

Turkey: New Law to Fight Against Proliferation of Financing Weapons of Mass Destruction

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I. General Overview

The Law No. 7262 on Preventing the Proliferation of Financing Weapons of Mass Destruction was approved by the Turkish Grand National Assembly on December 27, 2020 (“**Law No. 7262**”). In the general reasoning of the proposal, it is stated that main aim of the law is to fulfill a number of recommendations of FATF (Financial Action Task Force) in several different areas in order to fight against money laundering and financing of terrorism. The Law No. 7262 mandates changes in various laws.

It is expected that the Law No. 7262 will be approved by the President of the Republic of Turkey and published in the official gazette very soon and it will enter into force on the publication date, except for the changes introduced to the Turkish Commercial Code (“**TCC**”) which will become effective on April 1, 2021.

In this article, our aim is to reveal significant changes introduced with the Law No. 7262.

II. Adoption of Sanctions of United Nations Security Council

Law No. 7262 regulates rules and principles related to implementation of sanctions of the United Nations Security Council (“**UNSC**”) regarding prevention of financing of proliferation of weapons of mass destruction.

Article 2 of the Law No.7262 forbids the following, depending on scope of the decisions of the UNSC: (i) collection of or providing any funds to or for the benefit of or entering into joint ventures or other business relations with the persons or entities stated in the decisions of the UNSC or persons or entities controlled directly or indirectly by them or acting on their behalf or for their account and (ii) collection of or providing any funds to or for the benefit of entities which are related to the nuclear, ballistic missile programs or other activities forbidden with the decisions of the UNSC or persons or entities controlled directly or indirectly by them or acting on their behalf or for their account.

Moreover, persons, entities or organizations stated in the decisions of the UNSC or persons or entities controlled directly or indirectly by them or acting on their behalf or for their account cannot open representation offices, carry out activities in Turkey directly or indirectly. In addition, banks of such parties cannot incorporate branches or representation offices or enter into joint ventures in Turkey and it is also forbidden to enter into joint venture, capital partnership or establish correspondent bank relationship with their banks.

Unless permitted by the UNSC, depending on the scope of the relevant decisions; import, export and transit of substances, materials and equipment and, transfer of technology or contribution or support to nuclear activities or the development of nuclear weapon launch systems are also forbidden.

This new legislation entitles the President to freeze assets and marine transportation vehicles of persons, entities or organization stated in the decisions of the UNSC or persons or entities controlled directly or indirectly by them or acting on their behalf or for their account. The Law No. 7262 also stipulates imprisonment, judicial fines and administrative fines in case of breach of obligations related to implementation of the sanctions of the UNSC.

III. Aid Collection

Aid collection procedures are generally regulated in the Aid Collection Law No. 2860 (“**Law No. 2860**”).

With the Law No. 7262, launching online aid campaigns are also included within the scope of the Law No. 2860, and thus if it is understood that an unauthorized online aid campaign is carried out, relevant governorship and the Ministry of Interior will be authorized to request removal of the content within 24 hours, or to request criminal court of peace to order access ban through if they cannot reach the campaign provider or notification cannot be delivered due to technical reasons.

Article 10 of the Law No. 7262 set forth administrative fines for unauthorized aid collections.

IV. Novelties Regarding Associations

Law No. 7262 includes branches of associations, higher organizations of associations and foundations, branches and representation offices of the associations and foundations which have headquarters abroad and other non-profit organizations within the scope of the Law No. 5253, and thus all of these entities become subject to the provisions of the Law No. 5253 on Associations (“**Law No. 5253**”).

Article 12 of the Law No. 7262 sets forth that those convicted of crimes within the scope of the Law on the Prevention of Financing of Terrorism No.6415 (“**Law No. 6415**”) or of crimes of drug trafficking and laundering criminal proceeds are prohibited from taking office in the organs of associations other than the general assembly, even if the past sentences of those persons were pardoned. In the event that an investigation is initiated against those who work for an association, due to the crimes of manufacturing and trade of drugs or stimulants or of laundering the proceeds of crime within the scope of the activities of the association, Article 15 of the Law No. 7262 allows the Ministry of Interior to dismiss these individuals or may immediately apply to the court to request temporary suspension of activities of the association.

As per Article 19/2 of the Law No. 5253, the Ministry of Interior or local authorities may audit associations to determine whether they carry out their activities in accordance with the

purposes stated in their by-laws and if they keep their books and records in line with the legislation. Within the scope of such audits, information and documentation may be requested from public institutions and organizations, as well as real and legal persons “limited to the scope of audit” including banks and these persons are required to provide information and documents upon the request of the auditors.

Article 14 of the Law No. 7262 regulates aids to be made abroad by the associations and requires prior notification to the relevant local authority. The method and content of the notifications will be regulated by a secondary legislation.

V. Amendments to the Law No. 5549 on Prevention of Laundering of Crime Revenues (“Law No. 5549”)

Article 20 of the Law No. 7262 extends scope of the “obliged parties” includes independent attorneys to run Know Your Customer Checks and financial groups are also included within the scope of the Law No. 5549.

