB). Activities, assets, participations, receivables, equity capital, debts of insurance and reinsurance companies and all other elements affecting the financial and administrative structure are analysed by the IAB. All reports prepared by IAB are sent to the GDI where on-site supervision reports are combined with information from off-site supervision. The final evaluation is made by GDI.

437. In practice, supervisory authorities have inquired into mergers and take-overs even when the financial institutions subject to supervision are at the time involved in any ML case.

#### *Statistics*

**Table 31: Onsite Supervision, September 2005 to May 2006**

OBLIGED PARTIES	NO. OF OBLIGED PARTIES	NO. OF OBLIGED PARTIES SUBJECT TO ONSITE SUPERVISION	NO. OF EXAMINERS
Banks	50	30	64
Bureaux de change	761	257	81
Brokerage houses	146	104	112
Insurance companies	45	11	22
<b>Total</b>	<b>1002</b>	<b>402</b>	<b>279</b>

**Table 32: Criticisms<sup>36</sup> or Violations Determined During Onsite Inspections, September 2005 to May 2006**

OBLIGED PARTIES	NO. OF OBLIGED PARTIES SUPERVISED	NO. OF CRITICISMS / VIOLATIONS
Banks	30	16
Brokerage houses	104	2
Bureaux de change	257	44
Insurance companies	11	2
	<b>402</b>	<b>64</b>

**Table 33: Investigations of Violations of the Obligations Supervised by MASAK**

INVESTIGATIONS AND THEIR RESULTS	17.02.1997 - 31.12.2001	2002	2003	2004	2005	2006	TOTAL
Files opened for exclusively infringements of obligations	1	-	2	13	11	7	34
Completed files	1	-	-	3	6	3	13
- No detected violations of liabilities	1	-	-	3	4	3	11
- Referrals for violations of liabilities	-	-	-	-	2	-	2
- Ongoing files**	-	-	-	6	8	7	21
Referrals for violations of liabilities determined during preliminary investigations and investigations	4	8	5	4	5	1	27
<b>Total Referrals</b>	<b>4</b>	<b>8</b>	<b>5</b>	<b>4</b>	<b>7</b>	<b>1</b>	<b>29</b>

\*The table is of investigations executed referring to the infringements of obligations determined during the preliminary investigations and investigations and the files opened for solely infringements of obligations.

\*\*The distribution of ongoing files is shown as at 30.06.2005.

438. The new AML Law 5549 has added administrative penalties as an additional available sanction:

- According to Article 13, any infringement of customer identification obligations (Article 3), suspicious transaction reporting (Article 4(1)), training, internal control and risk management systems and other measures (Article 5) and periodically reporting (art. 6) are punishable by an administrative fine of TRY 5,000, and this fine can be doubled where the infringement is committed by a bank, finance company, factoring company, money lender, financial leasing company, insurance or reinsurance company, pension company, capital market institution or bureaux de change.
- The natural “person in charge” of the legal person can be punished with an administrative fine of TRY 2,000.
- Obligated parties which do not rectify any identified deficiencies in their training, internal audit, control and risk management systems within 30 days may also be subject to an administrative fine.

#### ***Guidelines – R.25 (Guidance for financial institutions other than on STRs)***

439. The primary pieces of AML/CFT guidance issued in Turkey to date are:

- The *Guideline of Combating Money Laundering and Obligation of Banking Sector* prepared jointly by MASAK and the TBA in 2003.
- The *TBA Guideline for banks on the Significance of Fight Against Laundering of Crime, Revenues and Financing of Terrorism.*
- *MASAK Suspicious Transactions Guideline*, July 2006.

440. The TBA has also issued a further 13 pieces of non-binding guidance and publications for banks on AML issues.

<sup>36</sup> Criticisms may be made by examiners as a result of onsite supervision. These are in the nature of recommendations to rectify relatively minor issues detected in the obliged party’s systems.

### **3.10.2 Recommendations and Comments**

#### **Recommendation 23**

441. The range of the obliged parties subject to the AML/CFT regulation is broad, and contains necessary financial institutions. The focus of AML regulation is customer identification, reporting suspicious transactions, record keeping and submission of information.

442. Important areas of the FATF standards are not addressed in regulatory activities, including most CDD requirements and examination of complex and unusual large transactions. There are some regulations dealing with the ownership and/or control of financial sector companies other than banks, although not all obliged parties are covered. The STR statistics reveal that almost all reports in the last five years have been submitted by banks, suggesting inadequate AML/CFT supervision of other obliged parties.

443. The qualifications and fit and proper tests for persons operating in senior roles in this sector are at times vague. In particular, there is a requirement that they have not been “subject to legal prosecution due to bankruptcy or other infamous offence”. These tests include a long list of offences which the persons must not have been convicted. Money laundering and TF are not included on the list of offences for which senior persons in the financial sector cannot have been committed. Money laundering however is captured as an offence of which founders of banks, bureaux de change and pension companies cannot have been committed.

444. The regulatory and supervisory measures that for both prudential and AML/CFT purposes do not implement measures for the insurance sector relating to licensing or structure or risk management. Further, there is no consolidated supervision for insurance and securities sectors.

445. MASAK conducts a limited programme of offsite AML/CFT control of financial institutions. Obligated parties are required by MASAK General Communiqué 4 to report annually to MASAK on statistical results of internal audit activities, for example the number of agencies controlled, customer identification and the number of suspicious transaction reports submitted. It is recommended that this requirement to report to MASAK on internal control activities be expanded, with appropriate accompanying guidance, and that MASAK establish ongoing analysis from these reports.

#### **Recommendation 29**

446. According to the provisions of Article 16 of the RRIL, MASAK is authorised to examine obliged parties to find out whether they fulfil AML their obligations. While the primary supervisors, BRSA, CMB and UT, can through their controls take into consideration AML requirements, the *Law on Insurance Supervision* does not include AML/CFT requirements in the scope of the supervision exercised by the IAB. Any AML violations found by other supervisors must be notified to MASAK for investigation. The inability of the regulators to directly apply sanctions for AML/CFT violations is a challenge to effectiveness.

447. MASAK and the courts can apply sanctions to the persons who execute the transactions which violate AML/CFT laws and regulations. Consequently, the directors and senior managers are not held liable for the violations occurring within their companies.

448. The statistics provided suggest that the number of detected violations is very low. No violations were detected in the five insurance companies, six were detected in the 70 bureaux de change, and three violations were detected in the 48 brokerage houses controlled. Further, these statistics show that the number of sanctions imposed where violations were detected is very low compared to the number of institutions supervised. These statistics call into question the effectiveness of supervision.

**Recommendation 17**

449. The sanction for violation of AML/CFT laws depends on obligations violated. Article 13 of the new AML Law 5549 provides for an administrative fine of TRY 5,000 for the obliged entity for violation of the obligations of Articles 3, 4(1), 5 and 6 (identification, suspicious transaction reporting, training and internal control and risk management systems, and reporting transactions exceeding a determined amount). This fine can be doubled where the infringement is by a bank, finance company, factoring company, money lender, financial leasing company, insurance or reinsurance company, pension company, capital market institution or bureaux de change. In cases of infringement of identification and STR obligations, a TRY 2,000 fine may be levied. The TRY 5,000 limit on fines that can be levied on financial institutions is not significantly more than under previous law and may not be sufficient to enforce compliance. Pursuant to Article 14 of the new AML Law 5549, imprisonment from one to three years and a judicial fine up to 5,000 days may be applied for; tipping off (Article 4(2)), failure to provide information, documents and records requested by MASAK or the inspectors (Article 7), and violation of record keeping requirements (Article 8).

450. Sanctions can be handed down by the courts against the persons who execute and administer the involved transaction. The mandatory criminal penalties required under the previous AML Law for violations of AML obligations by natural persons may have resulted in a small number of violations actually being prosecuted. The availability of administrative fines under the new AML law may allow for a more effective sanction system, but the relatively low limit on fines that can be applied may restrict the effectiveness of such fines. The extremely limited range of sanctions available is not adapted and proportionate to the various possible AML/CFT violations. It is recommended that Turkey clarify the sanctions available, providing for sanctions against legal persons and senior staff in institutions and better coordinating the sanctioning of the various regulatory bodies.

**Recommendation 25**

451. MASAK and the TBA have issued guidelines to assist obliged parties to implement and comply with AML/CFT requirements. This guidance is limited in scope and does not address all areas of the FATF Recommendations. The guidelines issued by the TBA are the most broad, but these are only produced for banks. Other competent authorities do not issued guidance for this purpose. MASAK does not provide feedback to parties reporting STRs, nor does it provide information on trends or examples drawn from the STRs received other than some statistics in its annual activity report.

**3.10.3 Compliance with Recommendations 23, 30, 29, 17 & 25**

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.17	PC	<ul style="list-style-type: none"> <li>• The range of available sanctions, although expanded under the new AML law, is still limited.</li> <li>• The requirement under the old AML law that mandatory criminal penalties applied to obliged parties which did not comply with AML/CFT requirements was a factor in the low number of sanctions issued.</li> <li>• The level of fines which may be issued is very low.</li> <li>• No sanctions are available for senior staff in institutions where violations occur.</li> <li>• Sanctions are now available for legal persons which do not fulfil their AML obligations but it is too early to assess their effectiveness.</li> </ul>
R.23	PC	<ul style="list-style-type: none"> <li>• There is no ongoing offsite AML/CFT control other than limited reporting by obliged parties of a limited set of statistics.</li> <li>• AML/CFT obligations do not extend to all CDD measures and matters in the FATF Standards.</li> <li>• No provisions exist which would prevent criminals or their associates from being beneficial owners of significant or controlling interests in financial institutions.</li> <li>• The fit and proper criteria for founders and persons operating in senior roles in the financial sector are broad.</li> <li>• The Core Principles are not applied for AML/CFT purposes, in particular in the insurance and securities sectors.</li> </ul>

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.25	PC	<ul style="list-style-type: none"> <li>• Only 3 pieces of AML/CFT guidance have been issued by Turkish government authorities and these do not cover all AML/CFT matters.</li> <li>• Neither feedback on STRs received nor information on typologies and trends is provided to obliged parties.</li> </ul>
R.29	PC	<ul style="list-style-type: none"> <li>• The number of AML/CFT inspections conducted and the number of violations detected are very low considering the size of the sector, suggesting limited effectiveness of the supervision system.</li> <li>• There is no explicit provision for control of compliance with AML/CFT requirements for insurance companies.</li> <li>• There is limited ongoing offsite AML/CFT control.</li> </ul>

### 3.11 Money or value transfer services (SR.VI)

#### 3.11.1 Description and Analysis

452. The issue has been regulated in Decree 32 on *Protection of the Value of Turkish Currency*, Communiqué 91/32-5 related to Decree 32, CBRT Circular I-M, *Banking Law 5411*, the PML, RRIL, MASAK General Communiqués 1 to 4, *Regulation Regarding Establishment and Functions of Participation Banks*, *Regulation Regarding Establishment and Functions of Banks*, *Postal Law 5584* and the *PTT Regulation on Remittances*. According to Articles 3 and 4 of Decree 32 on *Protection of the Value of Turkish Currency*, persons domiciled in Turkey can make international money transfers through banks and participation banks. In addition, Article 6(b) of CBRT Circular I/M, permits the PTT to carry out international money transfers. Similarly, only banks, participation banks and the PTT are authorised to conduct domestic transfers of money and value. (See table 22 for the number of international transfers over certain thresholds from 2001 to 2006.) Money transfer companies such as Western Union can only make their transactions via banks and the PTT. Bureaux de change are not authorised to transfer money.

453. Registration and licensing of these institutions is carried out in accordance with the *Banking Law*. These institutions are subject to AML obligations including those in the *Banking Law*, the PML, RRIL, MASAK *General Communiqués 1 to 4*, and the *Regulation Regarding Establishment and Functions of Banks*.

454. The Central Bank provides a system for workers' remittance under Article 55 of the Central Bank Law, Decree 32 concerning the *Law for the Protection of the Value of Turkish Currency* and CBRT Circular I/M. its primary purpose is to facilitate the transfer of remittance from abroad. Turkish natural persons aged of 18 years and more and holding a residence or working permit abroad can open an account in order to transfer money in bank and post office in or from Turkey. The Central Bank had correspondent banking agreements with foreign banks underpinning this system but those agreements have been terminated since the on-site visit. All customers using these accounts have their identification verified against MERNIS, the Turkish central population management system. All accounts are monitored continually for unusual transactions.

455. Legally, money and value transfers must be conducted through banks, participation banks or the PTT. There was no evidence of a significant alternative remittance sector outside the formal financial sector or that it presents a significant vulnerability. However, deficiencies on implementing measures for international wire transfers, as required by SR.VII, also has an impact on the implementation of requirements as contemplated by SR.VI. Furthermore, limitations identified generally with financial institutions (Recommendations 5-11, 13-15 and 21-23) would also apply.

#### 3.11.2 Recommendations and Comments

456. It is recommended that, as Turkey takes steps to improve implementation of relevant Recommendations, it clarifies and strengthens measures dealing with money or value transfer services.

### 3.11.3 Compliance with Special Recommendation VI

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
SR.VI	PC	<ul style="list-style-type: none"> <li>Limitations identified under R. 5-11, 13-15 and 21-23 generally apply to this sector; SR.VI has not been fully implemented.</li> </ul>

## 4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

### 4.1 Customer due diligence and record-keeping (R.12) (applying R.5, 6, and 8 to 11)

#### 4.1.1 Description and Analysis

457. As indicated in the introduction of this report, some of the designated non-financial businesses and professions (DNFBPs) contemplated by the FATF Recommendations are operational in Turkey. These include: real estate agents / brokers, dealers in precious metals and stones, lawyers, public notaries and accountants. Both casinos and internet gambling have been made illegal. There is no separate category of business dealing with trust and company service provision (TCSP); assistance in company formation, when it occurs, is offered by lawyers.

458. Prior to October 2006 (and at the time of the mutual evaluation on-site visit), AML/CFT preventive measures applicable to the Turkish financial system – and to DNFBPs – were set forth in the PML, as well as the RRIL and four MASAK General Communiqués issued from 1997 to 2002.<sup>37</sup>

459. On 11 October 2006, a new AML law was enacted – Law 5549 on the *Prevention of the Laundering of the Proceeds of Crime*. As indicated at the beginning of the last chapter, this new law expands on and, in some circumstances, replaces certain provisions of the PML. It came into force on 18 October 2006. Several of its provisions require the issuance of further regulation to come fully into force and effect, and these regulations must be issued within six months of October 2006. It should be noted, however, that for the existing regulation (the RRIL), the new law stipulates that their provisions “that are not contrary to this [the new] law” are to remain in effect. Therefore, as stated previously, were there are still currently valid and applicable regulations according to the provisional article of the new AML Law 5549, these have been taken into account for the purposes of rating.

460. The RRIL stipulates that AML/CFT preventive measures apply to 23 types of “obliged parties” (the full list of these is located at the beginning of Chapter 3). The new AML Law 5549, includes a general definition of “obliged parties”, which includes some but not all of the DNFBPs indicated in the RRIL. The Council of Ministers can also determine additional obliged parties among those operating in other fields. The RRIL list – with the additions from the new law – can thus be considered the definitive list. DNFBPs in this list include:

- Precious metals exchange intermediaries.
- Precious metal, stone and jewellery dealers.
- All postal services and cargo companies.
- Real estate agencies or persons intermediating purchase and sale of real estate.
- Lottery hall managers and those that operate with “bets”.
- Dealers in ships, aircraft and all types of transportation vehicles.
- Collectors, dealers and auctioneers of historical art, antiques and art works.

<sup>37</sup> See the footnote to the introductory paragraphs of Chapter 3 for the individual subjects of the MASAK General Communiqués.

- Notaries.
- Sports clubs.

461. The General Directorate of National Lottery and the Turkish Jockey Club are also obliged to comply with customer identification requirements and submit STRs in accordance with Articles 4 and 12 of the RRIL. The Directorate of Land Registry and notaries are obliged to submit STRs under Article 12 of the RRIL. Under Articles 13 and 14 of the new AML Law 5549 (formerly Article 12 of the PML and Article 17 of the RRIL), obliged parties who do not meet their obligations may receive an administrative fine and may be sentenced to imprisonment and a judicial fine.

462. According to Article 19 of the *Law Regarding Amendment of Law 4302 on Encouraging Tourism*, it is illegal to open or operate Casinos in Turkey. In addition, according to Article 5 of the *Regulation Regarding Lotteries in Internet*, it is illegal to operate internet casinos or gambling. While lottery hall managers remain on the list of obliged parties in the RRIL, due to it having been enacted before the abovementioned law and regulation which banned gambling activities, this profession no longer exists.

463. Under Article 72 of *Notary Publics Law 1512*, when notaries certify legal procedures they are obliged to determine the identity, address, skill and true intentions of involved parties. According to Article 84, notaries must gain a statement from the involved parties which notes the:

- Name and surname of the notary public and title of the notary public's office.
- Place and date of the procedures (in numbers and in writing).
- ID card and address of the involved parties and, if any, of the translator, witness and expert.
- Tax ID card of the involved party.
- Statement by the involved parties as to their true intentions.
- Signatures of the involved parties and seal and signature of the notary.

464. According to Article 84 of *Notary Publics Law 1512*, the original copies of official papers arranged in this form are to be kept in the notary's office with a copy given to the involved parties. According to Article 90 notarised signatures are provided in original form to the involved party with a copy held by the notary. According to Article 79 of the law, those who wish to carry out notarial procedures as deputy, parents, supervisors, substitute, representatives and heir or on behalf of artificial persons, such as companies or foundations, are obliged to present documents which prove their qualities and competences.

465. Trusts are not recognised under Turkish law and no evidence has been found of Turkish professionals providing offshore trust services. Corporate service providers do not appear to exist independently of other financial services.

466. Real estate agents are obliged parties, however it is unclear whether real estate agents perform any duties that would be covered by Recommendation 12 as they generally do not perform financial transactions on behalf of clients. The lack of any STRs submitted by this sector, the absence of regulatory oversight of the sector, and the fact that Turkey has generally not fully implemented certain measures (R. 6 and 8-11) makes it likely that the implementation of AML/CFT measures relating to R. 5, 6 and 8-11 is minimal.

467. The precious metals intermediary markets and exchanges are supervised by the Istanbul Gold Exchange and the Undersecretariat of the Treasury. Although some guidance has been provided by MASAK for the sector through the Istanbul Gold Exchange, it was unclear to the evaluation team if any supervision is done on the sector for the implementation AML/CFT measures relating to R. 5, 6 and 8-11. Also, oversight and guidance does not appear to extend to the retail level, which is a potential vulnerability. For the same reason as for the real estate sector, it is therefore likely that implementation of measures in this area is also minimal.

468. Notaries were previously only obliged parties under the RRIL to the extent that they had to submit STRs. With passage of the new AML law they are now explicitly covered and have full customer identification and record keeping requirements, though these do not stem from AML/CFT obligations. Little information was available as to whether notaries are in fact implementing customer identification and record keeping measures, and as for the previously mentioned sectors, the general shortcomings related to implementing R. 6, 8, 9 and 11 would also extend to notaries.

469. Lawyers, accountants and other legal professionals are not obliged parties and therefore AML/CFT measures do not apply them. It is unclear to the evaluation team whether lawyers or accountants undertake financial transactions on behalf of clients or otherwise have a fiduciary duty. There is no explicit prohibition on lawyers carrying out these services, and open information / advertisements on the internet (in the English language) indicate that lawyers in Turkey do indeed offer this type of service to their clients.

#### **4.1.2 Recommendations and Comments**

470. Certain of the relevant categories of DNFBPs are covered by the AML/CFT obligations set forth in the new AML Law 5549 (as they were previously under the PML). Lawyers and accountants are notably absent from the list of obliged parties. Given the lack of clear indication that the currently listed parties are in fact implementing measures under R. 5 and 10, as well as the general shortcomings as far as Turkey's implementation of R. 5, 6, and 8-11, the effectiveness of the implementation of R. 12 is called into question. It is recommended that Turkey fully implement R. 5, 6, 8-11 in the DNFBPs operational in its territory and that it move to extend these requirements to lawyers and accountants.

#### **4.1.3 Compliance with Recommendation 12**

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.12	NC	<ul style="list-style-type: none"> <li>• Lawyers, accountants and other legal professionals are not obliged parties.</li> <li>• Turkey's general shortcomings in implementation of Recommendations 5, 6 and 8-11 also apply to DNFBPs.</li> <li>• There are questions about the effectiveness of implementation of customer identification and record keeping requirements in obliged DNFBPs.</li> </ul>

## **4.2 Suspicious transaction reporting (R.16)** (applying R.13 to 15 & 21)

### **4.2.1 Description and Analysis**

471. Turkish DNFBPs were subject to suspicious transaction reporting requirements under the old AML law (the PML), and this obligation was reaffirmed with the passage of the new AML Law 5549 (Article 4). Article 12 of the RRIL specifies the form for providing this information to MASAK, and the MASAK General Communiqué 2 provides further instruction on reporting (applicable generally to all obliged parties). Obligated parties must report suspicious transactions to MASAK regardless of the amount of transactions. The RRIL and MASAK General Communiqués set out 20 suspicious transaction types. MASAK is authorised to set forth the types of suspicious transactions as guidance to the obliged parties.

472. According to Article 4 of the new AML Law 5549, if there is a suspicion or a suspicious situation that money or convertible assets used in transactions carried out or attempted to be carried out in the name of the obliged parties or through their intermediaries have illegal origin or are to be used for illegal purposes, this is to be immediately reported to MASAK, after making customer identification. Article 14 of the RRIL requires that STRs be reported within ten days from the date of the transaction. Under Article 13 of the new AML Law, the obliged parties and the persons in charge of them are punishable by administrative fines for not non-reporting of STRs. Formerly, Article 12 of

the PML (the old AML law) provided for imprisonment of those persons within the obliged parties who did not meet their STR reporting obligations. This provision of the old law was abolished by the new AML Law 5549.

473. Lawyers in Turkey enjoy absolute secrecy privilege extending to all their activity, documents in their possession and the right to refuse to attend as a witness in court. They are not obliged parties under the Turkish AML law.

474. As stated in the assessment of Recommendation 13, Article 4 of the new AML Law 5549 requires the submission of STRs to MASAK. The law has a general description of suspicious transactions as those relating to funds suspected of having illegal origin or being used for illegal purposes. The RRIL authorises MASAK to set forth the types of the suspicious transactions as a form of guidance to the obliged parties. STR reporting is only provided as an actual obligation in the MASAK General Communiqués. The Communiqué issued by MASAK dealing with the 20 types of suspicious transaction reports only has the status of guidance according to Article 12 of the RRIL. While the obligation to report STRs applies without a threshold, many of the types of STR described in the MASAK General Communiqués concern transactions of large amounts. This may in fact result in a threshold being applied in practice in relation to some forms of financial activity. The statistics provided by the Turkish authorities reveal a very low number of STRs compared to the size of the sector, the number of accounts and transactions. It is recommended that the provisions of Law 5549 be amended to specifically provide the STR reporting obligation for TF. It is also recommended that, in addition to defining additional STR types and reviewing the necessity of having thresholds in the STR types, Turkey should focus on a programme to increase the level of reporting by obliged parties.

475. No STRs have been filed by obliged DNFBPs. Regulatory organisations, where they exist for these sectors, do not appear to supervise for STR compliance, although under the new AML law MASAK and other examiners will in theory have the authority to investigate all covered DNFBPs. Limited guidance has been issued to the DNFBP sector; however, that guidance provides information on ML methods and on liabilities of obliged parties and also provides indications of suspicious transactions relating to various sectors including: bureaux de change, money lenders, post offices and cargo companies, and real estate. Some training has been provided.

476. As with financial institutions, DNFBPs are prohibited from warning their customers about reporting transactions to MASAK. The new AML Law 5549 of October 2006 introduces criminal liability for tipping-off. Likewise, the safe harbour provision of Article 10 of the new AML law applies to DNFBPs. Given the limited number of STRs submitted by the sector, there is no way to know whether this measure is actively respected in the DNFBP sector.

477. DNFBPs have only recently been required under the new AML law to establish and maintain internal procedures, policies and controls to prevent ML and TF. They do not have compliance officers or independent AML/CFT audit functions, which could present significant difficulties for DNFBPs now covered under the new law. They are not required to conduct in-house training or screen potential employees. DNFBPs are not required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations. The new AML Law 5549 gives the Ministry of Finance the power to determine which obliged parties must have internal controls and compliance officers, but as this law was enacted in October 2006 and regulations are expected by April 2007, it seems unlikely that DNFBPs have these controls.

#### *Statistics*

478. No STRs have been submitted by DNFBPs.

#### 4.2.2 Recommendations and Comments

479. Some of the relevant categories of DNFBPs are covered by the AML/CFT obligations set forth in the new AML Law 5549 (as they were previously under the PML). Lawyers and accountants are notably absent from the list of obliged parties. Given the lack of clear indication that the currently listed parties are in fact implementing measures under R. 13-15 and 21, as well as – in the case of suspicious transaction reporting – the extremely limited suspicious transaction reporting so far, the effectiveness of the implementation of R. 16 is called into question. It is recommended that Turkey increase the awareness of these measures among DNFBPs operational in its territory so as to ensure that R. 13-15 and 21 are effectively implemented. It is also recommended that Turkey move to extend these requirements to lawyers and accountants.

#### 4.2.3 Compliance with Recommendation 16

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.16	NC	<ul style="list-style-type: none"> <li>• Accountants, lawyers and other legal professionals are not required to submit STRs and are not subject to other measures covered by Recommendations 14, 15 and 21.</li> <li>• DNFBPs are not obliged to have compliance officers or internal control programmes.</li> <li>• DNFBPs are not required to conduct in-house training or screen potential employees. Limited training has been provided to DNFBPs.</li> <li>• DNFBPs are not required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations.</li> <li>• No STRs have been submitted by DNFBPs, which calls into question the effectiveness of implementation of Recommendation 13 in this sector.</li> </ul>

### 4.3 Regulation, supervision and monitoring (R.24-25)

#### 4.3.1 Description and Analysis

##### *Recommendation 24*

480. Real estate agents, dealers in precious metals, dealers in precious stones and notaries are obliged parties and are subject to Article 16 of the RRIL and Article 3 of the new AML law 5549. In the framework of these AML/CFT requirements MASAK is authorised to provide guidance and conduct investigations relating to these entities. Violations of obligations are subject to sanctions determined in Article 12 of the PML. None of these obliged parties are subject to other AML/CFT oversight.

481. Lawyers, other legal professionals and accountants are not obliged parties are not subject to AML/CFT supervision.

##### *Recommendation 25*

482. In September 2006 MASAK issued *A Guideline for Reporting Suspicious Transactions*. The general guidance provides some indicators for submitting STRs that are specifically applicable to DNFBPs and has been loaded onto the MASAK website. The evaluation team does not however have any information on whether this guidance is actually be used by the relevant obliged parties.

483. MASAK does not have a system in place for providing feedback to obliged parties on STRs submitted. It does however publish annual Activity Reports which provide some collated information in relation to STRs received.

#### 4.3.2 Recommendations and Comments

484. It is strongly recommended that Turkey implement systems for monitoring and ensuring the compliance of DNFBPs with AML/CFT requirements. MASAK has issued a piece of guidance of

relevant to DNFBPs on indicators of suspicious activities. It is recommended that further guidance be issued to this sector on that point and on what steps DNFBPs could implement to ensure their AML/CFT measures are effective. It is further recommended that MASAK commence providing feedback to obliged parties which submit STRs.

#### 4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.24	NC	<ul style="list-style-type: none"> <li>No systems exist for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements.</li> </ul>
R.25	PC	<ul style="list-style-type: none"> <li>The only guidance issued is a recent MASAK guideline which provides DNFBPs with indicators of ML and TF.</li> <li>MASAK does not have a system in place for providing feedback to obliged parties on STRs.</li> </ul>

#### 4.4 Other non-financial businesses and professions - Modern secure transaction techniques (R.20)

##### 4.4.1 Description and Analysis

485. Turkey has taken steps to implement measures in other non-financial businesses and professions to reduce ML and TF risks. In addition to the DNFBPs, some non-financial businesses and professions are subject to AML/CFT requirements in Turkey. Article 2 of the new AML law 5549 and Article 3 of the RRIL includes the following as obliged parties:

- Dealers in ships, aircraft and vehicles (including construction machines).
- Dealers, auctioneers and collectors of historical arts, antiques and art works.
- Sports clubs.
- Lottery hall managers.

486. These businesses and professions are obliged to conduct customer identification, report suspicious transactions, keep records and submit information and documents. The penal sanctions in Article 12 of the PML and the sanctions of Article 13 of the new AML law 5549 are applicable if they fail to comply with their AML/CFT obligations.

487. *General Communiqué on Tax Identity 2, General Communiqué 332 on Tax Procedure Law* and the *Law on Regulation of Payments by Check and Protection of Check Holders 3167* implement strategies designed to reduce the usage of cash. In addition, the TIC-RTGS system operated by the CBRT provides a safe IT system for funds transfers which is less risky than physical movements of cash. Similarly, one of the aims of *Law 3167 Regarding Regulation of Payments by Check and Protection of Check Holders* is to reduce cash usage by providing protections for those who use cheques. The check clearing system is also carried out under the supervision of the CBRT.

488. The number of credit cards and bank cards together with the number of ATM and POS machines has been increasing, indicating reduced reliance on cash.

**Table 34: Credit Cards, Bank Cards, ATMs and POS Machines**

TYPE	DECEMBER 2004	SEPTEMBER 2005
Total Credit Card	26,681,128	29,050,403
Total Bank Card	43,084,994	45,798,550
Number of POS	912,118	1,102,608
Number of ATM	13,544	14,517

489. While not a part of the AML/CFT system, all institutions when conducting purchase or sale transactions over USD 3,000 or its equivalent are obliged to determine tax identity numbers of the

parties involved in accordance with *General Communiqué on Tax Identity Number 2* and this helps to reduce ML and TF risks.

#### 4.4.2 Recommendations and Comments

490. Turkey has applied AML/CFT requirements to several different categories of DNFBPs under Article 3 of the new AML law 5549. However, given that the supervisory and regulatory structures for those sectors have no experience monitoring for AML/CFT compliance, additional action will be required to implement the law effectively in those sectors, especially in ensuring that these categories of businesses adequately implement measures dealing with customer due diligence, suspicious transaction reporting, record keeping, etc.

491. Turkey is effectively working to move more transactions to secure payment systems.

#### 4.4.3 Compliance with Recommendation 20

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.20	C	<ul style="list-style-type: none"> <li>Recommendation 20 is fully observed.</li> </ul>

## 5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

### 5.1.1 Legal persons – Access to beneficial ownership and control information (R.33)

#### 5.1.1 Description and Analysis

492. There is a central registry system in Turkey where titles, Articles of Association and other company records are registered. The Trade Registry was established through the “Trade Registry Circular” issued by the Council of Ministers in accordance with Articles 26-40 of the TCC and the special authority under Article 28 of the TCC on 25 February 1957. Trade registries offices are established wherever a chamber of commerce and industry or a chamber of commerce is located. There are 364 local chamber of commerce, industry, commerce and industry, maritime commerce and commodity exchanges.

493. Announcements pertaining to changes in the registry are made through the “Trade Registry Gazette” (TCC Articles 37, 38 and 42) which is published daily and are effective as regards from the working day following their publication in the gazette. Due to this publication policy, no claims are be entertained by Turkish courts that a person was unaware of information published in the Gazette (TCC Article 39). In addition, anyone may examine the contents of the Trade Registry and all documents kept at the office and any person may ask for an official certificate to attest to the inclusion on the Trade Registry, or not, of any matter. Trade Registry information is currently held and available in paper form, though an “Archive and automation project” is expected to result in a fully automated registry in 2007. On completion of this project it will be possible for natural and legal persons to access all records held by the Trade Registry online and conduct enquiries, including name searches. In addition, the Trade Registry will be better able to ensure information is accurate and kept securely and it will be able to share its database with other public authorities.

494. Commercial companies are registered through the Trade Registry Office in the location where the company’s head office is established. Registry and announcement requirements differ depending on the legal structure of the concerned entity. The types of notices include; establishment, increase in capital, change of legal status, branch opening or closure, change of address, change of shareholders, reports of general meetings, settlements, closing entries, financial statements, and court decisions. Registry requirements for open, limited partnerships and limited companies are in Articles 157, 244 and 510-511 of the TCC; registry requirements for joint stock companies are in Article 300 of the

TCC; and registry requirements for cooperatives are in Article 3 of the Law on Cooperatives. No information was available to the evaluation team as to whether the Trade Registry also includes information on any other types of legal persons, including foreign ones operating within Turkey, nor was it clear how often the information in the Trade Registry must be updated.

495. The subjects requiring registry include information on the founders of the legal person, partners, address of founders and business, registration date, range of activities, representatives (directors) and transfer of shares. There does not appear to be information on the shareholders in these registries. The focus of the registration system is identification of the persons who are authorised to carry out transactions on the behalf of the legal person. Under this system it is possible to have a cascade of ownership of one legal person by another legal person or arrangement with no information on the beneficial ownership or control of the legal persons involved in establishing, owning or controlling another legal person.

496. Registrations are made upon request. However, registration could be made also *ex officio* or following notification by government authorities that an unregistered company has been detected (Article 29 TCC). Establishment of a company in Turkey is finalised only after completion of the registration process. Update of the registry must occur within fifteen days of the establishment of the company or change in its circumstances as finalised in an instrument or deed. An extended one month term is allowed for those living outside the jurisdiction of the trade registry (Article 32 TCC).

497. Establishment and capital alterations of joint stock companies, in accordance with a communiqué and Article 273 of the TCC, are subjected to the permission of the Ministry of Industry and Trade. Article 409 of the TCC allows that share certificates may be registered or bearer. Bearer share certificates or temporary share certificates may not be issued for shares which have not been entirely paid up. The trade registry holds information on the nature of share structures, including whether the shares are of bearer or registered form, and share transfers must be notified to the Trade Registry Office.

498. Under the TCC, the trade registry is open to the public. Anyone may examine the contents of the trade registry and the original or certified copies of documents held by it (Article 37).

499. Trade Registry Offices also receive information from the public prosecutors, chambers of commerce, the tax administration, official authorities and courts whenever these organisations detect that a company has failed to comply with registry requirements (Article 45 of the *Trade Registry Regulation*).

500. In addition to the general power of Turkish Government authorities to require production of information and documents from other government institutions, natural and legal persons under Article 5 of the PML, registry offices have an examination function (TCC Article 34). Registry officers are able to examine the existence of legal conditions required for registration. Matters to be registered are to be in conformity with the truth, not misleading to third parties and not against public order. Registry officers inquire into the owners of establishments, ensure registry of the cases requiring registry and determine illegitimate registries (Article 45 of the *Trade Registry Regulation*). It was unclear to evaluators as to how far registry officers must enquire when there is a chain of ownership.

501. Article 40 of the TCC provides that deliberate provision of inaccurate or misleading information to the Trade Registry is an offence punishable by a fine of 100 to 2,000 liras (USD 68.5 to USD 1,370.2<sup>38</sup>), one to six months' imprisonment or both, and those found guilty are to be deprived of the both the right to be a member of the Chamber of Commerce and Industry and the right to carry on transactions on the Stock Exchange, or alternatively they are to be dismissed from the Stock Exchange for one to five years.

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<sup>38</sup> 1 TRY = 0.6851 USD as at 20 October 2006.

502. Inspectors of the Ministry of Industry and Trade audit capital stock companies. The inspections include investigations of the company's balance-sheet (Article 274 of the TCL). The Ministry of Industry and Trade may prosecute for termination of any company found to have made transactions and operated against the Law, outside of its Articles of Association or in any way against public order.

503. According to Article 409 of the TCC, share certificates of joint stock companies may be registered or to the bearer. If any of the share certificates are in bearer form, this must be noted in the company's Articles of Association. Turkey is currently undertaking an effort to dematerialise all bearer shares, and all shares traded on public exchanges are dematerialised upon receipt by a capital market intermediary.

### 5.1.2 Recommendations and Comments

504. While Turkey has a good Trade Registry system for legal persons, there is no requirement to disclose information on beneficial ownership to the Trade Registry or to other government authorities. It is recommended that the Trade Registry system be strengthened to require provision of information on the beneficial ownership and control of legal persons. Until the Trade Registry database is operational it is not possible to have rapid access to information of the owners or directors of a company. Inquiries and investigations may be conducted into the ownership of legal persons and through government authorities' powers to compel production of information they may be able to follow a trail of ownership through a series of legal persons back to the actual persons owning or controlling the entities.

505. The Trade Registry only contains information on the number of bearer shares issued for each company. It is not possible to trace movement of bearer shares. And Turkish authorities are not able to determine how many bearer shares are in circulation. However, bearer shares may no longer be issued and the dematerialisation programme will reduce and eventually remove the risk posed by bearer shares. It is recommended that Turkey continue to treat this dematerialisation programme as being a high priority.

### 5.1.3 Compliance with Recommendations 33

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.33	PC	<ul style="list-style-type: none"> <li>• Because the current Trade Registry is paper-based, there are some limitations on accessing the information in real-time; it is unclear how often the information is updated.</li> <li>• There is no obligation to declare the real beneficial owner or the natural persons who ultimately control legal persons to the Trade Registry or to other government authorities.</li> <li>• Bearer shares, even if <i>de facto</i> limited to companies not traded in the stock market, remain a matter of concern, albeit one which is being addressed by Turkey's dematerialisation programme.</li> </ul>

## 5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)

### 5.2.1 Description and Analysis

506. The Turkish legal system does not allow for the creation of trusts, and the legal concept of trust does not exist under Turkish law. Turkey has not ratified the 1985 *Hague Convention on the Law Applicable to Trusts and on their Recognition*.

507. Foreign trusts may operate in Turkey. If a foreign trust comes to Turkey as a customer, it is considered as an ordinary customer. This means all CDD measures which apply to Turkish entities should be applied to the foreign trust. The evaluation team was not able to gain information on whether Turkish lawyers may establish foreign trusts for their Turkish clients.

508. In the framework of a business relationship or an occasional transaction between an offshore trust as a customer of a Turkish financial entity, the same CDD provisions apply as for Turkish entities, that is, the Turkish obliged party must identify the customer.

### 5.2.2 Recommendations and Comments

509. While the Turkish legal system does not allow for the creation of trusts, and the legal concept of trust does not exist under Turkish law, it may be useful for Turkey to consider examining the issue of trusts and other legal arrangements established abroad. After such an examination it might then consider developing awareness raising exercises or recommendations for Turkish financial institutions or investigative authorities that may in the future come into contact with such arrangements either as part of commercial transactions or through a law enforcement investigations.

