

# The History and Functions of the Financial Crimes Investigation Board

Ali Sefa Türkmen & Hale Kutlay

The Financial Crimes Investigation Board (“Masak”) (Mali Suçları Araştırma Kurulu) was established by the Act on the Prevention of Money Laundering (“Laundering Prevention Act”) and aims to become a leading institution helping to create an efficient economy and a clean society by effectively combating the crime of money laundering.

The mission of Masak is to develop policies and regulations, collect and analyze information quickly and reliably, and carry out investigations and research on certain types of financial crimes, conveying the information and evidence gathered to the relevant authorities.

Masak operates under the Ministry of Finance and its functions and powers are subject to the provisions of the Laundering Prevention Act.

## The Functions and Powers of Masak

The functions and powers of Masak are regulated under the Laundering Prevention Act. As per Article 19 of the Laundering Prevention Act, Masak is charged with developing policies and implementation strategies, coordinating between institutions and organizations, conducting collective activities, and exchanging views and information in order to prevent the laundering of illegally gained money, as well as drafting laws, decree-laws and regulations to implement the policies determined and making regulations for the implementation of the Laundering Prevention Act and the decisions of the Council of Ministers.

Masak carries out research on the developments and trends in money laundering, and also on the methods of detecting it and on its prevention. In this context, Masak is authorized to make sectoral studies on improving legal measures and monitor the implementation of the results.

Masak also receives, analyzes and evaluates notifications of suspicious transactions, and if the information suggests elements of laundering, Masak informs the Chief Public Prosecutor’s Office to initiate the necessary proceedings under the Code of Criminal Procedure.

Masak provides services through the Vice Presidents, Heads of Department, Foreign Affairs, Observation of Legislation and Coordination, Data Collection, Data Entry, Obligation Monitoring, Support of Public Susceptibility, Analysis and Evaluation of the Crime of Laundering, Analysis and Evaluation of Terrorism Financing, and General Analysis Groups and the Information Technology, Human Resources, Administration and Financing Branch Offices.

## The Operational Rules of Masak

The operational rules of Masak are indicated in the Regulation on the Prevention of Money Laundering and Terrorism Financing (“Regulation”).

Certain institutions, organizations and people conducting activities in specific areas are defined as Obligated Parties (“Obligated Party/ies”) in the Regulation. Under Article 4 of the Regulation, Obligated Party refers to those who operate in the fields of banking, insurance, individual pension, capital markets, money lending and other financial services; postal service and transportation; lotteries and gambling; those who deal with currency exchange, real estate, precious stones and metals, jewelry, all kinds of transportation vehicles, construction machines, historical artifacts, artwork, and antiques, or intermediaries in

these operations; notaries; sports clubs and those operating in other fields determined by the Council of Ministers.

Obligated Parties are held responsible for providing full assistance and relevant information to Masak in criminal investigations. Various administrative fines and judicial punishments will be applied to Obligated Parties for noncompliance with the obligations set forth under the Laundering Prevention Act.

#### Identification and Relations with Risky Countries

As per Article 5 of the Regulation, Obligated Parties shall receive and verify the credentials of customers and third parties acting on behalf of customers before any transaction is made in case of;

- continuous business relationships regardless of the amount,
- a transaction or connected transactions above TL 20,000,
- suspicious transactions requiring notification (regardless of the amount),
- suspicion about the accuracy and sufficiency of credentials previously received.

The Regulation also defines the information and documents required for the identification of persons and legal entities including; associations and foundations, unions and confederations, political parties, foreign legal entities, unincorporated entities, state institutions, and organizations.

Furthermore, pursuant to the Regulation; financial institutions are obliged to show particular diligence in business relations with persons, legal entities and unincorporated entities based in risky countries, and to collect and keep all possible information regarding suspicious transactions.

#### Notification of Suspicious Transactions

“Suspicious transaction” is defined as a situation where there is any information, suspicion or reasonable grounds to suspect that an asset which is the subject of transactions carried out or attempted to be carried out within or through the Obligated Parties was acquired by illegal means or used for illegal purposes.

According to the Regulation, the Obligated Parties are responsible for informing Masak of suspicious transactions in ten (10) working days, at the latest, regardless of the financial value of the transaction.

Since such notifications include confidential information about individuals and legal entities, the Obligated Parties shall not disclose the content of the notification and/or the confidential information included therein to any third party.

#### Notification Obligation and Supervision

The Regulation includes several detailed provisions which provide Masak with full access to all information and documents required for the implementation of its aims and operations, under the title “Principles of Providing Information and Documents.”

Public institutions and organizations, persons, legal entities and unincorporated entities are obliged to provide all information, documents, and records in all forms including, but not limited to, microfiches, microfilms, magnetic tapes, disks and similar materials, all required information and passwords to enable such records to be read and any necessary conveniences. Without prejudice to provisions regarding the right to defense, those from whom such materials are requested shall not refuse to provide any information or documents relying on the provisions of special acts.