Accordingly, independent attorneys will be subject to provisions of the Law No. 5549 for certain transactions, namely: purchase and sale of immovable properties; establishment and abolition of limited real rights on immovable properties; incorporation, merger, management, assignment and liquidation of companies, foundations and associations and financial transaction with respect to such; management of banks, security and all sort of accounts along with assets in these accounts.

The foregoing scope excludes (i) the information obtained with respect to first paragraph of Article 35 of the Attorney Law No. 1136 (i.e. judicial procedures) and (ii) information obtained due to professional studies conducted within the scope of alternative dispute resolution methods. The foregoing will also be applicable to the extent that it does not violate any other laws in terms of the right to defense.

The other addition to the scope of the Law No. 5549 “financial group” is also defined in Article 20 of the Law No. 7262 as follows; a group consisting of financial institutions resident in Turkey and their branches, agencies, representatives and commercial agents as well as similar affiliated units, which are affiliated with an institution whose headquarters is in Turkey or abroad or under control of such institution.

It is important to note that Turkish lawmakers intended to include independent attorneys within the scope of anti-money laundering legislation for the similar transactions and a similar provision was included in the Regulation on Measures Regarding Prevention of Laundering of Crime Revenues and Financing of Terrorism. However, the Council of State ordered suspension of execution for this provision and thereafter, this provision was repealed by 10th Chamber of Council of State with the merit no. 2008/1675 and decision no 2013/508 on the grounds that this provision was introduced with a regulation and not with the Law No. 5549.

Article 23 of the Law No. 7262 has increased amounts of administrative fines to be imposed in case of breach of provisions of the Law No. 5549. An administrative fine of TRY 30,000 may be imposed on those who fail to fulfill obligations related to client identification and

periodic reporting. Further, an administrative fine of TRY 50,000 may be imposed on the persons breaching obligation related to suspicious transaction reporting. 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, authorized institution as well as payment and electronic money institutions and other financial institutions to be determined by the regulation, these administrative fines will be multiplied by two.

Obliged parties, who fail to comply with the obligations stated in Article 5 of the Law No. 5549, which are related to training, internal control and risk management, are given at least 30 days in order to remove deficiencies and to take necessary measures. If the obliged parties do not remove deficiencies and take necessary measures then an administrative fine of TRY 500,000 may be imposed. With the notification of the administrative fine, a new period, not less than 60 days, is granted. In the event that the deficiencies are not removed at the end of this grace period, an administrative fine that is twice the first administrative fine may be applied. In case the deficiencies are not corrected within 30 days as of the notification of the second administrative fine, activities of the obliged party may be restricted or suspended for a certain period of time or to take measures for the cancellation of the activity permit certificate. In addition, ¼ of the administrative fines imposed on the obliged party may be imposed on the responsible board member or senior manager who fails to fulfill these obligations.

Moreover, persons, institutions and organizations who fail to comply with the obligations of electronic notification specified in Article 9/A of the Law No. 5549 may be subject to an administrative fine of TRY 40,000 for each breach.

It is also worth mentioning that administrative fines within the scope of the Law No. 5549 cannot be imposed after eight years as of the date of breach of obligation.

VI. Changes to the TCC

With the amendments made to the TCC, the Ministry of Trade becomes authorized to introduce an obligation to keep resolution books and share ledger electronically.

It is also stipulated that holders of the bearer share certificates in a joint stock company and the information as to the shares have to be notified the Central Registry Agency (“MKK”). This is a significant novelty in terms of Turkish corporate law practice. An administrative fine of TRY 20,000 may be imposed on those who fail to fulfill this notification obligation. In this regard, only persons who prove that they possess the bearer share certificates and have informed MKK about their possessions will be authorized to exercise their shareholding rights against the company.

Similarly, transfer of bearer shares will become effective upon the notification to be made to the MKK by the transferee shareholder. An administrative fine of TRY 5,000 may be imposed on those who fail to fulfill this notification obligation.

Under Article 34 of the Law No. 7262, those who have bearer shares must apply to the joint-stock companies with their share certificates and then, the board of directors of such



companies notifies the Central Registry Agency about these shareholders and their bearer share certificates within five (5) business days. Such notification process has to be completed until December 31, 2021. If the shareholders do not apply to the joint-stock company, they cannot use their shareholding rights until the necessary application is made. The foregoing administrative fines are imposed on those who fail to fulfill this notification obligation.

VII. Amendments to the Law No. 6415

The definition of the assets within the scope of the Law No. 6415 has been extended with Article 35 of the Law No. 7262. Accordingly, assets are defined as follows: (i) funds and income that are owned or possessed by real and legal persons or under their direct or indirect control and any benefit and value derived from them or from their conversion and (ii) funds and income that are owned or possessed by real or legal person acting on behalf or account of a real person and any benefit and value derived from them or from their conversion. The Law No. 7262 authorizes the Ministry of Finance and Treasury to freeze the said “assets” and removal of such status under the certain conditions stipulated in the Law No. 7262.

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