### 5.2.3 Compliance with Recommendations 34

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.34	N/A	<ul style="list-style-type: none"> <li>Trusts do not exist under Turkish law.</li> </ul>

## 5.3 Non-profit organisations (SR.VIII)

### 5.3.1 Description and Analysis

510. Freedom of association is established in Article 33 of the *Constitution*, which states that everyone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission. This provision is seen as the overarching Constitutional freedom relating to non-profit organisations. Turkey's NPO sector is quite large and represents an important element in the Turkish economy. It comprises associations and foundations. Both are legal persons regulated by the Turkish civil law.

#### *Associations*

511. There are approximately 72,000 associations in Turkey which are regulated in accordance with Articles 56 to 100 of the *Turkish Civil Law 4721*, the *Law of Associations 5253* and the *Regulation relating to the Law of Associations*.

512. Under Article 56 of the *Turkish Civil Law 4721*, associations are “communities established by a minimum of seven natural or legal persons for fulfilling a specific and common purpose excluding sharing earnings through integrating their information and studies constantly”. Article 58 goes on to require all associations to have charters which specify association's name, purpose, income sources, membership provisions, organs, organisation structure and provisional board of directors. Under Article 59, an association becomes a legal person immediately on provision of its declaration of establishment, its charter and necessary documents to the top civilian authority of the place where the association is located. According to Article 60 the highest administrative authority in the region then decides whether to grant or refuse permission for the association to operate. The *Regulation relating to the Law of Associations* outlines the required content of the declaration of establishment and necessary associated documents. Articles 31 and 32 of the Regulation outline the bookkeeping requirements for associations.

513. Internal control requirements are specified in Article 9 of the *Law on Associations* and include the requirement that there be various levels of internal audit conducted by the general assembly, administrative board and supervisory board as well as by independent audit institutions. Article 11 of the Law requires that associations issue receipts of income collected and that they pay for expenses with cost vouchers, and further that the board of directors of the association must provide certificates of authority to those persons who conduct fund raising on behalf of the association.

514. The associations are under the supervision of the Department of Associations, within the Ministry Of Interior. The Department, which was established in 2003 according to the process of accession to the EU, has regulatory and supervisory functions. The supervisory functions were performed in the past by the governors (local authorities). Under Article 19, supervision is performed through an annual declaration which associations must present to the department outlining their activities and their income and expenditure. From this the Department of Associations determines whether the association's statute is contrary to the law. They also pay attention to financial matters.

515. If the objects of an association are not compatible with legislation and ethics, a court may give judgement for the dissolution of the association upon request of the public prosecutor or any other concerned person (Article 89 of the Turkish Civil Code). Similarly, under Article 90, associations must operate in accordance with their charters and where they do not the public prosecutor can apply to a court for an order that the association must cease operation.

516. When necessary, the Ministry of Interior or public administration officer may audit an association which appears to be conducting activities outside its charter and may audit associations for compliance with bookkeeping and recordkeeping obligations. Law enforcement officers cannot participate in the audits. During the audits, upon the request of the assigned officers, any information, document, and record must be presented and full access to premises must be provided. If any offence is detected during an audit the authority notifies the public prosecutor's office and the association. The Department of Associations is only resourced to audit approximately 2.5-3% of the associations each year. From time to time the Department of Associations meets with other government authorities and if they are notified by another administration of concern about an association, they will prioritise an audit of this association. Associations with a good reputation are subject to lighter control.

517. The Turkish Civil Law provides for international activities and business relationships by associations. Turkish associations can operate overseas, open branches and become members of foreign associations and establishments in order to achieve the objects set forth in their regulations (TCL Article 91). In addition, foreign associations can carry out activities, open branches, incorporate high-level organizations and participate in Turkish associations provided that permission is obtaining from the Ministry of Foreign Affairs and the Ministry of Internal Affairs (TCL Article 92).

#### *Foundations*

518. Foundations are a long-standing tradition in Turkey which dates back to the Seljuk period before the Ottoman Empire. Many buildings of historical and architectural value in Turkey belong to foundations. Foundations are divided in two groups; those foundations established before the Republican era and the new foundations which are subject to the Turkish civil law. According to Article 1 of the *Law on Foundations Law 2762*, foundations can be classified in three categories; fused (administered by the State), subsidiary (administered by the descendants of the founders), and, non-Muslim community foundations (administered by persons or boards elected by the community members). With the *Turkish Civil Code* of 1926, which was taken from the Swiss Civil Code, the concept of "institutions" was introduced instead of the concept of foundations, largely as a means of distinguishing the new foundations from existing ones. There are now over 46,000 foundations in Turkey; 41,500 fused, 300 subsidiary, 161 community foundations and 4,450 new foundations. Fused (*Mazbut*) foundations are directly managed by the Directorate of Foundations.

519. According to Article 104 of the Civil Code, foundations are registered both in the records of the competent court at the location of the foundation and in the central register maintained by the General Directorate of Foundations.

520. Under section A of the *Communiqué on the Foundations Established under Turkish Civil Law 227*, those who are sentenced to a minimum of 6 months imprisonment for any crime cannot establish

a foundation. According to Article 1 sub-paragraph (e) of the Communiqué, those who are convicted of the offences within ATL cannot establish a foundation.

521. The operations of foundations, principles and procedure for their activities and audit requirements are established in the *Regulation on the Foundations Established under Turkish Civil Law* (7-1066) and the *Communiqués on the Foundations Established under Turkish Civil Law*. Foundations are under the supervision of the Directorate General of Foundations, which is a public organisation linked with the Prime Ministry. The establishment, organisation and duties of the General Directorate for Foundations are regulated by Decree 227. Under Article 19 of the *Regulation on the Foundations Established under Turkish Civil Law*, foundations are subject to inspection by the Inspectors of the General Directorate of Foundations. Inspections focus on whether the foundations are operating within the provisions of their settlement deed and, in accordance with Article 20, will involve inquiry into the balance sheets, the profit and loss accounts, financial management, operations of the foundation and reasons for losses (if any). Under Article 20 of the regulation it is necessary to inspect each foundation bi-annually. Foundations are also inspected upon receipt of a complaint about them or their activities. Management and the organs of the foundation are obliged to present any kind of document, record and books requested during an inspection and are required to give any information requested by inspectors. When inspections of foundations occur under the inspection programmes of the Ministry of Labour and the Ministry of Finance and Trade, reports on the inspections are sent to the General Directorate of Foundations in accordance with Article 20 of the *Law on Social Security* 506.

#### *Associations and foundations*

522. Both associations and foundations are subject to the *Law on Fund Raising* 2860 which determines the persons authorised to collect funds, the purpose of fund raising, the principles and procedures for fund raising, use of funds and auditing.

523. Public authorities have the power to shut down non-profit entities which operate against the law. The General Directorate of Foundations has also the power to dismiss the directors from the office (article 112 of the Turkish Civil Code). The Department of Associations similarly has the power to shut down an association which operates against the law, including if it has links with terrorism. However the most important problem the Department has detected within the sector relates to associations operating small businesses (such as coffee-bars) so as to avoid taxes.

524. Neither the Department of Associations nor the General Directorate of Foundations have a duty to issue guidance to associations about terrorist financing and no such guidance has been issued to date.

525. Article 7 of the ATL states that “activities of associations, foundations, trade unions and similar institutions found to have supported terrorism shall be banned and the institutions may be closed down by a court's decision. Assets of these institutions shall be confiscated”. The confiscation provisions of Articles 54 and 55 of the TCL can be applied to confiscate the financial sources of terrorist organisations, including properties and benefits used by terrorist organisations and properties or benefits provided for use in terrorist activities.

526. Since enactment of Law 5253 on Associations in 2004, associations are free to operate abroad but the transfer of money from abroad is subject to supervision. Both associations and foundations have to record their transactions. However it is unclear how detailed such information, including information on cross-border transactions, actually is. In accordance with Article 39 of the regulation on Associations of 31 March 2005, associations must keep all receipts, expense vouchers and other documents, with the exception of books, for five years from the date of record. In accordance with the *Tax Procedure Law*, foundations are obliged to keep accounting records for five years.

527. The regulations are focussed on associations and foundations which operate entirely domestically or receive money from abroad. For this reason, while there are significant controls in place to govern the in-bound transfer of money to charities from abroad, there are no restrictions on Turkish associations or foundations financing activities abroad through foreign non-profit organisations. This could be material when Turkish non-profit organisations finance projects in high risk areas. Also, since terrorism is defined only in context of acts against the Turkish state, it may not be a violation of Turkish law for Turkish associations or foundations to provide financial support to foreign terrorist groups.

### 5.3.2 Recommendations and Comments

528. The non-profit sector is closely regulated and both associations and foundations are subject to registration systems. However the evaluation team did not receive any information which demonstrates that Turkey's periodic reviews of the sector include assessment of TF vulnerabilities. In addition, there is no outreach programme for raising the awareness of the non-profit sector about the risk of terrorist abuse. Non-profit organisations are required to maintain records and submit these to government authorities. This includes transaction records, though only the associations need to keep these for five years and the level of detail of these records is not specified. Non-profit organisations' records are not publicly assessable. Under the current legislation government authorities are able to search, if needed, and obtain accurate information on entities operating in the non-profit sector and persons who own, control and direct such entities. Sanctions are in place for non-profit organisations and those working for them who commit crimes.

529. Article 13/A of Law 3152 *Regarding Establishment and Functions of Ministry of Interior* regulates the functions of Department of Associations, one of which is "to collaborate with relevant institutions on the activities of directors and members of association and unions contrary to laws." In accordance with this function, the Department of Associations cooperates with and shares information with other public authorities. The Department of Associations reported that it is informed by other authorities where an association is suspected to being linked to a terrorist organisation. However, no information has been received evidencing regular cooperation or information sharing between authorities on this risk. Similarly, no information was obtained by the evaluation team to indicate international cooperation or information sharing relating to the activities of non-profit organisations.

530. It is recommended that Turkey expand its periodic reviews of the non-profit sector to include TF risks, as part of a comprehensive outreach programme, in order to ensure that the sector is not vulnerable to TF or other abuse. It should then use this information to help fully implement measures contemplated by SR.VIII broadly across the sector, including both foundations and associations.

### 5.3.3 Compliance with Special Recommendation VIII

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
SR.VIII	PC	<ul style="list-style-type: none"> <li>• Turkey does not periodically review the NPO sector for TF vulnerabilities and does not provide outreach and guidance on TF to the NPO sector.</li> <li>• There is no requirement for foundations to keep detailed records or to keep them for a period of five years.</li> <li>• The number of associations inspected in recent years is quite low, suggesting insufficient control of the sector.</li> <li>• Domestic and international cooperation in this area is not strong.</li> </ul>

## 6. NATIONAL AND INTERNATIONAL COOPERATION

### 6.1 National cooperation and coordination (R.31)

#### 6.1.1 Description and Analysis

531. Turkey's 'Coordination Board for Combating Financial Crimes', originally established by Article 4 of the PML (replaced by Article 20 of the new AML Law 5549), is the official coordination body for AML/CFT matters at the national level. The Undersecretary of the Ministry of Finance is the chairman of the Board. Membership on the board comprises high level representatives from 12 law enforcement agencies, regulatory authorities and other relevant institutions (see Table 7 for the full list of members of the Coordination Board for Combating Financial Crimes). Where it deems necessary, the Coordination Board may also invite representatives from other public institutions and establishments. Since passage of Law 5549, the Central Bank is now a formally on the board; however, the Prosecutorial Authority remains notably absent as a permanent member.

532. In accordance with the new AML Law, the Coordination Board must meet at least twice each year and is responsible for coordination of MASAK's activities on prevention of ML, evaluating draft legislation and proposals and determining policies concerning implementation. While the Coordination Board often meets twice per year, in 2003 for example, it held four meetings.

533. It is apparent that a large degree of consultation and discussion occurred between government agencies, primarily under the Coordination Board process, during the recent review of Turkey's AML legislation. MASAK also actively consulted with the financial sector as part of this review, through the Turkish Banks Association and other financial sector representative bodies. The evaluation team was unable, however, to get a clear sense of the degree of cooperation between the agencies in contact that is not led by MASAK.

534. Turkey has a number of agencies responsible for inspections of various parts of the financial sector. In the course of this work these agencies may detect AML matters. Where possible violations of laws are detected, cases are generally provided to the public prosecutor for investigation and prosecution, and in the case of possible violations of AML/CFT rules, agencies notify MASAK, according to Turkish authorities. Most supervisors were able to conduct research to gain statistics on the number of AML-CFT inspections conducted and on the sanctions applied. While each supervisory authority sends information from its inspection programmes to MASAK and alerts MASAK to any potential AML violations, this information is not otherwise shared or coordinated amongst authorities.

535. Similarly, MASAK provides potential ML cases to the public prosecutor and provides reports on potential violations in other areas such as taxation to the responsible authorities. To date 76 reports have been sent by MASAK to Revenue Administration for investigation in respect of taxation.

536. MASAK issues communiqués which are in the nature of enforceable rules. Four such communiqués have been issued; two in 1997 and two in 2002. Two of these communiqués related to suspicious transaction reporting, one related to customer identification and another related to customer identification, internal controls and training programmes within reporting entities. Two pieces of guidance have been issued as a result of joint efforts by MASAK and the Turkish Banks Association; *Guidance on Anti-Money Laundering and Liabilities of Banks*, issued by MASAK and the TBA in December 2003, and *Guidance on the Importance of Fighting against Laundering Proceeds of Crime and Financing Terrorism and Implementation in Banking System*, issued by the TBA in cooperation with MASAK in September 2005. Recently, in July 2006, MASAK also issued the *Suspicious Transactions Guideline*. In addition, MASAK and Department of Anti-smuggling and Organised Crime of the General Directorate of Turkish National Police prepare their annual activity reports. These reports are published and provide a mechanism for both self assessment and public assessment of these agencies. No further information was available to the evaluation team on TF analysis performed in this context or the investigative set up within MASAK, nor were there details on relevant

ongoing cooperation and information sharing. In addition, the case statistics of the General Directorate of Security and data of the General Directorate of Judicial Records and Statistics are useful instruments for reviewing the effectiveness of the system, although again the evaluation team was not provided with further details on who uses these statistics and how they are used.

537. Cooperation seems to be occurring amongst enforcement authorities on a fairly regular basis. This may be complicated by the fact that the police and gendarmerie have responsibility to deal with the same crimes – the former in cities and the latter in rural areas. There are likely to be cases where there is overlap. The evaluation team were informed that such overlap, if it occurs, is avoided or managed through coordination carried out by responsible prosecutor. Under the new AML Law 5549 the Coordination Board may meet at least twice per year. To date the Coordination Board has met at least 2 to 4 times a year. While Turkish authorities believe that frequency of meetings is sufficient for the Board to carry out its functions, the evaluators believe that the number of meetings may not be enough to fully develop AML/CFT matters. Until the introduction of the new AML Law 5549, neither the CBRT nor the public prosecutors were members of the Coordination Board, though they could have been invited to its meetings if needed. With enactment of the new law, the CBRT became a member of the Board but the public prosecutors remain outside this interagency coordination mechanism<sup>39</sup>. Nevertheless, among the tasks of the Coordination Board is also the task of coordinating relevant institutions and organisations regarding AML/CFT implementation, and in this regard, the participation of the prosecutors could be useful.

538. Each authority in Turkey has different types of statistics that reflect different aspects of the system – STRs, requests, inspections, sanctions, cases, convictions and acquittals and other statistics. These do not appear to be shared or jointly examined by related authorities. Turkey reviews its system through the activities of the Coordination Board, which meets to discuss AML/CFT policy issues. Use of this mechanism to evaluate and address trends and issues in statistics would benefit the Turkish system.

### 6.1.2 Recommendations and Comments

539. The Coordination Board provides a good means of domestic coordination at a policy level. This mechanism would benefit from active involvement of the public prosecutors. Moreover, the frequency of meetings may not be sufficient for timely review of issues as they arise. Ongoing operational coordination and information sharing by competent authorities could be strengthened, particularly in relation to the various reports the financial sector must make to different supervisors and the reporting by multiple supervisors direct to the public prosecutor's office.

### 6.1.3 Compliance with Recommendation 31

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.31	LC	<ul style="list-style-type: none"> <li>The public prosecutors are not directly involved in national AML/CFT policy development on a regular basis.</li> <li>There are questions of effectiveness of the cooperation as reflected in the general results obtained from AML/CFT measures.</li> </ul>

## 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

### 6.2.1 Description and Analysis

540. *The United Nations (UN) Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988) (the Vienna Convention) was adopted by Law 4136 on 22 November 1995 and

<sup>39</sup> Turkish authorities indicated that the prosecutors do not play any role in drafting bills that concern their area of responsibility; the General Directorate of Laws from the Ministry of Justice represents the interest of the prosecutors in this regard, although there is no direct operational or administrative relation between the Ministry and the prosecutors.

ratified by Decree 7801 of the Council of Ministers of 16 January 1996. *The United Nations Convention against Transnational Organized Crime* (the Palermo Convention) was signed by Turkey on 28 June 2002, adopted by Law 4800 on 30 January 2003 and ratified by Decree of the Council of Ministers 5329 of 26 February 2003. Its related Protocols were adopted by Law 4803 (of 30 January 2003), 4804 (of 30 January 2003) and Law 5095 (of 12 February 2004) and ratified by Decrees of the Council of Ministers 5329 of 26 February 2003 and 7097 of 30 March 2004.

541. Turkey has ratified 12 United Nations anti-terrorism conventions, including the 1999 *International Convention for the Suppression of the Financing of Terrorism* (Terrorist Financing Convention) which was adopted by Law 4738 on 10 January 2002 and ratified by Decree of the Council of Ministers 3801 of 1 March 2002.

542. Under Article 90 of the Constitution “International agreements duly put into effect bear the force of law.” These agreements are put into effect by Decrees of the Council of Ministers. Such Decrees have binding force once they are published in the Official Gazette. Harmonisation with the provisions of the agreements is ensured through enacting special laws. For example, after ratification of the Vienna Convention, the ML offence was defined and controlled delivery was established in the PML (the controlled delivery provisions of the PML still apply after passage of the new AML Law 5549). Provisions for special investigative techniques in accordance with the Palermo Convention are now included in the CPL and provisions in respect of confiscation of proceeds of crime in accordance with the *1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (the Strasbourg Convention) are in the TCL. The offence of financing terrorism was established by the AATL on 18 July 2006.

543. As noted in Chapter 2, Turkey has amended criminal legislation in order to implement the both Conventions, but in both cases, the offences do not cover the full scope of the offences as foreseen by the Conventions. The new ML offence (Article 282 of the TCL) covers most but not all of the elements of the ML offence as defined in Article 3(a) and 3(b) of the Vienna Convention and Article 6(a) of the Palermo Convention. As discussed for R. 1, the ML offence does not appear to cover the “possession” of criminal proceeds. The TF offence, as discussed in Chapter 2 (SR.II), does not cover all of the elements foreseen by the Convention, namely the financing related to offences included in the 12 UN Conventions cited in the *Terrorist Financing Convention*, in particular the offences in the *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons*. Furthermore, it only applies to TF related to terrorist acts against Turkey or Turkish citizens, something that is not foreseen in the Convention.

544. In order to implement S/RES/1267(1999), S/RES/1333(2000) and S/RES/1373(2001) in respect of freezing assets of the persons and the entities financing terrorism and terrorist organisations, nine decrees of the Council of Ministers have been issued and published in the Official Gazette to date. A description of this system has been provided in Chapter 2 (see the discussion on SR.III), and the significant weaknesses identified regarding the implementation of these Resolutions in Turkey mean that Turkey can be considered to have only partially implemented these measures.

#### *Additional Elements*

545. Turkey has ratified the Strasbourg Convention (Decree of the Council of Ministers 3801 of 1 March 2002) and a number of other international multilateral instruments that allow it to cooperate internationally. Some examples in the framework of the Council of Europe are; the *European Convention on Extradition* (1960) and its second additional Protocol (1992), *European Convention on Mutual Assistance in Criminal Matters* (1969) and its additional protocol (1990), *European Convention on the International Validity of Criminal Judgments* (1978), *European Convention on the Repatriation of Minors* (1976), *European Convention on the Transfer of Proceedings in Criminal Matters* (1978), *European Convention on the Suppression of Terrorism* (1981) and its amending protocol (2005), Additional Protocol to the *European Convention on Information on Foreign Law* (2004), the *European Convention on the Transfer of Sentenced Persons* (1987), the *European Civil*

*Law Convention on Corruption* (2003), the *European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (2004), the *European Criminal Law Convention on Corruption* (2004), the *European Agreement on the Transmission of Applications for Legal Aid* (1983) and its additional Protocol (2005).

### 6.2.2 Recommendations and Comments

546. Turkey has ratified the Vienna and Palermo Conventions and the Terrorist Financing Convention. Criminal legislation has been amended in order to implement the Conventions but those provisions do not cover the full scope of the Conventions as stated above and in the individual discussion on R. 1 and SR.II. It is recommended therefore that Turkey amend the ATL and the TCL to fully cover the ML and TF offences and thus completely implement the Vienna, Palermo and Terrorist Financing Conventions.

547. As stated above regarding the implementation of S/RES/1267(1999) and its successor resolutions, and S/RES/1373(2001), implementation of measures in Turkey is incomplete (see the discussion on SR.III in Chapter 2). It is recommended therefore that Turkey reinforce its system for implementing the UNSC Resolutions by developing and implementing necessary procedures and mechanisms.

### 6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.35	PC	<ul style="list-style-type: none"> <li>Some shortcomings exist in relation to implementation of Article 3(1)(c)(1) of the Vienna Convention and Article 6(1)(b)(i) of the Palermo Convention, namely the lack of full coverage of one of the elements of the ML offence: "possession".</li> <li>Turkey has not fully implemented the Terrorist Financing Convention as the TF offence only applies to acts of terrorism against Turkey and where the funds are used to carry out or attempt a terrorist act; also the offence does not include all of the offences as foreseen by relevant UN Conventions as stated in Article 2 of the TF Convention. Turkey's implementation of Recommendation 5 does not include adequate measures to identify the beneficial owners (in accordance with Article 18(1)(b) of the TF Convention).</li> <li>There are no procedures for identifying the beneficial owner of accounts and transactions as required by the TF Convention.</li> </ul>
SR.I	PC	<ul style="list-style-type: none"> <li>There is no specific arrangement for the implementation of the S/RES/1373(2001) other than through judicial means.</li> <li>There are no formal procedures in place for, or guidance relating to, gaining access to frozen funds for necessary expenses, unfreezing or on sanctions for failure to observe a freezing order.</li> <li>Turkey has not fully implemented the Terrorist Financing Convention, as the TF offence only applies to acts of terrorism against Turkey and where the funds are used to carry out or attempt a terrorist act; also the offence does not include all of the offences as foreseen by relevant UN Conventions as stated in Article 2 of the TF Convention.</li> </ul>

## 6.3 Mutual Legal Assistance (R.36-38, SR.V)

### 6.3.1 Description and Analysis

#### *Recommendation 36 and SR.V*

548. Turkey fulfils legal assistance requests on the basis of the bilateral and multilateral agreements to which it is a party and also in accordance with general principles of domestic law. Major international conventions to which Turkey is party are the:

- European Convention on Mutual Assistance in Criminal Matters*, which was ratified on 24 June 1969 by Law 1034 of 18 March 1968 and entered into force on 22 September 1969.

- Additional Protocol to *European Convention on Mutual Assistance in Criminal Matters*, which was ratified on 29 March 1990 by Law 3363 of 18 May 1987 and entered into force on 27 June 1990.
- *European Convention on the Transfer of Proceedings in Criminal Matters*, which was ratified on 27 October 1978 by Law 2080 of 13 March 1977 and entered into force on 28 January 1979.
- *European Convention on the International Validity of Criminal Judgments*, which was ratified by Law 2081 on 13 March 1977 and entered into force for Turkey on 28 January 1979.

549. Mutual legal assistance may also be provided in accordance with the provisions of mutual legal assistance in the Vienna Convention, Palermo Convention, Terrorist Financing Convention and the OECD Bribery Convention. In addition, Turkey has established mutual legal assistance agreements, including relating to application of confiscation and precautionary measures, with China, Egypt, India, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Lebanon, Mongolia, Morocco, Pakistan, Syria, Tajikistan, Tunisia, the northern part of Cyprus, the United States of America and Uzbekistan. Although there is no agreement between Turkey and Lebanon, the provisions of the agreement concluded with Syria are valid for Lebanon.

550. In the scope of international agreements to which Turkey is party, there is an effective legal assistance system in respect of ML and TF investigations which covers; (a) production, search and seizure of information and evidence, including financial records, from financial institutions and other natural and legal persons, (b) obtaining evidence and taking depositions from persons, (c) provision of originals or copies of documents, other information and evidence, (d) provision of judicial documents, (e) ensuring voluntary appearance of persons to provide evidence and information, (f) detection, freezing, seizing and confiscation of assets which are actual or intended instruments or proceeds of crime or the equivalent value of them.

551. Although there is no specific provision in the TCL concerning this matter, the Turkish authorities have stated that mutual assistance in criminal matters with countries which are not parties to the *European Convention on Mutual Assistance in Criminal Matters* is fulfilled on the basis of bilateral agreements and where a bilateral agreement does not exist, Turkey may meet mutual assistance requests on the basis of reciprocity which is a principle of customary international law.

552. Turkey does not refuse requests for legal assistance for any reasons other than those stipulated in the agreements to which Turkey is a party. It is required for example that the requests not be related to political crimes or military offences, that it does not infringe on the sovereignty, security, public order and other essential interests of Turkey, that it does not seek arrest or execution of a conviction, and, that meeting the request would not be a violation of human rights. These limits are specified in the provisions of the conventions to which Turkey is party.

553. Establishing evidence of a crime is sufficient for mutual legal assistance. In this framework, Turkey does not stipulate that a conviction should have been obtained or that judicial proceedings must have commenced in the requesting country in order to provide the assistance.

554. The Additional Protocol of the *European Convention on Mutual Assistance in Criminal Matters* was ratified on 29 March 1990 and entered into force for Turkey on 27 June 1990. Since the Protocol includes legal assistance on financial crimes, mutual legal assistance requests are not rejected for the reason that the offence is of a fiscal nature. Legal assistance on ML covers the full range of financial matters and all relevant requests are met. However, Turkey has not signed the second Additional Protocol to the Convention (2001).

555. Under Article 3 of the *European Convention on Mutual Assistance in Criminal Matters*, “The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting Articles to be produced in evidence, records or documents”. Thus,

the powers of competent authorities in Turkey to obtain documents and information from any natural or legal person, including compulsory measures, may be used to answer a mutual legal assistance request providing that the request of mutual legal assistance is consistent with the international agreements to which Turkey is party.

556. In Turkish legislation bank officials cannot conceal banking transactions and customer information from investigators and judicial authorities. Thus, requests of legal assistance are not rejected by asserting privacy rights of financial institutions, non-financial professions or business groups. Also, all public institutions and establishments and private establishments are obliged to provide information and document requested by judicial authorities. Public prosecutors may exercise their full range of powers to carry out any kind of investigation in respect of the subjects specified in rogatory letters conveyed to them by the Ministry of Justice.

557. The central authority coordinating mutual legal assistance in Turkey is the Ministry of Justice. The Ministry of Foreign Affairs is involved in the negotiations of the treaties involving mutual legal assistance, and in some circumstances it is also involved in mutual legal assistance and extradition proceedings. The Ministry of Justice may issue circulars for the proper implementation of the international conventions on legal cooperation matters. In this regard, Circular number 69 of 1 January 2006 on criminal legal cooperation matters has been issued. Turkish authorities informed the evaluators of the existence some time after the on-site visit and originally only in its Turkish language version with an outline of its contents. Later a short synopsis translation was made available for certain key passages. Nevertheless, it was impossible for the evaluators to determine the adequacy of coverage for the guidance or the degree to which it is used by relevant authorities.

558. A simple method applies to meeting mutual legal assistance requests. After the Ministry of Justice determines whether the request is consistent with the bilateral and multilateral conventions to which Turkey is party and with Turkey's domestic legislation, the approved request is conveyed to the relevant competent authority in order to meet the request. The competent authorities for mutual legal assistance requests are the public prosecutors and courts, depending on the nature of the request and the stage of investigation.

559. Competent authorities may not reply directly to requests coming from foreign judicial authorities to local equivalent authorities, though exceptions may be permitted in urgent cases. In such cases when it is necessary to avoid delay, a judicial authority from another country may convey a request to the relevant chief public prosecutor's office directly. However, in such cases a copy of the request must also be transmitted to the Ministry of Justice.

560. Under Article 12 of the TCL if a foreigner commits an offence in a foreign country causing injury to Turkey, which requires a punishment with a minimum limit of less than one year imprisonment, and if the offender is found in Turkey, then he is punishable under Turkish laws. This will only apply where there is no extradition agreement or the demand of extradition is rejected by the nation where the crime was committed or by the nation where the person holds citizenship. Where an action filed overseas against foreigner for an offence which caused injury to Turkey is not prosecuted, is extinguished or the punishment is abated, a new trial can be filed in Turkey upon request of the Ministry of Justice.

561. Under Article 9 of the TCL, "A person convicted in a foreign country for an offence committed in Turkey is to be retried in Turkey." It is possible to prevent dual prosecution in accordance with the provisions of *European Convention on the Transfer of Proceedings in Criminal Matters* or through mutual reconciliation by regarding the principle of reciprocity if judicial authorities in more than one country conduct criminal proceedings against the same crime. Turkey may either take over the prosecution or it may transfer the criminal prosecution after agreement with the relevant country, in accordance with the TCL and the European Convention. Also, the provisions of other international agreements as to authority for legal proceedings have applied.

**Recommendation 37 and SR.V**

562. Turkey carries out mutual legal assistance in criminal matters within the framework of the *European Convention on Mutual Assistance in Criminal Matters*. The principle of dual criminality is not specified among the reasons for rejection of the legal assistance requests in this convention. Thus, Turkey does not reject the legal assistance requests on the ground that the principle of dual criminality is not met. There are three specific exceptions to this rule. Firstly, Turkey has established a reservation in accordance with Article 5 of the *European Convention on Mutual Assistance in Criminal Matters*. Under this reservation, the principle of dual criminality is required in order to meet those requests of legal assistance which involve search and seizure. Secondly, in accordance with Article 18(f) of the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, dual criminality is required for seizure and confiscation requiring coercive measures. And finally, dual criminality is required for extradition of criminals in accordance with Article 2(1) of the *European Convention on Extradition*. Under that convention the act which is the subject of the extradition must be an offence penalized by a minimum of one year imprisonment in both requesting and requested parties.

563. According to the ATL, the TF offence is restricted to terrorist acts directed against Turkey and its interests. As dual criminality is required for providing mutual legal assistance to a foreign country relating to search, seizure, confiscation and extradition, the limited scope of the offence of TF could represent an obstacle in international cooperation. Turkish authorities have however affirmed that the scope of the Turkish TF offence does not pose a serious obstacle to international cooperation, as even where dual criminality is required, it is not interpreted rigidly but flexibly. Although the elements of the crime are not the same, all mutual legal assistance requests relating to terrorist financing would be acted upon regardless of whether the terrorist acts were perpetrated against Turkey's interests. Due to the relatively recent enactment of the TF offence this has not yet been tested.

**Recommendation 38 and SR.V**

564. Article 5 of the *European Convention on Mutual Assistance in Criminal Matters* stipulates that, "Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, reserve the right to make the execution of letters rogatory for search or seizure of property dependent on one or more of the following conditions:

- a) that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party;
- b) that the offence motivating the letters rogatory is an extraditable offence in the requested country;
- c) that execution of the letters rogatory is consistent with the law of the requested Party."

565. Through such a declaration, Turkey has stated that it will fulfil requests in letters rogatory relating to search and confiscation of assets where the offence is punishable in both countries, where the offence is extraditable in Turkey and where the letters rogatory are properly executed.

566. Requests from other countries for seizure and confiscation in accordance with bilateral and multilateral agreements to which Turkey and the requesting country are parties, are met in line with relevant provisions of Turkish law. Article 17 of the new AML Law 5549 provides that if there is serious circumstantial evidence about ML or TF, the asset values will be seized in accordance with Article 128 of the CPL. Turkish authorities have averred that this includes serious circumstantial evidence received from overseas, but it is too early to assess the effectiveness of this provision.

567. While there are no specific provisions that extend the scope of domestic laws for mutual legal assistance purposes, Turkish authorities stated that the provisions in Articles 123 to 134 of the CPL for freezing and seizing property and proceeds can be applied to legal assistance requests, and further that,

the provisions relating to confiscation of goods and confiscation of proceeds in Articles 54 and 55 of the TCL may be applied to meet legal assistance requests, including those relating to ML and financing terrorism. The provisions on the subject of confiscation (Article 54 & 55 TCL) are comprehensive and allow for confiscation of assets, proceeds of crime, instrumentalities used in or intended for use in committing a crime and for confiscation of corresponding value if the property subject to confiscation has been removed, disposed or consumed. The Ministry of Justice issues circulars on implementation of the treaties on legal cooperation matters. Circular 69 of 1 January 2006 on criminal legal cooperation matters has been implemented. The main aim of this circular is to give guidance to local authorities how to prepare proper requests according to the relevant conventions. This guidance notes that mutual legal assistance requests of foreign countries concerning the execution of seizure and confiscation should be carried out in accordance with the provisions of the conventions to which Turkey is a party. This would seem to indicate that there are no other applicable provisions for execution of a foreign request for search and seizure other than the ones contained in the Conventions.

568. Turkey has not established specific mechanisms for coordinating seizure and confiscation with foreign authorities, and it does not have arrangements to share confiscated assets with countries where the confiscation was the result of coordinated action. The *UN Convention on Against Corruption* was signed by Turkey on 10 December 2003 and it was ratified by Law 5506 of 18 May 2006. The convention stipulates establishing an effective international mechanism in fighting against corruption and a system of asset recovery. After the convention enters into force in Turkey, legal arrangements for asset recovery are likely to be established.

#### Statistics

569. In 2005, 22,522 documents came into Turkey and 22,522 documents were sent by Turkey's Ministry of Justice's General Directorate of International Law and Foreign Affairs relating to mutual legal assistance. From 1 January to 1 May 2006, the number of incoming documents was 8,389 and outgoing was 11,717. Most mutual legal assistance requests are most commonly made and received on the basis of the predicate offence involved, with the request seeking detection, seizure and confiscation of proceeds derived from the offence.

**Table 35: Legal Assistance Requests Sent**

YEARS	NO. OF REQUESTS			NO. OF RESPONSES			NO. OF REQUESTS REJECTED		
	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES
1999	-	-	-	-	-	-	-	-	-
2000	-	-	401	-	-	-	-	-	-
2001	-	4	452	-	1	-	-	3	-
2002	2	3	584	-	1	-	-	2	-
2003	-	5	930	-	4	-	-	1	-
2004	-	2	343	-	-	-	-	-	-
2005	-	-	421	-	-	-	-	-	-
2006	-	-	145	-	-	-	-	-	-
<b>Total</b>	<b>2</b>	<b>14</b>	<b>3276</b>	<b>-</b>	<b>6</b>	<b>-</b>	<b>-</b>	<b>6</b>	<b>-</b>

\*The offences within the scope of Article 7 of the *Anti-Terror Law 3713*

**Table 36: Legal Assistance Requests Received**

YEARS	NO. OF REQUESTS			NO. OF RESPONSES			NO. OF REQUESTS REJECTED		
	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES
1999	-	-	-	-	-	-	-	-	-
2000	-	-	305	-	-	-	-	-	-
2001	1	-	366	-	-	-	-	-	-
2002	2	-	224	-	-	-	-	-	-
2003	2	1	340	-	1	-	-	-	-
2004	3	-	338	-	-	-	-	-	-

YEARS	NO. OF REQUESTS			NO. OF RESPONSES			NO. OF REQUESTS REJECTED		
	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES
2005	-	-	421	-	-	-	-	-	-
2006	-	-	145	-	-	-	-	-	-
<b>Total</b>	<b>8</b>	<b>1</b>	<b>2139</b>	<b>-</b>	<b>1</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

\*The offences within the scope of Article 7 of the *Anti-Terror Law 3713*

### 6.3.2 Recommendations and Comments

570. Turkey is party to Treaties which provide the legal basis for providing and requesting mutual legal assistance. However, Turkey has not signed the Second Additional Protocol (2001) to the *European Convention on Mutual Legal Assistance in Criminal Matters*. According to Circular No. 69 of 1 January 2006, if there is no multilateral or bilateral agreement between the countries, the mutual legal assistance requests of foreign countries should be carried out according to Turkish legislation. While Turkish authorities have affirmed that the Circular is legally binding, it is unclear the degree to which the procedures described therein are effectively being used.<sup>40</sup> Turkey requires dual criminality in order to apply seizure, confiscation and extradition provisions in some areas in line with relevant conventions; however, Turkish authorities do not define this restrictively, and neither dual criminality nor the principle of reciprocity have been used as a grounds to refuse mutual legal assistance. The statistics provided suggest that assistance is provided within a reasonable period. In particular, during the years 2001-2004, Turkey provided information and documents to various jurisdictions, and in one case seized real estate assets on the request of a foreign jurisdiction.

571. Turkey does not apply disproportionate or undue conditions that can hamper provision of mutual legal assistance. While in practice, Turkish authorities appear able to assist foreign countries with all measures available for domestic investigations or criminal proceedings, there are no specific provisions that extend the scope of domestic laws for mutual legal assistance purposes. Until recently, some shortcomings in domestic legislation could have affected international cooperation. In particular; Article 128 of the CPL which provides for search and seizure of proceeds of crime did not apply to ML or TF cases. With the passage of the new AML Law 5549 in October 2006 however, these criminal procedure law provisions have been explicitly extended to ML and TF (Article 17).

572. As dual criminality is required for mutual legal assistance in certain instances, and the current terrorist financing offence covers only acts of terrorism related to Turkey and its interests, this could pose an obstacle for rendering assistance when the acts of terrorism are directed against a foreign country or an international organisation. As the terrorist financing offence came into force in July 2006 this has not yet been tested.

573. Turkey does not have arrangements for coordinating seizure or confiscation actions with other countries. No statistics were provided on international cooperation relating to seizure and confiscation. Turkey does not have an asset forfeiture fund and there is no indication it has considered establishing one. Turkey does not share confiscated assets with other countries which participated in coordinated action and there is no indication it has considered establishing a system to do so. It is recommended that Turkey consider establishing both systems.

### 6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.36	LC	<ul style="list-style-type: none"> <li>Dual criminality may impede search, seizure and confiscation where the request relates to the possession of criminal proceeds.</li> <li>The effectiveness of new international cooperation procedures could not be fully assessed due</li> </ul>

<sup>40</sup> As indicated above, the Circular was issued in January 2006, and the evaluation team was not informed of its existence until well after the on-site visit (and only in its Turkish language version). Thus, the evaluators were unable to assess the effectiveness of these procedures directly.

