

## ANTI-MONEY LAUNDERING AND COMBATING FINANCE OF TERROR

### I. “Dirty Money” and “Money Laundering” Concepts

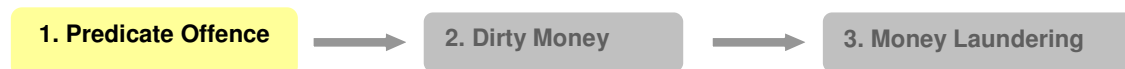
“Dirty money” is defined as all types of wealth and income derived particularly out of illegal activities and acts classified as felonies in the criminal laws. In the definition of dirty money, one must especially bear in mind that economic, ethical, social and legal definitions of dirty money are different from each other. In legal terms, dirty money can be defined as all types of income and benefits derived out of an act characterized as an predicate offence in the laws and regulations of the relevant country.

In general, “Money laundering” refers to and covers all transactions and processes aimed at and relating to change of form of cash income earned by illegal and unlawful ways, and concealing its real source and owners by protecting its current value as far as possible, and legitimizing money from organized or other crime, and converting it to other assets or properties so as to increase its accessibility and usability and distract the attention of authorities, or transfer of it from one place to another.

The belief that the term “money laundering” comes from Chicago gangs of the 1930s was the first to 'launder' its cash derived from alcohol sold, racketeering and gambling through laundromats. But the phrase "money laundering" was first used in media, in 1973 connection with the Watergate Investigation in United States.

But the term “dirty money” was become popular when illegal drug traders have been arrested with high amounts of cash money in 1980s. And dirty money in legal term was used also only proceeds of illegal drug trade at beginning of the struggle against money laundering. Today countries apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences

According to these definitions, the “sine qua non” elements of “money laundering” can be tabulated as follows:



1. A predicate offence must have been committed.
2. An economic benefit must have been derived out of this predicate offence.
3. An action must have been taken with the intention of legitimizing such money or economic benefit.

Money laundering techniques may contain a lot of different acts or steps varying from transaction to transaction, in terms of the institution or geographical location. Money laundering process is generally carried out at three stages:

**Placement:** In general, it refers to physical deposit of a great amount of dirty money in cash in a financial institution. At this stage, the link between the dirty money and the illegal activity has not yet been broken, and there exists no transaction, which may be shown by the money launderer as the legal source of the money. Therefore, this stage is the most difficult stage for money launderers, and the easiest stage for detection of suspicious funds by the financial institutions.

**Layering:** At the layering stage, with the intention of concealing the illegal activity sources of funds, or in other words, separating the illegal income from its sources, a series of financial transactions which are similar to legal transactions in terms of frequency, complexity and volume are realized. At this stage, with a view to causing failure of legal investigations and prosecutions, the crime organizations make use of the electronic transfer network of banks and bogus companies and the advantages of offshore financial centers and non-cooperative tax heavens where specialized consultancy services are provided and a broad range of opportunities are offered for tax and financial services, as well as the confidentiality principles. Duration of the layering stage is dependent on the need for use of income and on the belief of the launderers as to which extent they have broken the link of income with its source.

**Integration:** Having been disintegrated through various transactions and made unidentifiable by passing through many hands, the dirty money is at this stage integrated somehow to start to play a role and to form a means of power, just like “clean” money derived out of legal and legitimate business activities.

It is not absolutely necessary to carry out separately all three of these stages in each money laundering event.

## **II. Prevention of Finance of Terrorism**

Due to use of the illegal drug traffic and trade by the terrorist groups for financing their terrorist acts, and due to the ascending terrorism wave all over the world, all countries have been called to sign the agreements published by the United Nations for suppression of terrorism. FATF, playing a determining role in the international fight against money laundering, has published “The Eight Special Recommendations” focusing on the following issues of international cooperation and struggle, and clarifying the required legislative acts and regulations, and the points to be taken into consideration by the countries.

With a view to strengthening the struggle against terrorism, and preventing laundering of, and seizing, dirty money derived out of terrorism acts, and developing international cooperation in the struggle against organized crimes and terrorism, our country has ratified the agreements published by the United Nations, and has, in accord with the recommendations of FATF, held the financial institutions liable to report suspicious transactions if and when they have doubts or have reasonable causes to suspect that the funds are related or linked to terrorism or terrorist acts or are used for such purposes.

## **III. The Need for Fight Against Money Laundering**

Studies conducted during the 1990s concluded that money laundering involves two per cent of the gross world product. The large financial profits derived from illicit drug trafficking and related criminal activities enable transnational criminal organizations to contaminate, penetrate and corrupt the structure of governments, legitimate commercial activities and societies at all levels, thereby vitiating economic and social development, distorting the process of law and undermining the foundations of states.

