



Turkey: A Guide to Anti-Money Laundering Compliance Program

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Developing and establishing an effective anti-money laundering (“AML”) compliance program is a requirement for financial institutions in order to combat laundering the proceeds of crime and terrorist financing worldwide.

In this article, our aim is to reveal the scope and the significance of developing and establishing AML compliance program in Turkey.

(I) Introduction

In Turkey, compliance program requirement is set forth in the Regulation on Compliance Programs Regarding Obligations on Laundering the Proceeds of Crime and Prevention of Financing of Terrorism (“Compliance Regulation”).

According to the Compliance Regulation, only the foregoing obliged parties such as banks (except for Central Bank of Republic of Turkey as well as development and investment banks), capital markets intermediary institutions, insurance and pension companies, Post and Telegraph Organization General Directorate (pertaining only to banking activities) oblige to establish and operate a risk-based AML compliance program.

The AML compliance program requirement for each category of covered obliged parties would also apply to their agents, branches, commercial representatives or similar affiliates located in abroad to the extent allowed by their local jurisdiction.

(II) Scope of AML Compliance Program

The scope of AML compliance program established with a risk-based approach is as follows: (i) creating corporate policies and procedures, (ii) carrying out risk management activities, (iii) performing monitoring and controlling activities, (iv) assigning compliance officer and forming a compliance unit, (v) conducting training activities, (vi) carrying out internal control activities.

The risk management as well as monitoring and controlling activities are carried out by compliance officers. Moreover, those activities are under obligation of the board of directors of the obliged parties.

(1) Corporate Policies and Procedures

Obligated parties must create corporate policies by considering the size of the institution, the volume of the business and the type of their transactions. Corporate policies must consist of at least risk management, monitoring and controlling, training and internal control policies under Turkish laws.

The purpose of establishing corporate policy is (i) to determine strategies on ensuring obliged parties to comply with the obligations pertaining to laundering the proceeds of crime and prevention of financing of terrorism and on minimising risks to be exposed through assessing obliged parties' customers, transactions and services with a risk-based approach; (ii) to determine controls and measures within the institution, operational rules and responsibilities and (iii) to make the employees aware of these matters.

Corporate policies and procedures are required to be prepared in written form under the observation and coordination of the compliance officer. The board of directors is under obligation to approve corporate policies. Under the Compliance Regulation, compliance officers must deliver corporate policies and any amendments to the corporate policies to the Financial Crimes Investigation Board ("MASAK").

Obligated parties are also required to deliver corporate policies to the employees by obtaining their signatures. MASAK Frequently Asked Questions No. 105 states that corporate policies may be delivered electronically on the condition that the relevant employee has electronic signature. Moreover, e-mail messages may also be used to deliver the amendments to the policies, provided that the delivery is confirmed with read receipt method and that such method is stated in the relevant policy or amendment policy.

(2) Risk Management Activities

Obligated parties are required to implement risk management policies by considering the size of the institution, the volume of the business and the type of their transactions. The purpose of the risk management policy is to identify, grade, monitor, assess and minimise the risk that can be exposed. Risk management policy must consist of at least internal measures and operational rules regarding customer identification measures stipulated in the relevant anti-money laundering legislation. In addition to preparing risk management policy, obliged parties must also carry out risk management activities such as developing risk identification, grading, classification and assessment methods based on customer risk, service risk and country risk as well as grading and classifying services, transactions and customers.



(3) Monitoring and Controlling Activities

Another requirement for obliged parties is to conduct monitoring and controlling activities by considering the size of the institution, the volume of the business and the type of their transactions. Protecting obliged parties against risks and monitoring and controlling whether their activities are carried out in accordance with AML and corporate policies and procedures is the main purpose monitoring and controlling activities.

According to Article 15 of the Compliance Regulation, the minimum scope of the monitoring and controlling activities is as follows: (i) high risk customers and their transactions, (ii) transaction conducted with risky countries, (iii) complex and unusual transactions.