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
		to their recent implementation.
R.37	LC	<ul style="list-style-type: none"> <li>Applying dual criminality could be an obstacle to extradition and to mutual legal assistance relating to search, seizure and confiscation for TF in cases which do not involve Turkey or its interests.</li> </ul>
R.38	PC	<ul style="list-style-type: none"> <li>In cases where no convention or bilateral agreement exists, there is no specific provision for applying provisional measures to answer mutual legal assistance requests for search, seizure and confiscation except for reciprocity.</li> <li>Dual criminality may impede search, seizure and confiscation where the request is related to TF in cases which do not involve Turkey or its interests.</li> <li>No consideration has been given to establishing an asset forfeiture fund or to sharing confiscated assets with a foreign country after coordinated international action.</li> <li>There are no arrangements for coordinating seizure or confiscation actions with other countries.</li> </ul>
SR.V	PC	<ul style="list-style-type: none"> <li>The limited scope of the offence of TF could limit the possibility of mutual legal assistance requests for search, seizure and confiscation.</li> </ul>

## 6.4 Extradition (R.37, 39, SR.V)

### 6.4.1 Description and Analysis

#### *Recommendation 39 and SR.V*

574. Turkey has ratified the *European Convention on Mutual Assistance in Criminal Matters* and the *European Convention on Extradition* which was signed on 13 December 1957 and has been in effect since 18 April 1960 (its ratification was adopted by Law 7376 on 18 November 1959). Turkey has not asserted any legal or practical obstacles preventing meeting the requests other than those stipulated in the Conventions. Extradition requests can be refused if there is strong suspicion that the person will be tortured or inhumanely treated or punished or prosecuted because of his political opinions or his membership of a particular social group, nationality, religion or race.

575. In the requests for extradition, it is sufficient for meeting the request that the act which is the subject of extradition requires minimum one year imprisonment. Since ML is punishable by imprisonment from 2 to 5 years and TF by imprisonment from 5 to 10 years, the ML and TF offences are subject to extradition. In addition, Turkish authorities have stated that it is possible to carry out extradition in line with the principle of reciprocity. Where extradition requests received by Turkey are processed, a detention order may be issued or other protective measures may be taken under the Code of Criminal Procedure. When extradition is granted, the person may only be tried or punished for the offences noted in the extradition request.

576. It is not possible to extradite a Turkish citizen to a foreign country for any offence s/he committed, in accordance with Article 38 of the *Constitution* and Article 18/2 of the TCL. The only exception to this rule is where the extradition relates to Turkey's obligations as a party to the International Criminal Court. In cases where extradition requests are rejected due to Turkish citizenship, Turkish authorities state that, in line with Article 6 of *European Convention on Extradition* and upon request of the country, cases are often conveyed to Turkish judicial authorities for prosecution. In addition, under Article 11 of the TCL, if a Turkish citizen commits an offence overseas which would be subject to punishment of a minimum of 1 year imprisonment if committed in Turkey, then the Turkish citizen can be tried in Turkey. In cases where the punishment would be less than a year, the Turkish citizen could be subject to trial in Turkey if the injured party makes a complaint within 6 months of the offence. Article 13(1) of the TCL provides that if a Turkish citizen (or a foreign citizen) commits any of a set of listed offences while overseas, then s/he will be subject to Turkish law relating to these offences. While systems are in place to prevent dual prosecution, it is possible that a person already sentenced in another country could be re-tried in Turkey.

577. The procedure for evaluation of extradition requests involves the Council of Ministers, the Ministry of Justice, the public prosecutor's office and the Courts as competent authorities. The central authority in respect of requests is the Ministry of Justice. The court of the place where the person is located decides on the extradition request and this decision may be appealed before the Court of Cassation. If the court finds the extradition request admissible, execution of this decision is on the discretion of the Council of Ministers.

#### *Additional elements*

578. It is possible to conduct extradition matters directly with the counterpart Ministry in accordance with the agreements and protocols to which Turkey is a party. In practice however, the documents of extradition are conveyed via diplomatic channels and other associated communication is conducted between the Ministries concerned. Extradition of persons is not possible on the basis of an arrest warrant or foreign court judgement. There is no simplified extradition procedure for those who give up their right to formal extradition operations.

#### **Recommendation 37 and SR.V**

579. Turkey has ratified the *European Convention on Extradition* which adopts the principle of dual criminality. This principle applies also for financial crimes within the scope of the Additional Protocol to the convention. Turkey has not asserted any legal or practical obstacles preventing meeting the requests other than those stipulated in the convention. There are provisions related to the dual criminality principle in all multilateral international conventions on extradition to which Turkey is a party. When a bilateral or multilateral agreement does not exist, Turkey meets the extradition request on the basis of Article 18 of the TCL, which also requires dual criminality. This principle is applied flexibly and dual criminality is rarely used as a ground for rejection. Turkey provided information about a suspected terrorist who was extradited from Turkey for conduct of terrorist activities which were against the interests of foreign states (not against Turkey's interests)<sup>41</sup>.

#### *Statistics*

**Table 37: Extradition Requests Sent**

YEARS	NO. OF REQUESTS			NO. OF RESPONSES			NO. OF REQUESTS REJECTED		
	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES
1999	1	20	31	-	-	6	1	13	15
2000	-	18	34	-	-	6	-	15	14
2001	-	13	38	-	1	14	-	9	14
2002	1	10	53	-	1	26	1	9	12
2003	2	20	43	-	1	20	-	9	11
2004	-	22	60	-	4	26	-	13	21
2005	-	29	54	-	3	14	-	11	8
2006	-	10	10	-	-	2	-	-	-
<b>Total</b>	<b>4</b>	<b>142</b>	<b>323</b>	<b>-</b>	<b>10</b>	<b>114</b>	<b>2</b>	<b>79</b>	<b>95</b>

\*The offences within the scope of Article 7 of the *Anti-Terror Law 3713*

**Table 38: Extradition Requests Received**

YEARS	NO. OF REQUESTS			NO. OF RESPONSES			NO. OF REQUESTS REJECTED		
	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES
1999	-	3	40	-	3	16	-	-	3
2001	-	-	37	-	-	17	-	-	14
2001	-	2	37	-	-	13	-	-	6

<sup>41</sup> This information was provided 5 months after the onsite visit and only relates to a single case, and thus the evaluation team did not have sufficient information to assess the effectiveness of Turkey's implementation of this Recommendation in cases of terrorism against other countries.

YEARS	NO. OF REQUESTS			NO. OF RESPONSES			NO. OF REQUESTS REJECTED		
	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES	ML OFFENCE	*TF OFFENCE	PREDICATE OFFENCES
2002	2	2	41	2	-	20	-	-	14
2003	2	-	17	2	-	9	-	-	3
2004	-	1	25	-	-	12	1	-	4
2005	-	1	25	-	-	3	-	-	-
2006	-	-	9	-	-	-	-	-	1
<b>Total</b>	<b>4</b>	<b>9</b>	<b>231</b>	<b>4</b>	<b>3</b>	<b>90</b>	<b>-</b>	<b>1</b>	<b>45</b>

\*The offences within the scope of Article 7 of the *Anti-Terror Law 3713*

580. Response times for extradition requests received by Turkey over the past 2 years show that most requests are responded to within 6 months. The shortest response time has been 3 months 6 days and the longest was 7 months 23 days.

#### 6.4.2 Recommendations and Comments

581. The new TCL provides a robust basis to cooperate at international level in extradition matters. ML and TF are extraditable offences in Turkey. The procedure for extradition is quite complex and involves a political decision of the Council of Ministers. Turkey will not extradite its own nationals, but it may commence domestic proceedings for criminal actions of its citizens conducted overseas. It is recommended that the circumstances in which such action is conducted be broadened.

582. Extradition requests can be refused if the act is not an offence under Turkish law; however it has been stated that this is applied in a flexible manner. In addition, as the terrorist financing offence covers only acts of terrorism related to Turkey and its interests, this could pose an obstacle for rendering assistance when the acts of terrorism are directed against a foreign country or an international organisation. As the terrorist financing offence came into force in July 2006 this has not yet been tested.

583. Turkish authorities appear to provide effective cooperation on sharing evidence for extradition purposes. As the TCL came into force on 1 June 2005, it is too early to assess the effectiveness of the new extradition provisions.

#### Compliance with Recommendations 37 & 39, and Special Recommendation V

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.39	LC	<ul style="list-style-type: none"> <li>Domestic legislation provides limited circumstances in which it explicitly provides that if the extradition is refused on the ground of citizenship, the person will be prosecuted in Turkey.</li> <li>As the TCL came into force on 1 June 2005, it is too early to assess the effectiveness of the new extradition provisions it introduced.</li> </ul>
R.37	LC	<ul style="list-style-type: none"> <li>Applying dual criminality for search, seizure and confiscation could be an obstacle to extradition for TF in cases which do not involve Turkey or its interests.</li> </ul>
SR.V	PC	<ul style="list-style-type: none"> <li>The limited scope of the offence of TF could present grounds to refuse an extradition request if such an offence does not involve Turkey or its interests.</li> </ul>

#### 6.5 Other forms of international cooperation (R.40 & SR.V)

##### 6.5.1 Description and Analysis

584. **MASAK**: According to the sub-paragraph 2 of Article 3 of the PML, the duties of MASAK include exchanging studies and information with national and international institutions and establishments and conducting research and investigations related to ML. The President of MASAK is authorised by a Council of Ministers Decree to sign memoranda of understanding with the financial intelligence units (FIUs) of 95 countries in the scope of ML and TF but has not yet established any

MOUs with counterpart units. MASAK exchanges information with financial intelligence units through the Egmont Group of Financial Intelligence Units, of which it has been a member since 1998. There are no available statistics on spontaneous international disseminations which suggests the FIU does not make such disseminations.

585. Requests received through the Egmont Group are responded to as soon as possible by searching the MASAK database. Exchanges of information are conducted in relation to ML and predicate offences resulting in ML, and this includes fiscal matters. MASAK also provides counterpart FIUs with information and documents obtained from other domestic institutions, natural and legal persons in accordance with Article 5 of the PML, on the condition that the information is treated as confidential and is used only for intelligence purposes. Information obtained by MASAK through the Egmont Secure Web message system may only be used for the purposes stated in the request. Information requests received from non-counterparts are forwarded to the Turkish counterpart authority of the requesting unit.

**Table 39: Information Exchanges using the Egmont Secure Web**

YEARS	REQUESTS FOR INFORMATION	REQUESTS	RESPONSES
2004	Received by MASAK	106	103
	Sent by MASAK	30	23
2005	Received by MASAK	132	121
	Sent by MASAK	54	36
2006	Received by MASAK	74	57
	Sent by MASAK	123	41

586. **Banking Regulation and Supervision Agency (BRSA):** The BRSA has established 13 memoranda of understanding (Albania, Azerbaijan, Bahrain, Bulgaria, China, Greece, Indonesia, Kazakhstan, Kyrgyzstan, Malta, Pakistan, Romania and the northern part of Cyprus) allowing for the exchange of information about the activities of banks and financial institutions established in the respective countries; creation of the institutional framework to facilitate cooperation in cross-border supervision and sharing of experiences and technologies; and joint training programs. The information exchange can relate to ML issues as well as other supervisory matters. Further MOUs are currently being drafted with foreign counterparts. The BRSA is also able in some cases able to cooperate with foreign counterparts even without an MOU.

587. **Capital Markets Board (CMB):** Article 22(y) of the CML authorises the CMB to collaborate in any way and to exchange information regarding the capital market with any equivalent authority of a foreign country responsible for regulation and supervision of their capital markets. The CMB has signed both bilateral and multilateral agreements and as at October 2006 had 21 MOUs in place with foreign counterparts. The CMB is also one of the signatories of IOSCO Multilateral Memorandum of Understanding, which has 34 signatories. From 2002 to 2006 the CMB shared information relating to capital market investigations on 20 occasions with 9 different MOU counterparts. Some liaison is also conducted with additional countries outside of the MOU framework.

588. **General Directorate of Security:** The General Directorate of Security meets the information requests of foreign police authorities in the framework of bilateral security cooperation agreements. Mutual legal assistance processes are not required. The General Directorate of Security exchanges information for investigations with police authorities and through Interpol, Europol and police liaison officers. Inquiries are performed jointly by controlled delivery method. In the past 10 years Turkish authorities have worked with 15 countries, conducting a total of 114 controlled deliveries. While most of these involved illicit drugs or persons, Turkey has participated in controlled deliveries involving EUR 311,000 and GBP 250,000. Turkey has concluded 68 agreements for police cooperation in criminal matters with various countries. Turkey has some liaison officers posted overseas to facilitate the exchange of strategic and operational information and hosts a number of foreign liaison officers in Turkey who work closely with the Turkish National Police. Turkish authorities work with Europol and Interpol. On a regional level, Turkey is party to certain regional cooperation efforts in the fight

against organised crime in the Balkans and Black Sea region, such as, the Stability Pact, the South East European Cooperative Initiative (SECI) and the Black Sea Economic Cooperation.

589. **Undersecretariat of Customs:** Turkey is party to the Southeast European Cooperative Initiative (SECI). In addition, The Undersecretariat of Customs cooperates internationally through mutual cooperation and customs cooperation agreements, with information requests and responses sent through the Ministry of Foreign Affairs. Agreements have been signed with 40 countries and various protocols have been signed for mutual assistance with 8 countries. Such agreements on customs issues have been signed with several countries' customs administrations taking into consideration the provisions of "Nairobi Agreement" and "Draft Model Bilateral Agreement". These agreements improve the cooperation between customs administrations, facilitate and encourage the flow of goods and passengers and increase effectiveness of combat crimes committed against the customs laws and economic, social and financial benefits of both countries. It is also possible to exchange customs personnel and information within the scope of these agreements. Monthly meetings are held with the customs and police liaison officers of foreign countries who are based in Turkey. During these meetings information is exchanged on investigation procedures and on the routes, transportation, and concealment methods used by criminals. Information relating to the proceeds of crime connected to narcotic drugs may also be exchanged.

### 6.5.2 Recommendations and Comments

590. Turkey has a good framework in place for international cooperation, but Turkish authorities provided little information indicating effective cooperation in practice.

591. Article 12 of the new AML Law allows MASAK to sign and amend MOUs with foreign counterparts in order to exchange information within the scope of MASAK's duties. For an MOU to enter into force, a Decree of the Council of Ministers is required. This condition has the potential to limit international cooperation though a Decree is in place which authorises establishment of MOUs with 95 countries.

### 6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.40	LC	<ul style="list-style-type: none"> <li>MOUs signed by MASAK and foreign authorities require a decree from the Council of Ministers to enter into force, a requirement that could limit the effectiveness of international cooperation as envisaged by this Recommendation.</li> </ul>

## 7. OTHER ISSUES

### 7.1 Resources and statistics (R.30 & R.32)

592. **Remark:** the description and analysis relating to Recommendations 30 and 32 is contained in relevant sections of the report, i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections.

#### 7.1.1 Resources – Compliance with Recommendation 30

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.30	PC	<ul style="list-style-type: none"> <li>CFT training of all supervisors (in banking and especially securities and insurance sector) is insufficient.</li> <li>Competent authorities do not have an adequate structure and sufficient technical, staff and other resources for AML and CFT supervision of the insurance sector, particularly if full CDD</li> </ul>

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
		<p>and internal control requirements are implemented in this sector.</p> <ul style="list-style-type: none"> <li>• The FIU is not adequately resourced with staff with a law enforcement background.</li> <li>• The customs service does not seem to have sufficient funding and staff for its functions and this may lead to inadequate attention to AML/CFT issues.</li> <li>• There seems to be a serious lack of knowledge of AML/CFT issues among prosecutors and judges.</li> <li>• There is a need for CFT training to all authorities.</li> </ul>

593. **7.1.2 Statistics - Compliance with Recommendation 32**

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.32	PC	<ul style="list-style-type: none"> <li>• There are no statistics on spontaneous international disseminations involving the FIU.</li> <li>• The limited information on cross border transportation of currency does not reflect the amount of cross border transportation of currency.</li> <li>• Since 2002 the statistics on cases in courts as kept by the General Directorate of Judicial Records and Statistics show the number of persons convicted/acquitted but authorities are unable to say how many cases this information relates to.</li> <li>• Statistics on inspections dedicated to AML/CFT and the sanctions applied should be shared amongst the supervisors.</li> <li>• Statistics are not jointly examined by agencies to evaluate trends and issues.</li> </ul>

**7.2 Other relevant AML/CFT measures or issues**

594. There are no other issues relevant to the Turkish AML/CFT system.

**7.3 General framework for AML/CFT system (see also section 1.1)**

595. There are no elements of the general framework of the Turkish AML/CFT system that significantly impair or inhibit its effectiveness.

## TABLES

**Table 1: Ratings of Compliance with FATF Recommendations**
**Table 2: Recommended Action Plan to improve the AML/CFT system**
**Table 3: Authorities' Response to the Evaluation**

**Table 1: Ratings of Compliance with FATF Recommendations**

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

40 + 9 RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATING <sup>42</sup>
<b>Legal systems</b>		
1 – ML offence	PC	<ul style="list-style-type: none"> <li>• The threshold for predicate offences is too high as it only captures offences penalised by minimum imprisonment of 1 year or more.</li> <li>• Not all elements required by the relevant UN conventions appear to be covered, in particular; possession and possibly also use.</li> <li>• There are doubts about the effectiveness of Turkey's criminalisation of ML; prosecutions under the old ML offence (in effect up to June 2005) have produced a disproportionately high number of acquittals, and there have not been any final convictions for ML under this offence.</li> <li>• Effectiveness of the new ML offence cannot be assessed as it was introduced relatively recently (June 2005).</li> </ul>
2 – ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> <li>• It has not been clearly demonstrated (through prosecution or case-law) that the intentional element of the ML offence can be inferred from factual circumstances though this has not yet been tested in a prosecution, and this does not appear to be supported by case-law.</li> <li>• The 5 year maximum penalty for ML (or 10 years if committed in the context of a criminal organisation) is relatively low in comparison with similar types of offences.</li> <li>• Only a limited range of sanctions can be applied to legal persons.</li> <li>• There are questions of effectiveness in this area.</li> </ul>
3 – Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>• The rights of bona fide third parties may not be fully protected.</li> <li>• The effectiveness of Turkey's confiscation system to date is questionable: The number of confiscation proceedings is very limited (only 3), and no final confiscation action has occurred up to now.</li> <li>• New confiscation powers for ML and TF are too recent to test their effectiveness.</li> </ul>

<sup>42</sup> These factors are only required to be set out when the rating is less than Compliant.

40 + 9 RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATING <sup>42</sup>
<b>Preventive measures</b>		
4 – Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> <li>Financial institutions are not authorised to share information in the implementation of Recommendations 7 and 9 and SR.VII.</li> </ul>
5 – Customer due diligence	NC	<ul style="list-style-type: none"> <li>The only explicit CDD requirement is customer identification. It is not specified whether identification must be conducted for linked transactions below the TRY 12,000 threshold.</li> <li>Customer verification of natural persons only partially complies with international standards. There are no verification requirements for legal persons, associations, and foundations.</li> <li>Documents authorising a natural person to conduct transactions on behalf of a legal person are required as part of customer identification in accordance with primary or secondary law for legal persons registered in Trade Registry, but not for foundations or associations.</li> <li>There is only a very limited provision, which is not yet implemented in supporting regulation, requiring the identification of the beneficial owner, and financial institutions are not required to take reasonable steps to understand the layers of ownership and control of legal persons which are their customers.</li> <li>Measures for collection of information on the purpose and nature of the relationship for legal persons are only contained in unenforceable guidelines. There is no provision applicable for insurance.</li> <li>Measures for enhanced CDD for sensitive countries, sensitive business and higher risk customers, are only contained in non-mandatory and unenforceable guidelines and this is largely undefined.</li> <li>There are no clear CDD requirements for the financial sector other than those for banks.</li> <li>The exemption of requirements for identification for transactions carried out with central and local public administrations, state economic enterprises, quasi public institutions, banks and participation banks are overly broad.</li> <li>There are no clear requirements to conduct ongoing CDD.</li> </ul>
6 – Politically exposed persons	NC	<ul style="list-style-type: none"> <li>Turkey has not implemented AML/CFT measures concerning establishment of customer relationships with PEPs.</li> </ul>
7 – Correspondent banking	NC	<ul style="list-style-type: none"> <li>Turkey has not implemented AML/CFT measures concerning establishment of cross-border correspondent banking relationships.</li> </ul>
8 – New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> <li>Turkey has not implemented adequate AML/CFT measures concerning risks in technology or the establishment of non face-to-face business transactions (in the latter category, other than for banks and brokers).</li> </ul>
9 – Third parties and introducers	NC	<ul style="list-style-type: none"> <li>There is no law, regulation or enforceable guidance, outside of the securities' sector, on the use of third parties to perform CDD under Turkish law.</li> </ul>
10 – Record keeping	C	<ul style="list-style-type: none"> <li>Recommendation 10 is fully observed.</li> </ul>

40 + 9 RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATING <sup>42</sup>
11 – Unusual transactions	NC	<ul style="list-style-type: none"> <li>Recommendation 11 has not been implemented.</li> </ul>
12 – DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> <li>Lawyers, accountants and other legal professionals are not obliged parties.</li> <li>Turkey's general shortcomings in implementation of Recommendations 5, 6 and 8-11 also apply to DNFBPs.</li> <li>There are questions about the effectiveness of implementation of customer identification and record keeping requirements in obliged DNFBPs.</li> </ul>
13 – Suspicious transaction reporting	PC	<ul style="list-style-type: none"> <li>There is no express obligation to report STRs on terrorist financing and the limited definition of terrorism means the full range of terrorist financing activities is not covered by the definition of what matters STRs may relate to.</li> <li>Many of the STR types relate to high value transactions.</li> <li>The level of STR reporting is low when the size and nature of the Turkish financial sector is considered.</li> </ul>
14 – Protection & no tipping-off	LC	<ul style="list-style-type: none"> <li>In practice, the practice of some financial institutions in automatically suspending transactions that are the subject of an STR may inadvertently alert the customer to fact that a report has been made, thus limiting the effectiveness of the 'tipping off' prohibition.</li> </ul>
15 – Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> <li>Financial institutions are not required to establish adequate internal audit procedures and policies in relation to TF.</li> <li>The access to information by compliance officers in banks and participation banks is only inferred from their position in the organisation structure.</li> <li>While brokerage houses are required to adopt internal audit policies and procedures, this does not specifically relate to AML/CFT.</li> <li>Insurance companies and other obliged parties are not required to have internal controls or compliance officers.</li> <li>In-house training and screening requirements only apply to the banking and securities industries. Training requirements for banks do not exist in relation to the full breadth of AML/CFT issues and obligation.</li> <li>Effectiveness issue: Of the 20 banks inspected by the BRSA in 2005 (13 Turkish banks and 7 foreign banks), 6 did not fulfil their obligation on the appointment of compliance officer.</li> </ul>
16 – DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> <li>Accountants, lawyers and other legal professionals are not required to submit STRs and are not subject to other measures covered by Recommendations 14, 15 and 21.</li> <li>DNFBPs are not obliged to have compliance officers or internal control programmes.</li> <li>DNFBPs are not required to conduct in-house training or screen potential employees. Limited training has been provided to DNFBPs.</li> <li>DNFBPs are not required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations.</li> </ul>

40 + 9 RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATING <sup>42</sup>
		<ul style="list-style-type: none"> <li>No STRs have been submitted by DNFBPs, which calls into question the effectiveness of implementation of Recommendation 13 in this sector.</li> </ul>
17 – Sanctions	PC	<ul style="list-style-type: none"> <li>The range of available sanctions, although expanded under the new AML law, is still limited.</li> <li>The requirement under the old AML Law that mandatory criminal penalties applied to obliged parties which did not comply with AML/CFT requirements was a factor in the low number of sanctions issued.</li> <li>The level of fines which may be issued is very low.</li> <li>No sanctions are available for senior staff in institutions where violations occur.</li> <li>Sanctions are now available for legal persons which do not fulfill their AML obligations but it is too early to assess their effectiveness.</li> </ul>
18 – Shell banks	PC	<ul style="list-style-type: none"> <li>There is no explicit prohibition on establishment of shell banks.</li> <li>There is no provision that prohibits Turkish banks from entering into, or requiring them cease, operations with shell banks.</li> <li>There are no provisions requiring Turkish financial institutions to verify that their respondent institutions do not have accounts used by shell banks.</li> </ul>
19 – Other forms of reporting	C	<ul style="list-style-type: none"> <li>Recommendation 19 is fully observed.</li> </ul>
20 – Other NFBP & secure transaction techniques	C	<ul style="list-style-type: none"> <li>Recommendation 20 is fully observed.</li> </ul>
21 – Special attention for higher risk countries	NC	<ul style="list-style-type: none"> <li>Recommendation 21 has not been implemented.</li> </ul>
22 – Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> <li>Article 4 of the RRIL providing for application of customer identification requirements to overseas branches and subsidiaries has not been implemented.</li> <li>Internal control provisions for overseas branches and subsidiaries only exist for banks, not for any other obliged parties.</li> <li>There is no requirement to pay particular attention where branches and subsidiaries are in countries which do not or insufficiently apply the FATF Recommendations.</li> <li>There is no requirement to apply the higher of the two countries' standards.</li> <li>There is no requirement to inform supervisors when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures due to host country restrictions.</li> </ul>
23 – Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> <li>There is no ongoing offsite AML/CFT control other than limited reporting by obliged parties of a limited set of statistics.</li> <li>AML/CFT obligations do not extend to all CDD measures and matters in the FATF Standards.</li> <li>No provisions exist which would prevent criminals or their</li> </ul>

40 + 9 RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATING <sup>42</sup>
		<p>associates from being beneficial owners of significant or controlling interests in financial institutions.</p> <ul style="list-style-type: none"> <li>The fit and proper criteria for founders and persons operating in senior roles in the financial sector are broad.</li> <li>The Core Principles are not applied for AML/CFT purposes, in particular in the insurance and securities sectors.</li> </ul>
24 – DNFBP - regulation, supervision and monitoring	<b>NC</b>	<ul style="list-style-type: none"> <li>No systems exist for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements.</li> </ul>
25 – Guidelines & Feedback	<b>PC</b>	<ul style="list-style-type: none"> <li>MASAK does not provide specific feedback to obliged parties on STRs submitted, nor does it provide information on the trends and methods observed in the STRs received.</li> <li>The number of STRs received is low when the size and nature of the Turkish financial sector is considered.</li> <li>Only 3 pieces of AML/CFT guidance have been issued by Turkish government authorities and these do not cover all AML/CFT matters.</li> <li>Neither feedback on STRs received nor information on typologies and trends is provided to obliged parties.</li> <li>The only guidance issued (for DNFBPs) is a recent MASAK guideline which provides DNFBPs with indicators of ML and TF.</li> </ul>
<b>Institutional and other measures</b>		
26 – The FIU	<b>LC</b>	<ul style="list-style-type: none"> <li>The efficiency of MASAK in relation to TF could be jeopardised due to limitations in the scope of the reporting obligation for TF.</li> <li>The quality of financial analysis is in question as only a small number of files are referred to the public prosecutor.</li> <li>Reports on typologies and trends are not publicly released.</li> </ul>
27 – Law enforcement authorities	<b>PC</b>	<ul style="list-style-type: none"> <li>There is a very low level of convictions in ML cases. Almost all cases result in acquittals and of the small number where convictions have been recorded, all were on appeal at the time of the visit.</li> <li>The awareness of the public prosecutors and judges on ML matters seems to be poor.</li> <li>The new TF offence has not yet been tested therefore its effectiveness could not be judged.</li> </ul>
28 – Powers of competent authorities	<b>LC</b>	<ul style="list-style-type: none"> <li>The new TF offence has not yet been tested.</li> </ul>
29 – Supervisors	<b>PC</b>	<ul style="list-style-type: none"> <li>The number of AML/CFT inspections conducted and the number of violations detected are very low considering the size of the sector, suggesting limited effectiveness of the supervision system.</li> <li>There is no explicit provision for control of compliance with AML/CFT requirements for insurance companies.</li> <li>There is limited ongoing offsite AML/CFT control.</li> </ul>
30 – Resources, integrity and training	<b>PC</b>	<ul style="list-style-type: none"> <li>CFT training of all supervisors (in banking and especially securities and insurance sectors) is insufficient.</li> <li>Competent authorities do not have an adequate structure and sufficient technical, staff and other resources for AML</li> </ul>

40 + 9 RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATING <sup>42</sup>
		<p>and CFT supervision of the insurance sector, particularly if full CDD and internal control requirements are implemented in this sector.</p> <ul style="list-style-type: none"> <li>• The FIU is not adequately resourced with staff with a law enforcement background.</li> <li>• The customs service does not seem to have sufficient funding and staff for its functions and this may lead to inadequate attention to AML/CFT issues.</li> <li>• There seems to be a serious lack of knowledge of AML/CFT issues among prosecutors and judges.</li> <li>• There is a need for CFT training to all authorities.</li> </ul>
31 – National cooperation	LC	<ul style="list-style-type: none"> <li>• The public prosecutors are not directly involved in national AML/CFT policy development on a regular basis.</li> <li>• There are questions of effectiveness of the cooperation as reflected in the general results obtained from AML/CFT measures.</li> </ul>
32 – Statistics	PC	<ul style="list-style-type: none"> <li>• There are no statistics on spontaneous international disseminations involving the FIU.</li> <li>• The limited information on cross border transportation of currency does not reflect the amount of cross border transportation of currency.</li> <li>• Since 2002 the statistics on cases in courts as kept by the General Directorate of Judicial Records and Statistics show the number of persons convicted/acquitted but authorities are unable to say how many cases this information relates to.</li> <li>• Statistics on inspections dedicated to AML/CFT and the sanctions applied should be shared amongst the supervisors.</li> <li>• Statistics are not jointly examined by agencies to evaluate trends and issues.</li> </ul>
33 – Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> <li>• Because the current Trade Registry is paper-based, there are some limitations on accessing the information in real-time; it is unclear how often the information is updated.</li> <li>• There is no obligation to declare the real beneficial owner or the natural persons who ultimately control legal persons to the Trade Registry or to other government authorities.</li> <li>• Bearer shares, even if <i>de facto</i> limited to companies not traded in the stock market, remain a matter of concern, albeit one which is being addressed by Turkey's dematerialisation programme.</li> </ul>
34 – Legal arrangements – beneficial owners	N/A	<ul style="list-style-type: none"> <li>• Trusts do not exist under Turkish law.</li> </ul>
<b>International Cooperation</b>		
35 – Conventions	PC	<ul style="list-style-type: none"> <li>• Some shortcomings exist in relation to implementation of Article 3(1)(c)(1) of the Vienna Convention and Article 6(1)(b)(i) of the Palermo Convention, namely the lack of full coverage of one of the elements of the ML offence: "possession".</li> <li>• Turkey has not fully implemented the Terrorist Financing Convention as the TF offence only applies to acts of</li> </ul>

40 + 9 RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATING <sup>42</sup>
		<p>terrorism against Turkey and where the funds are used to carry out or attempt a terrorist act; also the offence does not include all of the offences as foreseen by relevant UN Conventions as stated in Article 2 of the TF Convention. Turkey's implementation of Recommendation 5 does not include adequate measures to identify the beneficial owners (in accordance with Article 18(1)(b) of the TF Convention).</p> <ul style="list-style-type: none"> <li>• There are no procedures for identifying the beneficial owner of accounts and transactions as required by the TF Convention.</li> </ul>
36 – Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> <li>• Dual criminality may impede search, seizure and confiscation where the request relates to the possession of criminal proceeds.</li> <li>• The effectiveness of new international cooperation procedures could not be fully assessed due to their recent implementation.</li> </ul>
37 – Dual criminality	LC	<ul style="list-style-type: none"> <li>• Applying dual criminality could be an obstacle to extradition and to mutual legal assistance relating to search, seizure and confiscation for TF in cases which do not involve Turkey or its interests.</li> </ul>
38 – MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> <li>• In cases where no convention or bilateral agreement exists, there is no specific provision for applying provisional measures to answer mutual legal assistance requests for search, seizure and confiscation except for reciprocity.</li> <li>• Dual criminality may impede search, seizure and confiscation where the request is related to TF in cases which do not involve Turkey or its interests.</li> <li>• No consideration has been given to establishing an asset forfeiture fund or to sharing confiscated assets with a foreign country after coordinated international action.</li> <li>• There are no arrangements for coordinating seizure or confiscation actions with other countries.</li> </ul>
39 – Extradition	LC	<ul style="list-style-type: none"> <li>• Domestic legislation provides limited circumstances in which it explicitly provides that if the extradition is refused on the ground of citizenship, the person will be prosecuted in Turkey.</li> <li>• As the TCL came into force on 1 June 2005, it is too early to assess the effectiveness of the new extradition provisions it introduced.</li> </ul>
40 – Other forms of cooperation	LC	<ul style="list-style-type: none"> <li>• MOUs signed by MASAK and foreign authorities require a decree from the Council of Ministers to enter into force, a requirement that could limit the effectiveness of international cooperation as envisaged by this Recommendation.</li> </ul>
<b>Nine Special Recommendations</b>		
SR.I – Implement UN instruments	PC	<ul style="list-style-type: none"> <li>• There is no specific arrangement for the implementation of the S/RES/1373(2001) other than through judicial means.</li> <li>• There are no formal procedures in place for, or guidance relating to, gaining access to frozen funds for necessary expenses, unfreezing or on sanctions for failure to observe a freezing order.</li> </ul>

40 + 9 RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATING <sup>42</sup>
		<ul style="list-style-type: none"> <li>Turkey has not fully implemented the Terrorist Financing Convention, as the TF offence only applies to acts of terrorism against Turkey and where the funds are used to carry out or attempt a terrorist act; also the offence does not include all of the offences as foreseen by relevant UN Conventions as stated in Article 2 of the TF Convention.</li> </ul>
SR.II – Criminalise terrorist financing	PC	<ul style="list-style-type: none"> <li>The TF offence is incomplete as it applies to terrorist groups only in the financing of the commission or attempted commission of specific acts.</li> <li>The TF offence does not apply to support to the individual terrorist, other than support to the individual terrorist for the commission of a limited set of criminal offences.</li> <li>The offence only applies in relation to terrorism against Turkey and its citizens.</li> <li>It does not cover all of the offences required by Article 2 of the UN Convention on the Suppression of the Financing of Terrorism (including offences in the <i>Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons</i>).</li> <li>The intentional element of the offence cannot be inferred from factual circumstances.</li> <li>The range of sanctions which can be applied to legal persons is limited.</li> <li>Due to the recent enactment of the autonomous TF offence, its effectiveness cannot be assessed.</li> </ul>
SR.III – Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> <li>There are deficiencies in many areas relating to the freezing of funds in accordance with the UNSC Resolutions.</li> <li>There are no formal procedures in place for, or guidance relating to, gaining access to frozen funds for necessary expenses, deslisting, unfreezing or sanctions for failure to observe a freezing order.</li> <li>There is no system in place for communicating the decrees to DNFBPs and no deadlines are set for action by financial institutions in accordance with the decrees.</li> <li>There is no provision for giving effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions (as related to S/RES/1373(2001)) other than through judicial or mutual legal assistance mechanisms.</li> </ul>
SR.IV – Suspicious transaction reporting	PC	<ul style="list-style-type: none"> <li>There is no explicit requirement in law or regulation for obliged parties to submit STRs relating to terrorism or TF, other than that conduct that involves assets “acquired through illegal ways or used for illegal purposes” and the limited definition of terrorism means the full range of terrorist financing activities is not covered by the definition of what matters STRs may relate to.</li> <li>Only 5 STRs were received as at 1 January 2006 based on a suspicion of terrorism, which seems to call into question the effectiveness of the existing requirement viewed against the potential size of the terrorism problem in Turkey.</li> </ul>
SR.V – International cooperation	PC	<ul style="list-style-type: none"> <li>The limited scope of the TF offence could present grounds to refuse an extradition request or mutual legal assistance</li> </ul>

40 + 9 RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATING <sup>42</sup>
		requests for search, seizure or confiscation if the request relates to terrorism not involving Turkey or its interests.
SR.VI – AML requirements for money/value transfer services	PC	<ul style="list-style-type: none"> <li>• Limitations identified under R. 5-11, 13-15 and 21-23 generally apply to this sector; SR.VI has not been fully implemented.</li> </ul>
SR.VII – Wire transfer rules	NC	<ul style="list-style-type: none"> <li>• Turkey has not implemented SR.VII.</li> </ul>
SR.VIII – Non-profit organisations	PC	<ul style="list-style-type: none"> <li>• Turkey does not periodically review the NPO sector for TF vulnerabilities and does not provide outreach and guidance on TF to the NPO sector.</li> <li>• There is no requirement for foundations to keep detailed records or to keep them for a period of five years.</li> <li>• The number of associations inspected in recent years is quite low, suggesting insufficient control of the sector.</li> <li>• Domestic and international cooperation in this area is not strong.</li> </ul>
SR.IX – Cross Border Declaration & Disclosure	LC	<ul style="list-style-type: none"> <li>• Regulations to implement the new disclosure requirement have not yet been issued.</li> <li>• The exemption from STR reporting (when the difference is less than TRY 1,500) foreseen by the new law and the low sanctions available (maximum of 1/10 of the amount transported) are concerns that call into question the potential overall effectiveness of the new measure.</li> </ul>

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
<b>1. General</b>	
<b>2. Legal System and Related Institutional Measures</b>	
2.1 Criminalisation of Money Laundering (R.1 & 2)	<ul style="list-style-type: none"> <li>• It is recommended that Turkey increase the maximum penalty for ML and broaden the range of sanctions available for legal persons, including adding fines as a possible penalty for legal persons involved in the ML offence.</li> <li>• It is also recommended that Turkey reduces the predicate offence threshold to 6 months to ensure that all predicate offences specified by the FATF standards are covered.</li> <li>• The evaluation team suggest that the Turkish public prosecutors become more closely involved with MASAK and other agencies in the government's AML programmes and that they take an active role in increasing the number of ML prosecutions conducted.</li> </ul>
2.2 Criminalisation of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> <li>• It is recommended that Turkey broaden the TF offence to apply to the financing of terrorism, not simply to terrorist acts, and to apply to the financing of individual terrorists as well as terrorist organisations.</li> <li>• It is further recommended that Turkey apply its terrorist financing offence to terrorism directed against the interests of any jurisdiction or international organisation and that it classifies offences against foreign diplomats as "terrorist offences" in the ATL.</li> <li>• The intentional element of the offence should clearly be able to be inferred from objective facts, and a broader range of sanctions should be available to be levied against legal persons involved in TF.</li> </ul>
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> <li>• Turkey should examine its approach to confiscation as related to ML cases to increase the number of successful confiscation actions.</li> </ul>
2.4 Freezing of funds used for terrorist financing (SR.III)	<ul style="list-style-type: none"> <li>• It is recommended that Turkey conduct a review of its system for implementing these United Nations Resolutions and then establish clear and where required publicly-known rules and procedures with regard to freezing of assets under both S/RES/1267(1999) and its successor resolutions, as well as S/RES/1373(2001).</li> </ul>
2.5 The Financial Intelligence Unit and its functions (R.26)	<ul style="list-style-type: none"> <li>• It is recommended that the regulation to be promulgated by April 2007 in support of the new AML law detail the STR reporting requirements, including in relation to terrorist financing, and the means of protecting sensitive information held by the FIU.</li> <li>• Obligated parties would benefit from an enhanced system of more regular feedback incorporating additional information such as case studies, typologies and trends.</li> </ul>
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	<ul style="list-style-type: none"> <li>• Law enforcement agencies and the public prosecutors should establish specialised areas to manage work relating to ML cases.</li> <li>• The resources of other authorities – for example, of the Customs service – may also need to be addressed.</li> </ul>
2.7 Cross Border Declaration & Disclosure (SR.IX)	<ul style="list-style-type: none"> <li>• Turkey should take steps to develop and issue regulations to fully implement the new disclosure obligations.</li> <li>• Turkey should consider eliminating the exemptions from STR reporting and sanctions where the difference in the declared and actual value of the currency is TRY 1,500 or less.</li> </ul>