Negative effects of dirty money, which is a major menace on the countries and their financial systems, can be listed as follows:

- It is illegal and may cause exposure to sanctions and penal servitudes and heavy fines in national and international platforms.
- It is transitory and may cause sudden changes and fluctuations in assets and liabilities of financial institutions.
- It causes loss of prestige to the State, the institutions and persons.
- It does not show a real movement, thereby disturbing the basic market balances such as supply-demand-price.
- It creates instability and lack of confidence.
- It causes loss to the law-abiding and honest investors.
- It reduces the importance given and the confidence shown to political, economic and social institutions.
- It nourishes fraudulency, bribery and corruption.
- It threatens the health of individuals and the society as a whole.

## **IV. Laws, Regulations and Legal Obligations**

In the course of the last decade major strides have been taken to target the financial base of organized crime groups and others involved in profit generating criminal offences. As the income derived out of criminal acts is generally in cash and high amounts, it cannot be used or spent freely and in a short time beyond attention. So, survival of organized crime organizations is directly linked to spending of lots of money, generally in cash form, beyond attention, and turning into non-cash form, and masking its source and owners.

The United States was the first country to recognize the need to control money laundering by drug smugglers and dealers. There have been a number of developments in the international financial system and the law against money laundering can be summarized at three F's main topics: **F**inding, **F**reezing and **F**orfeiting of criminally derived income.

As a result of the technologic developments paving the way for a trend of integration in the global financial

markets and facilitating the cross-border movement of capital to a great extent, efforts of the national administrative and legal authorities of individual countries aimed at preventing use of the financial system for money laundering are occasionally inadequate to achieve the intended purposes, and it becomes more and more difficult for the legal authorities to keep under control the cross-border movement of funds derived out of illegal ways and activities.

Therefore, it has become necessary for the countries to come together and take joint decisions and act in collaboration in order to put barriers to money laundering. To this end, many initiatives have so far been taken so as to ensure international cooperation, and many steps have been taken in various different agreements and conventions for joint action of the countries against money laundering.

## **i. International Bodies and Agreements**

### **Vienna Convention:**

One of the most important agreements on international cooperation is the United Nations Convention Against Smuggling of Narcotic and Psychotropic Substances dated 19.12.1988 (Vienna Convention). In the Convention which has so far been ratified by more than one hundred countries, in the case of intentional or non-intentional money laundering transactions of banks related or linked to illegal trafficking and smuggling of narcotics, the governments are held liable to identify and take joint actions, and the crimes associated to smuggling of narcotics are defined, and the sanctions thereof are shown, and the issues such as jurisdictional and penalization powers, seizure of properties, extradition, exchange of information, and mutual judicial assistance are detailed.

### **FATF-Financial Action Task Force:**

In 1989 the G7 Group of Countries responded to the growing threat posed by money laundering – particularly in connection with drug trafficking – by setting up the Financial Action Task Force (FATF). Originally comprised of experts from law regulators and enforcement authorities and particularly from the financial sector, FATF has grown up by time, and has now become a great and effective international organization enrolled in by 31 countries, 23 of which are OECD member states, also including our country.

FATF experts developed a list of **40 recommendations** in anti-money laundering best practice. These decisions, last revised in 2003, have, in addition to the member states, been accepted by the United Nations on 10 June 1998 as the international standard rules.

The main features of the revised Recommendations are as follows:

- a list of crimes that must underpin the money laundering offence (a list of the so-called “predicate offences”);
- the expansion of the customer due diligence process for financial institutions;
- enhanced measures for higher risk customers and transactions, including correspondent banking and PEPs;
- the extension of anti-money laundering measures to designated non-financial businesses and professions (amongst others lawyers, notaries and other independent legal professions, accountants, trust and company service providers);
- the inclusion of institutional measures, especially regarding international co- operation;
- the reinforcement of transparency requirements through information on the beneficial ownership of legal persons, or arrangements (e.g. trusts);
- the prohibition of shell banks;
- the extension of many anti-money laundering requirements to cover terrorist financing

Following the terrorist attacks of September 11, the FATF came up with a further **The Eight Special Recommendations** to tackle terrorist financing. FATF agreed to and issued new international standards to combat terrorist financing, which it calls on all countries to adopt and implement. The Eight Special Recommendations commits members to:

1. Take immediate steps to ratify and implement the relevant United Nations instruments.
2. Criminalize the financing of terrorism, terrorist acts and terrorist organizations.
3. Freeze and confiscate terrorist assets.
4. Report suspicious transactions linked to terrorism.
5. Provide the widest possible range of assistance to other countries' law enforcement and regulatory authorities for terrorist financing investigations.
6. Impose anti-money laundering requirements on alternative remittance systems.