Supervision officials assigned by Masak shall monitor whether Obligated Parties are complying with the Laundering Prevention Act, the Regulation and other relevant legislation.

#### Coordination Committee

Article 20 of the Laundering Prevention Act sets forth the duties, members and operational principles of the Coordination Committee for Combating Financial Crimes (“Coordination Committee”). As per Article 20, the Coordination Committee was formed to evaluate draft laws on the prevention of the laundering of illegally gained money and draft regulations to be issued by the Council of Ministers, and to coordinate implementation by the relevant institutions and organizations.

As outlined in the Regulation on the Procedure and Working Principles of the Coordination Committee for Combating Financial Crimes (“Coordination Committee Regulation”), the Coordination Committee, under the chairmanship of the Undersecretary of the Ministry of Finance, consists of; the President of the Financial Crimes Investigation Board, the President of the Finance Inspection Board, the President of the Tax Inspection Board, the President of the Revenue Administration, the Deputy Undersecretary of

the Ministry of the Interior, the General Director of Laws of the Ministry of Justice, the General Director of Economic Affairs of the Ministry of Foreign Affairs, the President of the Board of Treasury Comptrollers, the General Director of Banking and Foreign Exchange of the Undersecretariat of the Treasury, the General Director of Insurance of the Undersecretariat of the Treasury, the President of the Inspection Board of the Undersecretariat of Customs, the General Director of Customs of the Undersecretariat of Customs, the Vice President of the Banking Regulation and Supervision Agency, the Vice President of the Capital Markets Board and the Vice President of the Central Bank.

The Coordination Commission is entitled and authorized to evaluate draft laws on the prevention of the laundering of illegally gained money and draft regulations that will enter into effect by decree of the Council of Ministers. The Coordination Committee also aims to promote coordination between the institutions and organizations involved in combating financial crimes. Moreover, the members of the Coordination Commission are entitled and authorized to monitor the enforcement of its decisions and shall convey the relevant results to Masak.

### Texts of International Cooperation

Several international agreements have entered into effect between the financial intelligence units of Turkey, Norway, Japan, Ukraine, Bosnia and Herzegovina, Croatia, Korea, Macedonia, Romania, Albania, Syria, Georgia, Afghanistan, Mongolia, Portugal, Indonesia, Luxembourg, Senegal and TRNC in order to expand the activities of Masak from the national to the international level. Such international agreements also aim to investigate crimes of money laundering and terrorism financing and to establish international collaboration thereto. For this purpose, Turkey has signed bilateral and multilateral treaties with Slovenia, Germany, Poland, Greece, Italy, Bulgaria, Romania and TRNC, and Masak has become a member of the Egmont Group, which was established in 1995 to investigate suspicious international money transfers, with a number of international members from institutions worldwide.

### Investigation of Money Laundering

As explained above, the major function of Masak

is to investigate the laundering of assets based on the information provided by the Obligated Parties. The laundering of assets, which was first defined in the Turkish legal system with Law no. 4208, was re-defined in Article 282 of the Turkish Criminal Code ("Turkish Criminal Code") (Türk Ceza Kanunu).

Article 282 of the Turkish Criminal Code set out the penalties for money laundering. A person who transfers the proceeds obtained from an offense with a minimum penalty of six (6) months or more imprisonment to another country, or processes such proceeds in any way to conceal their illicit source or give the impression that they have been legitimately acquired shall be sentenced to imprisonment from three (3) years up to seven (7) years and a judicial fine of up to 20,000 days. Furthermore, a person who, without participating in the primary offense mentioned above, intentionally purchases, acquires, possesses or uses proceeds from that offense, shall be sentenced to imprisonment from two (2) years up to five (5) years.

The Turkish Criminal Code also states that if the laundering is committed by a public officer or professional person in the course of his duty then the penalty to be imposed shall be increased by one-half (1/2) and if a legal entity is involved in this offense, it shall be subject to security measures.

To prevent exposure to an investigation into laundering by Masak or other relevant public authorities, one should (i) conduct thorough research on the source of assets, (ii) ensure that assets are not acquired through an offense such as bribery, fraud or other crimes regulated under domestic or international legal systems, (iii) keep financial books and records properly, indicating the transfers of assets, and (iv) avoid suspicious acts which may create a false impression to the Obligated Parties that the assets could have been acquired by illegal means or be used for illegal purposes.

<sup>1</sup> Please note that under the Turkish Criminal Code, judicial fines are calculated by multiplying the amount to be paid by the perpetrator per day and the total number of days for which such fine shall be paid. The amount to be paid by the perpetrator per day shall be determined by a judge based on the socioeconomic status of the perpetrator. The total number of days for which a judicial fine is to be paid shall also be determined by a judge based on the characteristics of the case.