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
<b>3. Preventive Measures – Financial Institutions</b>	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<ul style="list-style-type: none"> <li>• It is recommended that Turkey issue regulations under the new AML Law 5549 to explicitly require obliged parties to obtain information on the purpose and intended nature of the business relationship, and to require obliged parties to conduct ongoing due diligence and scrutiny of transactions with regard to the obliged parties' knowledge of the customer. They should be adapted to apply not only to single transactions but to several transactions that appear to be linked in order to comply with the specific provisions of the SR.VII and its interpretative note. The threshold for identification (TRY 12,000) should be removed and obliged parties should be required to keep the documents, data or information collected under the identification process up-to-date and relevant.</li> <li>• It is recommended therefore that the regulation to be promulgated in relation to the new AML Law 5549 clearly require obliged parties to take measures to understand the ownership and control and determine who the natural person(s) are who ultimately own and control the legal person or arrangement. Further, this regulation should require obliged parties to keep records on whether transactions are for the customer or on behalf of another. In addition, the first STR type should be extended to cover incomplete CDD where a person, who is not a client, refused to provide information.</li> <li>• It is recommended that Turkey implement legislation to deal with enhanced due diligence, PEPs, cross-border correspondent banking relationships, non face-to-face transactions and complex/unusual large transactions. Rules should also be adopted governing the CDD for existing customers regarding the risk they represent.</li> <li>• It is recommended that Turkey modify its CDD exemption relating to transactions with Turkish public administration, state economic enterprise or a quasi public institution or a bank or participation bank to specify that the exemption is only in relation to identification and verification of the shareholders in the institution.</li> </ul>
3.3 Third parties and introduced business (R.9)	<ul style="list-style-type: none"> <li>• It is recommended that Turkey enact provisions dealing with the use of third parties to perform CDD under Turkish law.</li> <li>• Turkey should determine which financial institutions are allowed to rely on third parties and should regulate the relation between the financial institution and the third party. The written agreement should concern not only identification but all CDD measures and the time limit to provide information. The implementation measure should differentiate equivalent countries and should differentiate between regulated and supervised third parties and others.</li> <li>• The issue of the ultimate responsibility of identification and verification of the identity of the customer should be addressed.</li> </ul>
3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> <li>• It is recommended that Turkey provide for sharing information between financial institutions in relation to correspondent banking, when financial institutions rely on introductions of a third party or in relation to identification of customers involved in cross-border or international wire transfers.</li> </ul>
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> <li>• It is strongly recommended that Turkey implement SR.VII.</li> </ul>
3.6 Monitoring of transactions and	<ul style="list-style-type: none"> <li>• It is strongly recommended that Turkey implement Recommendations</li> </ul>

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
relationships (R.11 & 21)	11 and 21.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<ul style="list-style-type: none"> <li>• It is recommended that the provisions of the new AML Law 5549 be amended to provide a more explicit STR reporting obligation for TF. It is also recommended that, in addition to defining additional STR types and reviewing the necessity of focussing on large transactions in the STR types, Turkey should focus on a programme to increase the level of reporting by obliged parties.</li> <li>• It is recommended that the safe harbour provision in the new AML Law 5549 be further elaborated in the regulations to be issued to support that law so as to explicitly provide protection to the natural persons within obliged parties when submitting STRs.</li> <li>• Similarly, it is recommended that these regulations specifically prohibit tipping off by the natural persons employed within obliged parties.</li> <li>• Turkey may want to reconsider the high threshold placed on the transactions reported to the Central Bank.</li> <li>• An enhanced system of more regular feedback should be implemented for obliged parties, including DNFBPs, incorporating additional information such as case studies and typologies.</li> <li>• It is recommended that the STR reporting requirement for obliged parties be amended to explicitly include reporting of suspicions of TF and that the definition of terrorism be broadened.</li> </ul>
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> <li>• It is recommended that the internal control requirements for banks, participation banks and companies operating in the capital markets be strengthened and that similar requirements be put in place for all other obliged parties.</li> <li>• It is recommended that Turkey provide a training requirement in Law which requires all obliged parties to provide in-house training with content encompassing the entire AML/CFT system.</li> <li>• It is recommended that Turkey implement requirements for all obliged parties to have screening procedures to ensure high quality recruitment.</li> <li>• It is recommended that Turkey strengthen the provisions in place for banks to require that all obliged parties: <ul style="list-style-type: none"> <li>- Pay particular attention to be paid where branches and subsidiaries are in countries which do not or insufficiently apply the FATF Recommendations.</li> <li>- Apply the higher of the two countries' standards.</li> <li>- Inform supervisors when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures due to host country restrictions.</li> </ul> </li> </ul>
3.9 Shell banks (R.18)	<ul style="list-style-type: none"> <li>• It is recommended that Turkey explicitly prohibit the operation and establishment of shell banks, that it prohibit establishment correspondent banking relationship with shell banks and that it require Turkish banks to verify with respondent institutions that they do not have accounts used by shell banks.</li> </ul>
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	<ul style="list-style-type: none"> <li>• It is recommended that Turkey clarify the sanctions available, providing for sanctions against legal persons and senior staff in institutions and better coordinating the sanctioning of the various regulatory bodies.</li> <li>• It is recommended that this requirement to report to MASAK on internal control activities be expanded, with appropriate accompanying guidance, and that MASAK establish ongoing analysis from these</li> </ul>

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
	reports.
3.11 Money value transfer services (SR.VI)	<ul style="list-style-type: none"> <li>It is recommended that, as Turkey examines and takes steps to improve implementation of relevant Recommendations, it clarify and strengthen measures dealing with money or value transfer services.</li> </ul>
<b>4. Preventive Measures – Non-Financial Businesses and Professions</b>	
4.1 Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> <li>It is recommended that Turkey fully implement R. 5, 6, 8-11 in the DNFBPs operational in its territory and that it move to extend these requirements to lawyers and accountants.</li> </ul>
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> <li>It is recommended that Turkey increase the awareness of these measures among DNFBPs operational in its territory so as to ensure that R. 13-15 and 21 are effectively implemented.</li> <li>It is also recommended that Turkey move to extend these requirements to lawyers and accountants.</li> </ul>
4.3 Regulation, supervision and monitoring (R.24-25)	<ul style="list-style-type: none"> <li>It is strongly recommended that Turkey implement systems for monitoring and ensuring the compliance of DNFBPs with AML/CFT requirements.</li> <li>It is recommended that further guidance be issued to this sector.</li> <li>It is further recommended that MASAK commence providing feedback to obliged parties which submit STRs</li> </ul>
4.4 Other non-financial businesses and professions (R.20)	
<b>5. Legal Persons and Arrangements &amp; Non-Profit Organisations</b>	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> <li>It is recommended that the Trade Registry system be strengthened to require provision of information on the beneficial ownership and control of legal persons.</li> <li>It is recommended that Turkey continue to treat the dematerialisation programme as being a high priority.</li> </ul>
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> <li>It may be useful for Turkey to consider examining the issue of trusts and other legal arrangements established abroad. After such an examination it might then consider developing awareness raising exercises or recommendations for Turkish financial institutions or investigative authorities that may in the future come into contact with such arrangements either as part of commercial transactions or through a law enforcement investigations.</li> </ul>
5.3 Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> <li>It is recommended that Turkey expand its periodic reviews of the non-profit sector to include TF risks r, as part of a comprehensive outreach programme, in order to ensure that the sector is not vulnerable to TF or other abuse. It should then use this information to help fully implement measures contemplated by SR.VIII broadly across the whole sector, including both foundations and associations.</li> </ul>
<b>6. National and International Cooperation</b>	
6.1 National cooperation and coordination (R.31)	<ul style="list-style-type: none"> <li>The Coordination Board would benefit from active involvement of the public prosecutors. Moreover, the frequency of meetings may not be sufficient for timely review of issues as they arise.</li> <li>Ongoing operational coordination and information sharing by competent authorities could be strengthened, particularly in relation to the various reports the financial sector must make to different supervisors and the reporting by multiple supervisors direct to the public prosecutor's office.</li> </ul>

AML/CFT SYSTEM	RECOMMENDED ACTION (LISTED IN ORDER OF PRIORITY)
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> <li>It is recommended therefore that Turkey reinforce its system for implementing the UNSC Resolutions by developing and implementing necessary procedures and mechanisms.</li> </ul>
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	<ul style="list-style-type: none"> <li>It is recommended that Turkey consider establishing an asset forfeiture fund and a system for sharing confiscated assets with other countries which participated in coordinated action.</li> </ul>
6.4 Extradition (R.39, 37 & SR.V)	<ul style="list-style-type: none"> <li>It is recommended that the circumstances in which domestic proceedings will be conducted when extradition requests are refused on the basis of Turkish nationality be broadened.</li> </ul>
6.5 Other Forms of Cooperation (R.40 & SR.V)	<ul style="list-style-type: none"> <li>The FIU should look at the scope of information they supply in answer to requests from their counterparts. The search in all available databases should be performed.</li> <li>The FIU should pay attention to a possibility of spontaneous information sharing with other FIUs.</li> </ul>
<b>7. Other Issues</b>	
7.1 Resources and statistics (R. 30 & 32)	<ul style="list-style-type: none"> <li>The Coordination Board mechanism should be used to evaluate trends and issues in statistics.</li> </ul>
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

**Table 3: Authorities' Response to the Evaluation**

<b>RELEVANT SECTIONS AND PARAGRAPHS</b>	<b>COUNTRY COMMENTS</b>
Nil	Nil

## ANNEXES

- Annex 1: Abbreviations**
- Annex 2: Hierarchy of legal norms in Turkey**
- Annex 3: All bodies met on the on-site visit**
- Annex 4: Key laws, regulations and other measures**
- Annex 5: List of all laws, regulations and other material received**
- Annex 6: Additional charts and tables**

### Abbreviations

AATL	Law Regarding Amendment in the Anti-Terror Law 5532 of 29 June 2006
AML	Anti-money laundering
ATL	Anti-Terror Law 3713 of 12 April 1991
ATM	Automatic Teller Machine
BRSA	Banking Regulation and Supervision Agency
BSCE	Black Sea Economic Cooperation
CBRT	Central Bank of the Republic of Turkey
CBT	Credit Bureau of Turkey
CDD	Customer due diligence
CFT	Counter-terrorist financing
CMB	Capital Markets Board
CMB Communiqué V 46	Capital Markets Board Communiqué Serial V 46 on Principals Regarding Intermediary Activities and Intermediary Institutions
CMB Communiqué V 6	Capital Markets Board Communiqué Serial V 6 on Principles Regarding Record Keeping and Documentation in Intermediary Activities
CMB Communiqué VIII 34	Capital Market Board Communiqué Serial VIII 34 on Principals Regarding Licensing and Registration for the Professionals Engaged in Capital Market Activities
CMB Communiqué V 59	CMB Communiqué Serial V 59 on Principles Regarding Portfolio Management Activities and Institutions Which Are Authorised to Provide Portfolio Management Services
CML	Capital Market Law 2499 of 30 July 1981
CPL	Criminal Procedure Law 5271 of 1 June 2005
DNFBPs	Designated non-financial businesses and professions
EU	European Union
FATF	Financial Action Task Force
FTCL	Former Turkish Criminal Law 765 of 13 March 1926
GDBE	General Directorate of Banking and Exchange
GDI	General Directorate of Insurance
GDP	Gross Domestic Product
GNP	Gross National Product
GRECO	Group of states against corruption
IAB	Insurance Audit Board
ID	Identification

IGE	Istanbul Gold Exchange
IOSCO	International Organisation of Securities Commissions
ISE	Istanbul Stock Exchange
MASAK	Mali Suçları Araştırma Kurulu (Financial Crimes Investigation Board)
MERNIS	Merkezi Nüfus İdaresi Sistemi (Central population management system)
MF	Ministry of Finance
ML	Money laundering
MOU	Memorandum of Understanding
NATO	North Atlantic Treaty Organisation
OECD	Organisation for Economic Cooperation and Development
OIC	Organisation of the Islamic Conference
OSCE	Organisation for Security and Cooperation in Europe
PBA	Participation Banks Association
PEP	Politically exposed person
PKK	Partiya Karkerên Kurdistan
PML	Law on Prevention of Money Laundering 4208 of 19 November 1996
POS	Point of Sale
PTT	Post and Telegraph Organisation of Turkey
PVTC	Law on Protection of the Value of the Turkish Currency 1567 of 25 February 1930
RBICRMS	Regulation on Banks Internal Control and Risk Management Systems
RRIL	Regulation Regarding Implementation of the Law 4208
SDIF	Saving Deposits Insurance Fund
SECI	Southeast European Cooperation Initiative
SEE	State Economic Enterprise
SPO	State Planning Organisation
STR	Suspicious Transaction Report
TADOC	Turkish International Academy Against Drugs and Organised Crime
TBA	Turkish Banks Association
TCC	Turkish Commercial Code 6762 of 9 July 1956
TCL	Turkish Criminal Law 5237 of 1 June 2005
TCSP	Trust and company service provision

TDE	Turkish Derivatives Exchange
TF	Terrorist financing
TGNA	Turkish Grand National Assembly
TIC-RTGS	Turkish Interbank Clearing-Electronic Funds Transfer System
TSI	Turkish Statistical Institute
UN	United Nations
UNSC	United Nations Security Council
UT	Undersecretariat of Treasury
VAT	Value Added Tax
VEDOP	Vergi Dairesi Otomasyon Projesi (Tax administration automation system)
<b>Currency Units</b>	
BFR	Belgium Frank
DEM	Deutsche Mark
EUR	Euro
GBP	Great Britain Pound
NLG	Netherlands Guilder
TRL	Turkish Lira
TRY	New Turkish Lira (equivalent to 1,000,000 TRL)
USD	United States Dollar
WTO	World Trade Organisation

Hierarchy of Legal Norms in Turkey<sup>43</sup>

The following table outlines the primary sources of Turkish law along with their Constitutional sources and procedures for promulgation.

English term	Turkish term	Source and Procedure for Promulgation
<b>Constitution</b>	Anayasa	"The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs and administrative authorities and other institutions and individuals. Laws shall not be in conflict with the Constitution." [Article 11 of the Constitution]
<b>International treaty</b>	Milletlerarası andla malar	International treaties that have been put into effect have the same effect as domestic laws. No appeal to the Constitutional Court can be made with regard to these agreements on the grounds that they are unconstitutional. When there is a conflict between international agreements duly put into effect regarding basic rights and freedoms and domestic laws due to different provisions on the same issue, the provisions of international treaties shall prevail. [Article 90 of the Constitution]
<b>Law</b>	Kanun	The Turkish Grand National Assembly (TGNA – the Turkish legislative body) makes, amends and abrogates laws. [Article 87 of the Constitution] The President promulgates laws, which come into effect when published in the Official Gazette. [Article 89 of the Constitution]
<b>Ordinance</b>	Kanun hükümlerinde kararname — KHK	Ordinances or "decrees having the force of law" <sup>44</sup> have the same effect as laws. They are issued by the Council of Ministers, must be specifically authorised by law and are subject to mandatory approval by the TGNA within a prescribed period (if they are not approved within the prescribed period, they are cancelled). Submission to the TGNA occurs upon publication of the ordinance in the Official Gazette. [Article 91 of the Constitution]
<b>Decree</b>	Tüzük	The Council of Ministers issues decrees which govern the mode of implementation of laws or designate matters stipulated by a law provided that they do not conflict with existing laws and are examined by the Council of State. Decrees are signed by the President and promulgated in the same manner as laws. [Article 115 of the Constitution]
<b>Regulation</b>	Yönetmelik	The Council of Ministers, the Prime Ministry, individual Ministries and public corporate bodies may issue regulations in order to ensure application of laws and decrees relating to their particular fields of operation provided that they are not contrary to these laws and decrees. A law designates which regulations are to be published in the Official Gazette. [Article 124 of the Constitution]

<sup>43</sup> This does not incorporate 'other enforceable means' such as Communiqués and Circulars.

<sup>44</sup> Ordinances or "statutory decrees" issued during a state of emergency or martial law have the same status though the procedures for approval and promulgation differ. These legal instruments are dealt with under Articles 121 and 122 of the Constitution.

**All Bodies Met on the On-site Visit**

**GOVERNMENT AGENCIES**

BANKING REGULATION AND SUPERVISORY AGENCY (BRSA)

CAPITAL MARKETS BOARD (CMB)

CENTRAL BANK OF THE REPUBLIC OF TURKEY (CBRT)

GENERAL DIRECTORATE OF FOUNDATIONS

GENERAL DIRECTORATE OF GENDARMERIE

Head of Department for Combating Smuggling and Organised Crimes

GENERAL DIRECTORATE OF SECURITY

Head of Department for Combating Smuggling and Organised Crimes

Head of Department for Combating Terrorism

JUDICIAL AUTHORITIES

Public prosecutor

Judges

MINISTRY OF FINANCE

Financial Crimes Investigation Board (MASAK)

The Revenue Administration

The Inspection Board of Ministry of Finance

The Tax Inspectors Board of Ministry of Finance

MINISTRY OF JUSTICE

General Directorate of Legislation

General Directorate of International Law and Foreign Affairs

General Directorate of Criminal Affairs

General Directorate of Civil Affairs

MINISTRY OF FOREIGN AFFAIRS

General Directorate of Economical Affairs

General Directorate of Security Affairs

MINISTRY OF INDUSTRY AND TRADE

General Directorate of Domestic Trade

MINISTRY OF INTERIOR

Head of Department of Associations

UNDERSECRETARIAT OF CUSTOMS

General Directorate of Customs

General Directorate of Customs Enforcement

UNDERSECRETARIAT OF TREASURY

General Directorate of Bank and Exchange

General Directorate of Insurance

The Board of Treasury Comptrollers

**INDUSTRY BODIES**

ASSOCIATION OF CAPITAL MARKET INTERMEDIARY BODIES

ASSOCIATION OF THE INSURANCE AND REINSURANCE COMPANIES

EXPERT ACCOUNTANTS' ASSOCIATION OF TURKEY

ISTANBUL CHAMBER OF COMMERCE

ISTANBUL GOLD EXCHANGE

ISTANBUL STOCK EXCHANGE

PARTICIPATION BANKS ASSOCIATION

THE BANKS ASSOCIATION OF TURKEY

THE UNION OF CHAMBERS AND COMMODITY EXCHANGES OF TURKEY

TURKISH BAR ASSOCIATION

**FINANCIAL SECTOR**

T. IS BANKASI

TURKISH ECONOMIC BANK

## Key Laws, Regulations and Other Measures

### PREVENTION OF LAUNDERING PROCEEDS OF CRIME LAW

**Law No. 5549**

**Date of Adoption: 11/10/2006**

**Date of Publication: 18/10/2006**

#### CHAPTER ONE Purpose and Definitions

##### **Purpose**

**Article 1** – (1) The purpose of this law is to determine the principles and procedures for prevention of laundering proceeds of crime.

##### **Definitions**

**Article 2** – (1) In this Law;

- a) Ministry means Ministry of Finance,
- b) Minister means Minister of Finance,
- c) Presidency means Presidency of Financial Crimes Investigation Board,
- ç) Coordination Board means Coordination Board for Combating Financial Crimes,
- d) Obligated Party means those who operate in the field of banking, insurance, individual pension, capital markets, money lending and other financial services, and postal service and transportation, lotteries and bets; those who deal with exchange, real estate, precious stones and metals, jewellery, all kinds of transportation vehicles, construction machines, historical artefacts, art works, antiques or intermediaries in these operations; notaries, sports clubs and those operating in other fields determined by the Council of Ministers,
- e) Examiner means Finance Inspectors, Tax Inspectors, Customs Inspectors, Revenue Comptrollers, Sworn-in Bank Auditors, Treasury Comptrollers, Banking Regulation and Supervision Agency and Capital Markets Board Experts,
- f) Proceeds of crime means proceeds derived from crime,
- g) Money laundering offence means the offence defined in article 282 of Turkish Criminal Law No 5237 dated 26/09/2004.

#### CHAPTER TWO Obligations and Information Exchange

##### **Customer identification**

**Article 3** – (1) The obliged parties shall identify the persons carrying out transactions and the persons on behalf or account of whom the transactions are conducted within or through obliged parties before the transactions are conducted.

(2) The Ministry has the authority to determine document types required for customer identification. The types of transactions necessitating customer identification, monetary limits of them and other related principles and procedures shall be determined by regulations.

##### **Suspicious transaction reports**

**Article 4** – (1) In case that there is any information, suspicion or reasonable grounds to suspect that the asset, which is subject to the transactions carried out or attempted to be carried out within or through the obliged parties, is acquired through illegal ways or used for illegal purposes, these transactions shall be reported to the Presidency by the obliged parties.

(2) The obliged parties may not give the information to anybody including the parties of the transaction that they report the suspicious transactions to the Presidency, other than the examiners assigned to conduct inspection of obligations and the courts during legal proceedings.

(3) Activities of obliged parties required reporting and principles and procedures of reporting shall be set out by regulation.

#### **Training, internal control and risk management systems and other measures**

**Article 5** – (1) In the scope of necessary measures, the Ministry has the authority to determine obliged parties and implementation principles and procedures, including measures to assign an officer with necessary authority at administrative level for ensuring compliance with this Law and to establish training, internal control and risk management systems by regarding size of business and business volumes.

#### **Periodically Reporting**

**Article 6** – (1) The obliged parties shall report the transactions, to which they are parties or intermediaries, exceeding the amount determined by the Ministry to the Presidency.

(2) The transaction types subject to periodically reporting, reporting procedure and periods, excluded obliged parties and other implementation principles and procedures shall be determined by the Ministry.

(3) Regarding the implementation of this Law, periodically reporting may be requested from the public institutions and organizations, and institutions and organizations in the nature of public bodies other than the obliged parties. Those who shall report periodically and reporting principles and procedures are set out by regulations.

#### **Providing information and documents**

**Article 7** – (1) When requested by Presidency or examiners, public institutions and organizations, natural and legal persons, and unincorporated organizations shall provide all kinds of information, documents and related records in every type of environment, all information and passwords necessary for fully and accurately accessing to or retrieving these records, and render necessary convenience.

(2) Those from whom information and documents are requested in accordance with the previous paragraph may not avoid giving information and documents by alleging the provisions of special laws, providing the defence right is reserved.

#### **Retaining and submitting**

**Article 8** – (1) The obliged parties shall retain the documents, books and records, identification documents kept in every kind of environment regarding their transactions and obligations established in this Law for eight years starting from the drawn up date, the last record date, the last transaction date respectively and submit them when requested.

#### **Access system**

**Article 9** – (1) By the Presidency, an access system may be established to the data processing systems of the public institutions and organizations, and institutions and organizations in the nature of public bodies which keep records regarding to economic activities, wealth items, tax liabilities, census information and illegal activities in accordance with their laws or activities within the principles and procedures defined together by the Ministry and competent authorities of related Ministry and institutions and organizations in the nature of public bodies.

(2) The provisions of paragraph (1) do not apply to the banks with public capital excluding Central Bank of Republic of Turkey and public economic enterprises.

#### **Protection of obliged parties**

**Article 10** – (1) Natural and legal persons fulfilling their obligations in accordance with this Law may not be subject to civil and criminal responsibilities.

(2) The information about the persons reporting suspicious transaction may not be given to the third parties, institutions and organizations other than courts even if a provision exists in special laws. Necessary measures shall be taken by Courts in order to keep secret the identities of the persons and to ensure their security.

### **Inspection of obligations**

**Article 11** – (1) Inspection of the obligations introduced by this Law and relevant legislation is carried out through Finance Inspectors, Tax Inspectors, Customs Inspectors, Revenue Comptrollers, Sworn-in Bank Auditors, Treasury Comptrollers and Capital Markets Board Experts.

(2) The Presidency may request for an inspection within an obliged party in the scope of either one case or an inspection program. The requested unit shall meet the requirement of the request. Finance Inspectors, Tax Inspectors, Customs Inspectors, Revenue Comptrollers, Sworn-in Bank Auditors, Treasury Comptrollers, Banking Regulation and Supervision Agency and Capital Markets Board Experts are designated upon the request of the Presidency by the proposal of the head of the related unit and by the approval of the Minister to whom they are attached or related.

(3) Within the scope of this Law, the examiners assigned to conduct inspection, are authorized to request all kinds of information, documents and legal books from natural and legal persons including the public institutions and organizations, and unincorporated organizations, to examine all kinds of documents and records within them and to receive information from the relevant authorities verbally or in writing. They may also use the powers given to them by other laws.

(4) Examiners shall report violations of obligations to the Presidency while fulfilling their own duties entrusted to them by their units.

### **International Information Exchange**

**Article 12** – (1) President of Financial Crimes Investigation Board is authorized to sign the memoranda of understanding, which are not in the nature of international agreement, with foreign counterparts and to amend the memoranda of understanding signed in order to ensure exchanging information within the scope of duties of the Presidency. The signed memoranda of understanding and their amendments enter into force by the Decree of Council of Ministers.

## **CHAPTER THREE**

### **Penalties, Seizure and Sending of Decisions**

#### **Administrative fine in violation of obligations**

**Article 13** – (1) The obliged parties violating any obligation stated in articles 3 and 6 and paragraph (1) of article 4 of this Law shall be punished with administrative fine of five thousand New Turkish Liras by the Presidency. If the obliged party is a bank, finance company, factoring company, money lender, financial leasing company, insurance and reinsurance company, pension company, capital market institution or bureau de change, administrative fine shall be applied two-fold.

(2) In case of violation of the obligations stated in article 3 and paragraph (1) of article 4 of this Law, the employee who does not fulfil the obligation shall be punished with administrative fine of two thousand New Turkish Liras as well.

(3) The obliged parties who do not fulfil the obligations stated in article 5 of this Law shall be given at least 30 days in order to remove deficiencies and to take necessary measures. If the obliged parties don't remove deficiencies and take necessary measures then the provisions of paragraph (1) shall apply to them.

(4) Administrative fine may not be imposed after five years from the date of violation of obligation.

(5) Other principles and procedures regarding this article are determined by the regulation to be issued by the Ministry.

#### **Judicial penalty in violation of obligations**

**Article 14** – (1) Those who violate the obligations stated in paragraph (2) of article 4 and articles 7 and 8 of this Law shall be sentenced to imprisonment from one year to three years and to judicial fine up to five thousand days.

(2) Security measures peculiar to legal persons shall be adjudicated because of this offence.

#### **Failure in declaring the transaction carried out on account of other person**

**Article 15** – (1) In the transactions requiring customer identification which are conducted within or through the obliged parties, if anyone who acts in the name of himself/herself but on account of other

person does not inform the obliged parties of the person on account of whom he/she acts in writing before carrying out the transactions, he/she shall be sentenced to imprisonment from six months to one year or to judicial fine up to five thousand days.

#### **Disclosure to Customs Administration**

**Article 16** – (1) Passengers who carry Turkish currency, foreign currency or instruments ensuring payment by them to or from abroad, shall disclose them fully and accurately on the request of Customs Administration.

(2) In case no explanations are made or false or misleading explanation is made upon requested by the authorities, valuables with the passenger shall be sequestered by the Customs Administration. An administrative fine shall be imposed on the passengers who do not make explanation and who make false explanation on the amount they carry, with one tenth of the value carried, and of the difference between the value carried and disclosed respectively. Besides, the circumstance is considered as suspicious and shall be conveyed to the Presidency and other related authorities. The provisions of this paragraph do not apply to the differences up to one thousand and five hundred New Turkish Liras.

#### **Seizure**

**Article 17** – (1) In cases where there is strong suspicion that the offences of money laundering and financing terror are committed, the asset values may be seized in accordance with the procedure in article 128 of Criminal Procedure Law No. 5271.

(2) Public Prosecutor may also give seizure decision in case of any delays giving rise to inconvenience. The seizure applied without the judicial decision is submitted for the approval of the judge on duty at the latest in twenty-four hours. The judge shall decide on whether it will be approved or not at the latest in twenty-four hours. The decision of Public Prosecutor's Office shall be invalid in case of non-approval.

#### **Sending decisions**

**Article 18** - (1) A copy of indictment or the decision on lack of grounds for legal action at the end of investigation, adjudication in the conclusion of proceedings which are related to money laundering and financing terror offences and the seizure decision pursuant to article 17 of this Law shall be sent to the Presidency until the end of the following month by the Public Prosecutor's Offices and the courts.

## **CHAPTER FOUR Presidency and Coordination Board**

#### **Duties and Powers of the Presidency**

**Article 19** - (1) The Presidency of Financial Crimes Investigation Board is directly attached to the Minister of Finance. The duties and powers of the Presidency are as follows:

- a) To develop policies and implementation strategies, to coordinate institutions and organizations, to conduct collective activities, to exchange views and information in order to prevent laundering proceeds of crime.
- b) To prepare law and regulation drafts in accordance with the policies determined, to make regulations for the implementation of this Law and the decisions of Council of Ministers regarding the Law.
- c) To carry out researches on the developments and trends on laundering proceeds of crime, and on the methods of detecting and preventing them.
- ç) To make sectoral studies, to improve measures and to monitor the implementation on the purpose of prevention of laundering proceeds of crime.
- d) To carry out activities to raise the public awareness and support.
- e) To collect data, to receive suspicious transaction reports, to analyze and evaluate them in the scope of prevention of laundering proceeds of crime and terrorist financing.
- f) To request for examination from law enforcement and other relevant units in their fields, when required during the evaluation period.
- g) To carry out or to have carried out examinations on the subject matters of this Law.
- ğ) To denounce files to the Chief Public Prosecutor's Office for the necessary legal actions

- according to the Criminal Procedure Law in the event of detecting serious findings at the conclusion of the examination that a money laundering offence is committed.
- h) To examine the cases conveyed from Public Prosecutors and to fulfil the requests relating to the determination of money laundering offence.
  - i) To convey the cases to the competent Public Prosecutor's Office in cases where serious suspicion exists that a money laundering or terrorist financing offence is committed.
  - i) To ensure inspection of obligations within the scope of this Law and relevant legislation.
  - j) To request all kinds of information and documents from public institutions and organizations, natural and legal persons, and unincorporated organizations.
  - k) To request temporary personnel assignment from other public institutions and organizations within the Presidency, when their knowledge and expertise is necessary.
  - l) To carry out international affairs, to exchange views and information for the subjects in the sphere of its duties.
  - m) To exchange information and documents with counterparts in foreign countries, to sign memorandum of understanding that is not in the nature of an international agreement for this purpose.
- (2) The unit requested according to the sub-paragraph (f) of paragraph (1) by the Presidency shall respond to the request promptly.
- (3) The Presidency fulfils its duties of examination on money laundering offence through examiners. The examiners are designated upon the request of the President by the proposal of the head of the related unit and by the approval of the Minister to whom they are attached or related.
- (4) The examiners assigned upon the request of the Presidency are authorized to request information and document, to make examination, to inspect the obligations, to scrutinize all kinds of documents on the matters of the assignment.

#### **Coordination Board**

**Article 20** - (1) The Coordination Board for Combating Financial Crimes is constituted in order to evaluate the draft laws on prevention of laundering proceeds of crime and the draft regulations which will be issued by Council of Ministers, and to coordinate relevant institutions and organizations regarding implementation.

(2) The Coordination Board, under the chairmanship of Undersecretary of Ministry of Finance, consists of President of Financial Crimes Investigation Board, President of Finance Inspection Board, President of Tax Inspection Board, President of Revenue Administration, Deputy Undersecretary of Ministry of Interior, General Director of Laws of Ministry of Justice, General Director of Economic Affairs of Ministry of Foreign Affairs, President of the Board of Treasury Comptrollers, General Director of Banking and Foreign Exchange of Undersecretariat of Treasury, General Director of Insurance of Undersecretariat of Treasury, President of Inspection Board of Undersecretariat of Customs, General Director of Customs of Undersecretariat of Customs, Vice President of Banking Regulation and Supervision Agency, Vice President of Capital Markets Board and Vice President of Central Bank.

(3) In case their opinions and knowledge are required, representatives of other institutions and organizations may be invited to the Coordination Board without the right to vote.

(4) The Coordination Board meetings are held at least twice a year.

#### **Financial Crimes Investigation Expert and Assistant Expert**

**Article 21** – (1) Financial crimes investigation experts and assistant experts are employed at the Presidency. In addition to the requirements listed in article 48 of State Officials Law No: 657, the following qualifications are required in order to be appointed as Financial Crimes Investigation Assistant Expert:

- a) Being graduated from the faculties of management, economics, economics and administrative sciences, political sciences and law or higher education institutions whose equivalency is approved by the Board of Higher Education,
- b) Being successful in the special competition and qualification exams on the subjects of the profession and foreign language,
- c) Being no more than 30 years old on the date of examination.

(2) Assistant experts are appointed as Financial Crimes Investigation Experts, providing that they have a minimum of three-year actual experience, receive an affirmative employment record each year, succeed in the proficiency exam and get at least (C) level at the Foreign Language Examination for Public Staff or a score corresponding to this level from the equivalent examinations. The ones who are not successful in proficiency exam or do not submit the foreign language proficiency document in two years following the proficiency exam shall be assigned to other cadres suitable for their positions.

(3) The reports and information received in the scope of this Law are evaluated by Financial Crimes Investigation Experts and Assistant Experts.

(4) The other duties, authority and responsibilities, and employment, promotion, working principles and methods of Financial Crimes Investigation Experts and Assistant Experts are set out by the regulation issued by the Ministry.

### **Disclosure of Secret**

**Article 22** - (1) The persons stated below may not disclose secrets acquired while exercising their duties, about the personalities, transactions and account statements, businesses, enterprises, wealth and professions of the individuals and others related to them, and may not make use of those secrets for their own or third parties' benefit, even if they left their posts:

- a) The President and the members of Coordination Board, examiners and staff of Financial Crimes Investigation Board,
- b) The persons who are consulted for their knowledge and expertise,
- c) Other public officials who aware of the information because of their duties.

(2) These persons are sentenced to imprisonment from one year to four years in case of disclosing the secrets. The imprisonment may not be less than two years if the secrets are disclosed for material benefit.

(3) Giving information to the counterparts in the foreign countries by Presidency in accordance with this Law is not considered as disclosure of secret.

## **CHAPTER FIVE Miscellaneous Provisions**

**Article 23** - (1) The positions shown in the attached list (1) are set out for Financial Crimes Investigation Board and added to the section of Ministry of Finance of the Table (I) annexed to the Decree Law No.190 on General Cadre and Procedure dated 13/12/1983.

**Article 24** - (1) –As to the Decree Law No. 178 Regarding Establishment and Functions of the Ministry of Finance dated 13/12/1983;

a) Sub-paragraph (r) of article 2 is amended to “r) to determine the procedures and principles for prevention of laundering proceeds of crime.”

b) Article 14 together with its title is amended to;  
“The Presidency of Financial Crimes Investigation Board”

*Article 14-* The Presidency of Financial Crimes Investigation Board carries out the duties specified in article 19 of the Prevention of Laundering Proceeds of Crime Law and the duties given by other laws.”

c) Article 33 is amended to;

“*Article 33-* The Coordination Board for Combating Financial Crimes is constituted as stated in article 20 of the Prevention of Laundering Proceeds of Crime Law and carries out the duties given in the same article.”

### **Additional payments**

**Article 25** - (1) The president and members of Coordination Board are paid remuneration for per meeting in the amount to be calculated through multiplying the indicator number of (3000) by the salary coefficient of public officials.

(2) Additional payments not exceeding the amount calculated by multiplying the salary coefficients of public officials with the following indicator numbers are paid under the approval of the Minister to the following personnel working for the Financial Crimes Investigation Board;

- a) (7000) for the President of Financial Crimes Investigation Board,
- b) (6000) for the vice president and head of department,

- c) (10000) for the examiner assigned under this Law (not more than six months),  
 c) (5000) for the Financial Crimes Investigation Expert, director and data-processing director,  
 d) (4000) for the Financial Crimes Investigation Assistant Expert, chief, expert, translator, engineer, statistician, IT analyst and programmer,  
 e) (3000) for the others.  
 (3) With respect to the additional payments to the temporary personnel assigned in Presidency, the indicator number specified for the cadres in the Presidency for that duty is taken into consideration.  
 (4) Such payments are not subject to any tax or deduction other than stamp tax.

#### **Abolished and amended provisions**

- Article 26** - (1) Articles 1, 3, 4, 5, 6, 7, 8, 9, 12, 14, sub-paragraphs (a), (b), (d), (e) of article 2 and first and third paragraphs of article 15 of Law No. 4208 dated 13/11/1996 are abolished.  
 (2) The first and third paragraphs of article 13 of Law No. 4208 are abolished and the second paragraph is amended to “Ankara Criminal Court of Peace is authorized to give any decision on requests of foreign countries relating to the controlled delivery of assets derived from crime.”  
 (3) The phrases “dirty money” and “dirty money laundering offence” in other legislation refer to “proceeds derived from crime” and “money laundering offence” respectively.

#### **Regulations**

- Article 27** - (1) The principles and procedures relating to the subjects stated in the paragraph (d) and (e) of article 2 and in articles 3, 4, 6, 7, 11, 15, 16, 19 and 20 of this Law are arranged by the regulations which will be issued by the Council of Ministers within six months following the publication date of this Law.

#### **Increase of fixed amounts**

- Article 28** – (1) Fixed amounts specified in articles 13 and 16 of this Law are applied at the beginning of each year by increasing in the revaluation ratio determined for previous year under the Tax Procedure Law No. 213 dated 04/01/1961. In the calculations, the amounts up to ten New Turkish Liras are not taken into consideration.

- Provisional Article 1** - (1) The provisions of current secondary legislation that are not contrary to this Law shall be in effect until the arrangements stipulated in this Law come into force.

- Provisional Article 2** - (1) The foreign language requirement stated in the second paragraph of article 21 of this Law shall not apply to the Financial Crimes Investigation Assistant Experts who are in office on the date when this Law put into effect.

- Article 29** - (1) This Law enters into force on its publication date.