7. Strengthen customer identification measures in international and domestic wire transfers.
8. Ensure that entities, in particular non-profit organizations, cannot be misused to finance terrorism.

FATF also prepared a [Guidance for Financial Institutions in Detecting Terrorist Financing](#)

The 'FATF 40+8' are widely accepted as the international standards on anti-money laundering and countering the finance of terrorism. Turkey, a member of FATF, has implemented all 40 + 8 FATF recommendations and encourages their widest international adoption and application.

### EC- European Directives EC- European Directives

The basic issues dealt with by the Directives can be grouped under main headings such as customer identity establishment, keeping of records on identity and transactions, cooperation with juridical authorities, reporting of suspicious transactions, and in-house training, control and audit, which also constitute the structural frame of the legislative acts and regulations enacted in our country.

"The Council Directive 91/308/EC for Prevention of Use of Financial Systems for Money Laundering" is accepted and treated as the highest legal base for the European Union.

The Directive makes reference:

- to the Vienna and **Strasbourg Conventions**, in criminal field, where decisions as to prevention of money laundering, and treatment of the income derived out of dirty money also as dirty money, and confiscation of dirty money by the law enforcement agencies and authorities, and imposition of dissuasively high penalties are taken; and
- to the **Basel guidelines**, in financial field, setting down rules for establishment of customer identity, and keeping of records, and identification of high ethical standards and rules of conduct, and compliance with laws, and cooperation and coordination with juridical authorities, and to the 40 Recommendatory Decisions relating to legislative and financial regulations for protection of financial systems and institutions of the individual countries.

In recent times, the revised EU directive on money laundering has extended the directives obligations with regard to activities of professions outside the financial services sector, the definition of suspicious transactions to include the proceeds of other crimes besides drug trafficking. Apparently, these new directives or extension of existing directives have brought EU laws on money laundering in line with international regulations.

### USA Patriot Act

The USA PATRIOT Act stands for the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. The legislation is broad and changes immigration laws, tightens controls on money laundering, and greatly expands the legal use of electronic surveillance. It includes numerous provisions for fighting international money laundering and blocking terrorist access to the U.S. financial system.

The Act is far-reaching in scope, covering a broad range of financial activities and institutions. The Act, which generally applies to insured depository institutions as well as to the U.S. branches and agencies of foreign banks, does not immediately impose any new filing or reporting obligations for banking organizations, but requires certain additional **due diligence** and **recordkeeping practices**.

Particularly the banks which do not have any physical office and are comprised of only some web addresses and are founded in offshore locations and money centers known as tax shelters are used by money launderers and terrorist organizations in the illegal money and fund transfers. The Act prohibits covered financial institutions from establishing, maintaining, administering, or managing correspondent accounts with "**shell banks**," which are foreign banks that have no physical presence in any jurisdiction. The Act also provides that covered financial institutions must take "reasonable steps" to ensure that accounts for foreign banks are not used to indirectly provide banking services to shell banks.

FATF also put shell banks on the agenda by revised 40 Recommendations and designated in Rec.18: "Countries should not approve the establishment or accept the continued operation of shell banks. Financial institutions should refuse to enter into, or continue, a correspondent banking relationship with shell banks. Financial institutions should also guard against establishing relations with respondent foreign financial institutions that permit their accounts to be used by shell banks. "

## Wolfsberg Principles

On 30 November 2000, eleven internationally recognized banks and Transparency International (TI) have come together and published a guideline named “Global Anti Money Laundering Guidelines for Private Banking” containing special banking principles for prevention of money laundering and for transparency in banking transactions. This guideline, known and called as “Wolsberg Principles”, is focused on:

- customer acceptance rules,
- submittals to be requested from customers and account opening rules,
- determination of customer risk levels,
- monitoring the accounts according to risk levels and financial information of customers, and
- appropriate supervision, control and reporting techniques that may be used for detection of suspicious transactions.

The Wolfsberg Standards consist of the various sets of AML Principles, as well as related Statements, issued by the Group since its inception. These are “Monitoring Screening and Searching Wolfsberg Statement”, “Wolfsberg AML Principles for Correspondent Banking”, “Wolfsberg Statement on The Suppression of the Financing of Terrorism Wolfsberg AML Principles on Private Banking” “Wolfsberg AML Principles on Private Banking”.

