

Turkey Introduces KYC Requirements for Independent Attorneys

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The Law Proposal on Preventing the Proliferation of Financing Weapons of Mass Destruction (“Proposal¹”) which provides several and significant amendments to the Law No. 5549 on Prevention of Laundering of Crime Revenues (“Law No. 5549”) has been accepted by the Grand National Assembly of Turkey and is expected to be published in the Official Gazette in the upcoming days with the law number 7262². One of the most remarkable provisions introduced within the Proposal is the amendment to the Law No. 5549 which introduces Know Your Client (KYC) requirements to independent attorneys by way of defining them as one of the “obliged parties³”.

1. Scope in terms of Independent Attorneys

With the recent amendment, independent attorneys will be deemed an “obliged party” and thus be obliged to conduct KYC checks before transactions, limited to the following transactions:

- Purchase and sale of real estate,
- Establishment and abolition of limited real rights,
- Incorporation, merger, management, assignment and liquidation of companies, foundations and associations and financial transaction with respect to such,
- Management of banks, security and all sorts 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.

2. KYC Obligations

The persons under the scope of the definition of “obliged parties” are obliged to identify the persons carrying out transactions and the persons on behalf or for the benefit of whom the transactions are conducted within or through the obliged parties, before the transactions are conducted.

¹ Available at <https://www2.tbmm.gov.tr/d27/2/2-3261.pdf>

² Available at <https://www.tbmm.gov.tr/kanunlar/k7262.html>

³ Prior to the addition of “independent attorneys” into scope, the obliged parties were defined as “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, jewelry, all kinds of transportation vehicles, construction machines, historical artifacts, art works, antiques or intermediaries in these operations; notaries, sports clubs and those operating in other fields determined by the President.” (Article 2/d of the Law No. 5549)

In that regard, independent attorneys will be obliged to identify client's identity (i) for permanent business relationships⁴, (ii) for the cases that require suspicious transaction reporting or (iii) if there is a suspicion on the accuracy or the sufficiency of the previously obtained customer information. None of these three circumstances are subject to a monetary threshold. Financial Crimes Investigation Board (MASAK) will probably determine what would constitute "permanent business relationship" for the independent attorneys through its guidelines.

For instance, an independent attorney conducting a transaction regarding purchase of a real estate will be obliged to conduct a KYC check, if such transaction requires suspicious transaction reporting, regardless of the amount of the transaction.

In terms of monetary thresholds, (i) if the amount of the electronic transfer or the sum of more than one correlative transaction exceeds 2,000 Turkish Liras or (ii) if the transaction amount or the sum of more than one correlative transaction exceeds 20,000 Turkish Liras, independent attorney will be obliged to identify client's identity, as well.

For instance, an independent attorney will be obliged to do a KYC check regarding the incorporation of a company, the expenses of which exceed 20,000 Turkish Liras (which is the case in most of the incorporation transactions). The amount to be taken into consideration here would be the transaction amount (and not the attorney expenses to be paid to the independent attorney), but this will likely be further explained through the guidance of Financial Crimes Investigation Board (MASAK).

3. Reporting of Suspicious Activities

In case 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, independent attorneys will also be under the obligation to report such activities to MASAK as obliged parties.

Suspicious transaction is the case where 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, has been acquired through illegal ways or used for illegal purposes and is used, in this scope, for terrorist activities or by terrorist organizations, terrorists or those who finance terrorism (Article 27/1 of the Regulation on Measures regarding Prevention of Laundering of Crime Revenues and Financing of Terrorism).

⁴ Article 3/1(i) of the Regulation on Measures regarding Prevention of Laundering of Crime Revenues and Financing of Terrorism defines permanent business relationships as "business relationship that is established between obliged parties and their customers through services such as opening an account, lending loan, issuing credit cards, safe-deposit boxes, financing, factoring or financial leasing, life insurance and individual pension, and that is permanent due to its characteristics."

4. Content, Verification and Retention

Information to be obtained for KYC and the verification of such information varies depending on the person concerned such as real persons, legal entities registered in trade registries, legal entities resident abroad etc. For instance, *name, surname, birth place and date, parents' name, nationality, Turkish ID number for Turkish citizens, identity certificate type and number* will be obtained from real persons to fulfill the identification obligation. As for legal entities, *trade name, trade registry number, field of activity, company address, contact information, authorized representative's name, surname, place and date of birth, parents' name, nationality, Turkish ID number for Turkish citizens, identity certificate type and number, representative authorization and signature circular* will be obtained. The information to be collected should also be verified through the documents regulated in the legislation such as identity certificates or trade registry records which also depends on the type of the person concerned.

Independent attorneys should keep documents on customer identification for eight (8) years as of the last transaction date and should provide these documents upon request of the authorized bodies.

5. Sanctions

In case of failure to fulfill the obligation on client identification, non-compliance may be subject to an administrative fine of 30,000 Turkish Liras. Failure to comply with the obligation to report suspicious transactions may be subject to an administrative fine of 50,000 Turkish Liras, with the new amendment. Before the amendment, both of these fines were 5,000 Turkish Liras (subject to re-evaluation rate).

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