- Article 30** - (1) The Council of Ministers executes the provisions of this Law.

#### LIST (1) THE CADRES ESTABLISHED

Ministry of Finance  
Central Organization

Class	Titles	Cadre Degrees	Number of Additional Cadres
GAS*	Head of Department	1	4
GAS	Director	1	3
GAS	Data-processing Director	1	1
GAS	MASAK Expert**	1	6
GAS	MASAK Expert	2	5
GAS	MASAK Expert	3	4
GAS	MASAK Expert	4	4

Class	Titles	Cadre Degrees	Number of Additional Cadres
GAS	MASAK Expert	8	2
GAS	MASAK Assistant Expert	3	2
GAS	Chief	5	3
GAS	Chief	1	2
GAS	Translator	1	2
GAS	Statistician	5	5
GAS	Statistician	1	2
GAS	IT Analyst	4	1
GAS	Programmer	6	1
GAS	Programmer	4	1
GAS	Operator Preparing and Controlling Data	5	6
GAS	Operator Preparing and Controlling Data	8	7
		<b>TOTAL</b>	<b>61</b>

\***GAS:** General Administrative Services

\*\***MASAK Expert:** Financial Crimes Investigation Expert

## TURKISH CRIMINAL CODE

### Law No. 5237

#### **Laundering of Proceeds Derived from Crimes**

**Article 282** - (1) Whoever transfers abroad the proceeds derived from an offence requiring a minimum of one year or more imprisonment or subjects the proceeds to any transaction for the purposes of disguising illicit sources of them and misleading as if they were derived from legitimate sources, is sentenced to imprisonment from 2 years up to 5 years and to judicial fine up to twenty thousand days.

(2) In case this offence is committed by public servants or particular professionals, during the execution of their professions, the sentence to imprisonment shall be increased by half of it.

(3) In case this offence is committed in the context of the activities of a criminal organization designed for the purpose of committing offences, the sentence shall be increased by one fold of it.

(4) With regard to legal persons involved in this offence, security measures pertinent to them are taken.

(5) Before initiating the prosecution procedure, whoever enables the competent authorities to seize the proceeds subject of the offence or facilitates seizing the proceeds by informing competent authorities about where the proceeds are concealed shall not be sentenced under this Article.

## ANTI-TERROR LAW

(Amended with the Law 5532 Regarding Amendment in the Anti-Terror Law)

**Law No. 3713**

**Date of Publication: 12/04/1991**

### **Definition of Terror**

**Article 1** - "Terrorism is any kind of act attempted by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by using pressure, force and violence with one of the methods such as terror, intimidation, oppression or threat."

### **Terrorist Offender**

**Article 2** - Whoever becomes a member of the organizations consisted in direction towards objectives prescribed in the Article 1 and commits a crime together with the others or alone for these purposes or even not commit the intended crime but being a member of organizations shall be deemed as terror offender.

The ones who are not even a member of terrorist organization but committed a crime on behalf of the organization shall be deemed as terrorist offender and punished as the members of organizations.

### **Terrorist Crimes**

**Article 3** - Felonies envisaged in the Articles 302, 307, 309, 311, 312, 313, 314, 315, 320 and 310 of the Turkish Penal Law Nr. 5237 of 26.09.2004, are of terrorist crimes.

### **Felonies Committed with the Purpose Of Terror**

**Article 4** - Whenever below given felonies are committed in the context of activities of a terrorist organization, founded in order to commit crime in direction towards purposes, indicated in the Article 1, shall be deemed terrorist crime:

- a) Felonies indicated in the Articles 79, 80, 81, 82, 84, 86, 87, 96, 106, 107, 108, 109, 112, 113, 114, 115, 116, 117, 118, 142, 148, 149, 151, 152, 170, 172, 173, 174, 185, 188, 199, 200, 202, 204, 210, 213, 214, 215, 223, 224, 243, 244, 265, 294, 300, 316, 317, 318, 319, and 2nd paragraph of the Article 310;
- b) Felonies defined in the Law on Fire Arms and Knives, and Other Instruments Nr. 6136 of 10.07.1953;
- c) Felonies of intentionally burning forest, defined in the 4th and 5th paragraphs of the Article 110 of the Law on Forests Nr. 6831 of 31.08.1956;
- d) Felonies defined in the Anti-Smuggling Law Nr. 4926 of 10.07.2003 and necessitating imprisonment;
- e) Felonies in relation to acts causing proclamation of State of Emergency in those regions, where the State of Emergency was proclaimed as per the Article 120 of the Constitution;
- f) Felonies defined in the Article 68 of the Law on Protection of Cultural and Natural Heritage Nr. 2863 of 21.07.1983."

### **Increase of Sentences**

**Article 5** - Confinements and judicial fines to be determined according to related laws against those persons committed felonies prescribed in the Articles 3 and 4 shall be adjudged by increasing them one half. In penalties to be determined in this way, the maximum limit of a penalty determined either for a specific criminal act or for every kind of penalty may be exceeded. However, instead of life imprisonment, heavy life imprisonment shall be adjudged.

If any increase is envisaged for the penalty in the related Article due to fact that the felony was committed in the context of the activity of an organization, then an increase shall be made in penalty according to only this Article. However, increase to be made shall not be less than 2/3 of the penalty.”

### **Disclosure and Publication**

**Article 6** - Those who announce that the crimes of a terrorist organization are aimed at certain persons, whether or not such persons are named, or who disclose or publish the identity of officials on anti-terrorist duties, or who identify such persons as targets shall be punished by imprisonment for 1 to 3 years.

Those who print or publish leaflets and declarations of terrorist organizations shall be punished by imprisonment for 1 to 3 years.

Those who, in contravention of Article 14 of this law, disclose or publish the identity of informants shall be punished by imprisonment for 1 to 3 years.

In case of criminal acts prescribed in above paragraphs, and committed through media, a judicial fine for one thousand to ten thousand days shall be adjudged for owners and persons in charge of publication, who have no any accessorship in committing the felony by the media. However, the maximum limit of this penalty for persons in charge of the publication shall be five thousand days.

Periodicals including publicly provocation for committing felony, glorification of felonies committed and their authors, and propaganda of a terrorist organization in the context of activities of a terrorist organization may be, as a measure, held up on the ground of Order of a Judge, or of Warrant of a Public Prosecutor for fifteen days to one month, where any delay would cause adverse consequences. If Judge doesn't approve such a Warrant in course of 48 hours, then it shall be deemed null and void.”

### **Terrorist Organizations**

**Article 7** - Whoever founds, leads a terrorist organization, and becomes member of such an organization, with purpose to commit crime, in direction towards objectives prescribed in the Article 1, through methods of pressure, threatening, intimidation, suppression, and menace, by taking advantage of force and violence, shall be punished according to the provisions of the Article 314 of the Turkish Penal Law. Whoever arranges activities of the organization shall be punished as leader of the organization.

Whoever makes propaganda of the terrorist organization shall be punished by imprisonment for one to five years. In case of committing this crime through media, penalty to be given shall be increased by one half. In addition, a judicial fine for one thousand to ten thousand days shall be adjudged for owners and persons in charge of publication, who have no any accessorship in committing the felony by the media. However, the maximum limit of this penalty for persons in charge of the publication shall be five thousand days. Below given acts and behaviors shall be punished according to provisions of this paragraph as well:

- a) fully or partially to veil face with the purpose to hide personal identity in course of convention and demonstration march, turned into a propaganda of terrorist organization;
- b) to carry emblem and signs, shout slogans or announce through audio means, which would show membership or supportership of the terrorist organization, or to wear uniforms with emblem and signs of the terrorist organization.

If offences prescribed in the second paragraph are committed inside any block, local, bureau or outlying buildings belonging to associations, foundations, political parties, labour and trade unions or their subsidiaries, or inside educational institutions or student hostels or their outlying buildings, then punishment envisaged in this paragraph shall be doubled.”

### **Financing of Terror**

**Article 8** - Whoever knowingly and willfully provides with or collects fund for committing partially or fully terrorist crimes, shall be punished as a member of an organization. The perpetrator is punished in the same way even if the fund has not been used.

Fund cited in the first paragraph of this Article shall mean money or all types of property, right, credit, revenue and interest, value of which may be presented by money, and benefit and value that was collected as a result of conversion thereof.

**Qualified Act**

**Article 8/A** -If crimes included in this Law are committed through undue influence in the public service, punishment to be given shall be increased by one half.

**Responsibility of Legal Persons**

**Article 8/B** - If crimes included in this Law are committed in the context of a legal personality, security measures peculiar to those persons as per the Article 60 of the Turkish Penal Law shall be adjudged.

## **PART TWO**

### **Criminal Procedure**

**Determination of Function and Jurisdiction**

**Article 9** - Trials regarding crimes included in this Law shall be held by high criminal courts, prescribed in the first paragraph of the Article 250 of the Criminal Procedure Law Nr. 5271 of 04.12.2004. Lawsuit files initiated for these crimes against children older than fifteen years shall be handled by these courts as well.

**Investigation and Prosecution Procedure**

**Article 10** - Regarding the offences included in this Law, the other provisions shall be applied to the matters where there is no provision in the articles 250-252 of Criminal Procedure Law. However;

- a) If there existing a risk in view of the purpose of the investigation, on the ground of warrant of Public Prosecutor, a relative of the person apprehended or detained or whose detention period was prolonged shall be informed.
- b) Suspect may take advantage of judicial assistance only of one attorney in course of detention. The right of suspect under detention to meet the attorney may be restricted on the ground of the order of judge for 24 hours upon the request of public prosecutor, however, no statement shall be taken in course of this period.
- c) In course of taking statement of the suspect by law enforcement officers only one attorney may be present.
- d) Only employment record number shall be written down instead of personal identification of related officials in the minutes to be issued by law enforcement officers.
- e) If there exists risk for the purpose of investigation in course of examination and taking copies of the content of the file by attorney, such a competency may be restricted on the ground of order to be issued by judge, upon the request of public prosecutor.
- f) In course of investigation undertaken due to crimes prescribed in this Law, documents, files of the attorney regarding the defence and minutes of dialogues of attorney with suspect under arrest shall not subject to examination. However, if there have been some diagnosis or materials as to the fact that attorney appears to be a mediator for communication of members of terrorist organization in line with organization's objectives, upon the request of public prosecutor and on the ground of the order of judge, either an official may be instructed to attend the meeting and materials to be submitted by suspect to attorney or by attorney to suspect may be examined by judge. Judge may decide fully or partially to give materials or not to give them. Related parties may challenge such a decision.
- g) Exceptions included in the Articles 135/6(a)-(8), 139/7(a)-(2), and 140/1(a)-(5) of the Criminal Procedure Law shall not be applied.
- h) Provision of the Article 92/2 of the Law Nr. 5275 on Enforcement of Penalties and Security Measures of 13.12.2004 shall apply also in view of crimes envisaged in scope of this Law."

**Length of Detention**

**Article 11** - (Abolished: 18/11/1992-art. 3842/31)

**Testimonies of Interrogators/Investigators**

**Article 12** - (Abolished: 18/07/2006-art. 5532/17)

**Suspension and Commutation of Sentences to Fines**

**Article 13** - Imprisonment adjudged due to crimes included in this Law shall not be converted into alternative sanctions and deferred. However, this provision shall not be applied in relation to children not completed 15 years old.”

**Non-Disclosure of the Identity of Informants**

**Article 14** - The identity of those providing information about crimes or criminals within the scope of this law shall not to be disclosed, unless the informant has given permission or the nature of the information constitutes a crime by the informant.

**Appointment of a Defender**

**Article 15** - Fees of not more than three attorneys, determined as attorney in course of investigation and criminal proceedings, undertaken due to crimes claimed that they had resulted from fulfillment of functions of officials from intelligence and law enforcement services and other personnel in charge of anti-terror struggle shall be paid, and payments to be made regardless of attorney’s fees tariff to such personnel shall be met from allowance to be included in the budget of related organizations. Conditions and procedures regarding payment of attorney’s fees shall be arranged through a regulation to be issued jointly by the Ministries of National Defence and Interior.

**PART THREE  
Execution Of Sentences**

**Execution of Sentences and Holding of Pre-Trial Detainees**

**Article 16** - (Abolished: 18/07/2006-art. 5532/17)

**Conditional Release**

**Article 17** - Provisions of the Article 107/4 and 108 of the Law Nr. 5275 on Enforcement of Penalties and Security Measures of 13.12.2004 shall not apply to convicts of penalties included in this Law, in view of conditional release and implementation of measure of probation.

Whoever is convict of the penalty for escape or riot in course of being under arrest or conviction, and has already been sentenced to solitary confinement for three times as disciplinary penalty shall not take advantage of conditionally release even though these disciplinary penalties had been removed.

Whoever is convict due to crimes included in this Law shall not take advantage of conditional release, if any crimes in the scope of this Law would be committed following the date of coming into force of the conviction.

Terror offenders, whose death penalty have been converted into lifelong heavy imprisonment on the basis of the Law Nr. 4771 on Amendment in Various Laws of 03.08.2002 amended by the Article 1 of the Law Nr. 5218 of 14.07.2004, and terror offenders, whose death penalties have been converted into heavy life imprisonment and or who were sentenced to heavy life imprisonment shall not take advantage of conditional release. Heavy life imprisonment shall continue till their death.”

**Construction of Prisons and Detention Centers**

**Article 18** - (Abolished: 18/07/2006-art. 5532/17)

**PART FOUR  
Miscellaneous Provisions**

**Rewards**

**Article 19** - Provided that there was no accompliceship, whoever assists to detain perpetrators of crimes included in this Law or denounces their whereabouts or personal identification shall be awarded by cash prize. Amount, procedures and conditions of the prize shall be determined by regulation to be issued by the Ministry of Interior.”

**Measures of Protection**

**Article 20** - The State shall take necessary protective measures regarding judicial, of intelligence service, administrative and military officials, who assigned task or accomplished such a task, law

enforcement officers, Director General and Deputy Directors General of Prisons and Detention Houses, public prosecutors and prison wardens of prisons and detention houses, where terror offenders were protected, judges and public prosecutors, served at the State Security Courts, judges and public prosecutors undertaking service at high criminal courts, authorized by the Article 250 of the Criminal Procedure Law, and those, who have already left their service, and persons having become or having been made as public target of terror organizations, and persons, who assisted to disclose crimes.

Request for protection and security of chairing judges and members of high criminal courts to be nominated by High Commission for Judges and Public Prosecutors as per the Article 250 of the Criminal Procedure Law, and of public prosecutors in charge of investigation and criminal proceedings for crimes included in the jurisdiction of these courts, shall be primarily and urgently satisfied by related authorities and instances. Means and materials needed for protection shall be provided with by the Ministries of Justice and Interior.

Arrangements shall be undertaken in such subject matters, namely as protective measures, as modification of physiological appearance through aesthetic operation, if any request is made, modification of birth registration, driving licences, marriage certificate, diploma, and such documents, arrangement of military procedures, protection of rights regarding properties in kind of securities and real estate, social security and other rights. Of retired personnel being under protection, those with compulsory in-house protection shall be given advantage of lodgment by Ministry served, or public institution and organization, through hire value to be determined by taking into consideration by the Ministry of Finance of current rental values. In course of implementation of those measures the Ministry of Interior and related other institutions and organizations shall be obliged to comply with the rule of strict secrecy.

Conditions and procedures regarding protective measures shall be determined by a regulation to be issued by the Prime Ministry.

Of above-cited personnel, public officials, even though they have already left their service, shall be authorized to use arms in order to ward off any attacks to be directed by terror offenders towards themselves or their spouses and children.”

### **Pension for Invalids and Support for Widows and Orphans**

**Article 21** - Where an official is injured, left disabled, dies or is killed as a result of being exposed to terrorist activities in the course of his duty at home or abroad, even if he has subsequently left service, the provisions of Law 2330 on Monetary Compensation and Pension shall be applied. In addition:

(a) The total of the pension for invalids, or the spouse and orphans of those killed and entitled to a pension, may not be less than the pension of their colleagues on duty; if pensioners are killed by reason of terror, the monthly payment for their spouse and orphans may not be less than their monthly pension according to the relevant law. Insolvents that cannot perpetuate their life and depending support of anybody and spouses, orphans of those killed shall be paid post-retirement gratuity at an amount of the highest government salary. The others shall be paid at existing salaries as they worked for 30 years. In case of deficiency the difference shall be paid by the social security institutions and reimbursed by the Treasury.

(b) Those left invalid while benefiting from public accommodation at home or abroad, and the spouse and orphans of those killed and entitled to a pension (except those living in houses specially provided under the Law of Public Housing, shall continue to benefit from public accommodation for one year. Those who after that year leave such public housing and those not benefiting from public accommodation and those living in specially provided houses shall on application be paid rent by the State for accommodation within the country for a period of 10 years. Those living in specially provided accommodation abroad shall on application be paid the rent payable abroad for one year by the State.

(c) As regards benefiting from accommodation loans, the provisions of additional Article 9 of Law 2559 on the Duties and Competence of the Police shall be applied; those provisions shall also be applicable to invalids or their spouses and, where their partners are not alive or have re-married, to their children.

(d) Invalids, spouses, the daughters who do not work under social security organizations except Pension Fund of the Republic of Turkey and not get paid and the invalid sons who cannot perpetuate their life by working, minor children and mothers, fathers of those killed shall be entitled to travel free

of charge on State Railroads, City Maritime Lines and on public transport. If the spouses or orphans cease to be entitled to a pension under the provisions of the laws on social security, they shall not be entitled to any of the rights provided in this Article.

e) Victims, and widows and orphans of those died shall be examined and cured at all hospitals belonging to public institutions and organizations, where they would submit their recognition cards, issued by the Pension Fund of the Republic of Turkey. All treatment expenditures thereof shall be met by the related social security institution, if related persons have been working at any public institution or organization or have been taking pension of victims, old-age assistance, or salary for widow and orphan – by the related social security institution, and if there is no any salary for victims or widows or orphans, then by the Ministry of National Defense or the Ministry of Interior. Absent organs of disabled persons shall be accomplished by available artificial ones, fabricated either at home or abroad through most modern techniques, and if any need, such artificial organs shall be repaired or renewed.

f) The ones who cannot be cured in inland shall be cured in abroad based on the reports of the authorized medical institutions.

g) Insolvents who cannot perpetuate their life and orphans shall be sheltered and took care without any payment or State paid in the hostels or asylums belonging to public bodies and establishments, in case of not existing of these bodies, in the private rehabilitation centers and welfare centers.

h) The soldiers, subject to the provisions of Law Nr. 2330 on Monetary Compensation and Pension dated 03.11.1980, injured or left disabled as a result of being exposed to terrorist activities in the course of his duty shall benefit from the rights prescribed in the above sub-paragraphs (d), (e), (f) and (g); the spouses and the daughters who do not work under social security organizations except Pension Fund of the Republic of Turkey and not get paid and the invalid sons who cannot perpetuate their life by working, minor children and mothers, fathers of killed soldiers shall benefit for the rights prescribed in above sub-paragraph (d).

i) University students and children of died persons, whose villages were evacuated due to anti-terror struggle, shall be granted complimentary scholarship for their higher education by the State

### **Support for Other People Suffering Losses from Terrorism**

**Article 22** - Citizens who are not civil servants, but suffer from terrorist activities with loss of life or property shall get special support from the Social Welfare and Solidarity Fund. The scope and amount of the support will be determined by the local authorities administering the Fund.

### **Additional Article 1 -**

A) General, annexed and special budget institutions and establishments, local administrations, all sorts of enterprises or subsidiaries whose half of the capital publicly owned are obliged to allocate 0.5 % of their staff cadres subject to Law Nr. 657 Regarding State Personnel and contractual personnel and permanent workers to the persons stated below owing to the terrorist acts written in the article 1 of this law and employ or assign the persons determined in accordance with the provisions of this paragraph;

a) Public officials martyred or disabled to work and soldiers' spouses if any, or one of the children, or one of the sister/brother

Or,

b) Disabled but able to work

The Ministry of Interior is charged to determine the persons in the scope of the above paragraph and inform the public institutions and establishments having convenient cadres for the assignment of the ones who want to work considering their qualifications and the requirements of the job. It is not necessary to get permission for assignment of these people. However, the concerning persons should have the qualifications and properties which the job and cadre requires excluding the examination.

The procedure and principles followed up for the employment of the martyred relatives and the disabled ones who are able to work shall be determined with a regulation which will be issued by Ministry of Interior in three months by taking the advices of Ministries of Finance, National Defence, Labour and Social Security, State Personnel Presidency and Employment Agency.

B) Owing to the terrorist acts written in the article 1 of this law; the employers, in case of any request, are obliged to employ;

a) Public officials martyred or disabled to work and soldiers' spouses if any, or one of the children, or one of the sister/brother or,

b) Soldiers disabled but able to work, in the permanent workers status in the businesses where they are employing 50 or more workers as a ratio of 2 % (total number of workers shall be taken into consideration for the ones who have more than one business in the same province).

In determination of the number of these persons which will be worked, the number of permanent workers is taken into account. In calculating the 2%, fractions up to half are not considered. They are increased to whole.

The employers or their proxies who act contrary to the provisions of this paragraph shall be punished to fine ten times of the minimum wage determined for that year for each of the person they are not worked and each month.

The procedure and principles followed up for the employment of the martyred relatives and the disabled ones who are able to work shall be determined with a regulation which will be issued by Ministry of Labour and Social Security in three months by taking the advices of Ministries of National Defence and Interior. The employer finds the concerning persons through Employment Agency.

#### **Additional Article 2 -**

In case of non-obedience to the order of “give up!” in course of operations to be undertaken against terror organizations, or of any initiatives to use arms, law enforcement officers shall be authorized directly and immediately to use arms on the objective, to the extent and proportion so that they could neutralize the risk

### **PART FIVE Temporary Provisions**

#### **Temporary Article 1-**

In connection with crimes committed until 8 April 1991:

- a) Death sentences shall not be executed. Convicts covered by this provision shall be required to serve 10 years of the sentences provided for in Article 19 of Law 647 on the Execution of Sentences.
- b) Convicts sentenced to life imprisonment shall have to serve 8 years of their sentences.
- c) All others sentenced to punishments restricting personal liberty will have to serve one fifth of their sentences.

After serving the abovementioned terms they shall be conditionally released regardless of good conduct and without having to apply for such release.

The time spent in pre-trial detention shall be included in calculating the abovementioned periods.

The provisions relating to reduction of sentences in additional Article 2 of Law 647 on the Execution of Sentences shall not be applied to such convicts.

#### **Temporary Article 2 -**

In connection with suspects held in pre-trial detention for alleged crimes committed until 8 April 1991, the minimum limits of the expected sentence provided in the relevant law shall be considered:

(a) at the stage of preparatory investigations, according to the nature of the crime taken as the basis of the indictment;

(b) at the stage of final investigations, according to the crime mentioned in the indictment or according to the changed nature of the crime;

and if the pre-trial detainee has been imprisoned for a period specified in temporary Article 1, the detainee shall be released within 30 days of this law entering into force,

- 1) before a public case was started by the prosecution;
- 2) if a public case is continuing by the competent court;
- 3) if a case is pending at the appeal or military appeal court [after being referred there] by the competent court or the chief prosecutor. Defendants awaiting a public case or against whom a public case was started earlier shall be tried.

In case the defendant does not appear in court, the testimonies made to the prosecutor or before a judge shall be taken as sufficient. Following a final verdict at the end of the trial, the provisions of conditional release according to temporary Article 1 of this Law shall be applied.

**Temporary Article 3 -**

Those who, following the publication of this law, are entitled to benefit from the provisions of temporary Article 1, but have received disciplinary punishment on account of acts prejudicial to prison discipline, shall not benefit from the provisions of temporary Article 1 until their disciplinary punishment is lifted according to the Statute on Administration of Penal Institutions and the Execution of Sentences.

**Temporary Article 4 -**

Those who until 8 April 1991:

(a) killed or attempted to kill civil servants or officials on duty by acts defined in this law as terrorist acts, even if they have subsequently abandoned their status [sic], and those who participated in such offences;

(b) committed offences under Articles 125, 146 (except the last paragraph), 403, 404(1), 405, 406, 407, 414, 416 (1) and 418 of the Turkish Penal Code,

(c) violated provisions of the third chapter in Part Two of the Turkish Penal Code, entitled "Crimes against the Administration of the State", or, in contravention of the Banking Law, unjustly and irregularly received moneys from banks, or, in violation of Law 1918 on the Prevention and Prosecution of Smuggling, obtained an advantage, or conducted irregular, fraudulent or fictitious transactions of export, import or investment incentives and by doing so obtained unjust deduction of taxes, premiums, loans, difference of interest or similar advantages from public sources and those participating in such offences, regardless of whether or not the time limit for prosecution against such offence has passed, unless they have repaid the unjust and irregular advantage obtained by them,

(d) committed offences under Articles 55, 56, 57, 58 and 59 of the Military Criminal Code, shall not benefit from the provisions of Temporary Article 1. However, death penalties imposed for offences mentioned in this Article shall not be executed.

Such convicts shall be released conditionally regardless of good conduct and without the need for a special application, as follows: after 20 years if they were sentenced to death; after 15 years if they were sentenced to life imprisonment; and after they have served one third of their sentences in all other cases.

The time spent in pre-trial detention shall be included in calculating the abovementioned periods.

The reducing provisions of Additional Article 2 of Law 647 on the Execution of Sentences shall not be applied to such convicts.

The provisions of Temporary Article 2 (except for the reference in the last paragraph to Temporary Article (1) and Article 3 of this Law shall also be applied to such convicts.

**Temporary Article 5 -**

In order that those who, according to chapter (g) of Article 25 of Law 403 on Turkish Citizenship, have lost their Turkish citizenship can benefit from the temporary provisions of this Law, there shall be no condition imposed on their re-entry into the country within two years from the coming into force of this law and such persons shall not be stopped at the border when re-entering.

**Temporary Article 6 -**

Until special facilities for penal institutions have been built, pre-trial detainees and those convicted of terrorist crimes shall be kept in other penal institutions.

**Temporary Article 7 -**

The provisions of Article 17 of this law shall be applied to those who commit crimes under this law after it has entered into force.

**Temporary Article 8 -**

The provisions of Article 21 of this law shall be applied from the beginning of the first day of the month following the entering into force of the law for all persons included in this law since 1 January 1968.

**Temporary Article 9 -**

(Revoked: 31/03/1992-E.1991/18, 1992/20)

**Temporary Article 10 -**

Before this Law came into force, for the offences in the scope of article 8 of Law Nr. 3717 abolished with this Law;

1- Nolle prosequi is given by Public Prosecutors' Office in the pre-trial proceedings carried out.

2 - a) The arrested defendants shall be released by Public Prosecutors' Office if there is no public prosecution brought on them,

b) The arrested defendants shall be released by the concerning courts if there is a public prosecution brought on them,

3 - The files shall be adjudicated considering them as rush work and taking into account the article 2 of Turkish Criminal Code by;

a) the court if they are not sent to The High Court of Appeals or exist in Chief Public Prosecutors' Office,

b) the criminal agency if they are in The High Court of Appeals,

c) the court which the punishments of the convicts are executed.

**Provisions Repealed**

**Article 23** - (a) Law 2 on High Treason,

(b) Law 6187 on the Protection of Freedom of Conscience and Meetings,

(c) Articles 140, 141, 142 and 163 of the Turkish Penal Code No. 765,

(d) Sub-paragraph 7 and 8 of Article 5 and sub-paragraph 2 of Article 6 of Law 2908 on Associations,

(e) Law 2932 on Publications in Languages Other than Turkish,  
are hereby repealed.

**Entry Into Force**

**Article 24** - This Law shall enter into force on the date of its publication.

**Implementation**

**Article 25** - This Law shall be implemented by the Council of Ministers

## PREVENTION OF MONEY LAUNDERING

**Law No. 4208**

**Date of Publication: 19/11/1996**

### **PART ONE**

### **Prevention of Money Laundering**

#### **CHAPTER ONE**

#### **Object, Scope and Definitions**

##### **Object and Scope**

**Article 1** - The object of this law is to set forth the fundamentals that shall be applied for the prevention of money laundering.

##### **Definitions**

**Article 2** - For the purposes of this Law;

a) "Dirty money"<sup>45</sup> shall mean money and monetary instrument, property and proceeds derived from any activity stated in;

1- The Law No.1918 on Prevention and Follow-up of Smuggling,

2- The Law No.6136 on Firearms and Knives

3- The Law No.2238 on Removal, Preservation and Transplantation of Organs and Tissues,

4- The Law No.2863 on Protection of Cultural and Natural Values,

5- (Sub-paragraph amended with paragraph (o) of Article 81 of Law No:4369) Sub-paragraph (b) of Article 359 of the Law No:213 on Tax Procedures,

6- Paragraph (4) of Article 22 of the Law No:4389 on Banks,

7- Sub-paragraph (A) (1)-(7) of paragraph (1) of Article 47 of the Law No:2499 on Capital Market,

8- Article 333 of the Law No:2004 on Bankruptcy with regard to bankruptcy and composition of the banks which were transferred to Insurance Fund of Saving Deposits or were subjected to liquidation by Insurance Fund of Saving Deposits,

9- (Sub-paragraph amended with Article 5 of Law No:4782) Articles about Felonies Against the State and articles 179,192, from 211 to 220, 264, 316, 317, 318, 319, 322, 325, 332, 333, 335, 339, 341, 342, 345, 350, 403, 404, 406, 435, 436, 495, 496, 497, 498, 499, 500, 504 and 506 of the Turkish Criminal Law No:765,

and all the economic advantages and assets derived from the conversion of money, monetary instruments, property and proceeds from one form to another, including the conversion of a currency into another currency.

b) "Money laundering offence"<sup>46</sup> shall mean, other than the situations specified in the Article 296 of

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<sup>45</sup> The subjects of "dirty money", "money laundering offence" and "punishment for money laundering offence" have been established under the title "Laundering Assets Derived from Crime" in article 282 of Turkish Criminal Law No:5237 dated 26.09.2004. In accordance with this article, the crimes entailing a maximum of more than one year imprisonment were determined as predicate offences.

<sup>46</sup> **Article 282: Laundering of Assets Obtained from Crimes**

(1) *Whoever transfers, transmits or transports assets, derived from an offence minimum punishment of which is 1 year or more imprisonment, abroad or subjects these assets to a series of transactions for the purposes of disguising illicit sources of them and misleading as if they have been derived from legitimate sources, is sentenced to imprisonment from 2 years up to 5 years and to payment of a fine not more than twenty thousand days.*

(2) *In case this offence is committed by public servants or natural or legal persons, who deal with particular professions, during the execution of their duties or businesses, the sentence to imprisonment shall be increased by half of it.*

(3) *In case this offence is committed in the context of the activities of a criminal organization designed for the purpose of committing offences, the sentence shall be increased by two fold of it.*

(4) *With regard to committing this offence, for legal persons, security measures pertinent to them are taken.*

(5) *Before initiating the prosecution procedure, whoever enables the competent authorities to seize the assets subject to an offence or facilitates the seizing these assets by informing competent authorities about where these assets are concealed shall not be sentenced due to the offence defined under this Article.*

Article 165 of Turkish Criminal Law should be taken into consideration as supplementary regulation of this crime.

the Turkish Criminal Law making use of the proceeds from crime acquired through the activities mentioned in the subparagraph (a) of this Article by the offenders in order to legitimize them; by knowing that it is dirty money derived from the crimes referred to above, acquisition and possession of it by others, using it by acquirer or others, changing or hiding its source, nature, possessor or owner; making it subject of cross-border transactions or disguising such transactions, changing its source or location or laundering it by way of transferring in order to help the offender to evade the legal consequences of the crimes specified above or the other actions to prevent the detection of dirty money.

c) "Controlled delivery" shall mean the consignments, within the knowledge and under the supervision of the competent authorities, of the narcotic drugs and psychotropic substances, including the substances in Table I and Table II annexed to the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the substances that may take part in the amendments of those Tables, which will be delivered within Turkey or brought to and distributed in Turkey or prepared in Turkey and transported abroad or transported in transit through Turkey, the funds or dirty money related to those substances or every kind of smuggled or suspected to be smuggled goods that would be the source of dirty money, for the purposes of identifying the perpetrators, finding out and collecting all kinds of evidence and confiscating the smuggled or suspected to be smuggled goods and funds.

d) "Presidency" shall mean "the Presidency of Financial Crimes Investigation Board".

e) "Coordination Board" shall mean "Coordination Board for Combatting Financial Crimes".

## **CHAPTER TWO**

### **Duties, Powers and Responsibilities**

#### **Duties and Powers of the Presidency of Financial Crimes Investigation Board**

**Article 3** - The Presidency of Financial Crimes Investigation Board operates as attached directly to the Minister of Finance. Duties of the Presidency are as follows;

1. to carry out studies for prevention of money laundering, to take the necessary steps for this purpose,
2. to exchange studies and information with the national and international institutions and establishments, to make research and investigations related to dirty money,
3. to ask for all kinds of information and documents related to money laundering operations from natural persons and corporate bodies, including public institutions and establishments,
4. to investigate the issues conveyed by Public Prosecutors and by the law enforcement authorities on behalf of Public Prosecutors, to conclude the requests of these authorities on determination of money laundering offences,
5. to carry out preliminary investigations in order to determine whether money laundering offences have been committed or not, and if serious circumstantial evidences exist about money laundering, in cooperation with the law enforcement authorities, to request to be implemented the procedures in accordance with this Law and the provisions on search and seizure of the Criminal Procedure Law,
6. to inform the Public Prosecutor's Office about the steps taken on preliminary investigation,
7. to apply to the Public Prosecutor's Office for taking precautionary measures on the claims and rights of the suspected person, if there are serious findings and circumstantial evidences about money laundering during research and examination,
8. to provide the Public Prosecutor's Office with all information and documents concerning the commission of money laundering offence,
9. to propose in order to be decided by the Council of Ministers to put into force the measures to determine and prevent money laundering offences; and to assign banks, non-bank financial institutions and other natural persons and corporate bodies, with the requirement of customer identification, and to inform the Undersecretariat of Treasury of the actions taken,

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#### **Article 165- Purchasing or acquiring illicit property**

- (1) *Whoever purchases or acquires the property obtained through committing a crime shall be sentenced to imprisonment from six months to three years and to fine up to a thousand days.*

10. to collect and evaluate all the statistical and other kinds of information concerning money laundering offences and, to notify the related parties and competent authorities within the framework of bilateral and multilateral international agreements to which Turkey is a party,

11. to make the necessary arrangements on principles and procedures of Presidency's operations and on the implementation of Decrees of Council of Ministers concerning the principles and procedures of customer identification, as well as on the determination and prevention of money laundering offences, The Presidency performs its duties of investigation and examination of money laundering offences through Ministry of Finance Inspectors, Auditors, Revenue Comptrollers, Sworn-in Bank Auditors, Treasury Comptrollers and Capital Market Board Experts. The Ministry of Finance Inspectors, Auditors, Revenue Comptrollers, Sworn-in Bank Auditors, Treasury, Comptrollers and Capital Market Board Experts to be appointed are determined upon the request of the President of the Board by the proposal of the head of the unit concerned and by, the approval of the Minister to whom they are attached or related.

The Ministry of Finance Inspectors, Auditors, Revenue Comptrollers, Sworn-in Bank Auditors, Treasury Comptrollers and Capital Market Board Experts to be appointed upon the request of the Presidency are authorized to ask for information and documents, to make research and examination, to follow up and inspect the procedure to examine every kind of document for this purpose on the issues falling within the scope of the subject matter of their assignment.

#### **Duties and Powers of the Coordination Board for Combatting Financial Crimes**

**Article 4** - Under the Chairmanship of the Under-Secretary of Ministry of Finance, the Coordination Board consists of the Presidents of the Inspectors Board and the Auditors Board of the Ministry of Finance, Financial Crimes Investigation Board, Board of Sworn-in Bank Auditors and Board of Treasury Comptrollers of the Undersecretariat of Treasury as well as Capital Market Board; together with the General Director of Revenues, General Director of Banking and Exchange, General Director of Legislation of the Ministry of Justice, General Director of Relations with Middle-East, Africa and International Organizations of the Ministry of Foreign Affairs and Head of the Department for Combatting Smuggling and Organized Crimes of the General Directorate of Security of the Ministry of Interior. When necessary, Chief Legal Adviser and General Director of Legal Affairs of the Ministry of Finance; Director of the Board of Inspectors of the Undersecretariat of Customs; Head of Smuggling, Intelligence, Operation and Information Gathering Department of the Ministry of Interior and the representatives one each from the Prime Ministry, the Ministry of Health and the Central Bank of the Republic of Turkey at least at the level of General Director are invited to participate as a member in the Coordination Board. The Coordination Board may also invite representatives from other public institutions and establishments when it deems necessary.

The Coordination Board is responsible for coordination of the activities that will be performed by the Financial Crimes Investigation Board on prevention of money laundering together with the related institutions and establishments, determining policies concerning implementation and evaluating draft legislation and proposals.

#### **Obligation to Submit Information and Documents**

**Article 5** - Public institutions and establishments, natural persons and corporate bodies are obligated to submit information and documents to be requested by the Presidency and the other authorities specified in Article 3 of this Law and provide them with adequate support.

Natural persons and corporate bodies from whom information and documents are requested by the Presidency and the other authorities may not refrain from submitting information and documents by claiming the protection provided by privacy provisions in special laws, provided that the provisions related to the right of defense are reserved.

#### **Obligation of Secrecy**

**Article 6** - The persons stated below may not disclose the secrets or other confidential information, which they acquire while exercising their functions, about the personalities, transactions and account

statements, businesses, undertakings, properties or professions of the persons and other persons having relation with them and shall not make use of those secrets confidential information for their own or third parties' benefit:

- a) President of the Financial Crimes Investigation Board and his/her deputies, the Investigation Experts and Assistant Experts of Financial Crimes and other officials employed at the Board,
- b) Chairman and Members of the Coordination Board of Combatting Financial Crimes,
- c) Other public officials who are authorized in accordance with this Law,
- d) Natural persons and corporate bodies whose information and expertise on money laundering operations are applied,
- e) Persons performing duties as expert witness on money laundering issues,

This obligation continues even after the termination of the assignments of the persons stated above.

## CHAPTER THREE

### Penalties and Procedural Provisions

#### Penalties of Money Laundering Offence<sup>47</sup>

**Article 7** - Whoever commits money laundering offence shall be sentenced to imprisonment for from two years to up to five years and also heavy fine of one fold of the money laundered and all the property and assets in the scope of dirty money including the returns derived from them and in case the property and assets could not be seized, the corresponding value of them shall be subject to confiscation.

If dirty money is derived from offences of terrorism or from smuggling of substances or items which are forbidden by law to be imported to or exported from Turkey, or if the offence is committed to

<sup>47</sup> As of 01.06.2005, relevant articles of Turkish Criminal Law No:5237 dated 26.09.2004 shall apply.