## EGMONT Group

With a view to contributing to the fight against money laundering, on 9 June 1995, 24 countries and 8 international organizations came together in Brussels to form the EGMONT GROUP in “Internet Web-Secure” in order to share the financial intelligence information, and ensure cooperation among the Financial Intelligence Units, and improve efficiency of the Financial Intelligence Units. Turkey has applied for membership to EGMONT GROUP in February 1998 and been admitted to membership in the June 1998 Meeting.

## ii. Turkish Law and Regulations

By enacting and issuing the **Anti Money Laundering Law 4208** in 1996 and several regulations and communiqués for implementation of that Law, Turkey has completed and adopted its legislative acts, regulations and financial system in compliance with the Forty Recommendations of FATF where it is enrolled. Purpose of the Law 4208 is to set down the principles applicable for prevention of money laundering, and to determine the assets that may be the subject of “money laundering” crime which is classified as a separate and independent offence in the Law.

In 1998, **The Presidency of Financial Crime Investigation Board (MASAK)** reporting to the Minister of Finance has been formed and established, and has been entrusted with the data collection, evaluation, implementation, audit, regulation and coordination tasks and functions relating to the legal obligations arising out of the Law 4208.

In accordance with the FIU (Financial Intelligence Unit) definition accepted in the Rome meeting held in 1996 by the EGMONT group, to which Turkey is enrolled in February 1998, MASAK serves and functions as a central national intelligence unit (FIU) collecting, analyzing and circulating to the relevant authorities all financial data and information: about the revenues suspected of being derived out of criminal acts, or specified and stipulated in the national laws or regulations and legal arrangements for the purpose of fight against money laundering.

In 2006, new legislation of Turkey, **Prevention of Laundering Proceeds of Crime Law, Law No: 5549**, has been issued by Turkish FIU. The purpose of this law is to determine the principles and procedures for prevention of laundering proceeds of crime. In addition, new regulation regarding to the mentioned law has been inured in 2008 to explain the new methodology of client identification–verification, know your client principles, to determine the suspicious activities, corresponding banking, follow-up the transactions of the customers, etc.

With a view to strengthening the struggle against terrorism, and preventing laundering of, and seizing, dirty money derived out of terrorism acts, and developing international cooperation in the struggle against organized crimes and terrorism Turkey has ratified the agreements published by the United Nations, and has, in accord with The Eight Special Recommendations of FATF.

## iii. Legal Responsibilities

Within the frame of and in accord with the legislation in Turkey, Banks' Head Office units, local and foreign branches, agents and representatives are under obligation:

- a) to establish and validate identity of, and to record the addresses which must be given a documentation as a proof of their residence by the persons and entities who are counterparts of the transactions executed

- b) to report the suspicious transactions of the persons and entities to the “Presidency of Financial Crime Investigation Board” and for this purpose, to appoint a compliance (reporting) officer at the administration level, pursuant to and under the provisions of the relevant regulation,
- c) to regularly and continuously provide the “Presidency of Financial Crime Investigation Board” with information about the transactions to be determined by the Ministry of Finance;
- d) to organize training activities for its employees about the legislation pertaining to prevention of money laundering, and the legal obligations, laundering activities and suspicious transactions;
- e) to supervise, audit, check and report as a part of its internal audit systems whether the transactions are executed in compliance with the pertinent laws and regulations or not; and
- f) to keep all kinds of documents relating to the banking transactions at least for 8 years as a databank of evidences to be used in the investigations of the official authorities.

## **V. Prevention of Money Laundering and Financing Terror**

With the legislative acts and regulations enacted and put into force for fight against money laundering and with the international anti money laundering guidelines becoming prevalent in general use, the financial institutions that are exposed to money laundering transactions of the launderers for reasons arising out of weaknesses in their system and practices have suffered great losses in their financial standing, and been exposed to penalties and sanctions, and incurred a material loss of respect and prestige due to their customers involved in illegal activities.

All Banks must improve their own internal Anti Money Laundering (AML), Know Your Customer (KYC) and Combating Finance of Terrorism (CFT) policies and practices in accord with the legal obligations and international standards, basic policies and principles fight against money laundering according to and depending on their operations and fields of business. In fact, although taking all necessary measures against money laundering, there isn't any perfect formula for financial institutions that guarantees fully prevention. As a consequence, banks have to follow up the changes in legal liabilities, principles, guidances, advisory standards in both domestic and international area, and also take necessary measures against new trends and methods in money laundering by adopting and updating their own internal policies, procedures and in-house training activities.