(4) Compliance Officer and Compliance Unit

Pursuant to Article 16 of the Compliance Regulation, assigning compliance officer is a must for obliged parties. Once it is notified by obliged parties, MASAK assesses whether the relevant compliance officer candidate meets the criteria stipulated in the Compliance Regulation. If not, obliged parties are under obligation to assign a new compliance officer meeting the criteria.

Additionally, as per Article 18 of the Compliance Regulation, in order to ensure that compliance officer perform its duties and responsibilities effectively, board of directors is required to ensure establishment of compliance unit to execute compliance program by considering the size of the institution, the volume of the transaction, the number of the branch and personnel or the level of the risks it may expose to.

Duties and responsibilities of compliance officers are stipulated in Article 19 of the Compliance Regulation. Accordingly, compliance officers' duties and responsibilities are including but not limited to conduct necessary works to ensure that obliged parties comply with the AML legislation; conduct necessary communication and coordination with MASAK; establish corporate policies and procedures and submit corporate policies for approval of the board of directors; establish risk management and monitoring and controlling policies and carry out risk management and monitoring and controlling activities; submit her/his works regarding training program on laundering proceeds of crime and terrorist financing for the approval of the board of directors and ensure effective implementation of the approved training program and report suspicious activities to MASAK.

(5) Training Activities

Obliged parties are ordered to constitute a training policy including the matters such as operation of training activities, the person who would be responsible for conducting training

activities, determination and training of employees and trainers to be participated to training activities as well as training methods. The purpose of implementing a training policy is to ensure compliance with obligations within the scope of Turkish AML legislation and raise awareness of the employees.

In addition to implementation of a training policy, obliged parties are also required to carry out training activities in compliance with the size of the institution, the volume of the business and changing conditions for prevention of laundering proceeds of crime and terrorist financing.

Trainings to be presented to the employees need to include the following subjects: terms of laundering proceeds of crime and terrorist financing; stages and methods of laundering proceeds of crime and case studies on this matter; legislation on prevention of laundering proceeds of crime and terrorist financing; risk areas; corporate policies and procedures; principles on customer identification and suspicious activity reporting; obligation of archiving and submission; obligation of providing information and documents; sanctions to be implemented in case of breach of obligations; international regulations on combating laundering and terrorist financing.

(6) Internal Control

Obliged parties are required to ensure, annually and on a risk-based approach, examination and controlling of corporate policies and procedures, risk management, monitoring and controlling activities, sufficiency and efficiency of training activities and risk policy and whether the transactions are carried out in compliance with AML legislation and corporate policies and procedures. Internal control units and supervisory boards of obliged parties carry out internal control activities and report such activities to the board of directors.

(III) The Significance of Anti-Money Laundering Compliance Program

As stated above, compliance programs are implemented by compliance officers. However, the ultimate responsibility for carrying out compliance program adequately and efficiently lies with the board of directors. The board of directors may delegate some or all of its authorities to one or more board member(s). Delegation of an authority cannot remove the responsibility of the board of directors.

It is important to note that in case non-compliance with obligations as to training, internal control and risk management system, obliged parties must be given at least 30 days in order to correct deficiencies and take necessary measures. If obliged parties do not correct deficiencies and take necessary measures, an administrative fine of TRY 15,035 (~ EUR 2,300) could be imposed by MASAK. If the obliged party is a bank, insurance and pension company or capital



market institution, an administrative fine of TRY 30,070 (~ EUR 4,600) could be imposed. For each breach, the total amount of administrative fines applied to the obliged parties within the year of the breach cannot exceed TRY 1,709,600 (~ EUR 255,165) and TRY 17,096,120 (~ EUR 2,551,650) for banks, insurance and pension companies or capital market institutions. If the obliged parties subject to upper limit on fines (i.e. banks, insurance and pension companies or capital market institutions) do not comply with these obligations in the following year, the limit shall be applied twofold.

Therefore, it is crucial to comply with obligations pertaining to setting and implementing compliance program to not to face with the administrative burdens and reputational risk.

(IV) Conclusion

In light of the foregoing, institutions subject to the AML legislation are under obligation to establish and implement risk-based compliance programs proportionate to the size and volume of their businesses. The consequences of non-compliance with establishment and operation of AML compliance program might be subject to administrative fines and reputational damage to the relevant institution.

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