#### **Article 54- Confiscation of property**

- (1) *Provided not belonging to the bona fide third parties, the property used in committing a deliberate offence or allocated for committing an offence or derived from a crime shall be confiscated. The property prepared for using in committing an offence shall be confiscated in case of danger for public security, public health or public morality.*
- (2) *In case of removing, transferring, consuming of the property in the scope of first paragraph or in case confiscation of aforementioned property is impossible in another way, an equivalent value of the property shall be confiscated.*
- (3) *If it is considered that the confiscation of the property used in committing the offence generates more serious results in comparison to this offence and for this reason it is understood that confiscation of the property violates equity, then the confiscation may not be ordered.*
- (4) *The property whose production, disposition, usage, transportation, purchase and sale constitutes a crime shall be confiscated.*
- (5) *When a partial confiscation of any article is required, that part shall be confiscated providing that it can be separated without giving any harm to the whole of it.*
- (6) *With regard to the properties belong to joint owners, only the share of the person participating the crime shall be confiscated."*

**Article 55- Confiscation of benefits**(1) *The material benefits derived from the commission of a crime or constitutes the subject of the crime or provided for the commission of the crime with the economical earnings obtained by the deposition or conversion of them shall be confiscated. In order to give the confiscation decision in accordance with this paragraph, the material benefit can not be returned to the inflicted person.*

- (2) *When the property or material benefits can not be seized or submitted to the competent authorities, an equivalent value of these assets shall be confiscated.*

#### **Article 282- Laundering of Assets Obtained from Crimes**

- (1) *Whoever transfers, transmits or transports assets, derived from an offence minimum punishment of which is 1 year or more imprisonment, abroad or subjects these assets to a series of transactions for the purposes of disguising illicit sources of them and misleading as if they have been derived from legitimate sources, is sentenced to imprisonment from 2 years up to 5 years and to payment of a fine not more than twenty thousand days.*
- (2) *In case this offence is committed by public servants or natural or legal persons, who deal with particular professions, during the execution of their duties or businesses, the sentence to imprisonment shall be increased by half of it.*
- (3) *In case this offence is committed in the context of the activities of a criminal organization designed for the purpose of committing offences, the sentence shall be increased by two fold of it.*
- (4) *With regard to committing this offence, for legal persons, security measures pertinent to them are taken.*
- (5) *Before initiating the prosecution procedure, whoever enables the competent authorities to seize the assets subject to an offence or facilitates the seizing these assets by informing competent authorities about where these assets are concealed shall not be sentenced due to the offence defined under this Article.*

obtain sources for the offences of terrorism, the term of imprisonment to be imposed on the perpetrator according to the clause of the above referred paragraph shall not be less than four years.

If the crime is committed;

- a) by the persons who establish an organization to launder money or lead or become a participant of the organization,
- b) by officials or civil servants due to their duties and by those working at the bodies operating in accordance with; Banks Act No.3182, Insurance Supervision Law No.7397, Law No.3326 on Financial Leasing, Law No.1567 Regarding the Protection of the Value of Turkish Currency, Capital Market Law No. 2499, legislation on Money Lending Transactions and Principles and Procedures about Establishment, Operations and Liquidation of Special Finance Institutions,
- c) by way of violence or threat or by force of arms,

The penalties are increased by one fold additionally.

If the crime is committed by corporate bodies, in cases where the clause of subparagraph (a) of third paragraph could not be applied, both the managers committing the acts stated above being sentenced by the same penalties and corporate bodies shall be sentenced to fines from five hundred million Turkish liras to up to five billion Turkish liras.

If money laundering offence is committed by one of the ascendants or descendants or wife-husband or sister-brother in order to disguise the predicate crimes from which the dirty money is stemmed, the punishment shall be reduced from one-half to two-thirds.

### **Statutory Limitation<sup>48</sup>**

**Article 8** - Statutory limitation of investigating money laundering offences is (Amended: statement, 26/12/2003 – Article 5020/16) “fifteen” years.

Litigation vacates the running of statutory limitation.

### **Imposing Precautionary Measures**

**Article 9** - If there is serious circumstantial evidence about money laundering, the authority to give an order of freezing of claims and rights in banks and non-bank financial institutions as well as in real and other legal persons, including the values existing in deposit boxes; annulling the right of

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<sup>48</sup> In Article 66 of Turkish Criminal Law No:5237 dated 26.09.2004 entered into force on 01.06.2005, limitation of action is set forth as 8 years.

#### **Article 66 – Limitation of Action**

(1) *The public lawsuit shall abate except the situations stated otherwise in the law after;*

- a) *thirty years in crimes incurring aggravated life imprisonment,*
- b) *twenty five years in crimes incurring life imprisonment,*
- c) *twenty years in crimes incurring penalty of imprisonment not less than twenty years,*
- d) *fifteen years incurring penalty of imprisonment more than five years and less than twenty years,*
- e) *eight years in crimes incurring penalty of imprisonment not more than five years and criminal fine.*

(2) *The public lawsuit shall abate after the half of this period regarding the persons who perpetrate the offence when he/she is more than twelve but less than fifteen years old; two thirds of the period regarding the persons who perpetrate the offence when he/she is more than fifteen but less than eighteen years old*

(3) *In the determination of limitation of action the situations which the crime incurring more penalty also shall be taken into consideration concerning the available evidences in the file.*

(4) *The upper limit of the penalty of the crime stated in the law is taken into consideration in the determination of the periods in the above subparagraphs; penalty of imprisonment is principle in limitation of crimes incurring alternative penalties.*

(AMENDED: Subparagraph (5); 08/07/2005 – article 5377/8) (5) *In the situations incurring rejudging for the same action, the limitation period is starts from the beginning of the date of the demand on this matter by the court.*

(6) *The limitation shall process as of the day; when the crime is committed in completed crimes, after the final action in the crimes remained as an attempt, at the outage in the continuous crimes, when the last crime is committed in the chained crimes and after the children become eighteen years old in the crimes committed by the ones who has lineal ancestor or decision and influence on the children.*

(7) *The limitation of action shall not be carried out if the crimes stated in the Forth Part of the Second Book of this Law incurring aggravated life imprisonment or life imprisonment or penalty of imprisonment more than ten years are committed in abroad.*

disposition completely or partially; the seizure of property, negotiable instruments, cash and other valuables; holding the assets in custody and taking other precautionary measures on claims and rights, belongs to the Peace Court Magistrate during the preliminary investigation and to the Court during the trial.

Requests for precautionary measures are concluded immediately as a result of evaluation of documents and at the latest within 24 hours.

Public Prosecutors may also decide to freeze claims and rights in cases where it is necessary to avoid delay. Public Prosecutors' Office notifies the Peace Court Magistrate about the decision at the latest within 24 hours. Peace Court Magistrate decides at most within 24 hours whether to approve the decision or not; in case of non-approval, the decision of the Public Prosecutor becomes void.

### **Conditions to Apply Controlled Delivery**

**Article 10** - The following conditions are required for application of controlled delivery:

- a) Existence of a very seriously organized smuggling activity that falls within the scope of controlled delivery,
- b) Absence of other means to expose organizers, capital owners and members of the organization and to find out all the evidences pertaining to them.
- c) Securing the supervision of the smuggled goods or funds till they reach to the final destination without any interruption,
- d) Existence of required period of time for controlled delivery,
- e) Additionally, for the goods and funds which are prepared in Turkey for smuggling in order to be taken abroad or transported in transit through Turkey, the following conditions must be met:
  1. Assurance of the requesting state for the uninterrupted continuance of controlled delivery and prosecution and investigation of the perpetrators,
  2. Commitment for the extradition of the Turkish nationals and repatriation of substances, and funds together with the vehicles used for their transportation by the state where the controlled delivery has come to an end and the Turkish nationals have been captured.

### **Decision and Procedures of Controlled Delivery**

**Article 11** - Implementation of controlled delivery shall be decided by the Chief Public Prosecutor of the State Security Court of Ankara, provided that the conditions stated in Article 10 exist.

In case the follow-up and surveillance operations are in danger or if the possibility of loss of evidences or escape of the accused arises when controlled delivery are carried on, controlled delivery shall, without a decision, be terminated immediately.

The jurisdictional power with respect to controlled delivery belongs to the court where the operation terminates. Controlled delivery operation shall not abolish the jurisdictional power of the Turkish courts.

### **Violation of Obligations**

**Article 12** - The persons stated in Article 6 of this Law shall be sentenced to imprisonment for from one year to up to three years, in case they disclose the information that must be kept secret. In case it is determined that disclosure is made for a pecuniary benefit, the benefit concerned and the returns derived from it, are subject to confiscation.

Whoever refrains from furnishing the information and documents requested by the Presidency and other competent authorities, whoever does not make customer identification within the framework of principles and does not keep the records on customer identification for five years and whoever does not comply with the Decrees of the Council of Ministers and the Communiqués pertaining to implementation of the mentioned Decrees regarding the determination and prevention of money laundering offence, shall be sentenced to imprisonment for from six months up to one year and to heavy fine from twelve million Turkish liras to one hundred twenty million Turkish liras.

### **Jurisdiction<sup>49</sup>**

**Article 13** - Requests concerning money laundering offences are taken up and decided within the framework of Law No.3005 on Trial of Flagrante Delicto by the court where the dirty money exists.

Peace Courts Magistrates in Ankara are authorized to decide on foreign countries' requests of confiscation in accordance with Article 7 and controlled delivery of dirty money.

The request for confiscation judgement shall be made in accordance with the provisions of agreements to which the Republic of Turkey is a party.

## **CHAPTER FOUR Miscellaneous Provisions**

### **Additional Payments**

**Article 14** - The president and members of the Coordination Board are paid per meeting a remuneration in the amount to be calculated through multiplying the indicator number of 2000 by the salary coefficient of public officials.

Monthly additional payment, not exceeding the amount to be found by multiplying the salary coefficients of public officials with the following indicator numbers, is made with the approval of the Minister to the following personnel employed in the Financial Crimes Investigation Board with regard to prevention of money laundering;

- a) 10,000 for auditors charged with research and examination,
- b) 5,000 for the President and the Vice Presidents of the Financial Crimes Investigation Board
- c) 4,000 for experts and 3,000 for assistant experts performing data collection, pursuit and evaluation.
- d) 2,000 for those employed on management and office works.

In the appointments, deduction is made for periods less than one month.

Such payments are not subject to any tax or deduction other than stamp tax.

### **Regulations**

**Article 15** - Necessary arrangements for the implementation of this Law on the issues of submitting information, customer identification, methods of research and examination, suspicious transactions, determination of property and proceeds subject to laundering; as well as the principles and procedures on convention and functioning of Coordination Board, quorum for meeting and decision will be set out by regulations to be issued by the Council of Ministers within six months following the date of promulgation of this Law.

The principles and procedures of controlled delivery shall be determined in the regulation to be issued by the Ministry of Interior after consulting the Ministries of Justice and Finance and the Ministries to which Undersecretariats of Treasury and Customs are attached. The controlled delivery operations to be carried out within the framework of this regulation are executed by the Ministry of Interior.

The principles and procedures on employment, promotion and functioning of the Investigation Experts of Financial Crimes and Assistant Experts are set out by a regulation to be issued by the Ministry of Finance.

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<sup>49</sup> Procedure Law of Flagrant Offences No:3005 has been annulled by the Law No:5230 dated 23.03.2005. As of 01.06.2005, Criminal Procedure Law No:5271 dated 04.12.2004 has applied.

**Article 18.- The Laws annulled:**

*As of 1 April 2005;*

*Criminal Procedure Law No:1412 dated 4.4.1929,*

*Criminal Procedure Law of Flagrant Offences No:3005 dated 8.6.1936,*

*Law No:466 dated 7.5.1964 on Rendering Compensation to the Persons who were captured or arrested unjustly,*

*Law No:4422 dated 30.7.1999 on Combatting Organizations Pursuing Illicit Gain with all its annexes and amendments have been annulled.*

*(2) The provisions in relation to taking into force and implementation under Article 6, 8 and 12 of this Law have been reserved.*

**PART TWO****Provisions Amended in Other Laws****CHAPTER ONE****Supplementary Article to Law No.2313 Regarding the Control of Narcotic Drugs**

**Article 16** - The following article is added to the Law No.2313 Regarding the Control of Narcotic Drugs.

**Prevention of Production and Distribution of Narcotic Drugs and Psychotropic Substances  
Supplementary**

**Article 1** - Manufacturing, importation and exportation, transportation, possession or purchase and sale of the substances stated in Table 1 and Table II annexed to the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and of the substances that may take part in the amendments of these tables are subject to the permission of the Ministry of Health.

The provisions concerning the consultations with the related establishments for the permission to be given in accordance with the above paragraph and the principles and procedures of granting permission are set forth in the regulation to be issued by the Ministry of Health.

Whoever manufactures, imports and exports, transports, possesses, purchases or sells the substances stated in the first paragraph without permission shall, if the act does not necessitate a heavier punishment, be sentenced to heavy fine for from three-hundred million Turkish liras to up to one billion Turkish liras and the substances shall be confiscated.

If the crimes stated in the third paragraph are committed in order to use them in manufacturing of narcotic drugs and psychotropic substances or knowing that they will be used for such a purpose, the perpetrator shall be sentenced to heavy imprisonment for from two years to upto four years, if the act should not necessitate a heavier punishment. Whoever manufactures, imports, exports or transports or possesses, sells or purchases the necessary equipment and other materials in order to use in manufacturing of narcotic drugs and psychotropic substances or knowing that they will be used for such a purpose, also be sentenced to the same punishment.

The provisions of the Law No.3298 on Narcotic Drugs are reserved.

**CHAPTER TWO****Provisions Amended or Added to Decree Law No.178**

**Article 17** - The following paragraph (r) is added to Article 2 of the Decree Law No.178 Regarding the Organization and Functions of the Ministry of Finance:

r) to make necessary research and examination on prevention of money laundering, to determine the principles and procedures to be implemented for this purpose.

**Article 18** - The following paragraph (f) in Article 8 of the Decree Law No.178 which was abolished by Decree Law No.484 dated 2.7.1993 is modified as follows:

f) Presidency of the Financial Crimes Investigation Board

**Article 19** - The following Article 14 of the Decree Law No.178 which was abolished by Decree Law No.484 dated 2.7.1993 is modified as follow:

**Duties of the Financial Crimes Investigation Board**

**Article 14** - Financial Crimes Investigation Board performs the duties stated in Article 3 of the Law on Prevention of Money Laundering and other tasks entrusted to it by other laws.

**Article 20** - Article 33 of the Decree Law No:178 and its title concerning the High Board of Tariff policy which was abolished by the Article 9 of the Decree Law No:207 are modified as follows:

## **CHAPTER FIVE**

### **Standing Committee**

#### **Coordination Board for Combatting Money Laundering**

**Article 33** - Coordination Board for Combatting Money Laundering is formed as stated in Article 4 of the Law on Prevention of Money Laundering and performs the functions assigned in the same Article.

## **CHAPTER THREE**

### **Amendments to State Personnel Law No.657**

**Article 21** - Following statements have been added to State Personnel Law No. 657:

- a) the statements "Assistant Investigation Experts of Financial Crimes" to follow "Assistant Experts for the State Budget", "Investigation Experts of Financial Crimes" to follow "Experts for the State Budget" in paragraph (a) subparagraph(11) of the section on "Common Provisions" in Article 36,
- b) "Investigation Experts of Financial Crimes" to follow the statement "Experts for the State Budget" in the section (11), paragraph (A) subparagraph (I) of the additional article following article 213,
- c) the statement "Investigation Experts of Financial Crimes" to follow "the State Budget Experts" in paragraph (h) of section "I-General Management Service Class" on the annexed Additional Indicator Table No.1,
- d) the statement "President and Vice-President of the Financial Crimes Investigation Board" to follow "Head of National Library" in the section under the heading "1- In the Prime Ministry and Ministries" on the annexed additional Indication Table No.11,
- e) the statement "Vice-Presidents of the Financial Crimes Investigation Board" to paragraph (d) of live 5 on the annexed Office Compensation Table No. IV.

## **PART THREE**

### **Transitory Articles, Entry into Force and Enforcement**

**TRANSITORY ARTICLE 1** - A new section as "Presidency of the Financial Crimes Investigation Board" has been added to the Annexed Table No.1 of Regulation No.190, by creating new cadres indicated in the attached List No.1.

**TRANSITORY ARTICLE 2** - (Article 85 of the Law No: 4369 amended by the Transitory article 4/b) The personnel who have worked, as of the date of entering into force of this Law, at least 5 years in the expert and auditor cadres of Ministry of Finance stated in paragraph (A) of the second section of the additional article following Article 213 of the State Personnel Law No.657, may be appointed as the Investigation Expert of Financial Crimes until the date of 31.12.1998 on the condition that they are successful in the examination held by the examination committee to be constituted by the Minister's approval

*The Article before amendment: The personnel who have worked, as of the date of entering into force of this Law, at least 5 years in the expert and auditor cadres of Ministry of Finance stated in paragraph (A) of the second section of the additional article following Article 213 of the State Personnel Law No.657, may be appointed as the Investigation Expert of Financial Crimes within 6 months on the condition that they are successful in the examination held by the examination committee to be constituted by the Minister's approval*

**Article 22** - This Law enters into force on its publication date.

**Article 23** - The provisions of this Law shall be implemented by the Council of Ministers.

## MINISTRY OF FINANCE

Class	Title	Degree of Cadre	No of Cadre	Total
GAS	President of Financial Crimes Investigation Board	1	1	1
GAS	Vice President	1	3	3
GAS	Financial Crimes Investigation Expert	1	3	3
GAS	Financial Crimes Investigation Expert	2	3	3
GAS	Financial Crimes Investigation Expert	3	3	3
GAS	Financial Crimes Investigation Expert	4	3	3
GAS	Financial Crimes Investigation Expert	5	3	3
GAS	Financial Crimes Investigation Expert	6	4	4
GAS	Assistant Financial Crimes Investigation Expert	9	6	6
GAS	Director	1	2	2
GAS	Director	3	1	1
GAS	Analyst	4	1	1
GAS	Analyst	5	2	2
GAS	Analyst	6	2	2
GAS	Programmer	4	1	1
GAS	Programmer	5	2	2
GAS	Computer Operator	9	1	1
GAS	Computer Operator	10	1	1
GAS	Operator Preparing and Controlling Data	10	1	1
GAS	Operator Preparing and Controlling Data	11	5	5
GAS	Operator Preparing and Controlling Data	12	2	2
GAS	Clerk	6	3	3
GAS	Clerk	9	2	2
GAS	Clerk	12	2	2
	<b>Total</b>			<b>60</b>

MINISTRY OF FINANCE  
(JUNE 2002)

Class	Title	Degree of Cadre	No of Cadre	Total
GAS	President of Financial Crimes Investigation Board	1	1	1
GAS	Vice President	1	3	3
GAS	Financial Crimes Investigation Expert	1	3	3
GAS	Financial Crimes Investigation Expert	2	0	0
GAS	Financial Crimes Investigation Expert	3	2	2
GAS	Financial Crimes Investigation Expert	4	2	2
GAS	Financial Crimes Investigation Expert	5	0	0
GAS	Financial Crimes Investigation Expert	6	17	17
GAS	Financial Crimes Investigation Expert	7	2	2
GAS	Assistant Financial Crimes Investigation Expert	7	6	6
GAS	Assistant Financial Crimes Investigation Expert	8	21	21
GAS	Assistant Financial Crimes Investigation Expert	9	16	16
GAS	Director	1	3	3
GAS	Translator	1	2	2
GAS	Translator	2	1	1
GAS	Supervisor	6	1	1
TAS	Engineer	1	3	3
GAS	Analyst	4	1	1
GAS	Analyst	6	0	0
GAS	Programmer	4	1	1
GAS	Programmer	6	2	2
GAS	Computer Operator	5	1	1
GAS	Computer Operator	6	1	1
GAS	Computer Operator	9	1	1
GAS	Computer Operator	10	1	1
GAS	Operator Preparing and Controlling Data	3	2	2
GAS	Operator Preparing and Controlling Data	7	2	2

GAS	Operator Preparing and Controlling Data	8	0	0
GAS	Operator Preparing and Controlling Data	10	2	2
GAS	Operator Preparing and Controlling Data	11	2	2
GAS	Operator Preparing and Controlling Data	12	1	1
GAS	Clerk	5	4	4
GAS	Clerk	6	3	3
GAS	Clerk	7	1	1
GAS	Clerk	8	2	2
GAS	Clerk	9	2	2
		<b>Total</b>		<b>112</b>

\* GAS : General Administrative Services

## **REGULATION REGARDING THE IMPLEMENTATION OF THE LAW NO. 4208 ON PREVENTION OF MONEY LAUNDERING**

**Date of Publication: 02/07/1997**

### **PART ONE**

#### **Customer Identification, Submitting Information, Suspicious Transactions and Determination of Property and Proceeds Subject to Laundering for the Prevention of Money Laundering**

### **CHAPTER ONE**

#### **Object, Scope, Base and Definitions**

##### **Object and Scope**

**Article 1** - Principle and procedures on customer identification, submitting information, suspicious transactions and determination of property and proceeds subject to laundering as well as investigation and research methods with regard to the implementation of Law No. 4208 have been set forth in this Regulation.

##### **Legal Base**

**Article 2** - This Regulation has been arranged on the base of Article 15 of Law No. 4208 on Prevention of Money Laundering and Amendments to the Law No. 2313 Regarding the Control of Narcotic Drugs, Law No. 657 Regarding State Personnel and Decree Law No. 178 Regarding Establishment and Functions of the Ministry of Finance, dated 13.11.1996.

##### **Definitions**

**Article 3** - Within the framework of this Regulation;

Ministry means Ministry of Finance,

Presidency means Presidency of the Financial Crimes Investigation Board,

President means President of the Financial Crimes Investigation Board,

Coordination Board means Coordination Board for Combatting Financial Crimes,

Investigator means Finance Inspectors, Auditor, Revenue Comptrollers, Sworn-in Bank Auditors, Treasury Comptrollers and Capital Market Board Experts to be appointed upon the request of the Presidency,

Expert means Expert and Assistant Expert for Research of Financial Crimes,

Law means Law No.4208 on Prevention of Money Laundering and Amendments to the Law No. 2313 Regarding the Control of Narcotic Drugs, Law No. 657 Regarding State Personnel and Decree Law No.178 Regarding Establishment and Functions of the Ministry of Finance, dated 13.11.1996,

Bank means Banks established in Turkey and branches of foreign banks operating in Turkey,

Liable parties means each person, institution and establishment mentioned below,

a) Banks,

b) Private Finance Houses,

c) Institutions, which issue credit cards as their primary function, other than banks,

d) Money lenders, consumer finance companies and factoring companies operating within the framework of the legislation regarding money lending transactions,

e) Insurance and reinsurance companies operating within the framework of the Insurance Supervision Law No.7397,

f) Istanbul Stock Exchange Settlement and Custody Bank Inc.,

g) Capital market intermediaries and portfolio management companies,

h) Investment funds,

i) Investment companies,

j) Precious metals exchange intermediaries,

k) Precious metal, stone and jewelry dealers,

l) Authorized institutions operating within the framework of exchange legislation,

- m) Every kind of postal service and cargo companies including General Directorate of Post,
- n) Financial leasing companies,
- o) Real estate agencies or persons interme-diating buying and selling of real estate,
- p) Lottery hall managers,
- r) Ship, aircraft and vehicle-including construction machines-dealers,
- s) Collectors of historical arts, antiques and art works as well as dealers or auctioneers,
- t) Sports clubs,

Money Laundering offence means the offence defined in Article 2/b of the Law.

## **CHAPTER TWO**

### **Procedures Regarding Customer Identification**

#### **Customer Identification Requirement**

**Article 4 - (Amended by Article 1 of the amendment to the Regulation published in the Official Gazette with number 23951 on February 1, 2000 under the Decision of Council of Ministers No.2000/65)**

The liable parties and their branch offices, agents, representatives, commercial deputies and their units alike in Turkey shall identify their customers and those who carry out the transactions on behalf of the customers before they carry out the transactions; and shall keep the related documents in accordance with the established procedures for 5 years starting from the year following the last transaction date for each transaction they are involved in either as one of the parties or an intermediary; including all kinds of purchase and sale, remittance, payment, storage, clearance, barter, lending, borrowing, debt transfer, transfer of claims, renting, renting out, depositing into or withdrawing from current or deposit accounts or profit and loss participation accounts, collecting checks and deeds, transactions pertaining to securities and the transactions alike that exceed 12 billion Turkish Lira (**The amount amended by the Decision of the Coordination Board published on Official Gazette on 8.7.2003 with No: 25162**) or equivalent in foreign exchange.

The liable parties shall make identification regardless of monetary limit before the transactions related to insurance, financial leasing, deposit box services and, opening deposit, profit and loss participation, current and repo account and the accounts alike are carried out.

Considering the countries respectively, the first paragraph of this Article may also be applied by the Presidency to branches and agencies abroad of the liable parties whose head offices are in Turkey in terms of the transactions, which have been carried out with Turkey, including fund transfers from or to Turkey.

In terms of implementing this Article, General Directorate of National Lottery and Turkish Jokey Club shall be considered liable parties in addition to those stated in Article 3.

#### **The Article before the amendment**

**(Article 4 of the Regulation published in the Official Gazette with 23037 number on the date of July 2, 1997)**

*Article 4 - Liable parties and their agents, representatives and business deputies shall identify their customers and keep the related documents in accordance with the established procedures for 5 years starting from the date of the latest transaction regarding each transaction they are party or intermediate, including deposit box services and all kinds of purchase and sales, money transfer orders, payment, storing, clearing, exchange, lending, borrowing, transfer of debt, transfer of claims renting, renting out, insuring, opening of deposit accounts or participating profit and loss accounts, withdrawing or depositing money to these accounts, payment in return for certificate of deposits, cheque and bill collection, capital market and repo transactions, exceeding 2 billion Turkish liras or the equivalent of it in foreign exchange, before the operation takes place.*

**(Article 4 of the Regulation published in the Official Gazette with 23217 number on the date of December 31, 1997)**

**Article 4-** *Liabile parties and their branch offices, agents, representatives and commercial deputies and their units alike; shall identify their customers and keep the related documents in accordance with the established procedures for 5 years, starting from the year following the last transaction date for each transaction they are involved in either as one of the parties or an intermediary; including deposit box services, all kinds of purchase and sales, money transfer orders, payments, storage, clearance, exchange, lending, borrowing, debt transfer, transfer of claims, renting, insuring, opening a current account or a profit and loss participation account, deposits to or withdrawals from these accounts, payment in return for certificates of deposit, cheque and bill collections, capital market and repo transactions, that exceed 2 billion TL or equivalent in foreign exchange.*

*The first paragraph of this article may be applied by the Presidency to foreign branch offices and agencies of the financial institutions located in Turkey, in their money transfers to and from foreign countries, regarding the transactions with Turkey.*

*For the enforcement of this article, the Directorate General of National Lottery and Turkish Jockey Club will also be regarded as financial institutions.*

### **Exemptions**

**Article 5 -** Liabile parties are not required to make customer identification regarding transactions carried out with central and local public administrations, state economic enterprises, and quasi public institutions established by law and transactions carried out by banks and special finance houses among themselves.

### **Procedure of Customer Identification**

**Article 6- (Amended by Article 2 of the amendment to the Regulation published in the Official Gazette with 23951 on February 1, 2000 under the Decision of Council of Ministers No.2000/65)**

Customer identification shall be made by receiving legible photocopies of original copies or certified copies of the documents stated in this Article; or by writing down the information about the identity on the back of the documents related to the transactions. During identification process, the address declared by the real person who carries out the transaction shall also be registered.

The documents that are to be used in identification are stated below:

- a) For real persons who are Turkish citizens;  
ID-Card or  
Driving License or  
Passport.
- b) For real persons who are the citizens of foreign countries;  
Passport issued by his/her own country or  
Residence permit.
- c) For legal persons registered in Trade Registry;  
A copy of the registration document and  
The certificate authorizing the person to represent the legal person and  
The authorized signature document.
- d) For foundations;  
The documents certifying the registration to the General Directorate of Foundations.
- e) For associations;  
The document verifying that they are registered in the association registry kept by the Security Directorates of the provinces.
- f) For the organizations that are not corporate bodies;  
The decision stating authorization to manage them.

In the transactions carried out on behalf of corporate entities, associations, foundations and establishments which are not corporate entities, the real person who carry out the transaction shall also be identified. In the event that the transactions are carried out on behalf of another real person, corporate entity and the establishments that are not corporate entities, those on behalf of whom the transactions are carried out shall also be identified. Following operations of those who were identified

shall be carried out by means of comparing the information within the presented ID-Card to the information given by the customer.

The Presidency shall have the authority to determine identification procedure and methods and the sort of the document to be used for identification.

#### **The Article before amendment**

**(Article 6 of the Regulation published in the Official Gazette with 23037 number on the date of July 2, 1997)**

*Article 6 - Customer identification of the real persons is made either through taking an undoubtedly sound copy of any of the identifying documents with a photo such as ID- cards, drivers licenses and passports given by public offices or the copies of any of these documents certified by a notary public, or by recording the information on identity at the back of the sheet related with the transactions forms. If the transactions are carried out for another real person, then identification of this party shall also be made.*

*For the legal entities registered to Trade Registry, identification is made through keeping a copy of the document certifying registration and through a document justifying that the person applying to the bank on behalf of the legal entity, accompanied by a certified specimen of his/her signature. Foundations shall submit the document certifying the registration to General Directorate of Foundations and associations shall submit the document justifying that they are registered to the association registry kept by the Security Directorates in the provinces.*

*Any other transactions that will be made subsequently concerning the formerly identified customer, shall be conducted by comparing the information on the customer's ID-Card with the information previously recorded by the financial institution.*

*Presidency is authorized to establish principles and procedures about the requirement of customer identification.*

**(Article 6 of the Regulation published in the Official Gazette with 23217 number on the date of December 31, 1997)**

*Article 6 - Customer identification of the real persons that are Turkish citizens is made through identifying documents, such as ID-Cards, driver licenses or passports; for foreign real persons through the related country passport or residence permits; for the legal entities registered to the Trade Registry through keeping a copy of the document certifying registration and through a document justifying the person applying to the bank on behalf of the legal entity accompanied by a certified signature card of that person; for the foundations through a document certifying the registration to General Directorate of Foundations, for the associations through a document justifying that they are registered to the association registry kept by the Security Directorates in provinces; for the organizations that are not legal entities through a document authorizing their management and the identity card of the real person carrying out the transaction or copies of any of these documents can be certified by a notary public, the information recorded on the back of the related transaction document. If the transaction is carried out on behalf of another real person, then identification of that person should be made as well.*

*Any other transactions that will be made subsequently concerning the formerly identified customer, shall be conducted by comparing the information on the customer's ID-Card with the information previously recorded by the financial institution.*

*The Presidency is authorized to establish principles and procedures on the requirement of customer identification and the types of documents to be used for identification.*

### **CHAPTER THREE**

#### **Procedures Regarding Submitting Information**

##### **Obligation for Submitting Information and Documents**

**Article 7** - Public administrations, natural persons and legal entities are obligated to submit information and documents that would be requested by the Presidency and the investigators and to provide them with adequate support.

Natural persons and legal entities from whom information and documents are requested by the Presidency and the investigative authorities may not refrain from submitting information and documents by claiming the protection provided by privacy provisions in special laws, provided that the provisions related to the right of defense are reserved.

Information shall be requested either verbally or in written form. In cases where the persons from whom information is requested verbally, do not provide the requested information, the request shall be repeated in written form and a term of no less than 7 days shall be granted.

#### **Obligation to Submit Information on Permanent Basis.**

**Article 8 - (Article 8 amended by the Decision of Council of Ministers with 97/10419 number on the date of December 31, 1997)** The Presidency may ask a continuous flow of information from financial institutions regarding the transactions determined by the Presidency, in which they participate as one of the parties or as intermediaries.

The Ministry is authorized to determine the information to be submitted on a permanent basis in terms of monetary limits, liable parties, implementation period, principles and procedures; to regulate the methods of record keeping by liable parties; to ask for keeping this information for a certain period. The Presidency is authorized to make regulation regarding the procedure of submitting information.

#### **The Article before amendment**

**(Article 8 of the Regulation published in the Official Gazette with 23037 number on the date of July 2, 1997)**

#### ***Information Required to be Submitted on a Permanent Basis***

**Article 8 -** *Liable parties shall report to the Presidency each purchase and sales of all kinds, executing money orders, payment, storing, clearing, exchange, lending, borrowing, transfer of debt, giving possession of credit, renting, renting out, insuring, opening of deposit accounts or participating profit and loss accounts, withdrawing or depositing money to these accounts, payment in return for certificate of deposits, cheque and bill collection, capital market and repo transactions, that liable parties are Party or intermediate, exceeding 5 billion Turkish liras or the equivalent of it foreign exchange.*

*Multiple transactions made by real persons or legal entities in a business day shall be treated as a single transaction even if each is below the above threshold. Transactions made at night or over a weekend or holiday shall be treated as if made on the next business day following the transaction.*

#### **Reporting by the Customs Administration**

**Article 9 - (Article 9 amended by the Decision of Council of Ministers with 97/10419 number on the date of December 31, 1997)** The Customs Administration shall report to the Presidency all infractions of the law regarding the physical transfer of gold, Turkish Lira, foreign currency and convertible monetary instruments by passengers.

#### **The Article before amendment:**

**(Article 9 of the Regulation published in the Official Gazette with 23037 number on the date of July 2, 1997)**

#### ***Reporting of the Passengers at the Time of Coming in or Going Abroad***

**Article 9 -** *Passengers shall report to the Customer Administrations when they physically transport the Turkish Lira, foreign currency and monetary instruments enabling payment in any currency exceeding*

*5 billion Turkish liras into or out of Turkey at the time of entry or departure. Customs Administrations shall submit the information to the Presidency within the time limits stated in Article 11.*

*The reporting requirement in this Article, does not nullify the reporting requirement established by the decrees regarding the protection of the value of the Turkish currency.*

*The Presidency is authorized to establish the form, principles and procedures of reporting requirement through consulting the Customer Administration.*

### **Exemptions about Submitting Information on a Permanent Basis**

**Article 10** - Transactions stated below are not subject to the permanent reporting requirement:

- a) Transactions carried out by banks and special finance houses with.
  - 1) Banks and special finance houses,
  - 2) Central and local public administrations, state economic enterprises,
  - 3) Quasi-Public institutions established by laws.
- b) Transactions reported by liable parties other than banks and special finance houses, of which payment is made through transfer from accounts within banks and special finance houses, or checks or credit cards (prizes paid by lottery hall managers are excluded).
- c) Transactions to be determined by banks and special finance houses on the condition that their responsibility is reserved, of real persons and legal entities from their commercial accounts related with their business in Turkey that will be included to the professions determined by the Ministry and proportional to their activities.

### **Time limits for Submitting Information on Permanent Basis**

**Article 11 - (Article 11 amended by the Decision of Council of Ministers on the date of 31.12.1997 with 97/10419 number)** Transactions carried out within a month of the transactions that are covered by Article 8, in the name of the financial institutions or as intermediaries will be reported to the Presidency no later than the fifteenth day of the following month.

The Presidency is authorized to set forth different reporting periods or dates in terms of liable parties, taking into consideration the features of transactions.

### **The Article before amendment**

**(Article 11 of the Regulation published in the Official Gazette with 23037 number on the date of July 2, 1997)**

*Article 11 - The transactions carried out in a month subject to Articles 8 and 9, shall be submitted to the Presidency till the 15th day of the following month.*

## **CHAPTER FOUR**

### **The Procedures Regarding Suspicious Transactions**

#### **Suspicious Transactions**

**Article 12 - (Article 12 amended by the Decision of Council of Ministers on the date of 31.12.1997 with 97/10419 number)** If there is a suspicion or a suspicious situation that money or convertible assets used in transactions carried out or attempted to be carried out in the name of the liable parties or through their intermediaries stemmed from illegal activities, this shall immediately be reported to the Presidency, after making customer identification.

Persons, institutions and establishments reporting the suspicious transactions to the Presidency or the employees executing and managing the transaction, as well as their legal representatives, are not allowed to warn their customers.

Reporting of a suspicious transaction that has already taken place, in accordance with submission of information on a permanent basis, shall not nullify the obligation to report the suspicious transactions in accordance with this article.

The Presidency is authorized to set forth the types of suspicious transactions as a guidance to the liable parties.

Regarding the implementation of this article, notaries, the Directorate General of National Lottery, land register offices, the Jockey Club will also be treated as liable parties.

#### **The Article before amendment**

**(Article 12 of the Regulation published in the Official Gazette with 23037 number on the date of July 2, 1997)**

*Article 12 - With regard to the funds being subject to the transactions carried out or attempted to be carried out through liable parties or by the intermediation of them, if there exist any information, suspicion or circumstance that is supposed to raise suspicion that such funds stem from a criminal activity, liable parties shall report their suspicion to the Presidency after making customer identification and executing the transaction.*

*The liable parties reporting the suspicious transactions to the Presidency or the employees executing and administering the transaction as well as their legal representatives are not allowed warning their customers.*

*The reporting of a suspicious transaction that has already been done in accordance with the article regarding submission of information on a permanent basis, shall not nullify the obligation to report the suspicious transaction in accordance with this article.*

*The Presidency is authorized to set out the types of suspicious transactions as a guidance to the Obligers.*

#### **Submitting Information to Other Competent Authorities**

**Article 13** - In case it is clearly known that the funds stem from activities other than the ones stated in the Article 2/a of the Law No. 4208, reporting shall be made to the competent authorities, instead of the Presidency, within the framework of the general provisions.

#### **The Procedure for Reporting Suspicious Transactions**

**Article 14 - (Article 14 amended by the Decision of Council of Ministers on the date of 31.12.1997 with 97/10419 number)** Suspicious transactions shall be reported to the Presidency within a maximum of 10 days, starting from the date the transaction is detected. However, suspicious transactions and the parties to these transactions shall be reported to the authorized and assigned Public Prosecutor immediately, as well as to the Presidency, if such delays may cause inconveniences.

The Presidency is authorized to set out the principles and procedures regarding the reporting requirement.

#### **The Article before amendment**

**(Article 14 of the Regulation published in the Official Gazette with 23037 number on the date of July 2, 1997)**

*Article 14 - Suspicious transaction shall be reported to the Presidency within 15 days at the latest after the execution of the transaction. However, in case the delays might cause inconveniences, suspicious transactions and the parties to these transactions shall be reported immediately to the authorized and assigned Public Prosecutors, along with the Presidency.*

*The Presidency is authorized to set out the principles and procedures regarding the reporting requirement.*

#### **Assignment of Compliance Officer**

**Article 14/A - (The Article inserted into the Regulation in accordance with the amendment to the Regulation published in the Official Gazette with 23951 number on the date of February 1, 2000 under the Decision of the Council of Ministers)**

The liable parties shall assign compliance officer at administrative level for the purpose of performing their reporting obligation in accordance with the provisions of this Regulation. The Ministry of Finance has been authorized to determine liable groups, which will assign compliance officer, beginning dates of implementation and qualifications, duties, powers and responsibilities of compliance officers.

**CHAPTER FIVE**

**Determination of Property and Proceeds Subject to Laundering**

**Property and Proceeds Subject to Laundering**

**Article 15** - Money, monetary instruments, property and proceeds derived from any activity stated in the Article 2/a of the Law and all the economic advantages and assets derived from the conversion of money and monetary instruments, property and proceeds from one form to another, including the conversion of a currency into another currency are regarded the subjects of laundering.

**CHAPTER SIX**

**Miscellaneous Provisions**

**Control**

**Article 16** - The Presidency is authorized to examine the liable parties in order to find out whether they fulfill their obligations or not through the investigators.

**(The paragraph inserted into the Article 16 in accordance with the amendment to the Regulation published in the Official Gazette with 23951 number on the date of February 1, 2000 under the Decision of the Council of Ministers)**

The liable parties that have been obligated to employ inspectors in order to inspect the transactions in terms of complying with the provisions of the legislation pursuant to their legislation, shall carry out their inspections in terms of the obligations stated in the Act and this Regulation as well. Inspection boards in special financial houses shall carry out this kind of inspection.

**Training**

**Article 16/A** - The Presidency may request from the liable parties to ensure training facilities for their employees that enable them to know the obligations introduced by this Regulation.

The Ministry of Finance has been authorized to determine the procedure, scope, subject, liable groups and implementation date of education programs which will be ensured by the liable parties.

**Responsible Persons and Penalties**

**Article 17** - Whoever refrains from furnishing the information and documents requested by the Presidency and other competent authorities, whoever does not make customer identification within the framework of the principles and does not keep the records of customer identification for five years, whoever either does not report the transactions that shall be submitted on a permanent basis and suspicious transactions or does not report them within the procedures set forth, and whoever does not comply with the Decrees of the Council of Ministers and Communiqués on the implementation of the mentioned Decrees regarding the determination and prevention of money laundering offense shall be sentenced to the penalties stated in the Law.

In case the above mentioned obligations are not fulfilled, persons who execute and administer the transaction shall be responsible in proportion with their duties, connection and level of participation to act.

### **Foreign Exchange Rates**

**Article 18** - In order to find out Turkish lira equivalent of transactions carried out in foreign currency or in instruments enabling payment in foreign currency, Central Bank's foreign exchange buying rates of that same date shall be taken as a base.

### **Keeping Private Records**

**Article 19** - Upon proposal of the Presidency, the Coordination Board is authorized to set forth the principles and procedures for liable parties in keeping private records, when it deems necessary, by taking into consideration the nature of the transactions stated in Article 8 of the Regulation.

### **Authority**

**Article 20 - (Article 20 amended by the Decision of Council of Ministers with 97/10419 number on the date of December 31, 1997)** Upon proposal of the Presidency, the Coordination Board is authorized to establish the fixed limits in this Regulation by taking variations in the wholesale price index calculated by the State Institute of Statistics into consideration.

Decision of the Coordination Board on that issue will be put into force starting from the first day of the month following its issuance in the Official Gazette.

### **The Article before amendment**

**(Article 20 of the Regulation published in the Official Gazette with 23037 number on the date of July 2, 1997)**

*Article 20 - Upon proposal of the Presidency, the Coordination Board shall establish fixed amount levels for thresholds in this regulation each year in December, by taking into consideration the variations in wholesale price index calculated by the State Institute of Statistics.*

## **PART TWO**

### **THE METHODS OF INVESTIGATION AND EXAMINATION**

#### **CHAPTER ONE**

#### **Investigation and Examination Procedures**

##### **Investigators and their powers**

**Article 21** - Investigators assigned upon proposal of the Presidency have powers to carry out investigation and examination of money laundering crimes. Besides their powers given by their own special laws, investigators make use of powers given by the Law No.4208 on the matter of assignment.

If investigators detect significant evidences in relation to money laundering during the investigation and the examination process, then they apply the Presidency in written form in order to be implemented precautionary measures on claims and rights of related persons.

##### **The Procedure of Assignment of Investigators**

**Article 22 - (Article 22 amended by the Decision of Council of Ministers with 97/10419 number on the date of December 31, 1997)** The Presidency carries out its duties of investigation and examination of money laundering crimes directly or, when it deems necessary, due to the result of preliminary investigation through investigators, regarding issues, requests and denunciations conveyed to the Presidency by Public Prosecutor or law enforcement authorities by the direction of Public Prosecutor and on the information and documents obtained spontaneously.

Investigators will be assigned by the related unit director's proposal upon the President's request and the related Minister's approval. They will be charged temporarily to fulfill the investigation requested

by the Presidency. Appointment within a maximum of ten days starting from the date of request is reported to the Presidency.

Investigators will prioritize investigation and examination of the money laundering crime as requested by the Presidency, within the period they are in charge.

#### **The Article before amendment**

**(Article 22 of the Regulation published in the Official Gazette with 23037 number on the date of July 2, 1997)**

*Article 22 - The presidency; on the condition of applying of Public Prosecutors or requirements of other official establishments due to instructions of Public Prosecutors or denunciations or other documents, if it determines directly or due to the result of preliminary investigation, carries out their powers or responsibilities through its investigators.*

*Investigators are assigned temporarily in order to work for the Presidency provided that a proposal from the authority related and approval of the Minister. The estimated investigation time interval is stated in requirement form. Assignment is carried out in 10 day the latest from the date of requirement and is submitted to the Presidency.*

*The duration of assignment under the Presidency, begins with the date of joining of investigator to the Presidency and finishes that of leaving of investigator that are both submitted to the Presidency.*

*Investigator carries out only investigation of money laundering crimes during his assignment and cannot perform on his own departments' studies in the way of detaining the works of the Presidency.*

#### **The Way of Functioning of the Investigators**

**Article 23 - (Article 23 amended by the Decision of Council of Ministers with 97/10419 number on the date of December 31, 1997)** An appointment starts when the Presidency receives the document regarding appointment of investigators by the related unit, and ends with the submission of the report prepared by investigators to the Presidency.

The Presidency shall ask the investigators to carry out the investigation and examination activity in place determined by the Presidency when necessary.

The Presidency may determine a deadline in accordance with the peculiarity of the investigation and examination carried out by the investigation staff. If it is understood that the task cannot be completed by the present deadline, they will request extension with a reason underlying this request. The Presidency may both delay the deadline and ask the related units to increase the number of investigators in such a case.

#### **The Article before amendment**

**(Article 23 of the Regulation published in the Official Gazette with 23037 number on the date of July 2, 1997)**

*Article 23 - Investigation and examination duties are assigned to investigator by the Presidency in written form. Investigators perform on their duties through the provisions of legislation related.*

*Investigator assigned for the Presidency, also performs his functions in other areas due to the approval of the Presidency. In determination of the performing area, requirements of responsibilities such as secrecy and security are taken into account.*

*The Presidency can establish teams, which consist of investigators for a work; and due to the content of investigators, the Presidency can assign an investigator among them in order to provide coordination.*

*In terms of secrecy and security of the works, the Presidency is authorized to establish a system, which consists of some codes that take place investigators' actual names in the reports and other correspondences, and to make necessary arrangements on the principles and the ways of correspondence.*

*An appropriate duration of time is given to the investigators by the Presidency for investigation and examination assignments due to the features of the works. If it is understood that the work cannot be completed in this interval, then investigator demands for extension by giving reasons. The Presidency may both give extension and assign more investigators.*

### **Investigation and Examination Reports**

**Article 24 - (Article 24 amended by the Decision of Council of Ministers with 97/10419 number on the date of December 31, 1997)** Investigation and examination results will be submitted to the Presidency with a properly arranged “Investigation and Examination Report”.

The other characteristics concerning the Report's format are established by the Presidency.

### **The Article before amendment**

**(Article 24 of the Regulation published in the Official Gazette with 23037 number on the date of July 2, 1997)**

*Article 24 - The results of the investigations and the examinations under the law are submitted to the Presidency through “Investigation and Examination Report” that its copies are sufficient in number. The investigator keeps out a copy of the report. The reports are numbered succesively as of the calendar year.*

*The other characteristics concerning the Report's format are established by the Presidency.*

### **Reading Reports**

**Article 25 -** The reports submitted to the Presidency by the investigators are read before being given to the authorities related. The purpose of the reading is to provide reports without errors of fact and law.

The Vice Presidents assigned by the President read the reports. If any conflict occurs in reading process, a commission headed by a vice president other than one who read reports, which consists of two investigators from the department to which investigator carrying out investigation belongs and an investigator from each department in cooperative investigations, makes final decision. The decision of commission is implemented.

### **Procedures on the Reports**

**Article 26 -** The Presidency provides the Public Prosecutor's Office with all the information and documents concerning the commission of money laundering offence. The Ministry of Finance intervenes the case under the Code of Criminal Procedure in the event that the Public Prosecutor's filing a complaint against someone. In case of being made a decision of non-execution, the Ministry makes use of its rights of objections. In case that other offences are determined during the investigation and the examination, then the procedures are implemented under the provisions related.

## **CHAPTER TWO**

### **Miscellaneous Provisions**

#### **Informing by the Public Prosecutors**

**Article 27 -** The Public Prosecutors deliver their decisions, concerning the reports submitted them, to the Presidency.

#### **The Reports to be Delivered to the Presidency**

**Article 28 - (Amended by Article 6 of the amendment to the Regulation published in the Official Gazette with 23951 on February 1, 2000 under the Decision of Council of Ministers No.2000/65)** While the investigators the titles of whom are stated in Article 3 of the Law perform their duties given by their departments, in the event that they detect the activities contrary to the obligations under this

Regulation and the activities which have given rise to money laundering stated in Article 2 of the Law No: 4208, they shall send their reports related to these matters to the Presidency via their own departments. In the event that serious evidences concerning money laundering exist and that it is necessary to avoid delay; the investigation is carried out with regard to money laundering offence; and this situation shall be reported to the Presidency in writing.

#### **The Article before amendment**

**(Article 28 of the Regulation published in the Official Gazette with 23037 number on the date of July 2, 1997)**

*Article 28 - While they perform their duties given by their department concerning commission money laundering offence the reports prepared by the inspectors, the investigators and the comptrollers are submitted to the Presidency in order to be evaluated. However, if there exist some serious evidences concerning money laundering and it is necessary to avoid delay, while carrying on the investigation, Presidency is reported relating the case.*

#### **Security**

**Article 29** - Upon the request of the Presidency, the security staff are assigned temporarily under order of the Presidency by the Ministry of Interior.

#### **Administrative Support**

**Article 30** - Every officials from civil administrations, chiefs of the police offices, civil servants, majors, head men of villages and public institutions and establishments are charged with supporting and facilitating while the Presidency and investigators act on their duties under the Law No.4208.

### **CHAPTER THREE**

#### **Final Provisions**

##### **Abolished Decree**

**Article 31** - Decree of the Council of Ministers dated July 24, 1996 with 96/8443 number has been abolished that it was about Customer Identification Obligation of the Banks.

##### **Entry into force**

**Article 32** - This regulation shall be put into force on the date of its publication.

##### **Execution**

**Article 33** - The Ministry of Finance executes the provisions of this Regulation.

## **MASAK GENERAL COMMUNIQUE NO.1**

**Date of Publication: 31/12/1997**

The principles related to identification to be executed by the liable persons have been established in the Article 5 of the Regulation concerning Implementation of the Law No:4208 issued by the Council of Ministers in accordance with the Article 15 of the Law on Prevention of Money Laundering and put into effect through publishing on July 2, 1997; and in the Article 4 and the Article 6 of the same Regulation that were amended by another Regulation issued under the decision of the Council of Ministers and published on the date of 25.12.1997 with the number of 97/10419. In accordance with the Articles above mentioned, the authority to establishing the methods and procedures related to identification is given to the Presidency of Financial Crimes Investigation Board.

Having based on this authority the Presidency has established the methods and procedures related to identification in the ways of followings:

### **I- THE LIABLE PARTIES OBLIGATED TO IDENTIFICATION**

In accordance with the Articles 3 and 4 of the Regulation concerning Implementation of the Law No:4208, persons and establishments below are obligated to identification.

- 1- Banks,
- 2- Private Finance Houses,
- 3- Institutions which export credit cards as their primary function, other than banks,
- 4- Money lenders, consumer finance companies and factoring companies operating within the framework of the legislation regarding money lending transactions,
- 5- Insurance and reinsurance companies operating within the framework of the Insurance Supervision Law:7397,
- 6- Istanbul Stock Exchange (ISE) Settlement and Custody Bank Inc.,
- 7- Capital Market intermediaries and portfolio management companies,
- 8- Mutual funds,
- 9- Investment companies,
- 10- Precious Metals Exchange intermediaries,
- 11- Precious metal, stone and jewelry dealers,
- 12- Authorized institutions operating within the framework of exchange legislation,
- 13- Every kind of postal service and cargo companies including General Directorate of Post,
- 14- Financial leasing companies,
- 15- Real estate agencies or persons intermediating in buying and selling of real estate,
- 16- Lottery hall operators,
- 17- Including construction machines, all kinds of ship, aircraft and vehicle dealers,
- 18- Collector of historical arts, antiques and art works as well as dealers or auctioneers,
- 19- Sports clubs,
- 20- General Directorate of National Lottery,
- 21- Turkish Jockey Club.

### **II- CUSTOMER IDENTIFICATION REQUIREMENT**

#### **A- CUSTOMER IDENTIFICATION**

Liable parties and their branch offices, agents, representatives and commercial deputies and their units alike; shall identify their customers for each transaction they are involved in either as one of the parties or an intermediary; including deposit box services, all kinds of purchase and sales, money transfer orders, payments, storage, clearance, exchange, lending borrowing, debt transfer, transfer of claims, renting, renting out, insuring, opening a current account or a profit and loss participation account, deposits to or withdrawals from these accounts, payment in return for certificates of deposit, cheque and bill collections, capital market and repo transactions, that exceed 2 billion TL or

equivalent in foreign exchange before conducting these transactions, and keep the related documents in accordance with the established procedures for 5 years, starting from the year following the last transactions date.

## **B- EXEMPTIONS**

As stated in the Article 5 of the Regulation liable parties are not required to make customer identification regarding transactions carried out for general, annexed and private budget administrations, state economic enterprises, and organizations in the form of public institutions established by Law and transactions carried out between banks and special finance houses themselves.

## **C- PROCEDURE OF CUSTOMER IDENTIFICATION**

Customer identification of the real persons that are Turkish citizens shall be made through identifying documents, such as ID- cards, driving licenses or passports; for foreign real persons through the related country passport or residence permits; for the legal entities registered to the Trade Registry through keeping a copy of the document certifying registration and through a document justifying the person applying to the bank on behalf of the legal entity accompanied by a certified signature card of that person; for the foundations through a document certifying the registration to General Directorate of Foundations, for the associations through a document justifying that they are registered to the association registry kept by the Security Directorates in provinces; for the organizations that are not legal entities through a document authorizing their management and the identity card of the real person carrying out the transaction or copies of any of these documents can be certified by a notary public, the information recorded on the back of the related transaction document. If the transaction is carried out on behalf of another real person, then identification of that person shall be made as well.

Any other transactions that will be made subsequently concerning the formerly identified customers, shall be concluded by comparing the information on the customer's ID- card with the information previously recorded by the financial institution.

The liable parties shall continue to carry out customer identification in accordance with their own methods and procedures of the transactions under the amounts required identification.

## **D- RESPONSIBLE PERSONS AND PENALTIES**

The liable persons who do not make customer identification and do not keep the documents concerning identification for five years in the framework of the principles set forth in this communique, shall be sentenced to imprisonment for from six months to up to a year and to heavy fine from twelve million Turkish Liras to up to one hundred and twenty million Turkish Liras.

The above has been notified.

## **MASAK GENERAL COMMUNIQUE NO.2**

**Date of Publication: 31/12/1997**

The principles concerning suspicious transactions have been established in the Article 12 and Article 14 of the Regulation, related to Implementation of the Law No:4208 issued by the Council of Ministers in accordance with the Article 15 of the Law on Prevention of Money Laundering and put into effect through publishing on July 2, 1997, amended by another Regulation in accordance with the decision of Council of Ministers No.97/10419 dated 25.12.1997. Under the Articles mentioned above, the authority to detecting suspicious transactions and to establishing the methods and procedures regarding to report information has been given to the Presidency of Financial Crimes Investigation Board. Upon this authority, the methods and procedures regarding suspicious transactions have been established as followings.

### **I- THE LIABLE PARTIES OBLIGATED TO REPORTING SUSPICIOUS TRANSACTIONS**

In accordance with the Article 3 and the Article 12 of the Regulation regarding Implementation of the Law No:4208, the persons and establishments stated below have been obligated to report suspicious transactions.

- 1- Banks,
- 2- Private Finance Houses,
- 3- Institutions which export credit cards as their primary function, other than banks,
- 4- Money lenders, consumers finance companies and factoring companies operating within the framework of the legislation regarding money-lending transactions.
- 5- Insurance and reinsurance companies operating within the framework of the Insurance Supervision Law No:7397,
- 6- Istanbul Stock Exchange (ISE) Settlement and Custody Bank Inc.,
- 7- Capital market intermediaries and portfolio management companies,
- 8- Mutual funds,
- 9- Investment companies,
- 10- Precious metals exchange intermediaries,
- 11- Precious metal, stone and jewelry dealers,
- 12- Authorized institutions operating within the framework of exchange legislation,
- 13- Every kind of postal service and cargo companies including General Directorate of Post,
- 14- Financial leasing companies,
- 15- Real Estate agencies or persons intermediating in buying and selling of real estate,
- 16- Lottery hall operators,
- 17- Including construction machines, all kinds of ship, aircraft and vehicle dealers,
- 18- Collector of historical arts, antiques and art works as well as dealers or auctioneers,
- 19- Sports Clubs,
- 20- Public Notaries,
- 21- General Directorate of National Lottery,
- 22- Directorate of Land Register,
- 23- Turkish Jockey Club

Obligation to reporting suspicious transactions shall be carried out by real persons themselves, legal representatives of corporate bodies or directors of or persons authorized by establishments/entities not corporate bodies.

Branch, agency, representative and commercial representative and the like of the entities or persons obligated to reporting suspicious transactions shall carry out reporting.

In the case that the liable parties are the agents / branches of foreign persons or establishments operating in Turkey, those agents shall carry out reporting suspicious transactions.

## **II- SUSPICIOUS TRANSACTIONS**

### **A- Definition of suspicious transaction**

Suspicious transaction is the case that there is a suspicion or a suspicious situation in which money or convertible assets used in transactions carried out or attempted to be carried out within the liable parties mentioned above or through them stem from illegal activities.

### **B- Types of suspicious transactions**

The followings shall be evaluated as suspicious transactions:

1- In the case that there is an attitude showing unwillingness in giving information that is required for everyone normally while a transaction is carried out; in the case that difficulties to acquire information of identity are met with; in the case that insufficient or false information is given; in the case that documents which are suspected of being counterfeit are given; in the case that misleading information concerning financial situation is declared; in the case that the transaction is not in compliance with the purpose declared.

2- Transferring large amounts of money from countries or to countries in which there are illegal activities regarding narcotic substances, smuggling or in which there are terrorist organizations and, transferring large amounts of money from or to offshore centres.

3- Detecting abnormal increases in the accounts of a person in banks and, within the other liable persons and, holding inactive money in large amounts in these accounts.

4- That the customer transfers large amounts of money causing suspicion, to addresses and to accounts other than addresses which the customer regularly used and to which customer sent money.

5- Cash movements in large amounts or such cash movement coming from abroad in the name of a person or an account of a person who has bad reputation and has no certain business, no commercial background and no commercial substructure in the country.

6- Transferring money in large amounts to or from another country without generally using an account, conducting electronic funds transfers without sufficient explanation and demanding that the EFT be paid in cash.

7- That there is more than one account of unaccustomed nature within the same liable party, reaching large amounts when these accounts are considered together or when holding amounts that might be combined, in different accounts by dividing them into parts, or decreasing the amounts of the transactions to lower amounts in order not to be included in ongoing reporting requirements.

8- Making payments to the same account by many persons without reasonable explanations or transferring amounts of money to the same account from many different accounts.

9- Opening a deposit account in order to transfer funds to foreign banks by persons whose trade volumes are so small as to not require to dealing with a bank in their home country or transferring the cash deposited only for the purpose of transferring funds into provisional accounts by keeping it in the account a short period of time without being subject to any transaction.

10- The existence of accounts disproportional to commercial activities and carrying out transfers between those accounts, carrying out transactions that have not obviously originated from commercial purposes within those accounts, making payments to persons who are not clearly related to the person or to the company in usual ways.

11- Receiving credit or loans in large amounts and repaying of them in short periods of time in an unexpected ways and without any reasonable explanation.

12- Obtaining credit in home country by showing an account abroad as a guarantee and then providing the creditor institution with the conditions by enabling it to attach the money deposited abroad to bring to the home country by repaying credit obtained in home country through transferring from off shore banks abroad.

13- When requesting credit, not giving convincing information about where it will be used and not submitting explicit information about repayment of that credit.

14- Carrying out money transfers which are similar to each other in terms of amounts and which are close to each other in time to or from another country.

15- Giving purchasing and selling orders regarding accounts opened in stock markets and in future markets for the purpose of pretending to carry out transactions in matching amounts and in cases where there is no purpose and no extraordinary situation.

16- Carrying out similar transactions in two or more account in which the transactions result in profit and loss continuously and which were opened at the same time in order to transact on the stock exchange and, suspecting or knowing that the persons who profit from those accounts are the same.

17- Closing a big loss originating from accounts opened by a broker by means of cash sent by different investors in every time or transferring profits from other accounts to the same investor.

18- Opening accounts in very large amounts in cash by brokers and making payments while the accounts are being opened or on the date of barter in cash.

19- Opening numerous accounts in which the same types of transactions are carried out, for purpose of not calling attention to the amount and movements of transactions carried out by the brokers.

The types of suspicious transactions stated above shall be characterized in the nature of a guidance. Suspicious transaction might happen in other nature or by means of other methods. In the case that the nature and the method of the suspicious transaction are not consistent to the types given above but it arises a suspicion in compliance with the definition stated in Paragraph A, that transaction shall be evaluated as a suspicious transaction.

The suspicious transactions and the other transactions evaluated suspicious transactions shall be reported to the Presidency of the Board of Investigating Financial Crimes.

Reporting the suspicious transactions in the scope of permanent submitting requirement does not remove the obligation to reporting suspicious transactions separately.

## **C- Procedures and methods regarding reports**

### **1- Requirements prior to reporting**

When the liable parties encounter a suspicious transaction they fill the Form of Reporting Suspicious Transaction attached as Annex I by considering the information and the findings acquired through investigating the suspicious transaction as far as possible and in the framework of authority, after identification requirement and then send to the Presidency. In the case that the liable persons acquire new information and findings concerning the transaction reported, the reporting form is filled again and send to the Presidency by stating that it is an annex of that report.

### **2- Filling and signing the reporting form**

The liable parties shall report suspicious transactions that they encounter without any monetary limits by means of the Form of Reporting Suspicious Transaction. After the information detected concerning A,B,C and D parts of the Form is written down, the suspicious transaction detected shall be shown by fixing (x) mark opposite side of the options from 1 to 19 that one of which is appropriate. If the transaction does not correspond the types of the options, the following option showed as "Other Situations" numbered 20 shall be marked and the suspicious transaction known shall be written down in that option.

In the case that the liable parties want to give other information excluding in that of Form can be sent by writting in any way without being subject to any formation as attached to this Form.

After the Form is completed, it shall be signed by the person carried out that transaction in company with a person authorized to sign in terms of resulting that transaction. The officials at the level of branch director shall execute the second signature in the banks and special finance houses.

The liable parties reporting the suspicious transaction or the persons belonging to the liable person carrying out the transaction actually and managing the transaction process or the legal representatives

of the liable persons shall not give any information about the transaction to those involved in transaction.

**3- The time allowed for reporting suspicious transactions**

Suspicious transactions shall be reported to the Presidency within a maximum of ten days starting from the date the transaction is detected. However, suspicious transactions and the parties to those transactions shall be reported to the authorized and assigned Public Prosecutor immediately, as well as the Presidency, if such delays may cause inconveniences.

**4- The place of reporting suspicious transactions**

The liable parties shall send “The Form of Reporting Suspicious Transaction” organized by them to the following address in the time allowed for reporting: Ministry of Finance The Presidency of the Board of Investigating Financial Crimes Atatürk Bulvarı No:225 06680 Kavaklıdere/ANKARA or to the fax number (0 312) 428 15 60. The original copy of FRST shall be sent by means of registered postal service or shall be handed over without having been considered whether it was faxed.

**D- Responsible persons and penalties**

The liable parties who do not report the suspicious transactions within the procedures set forth in this Communique and within the time allowed for reporting shall be sentenced to imprisonment for from six months to up to a year and, to a heavy fine from twelve million Turkish Liras to up to one hundred and twenty million Turkish Liras.

The above has been notified.

**ANNEX 1**

**THE FORM OF REPORTING SUSPICIOUS TRANSACTION**

**A- THE LIABLE PERSON WHO FILLED THE FORM**

Name, Surname-Title :	
Adress :	
Tel :	Tax Identification Number :

**B-THE PERSON WHO CARRIED OUT THE SUSPICIOUS TRANSACTION**

Name, Surname :	
Date of Birth and Place :	
Adress :	
Business-Status :	
Tel :	
Identification Document No :	
ID-Card : <input type="checkbox"/>	Driver Licence : <input type="checkbox"/>
Passport : <input type="checkbox"/>	Other : <input type="checkbox"/>
On behalf of whom he/she carried out the transaction	
On behalf of himself/herself : <input type="checkbox"/>	On behalf of himself/herself : <input type="checkbox"/>

**C- THE PERSON ON BEHALF OF WHOM THE TRANSACTION CARRIED OUT**

Name, Surname-Title :	
Tax Identification Number :	
Date of Birth and Place :	Tel :
(If Corporate Body, Legal Center and Trade Registry No) :	
Adress :	

**D- INFORMATION ABOUT THE SUSPICIOUS TRANSACTION**

The dates of suspicious transactions :	
Reference No (If any) :	
The Amount of The Suspicious Transaction :	
* The Accounts Related to The Suspicious Transaction :	
* The Type of Transaction and Explanatory Information :	

\*When the blank is not enough in writing information it can be written down a paper and attached.

**E- TYPES of SUSPICIOUS TRANSACTION (Mark the suspicious transactions)**

1- In the case that there is an attitude showing unwillingness in terms of giving information that is required for everyone normally while a transaction is carried out; in the case that difficulties to acquire information of identity are met with; in the case that insufficient or false information is given; in the case that documents which are suspected of being counterfeit are given; in the case that misleading information concerning financial situation is declared; in the case that the transaction is not in compliance with the purpose declared.

2- Transferring large amounts of money from countries or to countries in which there are illegal activities regarding narcotic substances, smuggling or in which there are terrorist organizations and, transferring large amounts of money from or to offshore centres.

3- Detecting abnormal increases in the accounts of a person in banks and within the other liable persons and holding inactive money in large amounts in these accounts.

4- That the customer transfers large amounts of money causing suspicion, to addresses and to accounts other than addresses which the customer regularly used and to which customer sent money.

5- Cash movements in large amounts or such cash movement coming from abroad in the name of a person or an account of a person who has bad reputation and has no certain business, no commercial background and no commercial substructure in the country.

6- Transferring money in large amounts to or from another country without generally using an account, conducting electronic funds transfers without sufficient explanation and demanding that the EFT be paid in cash.

7- That there is more than one account of unaccustomed nature within the same liable party, reaching large amounts when these accounts are considered together or when holding amounts that might be combined, in different accounts by dividing them into parts, or decreasing the amounts of the transactions to lower amounts in order not to be included in ongoing reporting requirements.

8- Making payments to the same account by many persons without reasonable explanations or transferring amounts of money to the same account from many different accounts.

9-Opening a deposit account in order to transfer funds to foreign banks by persons whose trade volumes are so small as to not require to dealing with a bank in their home country or transferring the cash deposited only for the purpose of transferring funds into provisional accounts by keeping it in the account a short period of time without being subject to any transaction.

10- The existence accounts disproportional to commercial activities and carrying out transfers between those accounts, carrying out transactions that have not obviously originated from commercial purposes within those accounts, making payments to persons who are not clearly related to the person or to the company in usual ways.

11- Receiving credit or loans in large amounts and repaying of them in short periods of time in an unexpected ways and without any reasonable explanation.

12- Obtaining credit in one's home country by showing an account abroad as a guarantee and then providing the creditor institution with the conditions by enabling it to attach the money deposited abroad to bring to the home country by repaying credit obtained in home country through transferring from off shore banks abroad.

13- When requesting credit, not giving convincing information about where it will be used and not submitting explicit information about repayment of that credit.

14- Carrying out money transfers which are similar to each other in terms of amounts and which are close to each other in time to or from another country.

15- Giving purchasing and selling orders regarding accounts opened in stock markets and in future markets for the purpose of pretending to carry out transactions in matching amounts and in cases where there is no purpose and no extraordinary situation.

16- Carrying out similar transactions in two or more account in which the transactions result in profit and loss continuously and which were opened at the same time in order to transact on the stock exchange and, suspecting or knowing that the persons who profit from those accounts are the same.

17- Closing a big loss originating from accounts opened by a broker by means of cash sent by different investors in every time or transferring profits from other accounts to the same investor.

18- Opening accounts in very large amounts in cash by brokers and making payments while the accounts are being opened or on the date of barter in cash.

19- Opening numerous accounts in which the same types of transactions are carried out, for purpose of not calling attention to the amount and movements of transactions carried out by the brokers.

20- Other situations (they should be written briefly).

One who fills the form    Official authorized to sign

Name, Surname    :  
Title                :  
Date                :        Signature and Stamp

### **MASAK GENERAL COMMUNIQUE NO.3**

**Date of Publication: 07/02/2002**

The methods and procedures related to suspicious transactions are determined in the Financial Crimes Investigation Board General Communiqué No: 2 issued on the Official Gazette dated December 31, 1997 with the number 23217 according to the given power in articles 12 and 14 of the Regulation related to the Law No. 4208 issued by the Council of Ministers in accordance with the article 15 of the Law No. 4208 on Prevention of Money Laundering.

The types of the transactions that are considered to be suspicious listed as 19 articles in the Part II/B of the Financial Crimes Investigation Board General Communiqué No.2.

The following transaction type is added to the 19 suspicious transaction types determined in order to help the obligators while they are carrying out their suspicious transaction reporting obligations by this Communiqué.

**20- If suspect or have reasonable grounds to suspect that funds are linked or related to, or is to be used for terrorism or terrorist acts,**

The above has been notified.

## MASAK GENERAL COMMUNIQUE NO.4

**Date of Publication: 10/11/2002**

Concerning the Regulation (Published in Official Gazette in February 01,2000 with the number 23951) regarding the amendments made in the Regulation about Implementation of Law No: 4208 in accordance with the decision of Council of Ministers dated 13/01/2000 with the number 2000/65, the below statements are needed to be made.

### **I - CUSTOMER IDENTIFICATION REQUIREMENT**

The Article 4 of the Regulation includes the arrangements regarding the transactions in which customer identification shall be done.

In the previous form of the article, customer identification has been required for the liable parties in deposit box services without any amount limitation, in the other transactions that exceed 2 billion TL or equivalent in foreign exchange. By the amendment, the scope of the transactions in customer identification has been extended without any amount limitation.

According to this; in addition to the deposit box services, the liable parties shall make customer identification regardless of monetary limitation as insurance and financial leasing, deposit account, profit and loss participation account, current account, repos or accounts alike are carried out.

Although the transactions have been enumerated in customer identification without taking into consideration the 2 billion TL limit in the subparagraph of the article, by using the statement “Opening transactions of the accounts alike” it has been stated that the regulation is not limited by these transactions. The mentioned transactions are the ones indicating a continuity of business relation between the liable and the customer in terms of their peculiarities. Accordingly, in all the transactions; which are not mentioned their names in the regulation; and which are permanent feature; and also which enable a new transaction on the same account, the customer identification shall be made without any amount limitation. The liable parties shall take into consideration the continuity factor of the transactions while determining the transactions subject or not subject to the limit of 2 billion TL. If a transaction made, later gives the opportunity of making one or more transactions connected with this, it is required to be accepted that the transaction carries the continuity feature and to be evaluated in the scope of “Opening transactions of the accounts alike”.

In the transactions that are except from the ones stated above, the customer identification requirement begins in case of exceeding 2 billion TL or equivalent in foreign exchange. In determination of the TL equivalence of the transaction made in foreign currency, the Central Bank foreign exchange buying rate on the operation day shall be taken into account.

On the other hand the statement in the first paragraph of Article 4 of the Regulation “their customers and the party of this subject” has been amended as “their customers and the ones acting on behalf of them” because of some hesitations in implementation. Accordingly, although the essential point is to determine the customer identification, in the event that the transaction has been realized by those on the behalf of the customer, they are also subject to customer identification. No matter the customer is real person or corporate body in terms of the implementation.

**Case 1:** An amount of money has been deposited to the business account of Person (A) by his trade debtors to the Bank (X) that the person was opened a business account on April 19,2002. The money accumulated has been withdrawn by person (B) who was authorized by person (A). Concerning these operations;

- As the transaction of opening an account carry the continuity factor, the customer identification of person (A) shall be done regardless of the amount of transaction while opening an account for the first time in Bank (X).
- The identification of the third parties who deposit money to the account of Person (A), shall be determined if the amount of money exceeds 2 billion TL or the equivalent of it in foreign exchange.

- The identity of person (B) shall be determined if the amount of money withdrawn by him exceeds 2 billion TL or the equivalent of it in foreign exchange. The customer identification requirement does not exist if the money is not exceeding the limit.

**Case 2:** Mr. (B) who acts on behalf of Mr. (A) has applied to the bank in order to make a remittance of 5 billion TL for (X) Corporation. Concerning the operations;

- Although this remittance operation does not carry on the continuity factor, since the amount exceeds 2 billion TL, the customer identification is required.

- The identities of Mr. (A) behalf of whom the transaction is done and Mr. (B) who the remittance transaction is done shall be separately determined by the bank.

- It is required to determine the identities of the persons individually both acting on behalf of the company and the company in person while withdrawing the remittance amount of 5 billion TL from the bank.

**Case 3:** Mr. (A) is sending remittance as an amount of 250 million TL to his son who is educating in Istanbul through the Ankara Branch of the Istanbul Branch of Bank (X). Concerning these transactions;

- As the amount of remittance send by Mr. (A) does not exceed 2 billion TL, Ankara branch of Bank (X) does not required to make identification.

- Although Istanbul Branch of Bank (X) makes identification in the banking implementations before paying the amount to the son of Mr.(A) , in the scope of the established procedures of the Regulation, the necessity of making identification and keeping the related documents for five years is not necessary.

## II - PROCEDURE OF CUSTOMER IDENTIFICATION

The first paragraph of Article 6 of the Regulation before amendment covers the arrangements regarding the documents in customer identification.

In the new arrangement, there has not been made any change in the scope of the documents valid in customer identification. In order to make the article more comprehensive, it is rearranged in subparagraphs, and the point in customer identification, the address declared by real person making the transactions should be recorded has been added to the end of first paragraph. According to this the liable parties, in customer identification shall also keep their addresses that declared by the real person who made the transactions. The basic principle in this arrangement, is the only declaration of the person who made the transaction so it is not necessary for the liable parties to require a document related to their addresses.

In the first sub-paragraph of Article 6 of the Regulation before the amendment the statement “ In the event of making the transactions on behalf of another person, the identity of that person is also determined” has been taken place as a difference. In the event of evaluating this statement with the statement “ customers and those involved in subject” that are taking place in Article 4 of the Regulation before the Amendment both the identification of real or the corporate bodies' and the persons' identification acting on behalf of them shall be required. However, in order to remove the hesitations on this issue, the concerning statement rearranged as “ In the event that the transactions are carried out on behalf of a real person, corporate body or the establishments that are not corporate entities, those on behalf of whom the transactions are carried out shall also be identified”. According to this, in the event that the transactions are carried out on behalf of a real person or corporate body (including foundations and associations) or establishments that are not corporate entities both the ones whom the transactions made on behalf of them and the real persons whom the transactions made by them shall be separately identified.

In the last sub-paragraph of the Article 6 of the Regulation, the Presidency has been authorized to determine identification procedure and methods and the sort of the document to be used for identification. Based on this authority, it has been thought fit to make the identification through the documents stated below;

**1 - The customer identification that shall be done in the first transaction:**

In the event that a real person carries out a transaction on behalf of him, the original ID-Card, driving licence or passport or the legible copies of any of these documents certified by a notary public or recording the information on identity at the back of the sheet related with the transaction forms, (The process for identification of real persons shall be stated as “receiving the identification information” for the purpose of abstaining the repetitions.)

In the event that, carry out a transaction by another person on behalf of a real person, the identification of the person that transactions made on behalf of him shall be done by ”receiving the identification information”, the identification of the person that carried out the transaction shall be done both “receiving the identification information” and receiving the legible photocopy of the notarised form of the original of the proxy regarding the authorization of the person acting on behalf of the real person.

In the event that carry out a transaction on behalf of a legal entity registered to Trade Registry, the identification of the person that the transactions are made on behalf of him, shall be done by receiving the legible photocopy of signature circulars and trade register gazette of the documents certified by a notary public, the identification of the ones that are made transactions on behalf of a legal entity shall be done by

- Receiving the identification information of them, if the persons or person authorized does the transaction named in Trade Register Gazette.
- Receiving the identification information of them if the transaction is made by the other persons authorized by the ones named in Trade Register gazette and receiving the legible photocopy of the original or the notarised copy of the proxy that they are authorized

In the event that carry out the transaction on behalf of an association or foundation, the identification of association or foundation shall be done by receiving the legible photocopy of the notarised or the original copy of the documents related to the registration keeping in the establishment that is recorded, the identification of the real person carry out the transaction on behalf of an association or foundation shall be done by

- Receiving the identification information if the transaction is made by the ones named in registration documents,
- Receiving the identification information and the legible photocopy of the original or the notarised copy of the proxy that they are authorized if the transaction is made by the other persons authorized by the ones named in registration documents,

In the event that carry out the transaction on behalf of an organization that are not corporate bodies (Ex: apartment management), the identity of the person whom the transaction carried out on behalf of him shall be determined by receiving the legible photocopy of the original or the notarised copy of the decision related to authorization of management, the identification of the person who carry out the transaction shall be identified by receiving the identification information.

**2 -** The confirmation process in subsequent transactions whose identification determined in duly procedure shall be made by presenting the documents stated below and comparing the information on these documents with the ones recorded by the liable;

In the event that a real person carry out a transaction on behalf of him, the original or the notary certified copy of ID-Card, driver licence or passport (The statement “Valid Identity Document” shall be used in this section instead of listing the documents one by one).

In the event that another person carry out the transaction on behalf of a real person, one of the “valid identity document” and the proxy regarding the authorization of the person carrying out the transaction on behalf of him.

In the event that carry out the transaction on behalf of a corporate body registered to Trade Registry if the transaction is carried out;

- By the persons named in Trade Registry, one of the “valid identity documents”.
- By the persons authorized, one of the “valid identity documents” and the proxy.

In the event that carry out the transaction on behalf of an association or foundation, if the transaction is carried out;

- By the persons named in trade registry, one of the “valid identity documents”
- By the persons authorized, one of the “valid identity documents” and the proxy.

In the event that carry out the transaction on behalf of the organizations that are not legal entities, if the transaction is carried out;

- By the persons named in the decision that authorized to manage, one of the “valid identity documents”,
- By the persons authorized, one of the “valid identity documents” and the proxy.

In confirmation, it is enough to write down the name and surname of the person to the concerning document making the transaction. It is not necessary to take the photocopy of these documents or to write down the identity information to the back of the concerning documents.

**Case:** Mr. (A), the director of (Z) Limited Company has applied to Bank (X) to open a trade deposit account on behalf of the company.

As opening an account is readily requiring customer identification, it is necessary to make the identification of Mr. (A) and (Z) Limited company before this transaction. The Bank shall make the identification of (Z) limited company by receiving legible photocopies of original copies or certified copies of the signature circulars and trade registry gazette (establishment/amendment). The customer identification of Mr. (A) shall be made by receiving legible photocopies of original copies of or certified copies of ID-Card, driving licence or passport or by recording the information on the back of the related transaction document.

If the transaction is to be done by another person authorized by Mr. (A), the identification of this person shall be made by receiving legible photocopies of original copies of or certified copies of the ID-Card, driving licence or passport or by recording the information on the back of the related transaction document and receiving the legible photocopies of the original proxy or notary certified copies.

In the event that Mr. (A) has applied to the bank in order to make a transaction exceeding 2 billion TL, it will be enough to present one of the valid identity documents. The bank shall complete the customer identification by confirming the person that he is the company authority and his identity information and also by writing the name and the surname of Mr. (A) to the document relating the transaction.

Furthermore, in accordance with the amendment made in Regulation, if the person who made the transaction is Mr. (A) then Mr. (A)'s, if the person is another person authorized by Mr. (A) then this authorized person's address they declared should be recorded.

### **III - ASSIGNMENT OF COMPLIANCE OFFICER AND THE PROCEDURE FOR REPORTING SUSPICIOUS TRANSACTIONS**

According to the Article 14/a that added to the Regulation, it is necessary for the liable parties to assign compliance officer at administrative level for the reports that they are required to make in accordance with the provisions of the Regulation. The Ministry of Finance has been authorized to determine the liable groups, that shall assign compliance officer, beginning dates of implementation and qualifications, duties, powers and responsibilities of compliance officer.

The principle and procedure of assignment of compliance officer has been determined as stated below in accordance with this authorization.

#### **A) The Liable Parties Obligated To Assign Compliance Officer**

In accordance with the Articles 3 and 12 of the Regulation, 23 liable groups have been determined to report suspicious transactions.

In accordance with the power that the Article 14/a of the Regulation has given to our Ministry, the banks and the private finance houses within these liable groups have been obligated to assign compliance officer in the first step.

## **B) The Time Concerning The Assignment Of Compliance Officer**

Banks and private finance houses have obliged to assign compliance officer within 30 days from the publication date of this communique and within the same time required to report the open identity of the compliance officer to Financial Crimes Investigation Board. The address and the communication instruments (telephone, fax, e-mail etc.) of the person who assigned as compliance officer are also required to be in the report.

## **C) The Qualifications, Duties, Powers And The Responsibilities Of Compliance Officer**

### **1 - Definition and Peculiarity of compliance officer**

Compliance officer means top-level personnel charged in directly connected to the general director or the deputy general director in the administrative structure of the concerning establishment in fulfilling the necessities of reporting the suspicious transactions required to be done by liable groups in accordance with the regulation. There is no any inconvenience to hold any other duty except investigation and supervision with this duty for compliance officers. In another word the liable parties shall assign compliance officer upon fulfilling the declared provisions, among their staff that they are employing and performing at present another position this duty also, as well as assign solely for this duty. The assigned authority shall be responsible in the capacity of "Compliance Officer" to Financial Crimes Investigation Board. Liable parties shall employ enough personnel with the other ones who will assist him by considering the workload meet. Liable parties should take precautions for the purpose of performing the duties of compliance officers on time and complete.

### **2 - Duty and Authorities of compliance officers**

In terms of the power given by the Article 14/a of the Regulation in the framework of the principles determined in the sections III. A, B and C/1 of this communique as the banks and the private finance houses are brought to assign Compliance Officers and the suspicious transaction reports that shall be devolved to the Presidency through them, the principle and the procedures that should be obeyed concerning the issue are stated below;

a) The definition of suspicious transaction has been stated in the section II/A of the communique No: 2 (Published in Official Gazette on December 31,1997 with the number 23217) published before concerning suspicious transaction reporting, the principles and the procedures of reporting has been determined in section II/C, the suspicious transaction types have been explained in section II/B and the suspicious transaction type with the number 20 has been added to the 19 suspicious transaction type determined before in Communique No: 3. (Published in Official Gazette on February 07, 2002 with the number 24664) (ANNEX 1 The Form of Reporting Suspicious Transaction)

In the regulation made by Communique No: 2, the Suspicious Transaction Reporting Forms (STRF) had been sending to the Presidency by the signatures of the official making the transaction and the officials that have the signing power in concluding this transaction. However, according to this Communique in the event that encountering with suspicious transaction in banks and private finance houses, the suspicious transaction reporting forms shall be filled up and signed by the same ones but before all else shall be sent to compliance officer. In the event of a disagreement between the official making the transaction and the official who has the signing power, then the STRF with regard to whether the transaction suspicious or not, then the STRF shall be sent to the compliance officer with only one signature.

b) The compliance officers shall evaluate the information in the STRF sent to them by taking into consideration the Laws, Regulation and Communiques and concerning the other available information within the liable parties, and according to the evaluation result he shall decide whether to report the transaction as suspicious or not to the Presidency.

c) Compliance Officers shall behave in goodwill, sensible and honest in decision-making process. Their decision on not reporting the transaction in this way shall not be respected as violation of Suspicious Transaction Reporting obligation. However, the suspicious transaction reporting form that is decided not to be reported and its written reason shall be kept for five years in the event of presenting in a necessary case.

d) According to the Article 14 of Regulation the suspicious transactions shall be obliged to report to Presidency within 10 days as from the determination date of the transaction. According to this, Compliance Officers shall be obliged to complete his evaluation in this period and send the forms to the Presidency when deciding it as suspicious. In another word, the period between the determination date of suspicious transaction and conveying date of this transaction is maximum 10 days including the compliance officer's evaluation. On the other hand in exigent circumstances, it is necessary to notify the situation to the authorized and on duty public prosecutor beside Presidency.

e) The STRF that has been decided to report shall be sent to the fax of Presidency numbered (0 312) 428 15 60-467 64 04 in the attachment of the document. However, the reporting shall be conveyed to the address "Maliye Bakanlýđy Mali Suçlarý Arařtırma Kurulu Bařkanlýđy Atatürk Bulvarý Numara: 225 06680 Kavaklýdere/Ankara" by registered mail or by hand without taking account its sending via fax.

### **3 - Responsible persons and penalties**

The liable parties who do not assign compliance officer and do not take the necessary precautions for performing his duties completely and on time and the compliance officers who do not perform his duties within the procedures set forth in this communique shall be sentenced according to the Article 12 of the Law No: 4208.

The responsibilities of the officers who do not make reporting to the compliance officers, shall continue within procedures set forth in Communique No: 2.

## **IV. CONTROL**

"Internal control" has been added to the control of liable parties dimension by the sub-paragraph inserted to the Article 16 named "Control" of the Regulation.

According to this; the banks that have been obligated to employ inspectors and the private finance houses that have inspection boards in pursuant to their legislation shall also be obliged to carry out the inspection of whether obeying the rules in Communiques and Regulations regarding the implementation of Law No: 4208 on Prevention of money laundering by their inspectors and auditors that are employed to control the transactions convenience to the provisions of legislation.

The statistical results of the internal audit studies made during the current year shall be reported to the Presidency up to the end of March of the following year (like the number of agency controlled, customer identification and the number of transactions controlled in suspicious).

## **V. TRAINING**

According to the arrangement in Article 16/A inserted to the Regulation, it is stated that the Presidency may request from the liable parties for their employees that enable them to know the obligations introduced by the Regulation, Ministry of Finance has been authorized to determine the procedure, scope, subject, liable groups and implementation date of education programs that will be ensured by the liable parties.

The below statements are needed to be made based on this authority.

### **A -The Liable Parties Required Training Their Employees**

Based on the authority given by Article 16/A of Regulation, in the first phase the training program necessity is required from banks and private finance houses.

### **B - Contents Of Training Programs**

The liable parties shall determine the contents of their training programs by taking into account the points stated below;

- The transactions that required to be identified, customer identification procedure and keeping the records,
- Recognizing the suspicious transactions and the reporting procedure,
- The procedure of presenting the required information and documents,
- The penalties that shall be implemented in the event of not complying with the obligations.

The training programs shall be continually reviewed according to the necessities and shall be reiterated in regular periods for the purpose of keeping the staff's information contemporary.

The statistical results of the training studies made during the year, shall be reported to the Presidency up to the end of March in consequent year.

### **VII - ENTRY INTO FORCE**

This regulation shall be put into force on the date of its publication.

Until the compliance officer assignment completing, the transactions shall be done according to the Communique No: 2.

The above has been notified.

### List of all Laws, Regulations and Other Material Received

#### Laws

Constitution Law  
 Law No 213 Tax Procedure Law  
 Law on Social Security No 506  
 Law No 507 on Tradesman and Craftsman  
 Law No 657 Duties and Obligations of Civil Servants (relevant articles)  
 Former Turkish Criminal Law, No 765  
 Law of Obligations No 818  
 Law No 1136 Attorneyship Law  
 Law No 1163 Cooperatives Law  
 Law No 1211 on the Central Bank of the Republic Of Turkey  
 Law No 1322 On Promulgation And Publication Of The Laws And Regulations And The Date Of Effect Of The Same (art.1)  
 Law No 1512 Notaryship Law  
 Law No 1567 Regarding The Protection Of The Value Of Turkish Currency  
 Law No 2499 Capital Market Law  
 Law No 2577 Procedure of Administrative Justice Act  
 Law No 2803 Regarding Establishment, Functions and Powers of Gendarmerie (Para 1/a Article 7)  
 Law No 2860 on Collecting Contributions  
 Law No 3167 on Regulation of Payments by Check and Protection of Check Holders  
 Law No 3226 Financial Leasing  
 Law No 3335 on establishment of an international organisation (relevant articles)  
 Law No 3628 on the Declaration of Properties on the Fight with Bribe and Malversation  
 Law No 4389 Banks Act (abolished)  
 Law No 3713 Law to Fight Terrorism (Related Articles)  
 Anti-Terror Law No 3713 of 2006 as amended by Law No 5532 Regarding Amendment in the Anti-Terror Law  
 Law No 4059 on the Structures and Duties of the Treasury Undersecretariat and the Foreign Trade Undersecretariat  
 Law No 4208 on Prevention of Money Laundering  
 Law No 4302 Amending the Law on Encouragement of Tourism  
 Law No 4358 Concerning the Expansion of the Usage of Tax Identity Number  
 Law No 4422 on the prevention of benefit-oriented criminal organisations (abolished)  
 The Law No 4518 On Approving Ratification of Convention on Combating Bribery of Foreign Public Officials in International Business Transactions  
 Law No 4632 on Individual Pension Savings and Investment System  
 Law No 4674 on Adoption of Amending the Statutory Decrees Regarding the Organization and Tasks of the Ministry of Justice and the Law of Amendment on the Enclosed List of the Statutory Decree Regarding the General Staff and its Procedure  
 Law No 4721 Turkish Civil Law Related Articles (Associations And Foundations)  
 Law No 4734 Public Procurement Law

Law No 4782 Amendments to the Law Regarding Prevention of Bribery of Foreign Public Officials in International Business Transactions  
Law No 4926 on Fighting Smuggling  
Law No 5018 Public Financial Control and Management  
The Law No 5072 on the Relations between Foundations and Public Institutions  
The Law No 5191 on Approving Ratification of Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime  
Law No 5237 Turkish Criminal Law  
Law No 5252 on Entry into Force and the Method of Implementation of Turkish Criminal Law  
Law No 5253 on Associations  
Law No 5271 Code of Criminal Procedure  
Law No 5345 on Organization and Duties of the Revenue Administration  
Law No 5411 Banking Law  
The Law No 5506 on Approving Ratification of the United Nations Convention on Corruption  
Law No 5549 Prevention of Laundering the Proceeds of Crime  
Law No 5584 Postal Law  
Law No 6136 on Firearms and Knives  
Law No 6762 Turkish Commercial Code  
Law No 7397 Insurance Supervision Law  
Law No 7397 Regarding Insurance Supervision (includes amendments made by Law 3397)  
Turkish Criminal Law  
Excerpts from laws re predicate offences  
Legislation re the Board of Treasury Controllers  
Legislation re the Finance Inspectors  
Relevant articles of Laws re associations  
Articles of Laws 3562 and 3568 and the associated Regulation

### **Decrees**

Decree Regarding The Establishment And Functions Of Undersecretariat Of Customs  
Decree No 32 Regarding The Protection Of The Value Of The Turkish Currency  
Decree No 90 Concerning Money Lending  
Decree No 91 Concerning Securities Exchanges  
Decree No 227 on the Organisation and Duties of the Directorate General of Foundations  
Decree Law No 233 on Public Economic Enterprises and General Directorate of PTT  
Decree of the Council of Ministers No 2000-385  
Turkey's National Program on Undertaking of European Acquis Communautaire, Decree No 2001-2129  
Decree of the Council of Ministers No 2001-3483  
Decree of the Council of Ministers No 2002-3801  
Decree of the Council of Ministers No 2002-3873  
Decree of the Council of Ministers No 2002-4206  
Decree of the Council of Ministers No 2002-4896  
Decree of the Council of Ministers No 2003-5329  
Decree of the Council of Ministers No 2003-5426  
Decree of the Council of Ministers No 2004-6876  
Decree of the Council of Ministers No 2004-7097

Decree of the Council of Ministers No 2004-7712  
 Decree of the Council of Ministers No 2005-8685  
 Decree of the Council of Ministers No 2006-10356  
 Decree of the Council of Ministers No 2006-10365  
 Decree of the Council of Ministers No 2006-10508  
 Statute of Association of Capital Market Intermediary Institutions and related Decree  
 Council of Ministers Trade Registry Circular - By Law of Trade Registry

### **Regulations**

Exchange Brokerage Houses General Regulation Concerning the Foundation and Operation Principles of Precious Metals Exchange  
 Hakkında Yönetmelik  
 Judicial Law Enforcement Regulation  
 Money Order Regulations of PTT  
 Postal Regulation  
 Regulation 7-1066 on the Foundations Established under Turkish Law  
 Regulation Concerning Capture, Taking into Custody and Taking Deposition  
 Regulation Concerning Controlled Delivery  
 Regulation Concerning Incorporation, Operation and Supervision of the Central Registry Agency  
 Regulation Concerning Judicial Enforcement  
 Regulation Concerning Money Lending  
 Regulation Concerning the Principles of Issuance of Precious Metals Exchange Membership Certificate and the Conditions of the Foundation and Operation Principles of Precious Metal Exchange Brokerage Houses  
 Regulation of Arresting and Guarding  
 Regulation of Duties and Working Procedures of Financial Crimes Investigation Experts  
 Regulation of Lottery in Virtual Environment  
 Regulation of Working Procedures of the Coordination Board for Combating Financial Crimes  
 Regulation on Associations  
 Regulation on Banks' Internal Control and Risk Management Systems  
 Regulation on Customs Enforcement No 25282 (relevant articles)  
 Regulation on the Establishment and Operations of Banks  
 Regulation on the Goods Involved in Crimes  
 Regulation Outlining the Functions of a Stock Exchange  
 Regulation Regarding Elimination Examination for the Profession of Undersecretariat of Customs, Customs Assistance Inspector and General Directorate Trainee Controller  
 Regulation Regarding Lotteries in Internet  
 Regulation Regarding the Capital Markets Board Staff  
 Regulation Regarding the Establishment and Operations of Financial Leasing Companies  
 Regulation Regarding the Establishment, Function and Working Principles of Capital Markets Board  
 Regulation Regarding the Examination, Duties and Working Procedures and Principles of Customs Experts and Customs Assistance Experts  
 Regulation Regarding the Implementation of the Law No 4208 on Prevention of Money Laundering  
 Regulation Regarding Implementation Procedures and Methods of Controlled Delivery  
 Sanal Ortamda Oynatılan Talih Oyunlari

### **Communiqués and other mandatory instructions**

CBRT Circular No I-M

CBRT Communiqué No 97/1 on Certificates of Deposit

Circular No 457

CMB Communiqué Serial V, No 68 on Principles Regarding Internal Auditing System of Brokerage Houses

CMB Serial IV No 28 Communiqué

CMB Serial.V No 6 Communiqué on Principles Regarding Record Keeping and Documentation in Intermediary Activities

CMB Serial.V No 46 Communiqué on Principles Regarding Intermediary Activities and Intermediary Institutions

CMB Serial.V No 55 Communiqué on The Principles Regarding Investment Advisory Activities and Institutions which are Authorized to Provide Investment Advisory Services

CMB Serial.V No 59 Communiqué on Principles Regarding Portfolio Management Activities and Institutions which are Authorised to Provide Portfolio Management Services

CMB Serial.VIII No 34 Communiqué on Principles Regarding Licensing and Registration for the Professionals Engaged in Capital Market Activities

Communiqué No 91-32/5 attached to Decree No 32 on Protection of the Value of Turkish Currency  
Communiqué No 97-32/21

Communiqué No 2002-32/27 related with Decree No 32 on Protection of the Value of Turkish Currency (abolished)

Communiqué No 2002-32/32 related with Decree No 32 on Protection of the Value of Turkish Currency

General Communiqué No 332 on Tax Procedure Law

General Communiqué of Tax Identity Number Serial Number 1

General Communiqué of Tax Identity Number Serial Number 2

General Communiqué of Tax Identity Number Serial Number 3

MASAK General Communiqué No 1 (Customer Identification)

MASAK General Communiqué No 2 (Reporting Suspicious Transactions)

MASAK General Communiqué No 3

MASAK General Communiqué No 4

Ministry of Industry and Trade Communiqué on Obligatory Standard No OSG-2003/59

Ministry of Justice, General Directorate of International Law and Foreign Affairs, Circular No 69 on the issues which should be considered by judicial authorities in international cooperation regarding criminal matters

### **Guidance and other relevant documents**

*TBA Guideline* Articles of Capital Market Law re dematerialisation

Association of Capital Market Intermediary Institutions of Turkey booklet

Association of Capital Market Intermediary Institutions of Turkey PowerPoint presentation

Association of Capital Market Intermediary Institutions of Turkey table of compliance with relevant Recommendations

Association of Insurance and Reinsurance Companies 2005 Annual Report

Association of Insurance and Reinsurance Companies PowerPoint presentation

Bar Association brochure

Board of Treasury Controllers overview

Board of Treasury Controllers PowerPoint presentation  
Brief Overview of the Ministry of Finance Control Units  
BRSA and AML PowerPoint presentation  
BRSA Overview PowerPoint presentation  
Capital Markets Board PowerPoint presentation  
Central Bank of the Republic of Turkey PowerPoint presentation  
Central Registry Agency PowerPoint presentation  
Conviction Statistics updated to include 2005  
Description of 'repo' accounts  
European agreement on regulations governing the movement of persons between member states of the Council of Europe  
Gendarmerie PowerPoint presentation  
General Directorate of Foundations PowerPoint presentation  
General Directorate of Turkish National Police PowerPoint presentation  
General Directorate of Turkish National Police - speaking notes to accompany PowerPoint presentation  
Inspection Board of Finance overview  
Inspection Board of Finance PowerPoint presentation  
International disclosure form from Ministry of Industry and Trade, General Directorate of Domestic Trade  
Is Bankasi PowerPoint presentation  
ISE overview of Capital Markets  
ISE Bonds and Bills market statistics  
ISE Capital markets trading statistics - January  
ISE Capital markets trading statistics - February  
ISE Capital markets trading statistics - March  
ISE Capital markets trading statistics - April  
ISE Capital markets trading statistics - May  
ISE Capital markets trading statistics - June  
ISE Capital markets trading statistics - July  
ISE Capital markets trading statistics - August  
ISE Capital markets trading statistics - September  
ISE Market Statistics  
ISE Traded values on the stock market  
Istanbul Chamber of Commerce booklet  
Istanbul Gold Exchange overview  
Istanbul Stock Exchange PowerPoint presentation  
MASAK Activity Report 2005  
MASAK PowerPoint presentation  
MASAK "Suspicious Transactions Guideline"  
Ministry of Interior, Department of Associations PowerPoint presentation  
Official Gazette  
Official Statement about Foundations Established According to the Provisions of Turkish Civil Code (227 GT KHK 001)

Official Statement about Foundations Established According to the Provisions of Turkish Civil Code (227 GT KHK 002)

Official Statement about Foundations Established According to the Provisions of Turkish Civil Code (227 GT KHK 003)

Participation Banks Association overview

Participation Banks Association PowerPoint presentation - A General Outlook on Participation Banks

Participation Banks Association PowerPoint presentation - AML/CFT

Statute of Participation Banks' Association and related articles in Banking Law

TAKASBANK PowerPoint presentation

Turkish Banks Association (TBA) AML PowerPoint presentation

TBA and MASAK "A Guidance for Importance of Fighting against Laundering Proceeds of Crime and Financing terrorism and Implementation in Banking System"

TBA Code of Banking Ethics

*TBA Guideline* for the Turkish Banking System on Significance of Fight Against Laundering Of Crime Revenues And Financing Of Terrorism

TBA overview PowerPoint presentation

TBA Speech

TBA Statute (17/07/2006)

Turkish Economic Bank (TEB) AML and CFT policies and procedures

TEB PowerPoint presentation

TIC-RTGS & ESTS System Operational Rule Book

TIC – RTGS & ESTS User Guide

Trade Registration Gazette information on Automation and Archive Project

Turkish National Police information notice

Turkish National Police speaking notes

Turkish Revenue Administration PowerPoint presentation

Turkish Trade Registry PowerPoint presentation

Undersecretariat of Treasury, General Directorate of Insurance PowerPoint presentation

Urgent Action Plan 59, issued by Cabinet of Ministers.

## ANNEX 6

## Additional Charts and Tables

## Section 1.1 – General Information on Turkey

## Basic Economic Indicators

MACRO INDICATORS	UNIT	2000	2001	2002	2003	2004	2005	2006	EXPL.
<b>REAL ECONOMY</b>									
GNP	Billion TRY	125.60	176.50	273.50	356.70	428.90	485.10	539.0	Est.
GNP	Billion USD	200.40	143.30	180.70	237.70	301.50	357.70	380.60	Est.
GNP Per Capita	USD	2,987.00	2,105.00	2,619.00	3,383.00	4,172.00	4,964	5,216	Est.
Growth Rate	%	6.30	-9.50	7.90	5.90	9.90	5.50	5.0	Est.
<b>PRICES</b>									
Producer Price Index (End of Year)	%	32.70	88.60	30.80	13.90	13.80	2.70	5.50	2006/2
Consumer Price Index (End of Year)	%	39.0	68.50	29.70	18.40	9.30	7.70	8.20	2006/2
<b>UNEMPLOYMENT RATE</b>	%	6.60	8.40	10.30	10.50	10.30	10.30		
<b>BUDGET</b>									
<b>Budget Revenues</b>	Billion TRY	33.30	51.80	76.40	100.20	109.90	134.80		
<b>Budget Expenditures</b>	Billion TRY	46.60	80.40	115.50	140.10	140.20	144.60		
Non-Interest Expenditures	Billion TRY	26.20	39.30	63.60	81.40	83.70	98.90		
Interest Expenditures	Billion TRY	20.40	41.10	51.90	58.60	56.50	45.70		
<b>Budget Deficit</b>	Billion TRY	-13.30	-28.60	-39.10	-39.80	-30.30	-9.80		
<b>Non-interest B. Equilibrium</b>	Billion TRY	7.10	12.50	12.80	18.80	26.20	35.90		
<b>Non-interest B. Equilibrium /GNP</b>	%	5.70	7.10	4.70	5.30	6.10	7.40		
<b>DEBT INDICATORS</b>									
<b>Public Domestic Debt Stocks</b>	Billion TRY	36.40	122.20	149.90	194.40	224.50	244.80	246.40	2006/2
<b>External Debt Stocks</b>	Billion USD	118.60	113.70	130.20	145.30	161.80	165.20		
<b>Public External Debt Stocks</b>	Billion USD	53.00	59.80	71.80	76.90	76.80	69.00		
<b>Public Debt Stocks/GNP</b>	%	55.40	110.90	94.50	86.80	77.00	70.00	67.20	2006/2
<b>BALANCE OF PAYMENTS</b>									
Export (FOB)	Billion USD	30.70	34.40	39.10	50.80	66.70	76.60		
Import (FOB)	Billion USD	-53.10	-38.90	-47.80	-64.80	-90.60	-109.20		
Balance of Foreign Trade	Billion USD	-22.40	-4.50	-8.60	-13.90	-23.90	-32.60		
Resources: UT, CBRT, MF, TSI									

## Section 1.2 – General situation of money laundering and financing of terrorism

## Proceeds of crime involved in 194 cases of predicate offences from 1999 to 2004

PREDICATE OFFENCES (LAW-LAW No)	No. of FILES	MONETARY AMOUNTS										IMMOVABLE PROPERTIES (UNIT)					OTHERS	
		TRY	USD	DEM	EUR	GBP	FRF	NLG	BFR	CHF	HOUSE	SHOP	LAND	FIELD	VEHICLE (UNIT)	UNCLASSIFI		
1918 - 4926	31	23,675,842,954,349	102,305,795,84	899,679,30	-	-	-	-	-	-	-	-	-	-	-	-85,512 Lt oil gas		
2238	1	4,378,632,006	808,217	5,863	-	-	13,987	-	23	2	-	-	-	1	-	-		
2863	1	-	260,000	-	-	-	-	-	-	-	-	-	-	-	-	-		
6136	2	146,793,675,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
213/359-b	15	25,907,826,485,112*	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
FTCL/146	3	-	375,000	-	-	-	-	-	-	2	-	-	-	-	-	-		
FTCL/192	1	-	-	-	-	-	-	-	-	1	-	-	-	1	-	-		
FTCL/325	1	15,409,701,894,460	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
FTCL/332	1	32,166,900,000	104,473,50	-	-	-	-	-	-	-	-	-	-	-	-	-		
FTCL/339	3	215,842,302,000	41,354,219	-	-	-	-	-	-	-	-	-	-	-	-	-		
FTCL/342	4	25,758,995,500	-	26,000	-	-	-	-	-	-	-	-	-	-	-	-		
FTCL/345	5	762,065,307,986	792,451	-	-	-	-	-	-	-	-	-	-	-	-	-		
FTCL/403	66	37,901,210,774,380	104,747,483,48	27,481,566,71	17,108,690,23	5,639,405	311,826	20,950,797	239,588	22	2	19	2	2	1 gun, ½ shared s office, 22,210m2 c grove and 22,379r vineyard			
FTCL/436	1	18,600,000,000	1,630,000	-	-	-	-	-	-	-	-	-	-	-	-	-		
FTCL/495	6	150,010,041,600	2,629,56	3,488,589,19	3,004,01	-	-	-	-	-	-	-	1	28	28 great cattle			
FTCL/496	2	37,900,000,000	90,000	-	-	-	-	-	-	-	-	-	-	-	-	-		
FTCL/498	2	224,310,000,000	75,000	-	-	-	-	-	-	1	-	-	-	3	-	-		
FTCL/499	1	-	10,550	-	-	-	-	-	-	-	-	-	-	-	-	-		
FTCL/504	24	1,202,092,835,886,624	400,441,016,82	11,970,247,61	50,000	230,066,53	-	428,330	6,800,000,13	-	-	-	-	-	-	-		
FTCL/506	1	-	57,426,473	-	-	-	-	-	-	-	-	-	-	-	-	-		
<b>TOTAL</b>	<b>171</b>	<b>1,306,605,243,849,017</b>	<b>710,423,309,20</b>	<b>43,871,945,81</b>	<b>17,161,694,24</b>	<b>5,869,471,53</b>	<b>325,813</b>	<b>21,379,127</b>	<b>7,039,588,13</b>	<b>23</b>	<b>28</b>	<b>2</b>	<b>19</b>	<b>3</b>	<b>54</b>	<b>-</b>		

FTCL indicates former Turkish Criminal Law 765

### Concluded Cases under special laws with penal provisions in criminal court, 2004 – type of charge

TYPE OF CRIMINAL CHARGE	FTCL ARTICLE No.	COMMENCING YEARS OF PROCEEDINGS AND RATES										CONCLUDED CASES
		2000 AND BEFORE	%	2001	%	2002	%	2003	%	2004	%	
Fraud and Bankruptcy	503-507	1,753	8.4	1,570	7.6	2757	13.3	6,496	31.3	8,185	39.4	20761
Forgery on Documents	339-349	1,455	8.2	1,082	6.1	1972	11.2	4,947	28.0	8,186	46.4	17642
Counterfeiting Of Currency, Public Bonds and Valuable Seals	316-331	110	0.7	123	0.8	390	2.4	3,768	23.4	11,715	72.7	16106
Pillage, Highway Robbery and Kidnapping	495-502	216	2.2	249	2.6	646	6.7	3,332	34.6	5,190	53.9	9633
Forgery of Identification Cards, Identity Papers, Passports, License and Accounts	350-357	221	2.6	292	3.4	606	7.1	3,802	44.8	3,563	42.0	8484

### Concluded Cases under special laws with penal provisions in criminal courts, 2004 - law

RELATED LAW ABOUT CRIMINAL CHARGE	LAW No	COMMENCING YEARS OF PROCEEDINGS AND RATES										CONCLUDED CASES
		2000 AND BEFORE	%	2001	%	2002	%	2003	%	2004	%	
The Law on Firearms and Knives	6136	645	3,0	816	3,7	1646	7,5	6329	29,0	12420	56,8	21856
The Law on Fighting Smuggling	4926	726	5,7	784	6,2	1332	10,5	4014	31,7	5813	45,9	12669
The Law on Protection of Cultural and Natural Values	2863	53	2,2	78	3,2	188	7,7	850	34,8	1274	52,1	2443
The Law on Prevention and Following-Up of Smuggling	1918	110	15,5	116	16,3	186	26,2	200	28,2	98	13,8	710

## Section 1.3 – Overview of the financial sector and DNFbps

### Basic Indicators of the Banking Sector

BALANCE SHEET INDICATORS	2004		2005		SHARE %		CHANGE %
	2004	2005	2004	2005	2004	2005	2005/2004
Liquid Assets (*)	32,867	46,751	10.7	11.8			42.2
Securities Portfolio(***)	123,681	143,016	40.4	36.0			15.6
Credits	99,342	149,937	32.4	37.8			50.9
Claims in Proceedings (Net)	759	764	0.2	0.2			0.7
Affiliates, Subsidiaries, Fixed Assets	20,240	18,474	6.6	4.7			-8.7
Other Assets	29,550	38,024	9.6	9.6			28.7
<b>Total Assets</b>	<b>306,439</b>	<b>396,967</b>	<b>100</b>	<b>100</b>			<b>29.5</b>
Deposits	191,065	243,121	62.4	61.2			27.2
Funds from Repo	10,596	17,414	3.5	4.4			64.3
Liabilities to CBRT, Money Markets and Banks	35,754	54,693	11.7	13.8			53.0
Owner's Equity	45,963	53,736	15.0	13.5			16.9
Other Liabilities	23,060	28,004	7.5	7.1			21.4
<b>Profit/Loss Items</b>							
Interest Income	40,337	42,296	83.2	80.6			4.9
Non Interest Income	8,146	10,192	16.8	19.4			25.1
<b>Total Income</b>	<b>48,483</b>	<b>52,488</b>	<b>100</b>	<b>100</b>			<b>8.3</b>
Interest Expenditure	22,708	23,995	61.0	55.4			5.7
Non Interest Expenditure	14,513	19,340	39.0	44.6			33.3
<b>Total Expenditure</b>	<b>37,221</b>	<b>43,335</b>	<b>100</b>	<b>100</b>			<b>16.4</b>
Pre-tax Income (Loss)	9,079	9,053	-	-			-0.3
Tax Provision	2,627	3,338	-	-			27.0
<b>Net Profit (Loss)</b>	<b>6,452</b>	<b>5,714</b>	-	-			<b>-11.4</b>
<b>Off-Balance Sheet Liabilities</b>							
Non Liquid Credits and Liabilities	55,712	64,856	36.0	32.6			16.4
Commitments	98,860	134,006	64.0	67.4			35.6
Derivative Financial Instruments	38,971	65,829	25.2	33.1			68.9
Other Commitments	59,889	68,177	38.7	34.3			13.8
<b>Total Off-Balance Sheet Liabilities</b>	<b>154,571</b>	<b>198,862</b>	<b>100</b>	<b>100</b>			<b>28.7</b>

The participation banks are excluded.

Liquid Assets: Cash, Receivable from Central Bank, Receivables from Money Market, Receivables from Banks.

\*\* Securities Portfolio: For Purchase and Sale, Ready for Sale and Securities Not Sold Till Maturity

\*\*\* Consumer Loan: Consumer Credits Including Foreign Exchange Indexed (House, Vehicle, Need, Other) and Total of Consumer Credit Card.

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Securities Portfolio(***)	123,681	143,016	40.4	36.0	15.6
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Other Assets	29,550	38,024	9.6	9.6	28.7
<b>Total Assets</b>	<b>306,439</b>	<b>396,967</b>	<b>100</b>	<b>100</b>	<b>29.5</b>
Deposits	191,065	243,121	62.4	61.2	27.2
Funds from Repo	10,596	17,414	3.5	4.4	64.3
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Interest Income	40,337	42,296	83.2	80.6	4.9
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Tax Provision	2,627	3,338	-	-	27.0
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<b>Off-Balance Sheet Liabilities</b>					
Non Liquid Credits and Liabilities	55,712	64,856	36.0	32.6	16.4
Commitments	98,860	134,006	64.0	67.4	35.6
Derivative Financial Instruments	38,971	65,829	25.2	33.1	68.9
Other Commitments	59,889	68,177	38.7	34.3	13.8
<b>Total Off-Balance Sheet Liabilities</b>	<b>154,571</b>	<b>198,862</b>	<b>100</b>	<b>100</b>	<b>28.7</b>

The participation banks are excluded.

\* Liquid Assets: Cash, Receivable from Central Bank, Receivables from Money Market, Receivables from Banks.

\*\* Securities Portfolio: For Purchase and Sale, Ready for Sale and Securities Not Sold Till Maturity

\*\*\* Consumer Loan: Consumer Credits Including Foreign Exchange Indexed (House, Vehicle, Need, Other) and Total of Consumer Credit Card.

## Section 2.2 – Criminalisation of terrorist financing

### Cases in criminal courts in accordance with Article 7 of Law 3713 in 2003

CRIMINAL CASES IN RELATION TO ARTICLE 7 OF THE LAW 3713		NO. OF CASES	NO. OF SUSPECTS		
			MALE SUSPECTS	FEMALE SUSPECTS	TOTAL
Incoming	Transferred from previous year	32	61	4	65
	Filed in 2003	180	300	53	353
	Quashed	8	22	5	27
	<b>Total</b>	<b>220</b>	<b>383</b>	<b>62</b>	<b>445</b>
The cases concluded		44	-	-	89
Transfer to next year		176	-	-	356

### Cases in criminal courts in accordance with Article 7 of Law 3713 in 2004

CRIMINAL CASES IN RELATION TO ARTICLE 7 OF LAW 3713		NO. OF CASES	NO. OF SUSPECTS		
			MALE SUSPECTS	FEMALE SUSPECTS	TOTAL
Incoming	Transferred from previous year	176	292	64	356
	Filed in 2004	488	1383	249	1632
	Quashed	99	187	31	218
	<b>Total</b>	<b>763</b>	<b>1862</b>	<b>344</b>	<b>2206</b>
The cases concluded		364	-	-	1236

Transfer to next year	399	-	-	970
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### Cases in criminal courts in accordance with Article 7 of Law 3713 in 2005

CRIMINAL CASES IN RELATION TO ARTICLE 7 OF LAW 3713		NO. OF CASES	NO. OF SUSPECTS		
			MALE SUSPECTS	FEMALE SUSPECTS	TOTAL SUSPECTS
Incoming	Transferred from previous year	399	784	186	970
	Filed in 2005	1376	2290	379	2669
	Quashed	98	105	20	125
	Total	1873	3179	585	3764
The cases concluded		720	0	0	1636
Transfer to next year		1153	-	-	2128

### Section 2.5 – The FIU and its Functions

#### MASAK budget allocation and expenditures

YEAR	BUDGET ALLOCATION	FINAL EXPENDITURE
2000	TRL 736,738,970,000	TRL 648,832,460,000
2001	TRL 1,109,855,000,000	TRL 1,050,227,220,000
2002	TRL 1,797,050,980,000	TRL 1,721,114,870,000
2003	TRL 4,379,236,850,000	TRL 2,516,289,550,000
2004	TRL 5,372,461,850,000	TRL 4,497,198,450,000
2005	TRY 3,480,000.00	TRY 2,875,314.87

#### MASAK personnel

TITLE	NUMBER	TITLE	NUMBER
President	1	Analyst	3
Vice President	3	Programmer	4
MASAK Expert	41	Computer operator	2
MASAK Assistant Expert	11	Operator preparing and controlling data	12
Tax Auditor	7	Translator	3
Director	3	Clerk	17
Budget Expert	1	Technician	3
Chief	2	Mail carrier	1
Engineer	1	Service personnel	7
Analyst-Coordinator	1	Driver	1
<b>TOTAL = 124</b>			

#### MASAK personnel profile

IN RESPECT OF EDUCATION		
	NUMBER	%
Doctorate	3	2.4
Graduate	11	8.9
Under Graduate	85	68.5
Two-year Degree	9	7.3
High School	13	10.5
Secondary School	2	1.6
Primary School	1	0.8
<b>Total</b>	<b>124</b>	<b>100</b>

IN RESPECT OF AGE	
AGE	NUMBER
18-25	7
26-30	23
31-35	23
36-40	36
41-45	22
46-50	12
>51	1
<b>Total</b>	<b>124</b>