### **Basic Principles of Fight Against Money Laundering**

#### **a. Know Your Customer**

Financial institutions must endeavor to determine and confirm the identity of customer, and the source and destination of funds, and the main economic activities creating the wealth.

#### **b. Compliance With Laws**

Internal regulations must be issued, and obligations and responsibilities must be determined in order to assure full compliance with the laws and the regulations, acts and decisions of the official authorities appointed as per the laws.

#### **c. Cooperation With Law Enforcement Agencies**

Financial institutions must report to the authorized official investigation agencies all of the suspicious transactions which do not have an economic purpose in appearance, and where the customer tries to refrain from identity establishment and official reporting requirements and obligations.

#### **d. Policies and Procedures and Training**

Financial institutions must have written policies and procedures defining the responsibilities and duties for the purpose of adaptation of their internal practices and work processes with the legal obligations and liabilities. And financial institutions must give regular training to their employees so as to create a standard knowledge level. Training activities must give information about the applicable laws and regulations, the legal obligations and liabilities, type of suspicious transactions and the money laundering typologies, risky lines of business-risky areas and risky transactions, client acceptance rules, identification and reporting of the suspicious transactions responsibilities.

#### e. Monitoring, Control and Reporting Activities

The Banks have to establish and operate internal control, reporting and communication systems for prevention of money laundering transactions and for detection of suspicious transactions. The definition and ongoing monitoring of risky areas, risky lines of business and risky transactions and also establishing heavy due diligence and client acceptance procedures help financial institutions to prevent themselves from money launderers.

### VI. Bank Anti Money Laundering and Combating Finance of Terrorism Policy and Procedures

In the course of gaining new customers and maintaining the existing customer relations, with a view to avoiding use of our Bank and its subsidiaries and affiliates under control of our Bank at any stage of money laundering, (placement, layering and integration) our Bank must show maximum care to procure transparency in customer information and transactions, and to establish and maintain customer relations on the basis of mutual trust principle. Accounts cannot be opened with nickname or assumed name or with no name, other than the real name or title. Whether the opened accounts are actually used by the person in whose name the account is opened will be traced and followed up continuously.

TEB's written "Anti – Money Laundering (AML) and Combating the Financing of Terrorism (CFT) policies and practices" sets down the legal and administrative obligations of our Bank and its employees in the fight against money laundering and finance of terrorism with a view to preventing the use of our Bank at any stage (placement, layering and integration) of money laundering, and aims at making our Bank's policies and procedures fully compliant with the current laws and the legislative acts and regulations of the related authorities authorized by laws.

TEB's written Prevention of Money Laundering and Finance of Terrorism Policy has been categorised into the following main topic areas;

- Purpose
- Scopes
- Dirty Money and Money Laundering Concepts, Stages and Tipologies of Money Laundering
- Historical Development of Fight Against Money Laundering (*Vienna Convention, FATF-Financial Action Task Force, EC- European Directives, EGMONT Group, Basel Banking Supervision Committee, Wolfsberg Principles*)
- Combatting Finance Of Terrorists
- Laws, Regulations and Legal Obligations
- Acts in Conflict With Laws and Legal Obligations
- Duties and Power of Presidency of Financial Crime Investigation Board of Turkey (MASAK)
- Duties of Bank Compliance Officer
- Know Your Customer Policies and Practices (*Implementation Guidelines and Principles on Acceptance of Customers and Receipt of Identifying Documents and Information*)
- Natural or Legal Persons Who Are Non-Eligible For Customer Relations or Banking Transactions (*Persons Whose Real Identity and Address Cannot Be Determined and Identified, Persons Who Are Not Contacted Face-to-Face, Shell Banks defined in USA Patriot Act*)
- Natural or Legal Persons Necessitating Enhanced Diligence and Care Before Acceptance As Customers of our Bank (*1. Clients from Risky Regions and Areas or Nationality- NCCT, OFAC, USA MDPC & MDTC List, Uncooperated Tax Heavens 2. Risky Lines of Business, Sectors and Customers: Non-Bank Financial Institutions, Money Changers, Banks and Financial Institutions Resident Abroad, Accounts Opened in The Name of Money Managers and Professional Intermediaries, Accounts of Charitable Organizations, Foundations and Associations, and Accounts Opened in the Name of Political Parties, Politicians and Their Relatives-Risky*)
- Monitoring Risky Transactions (*Money laundering risk is higher in the following banking products: Electronic Transfers, Cash Transactions, Internet, Call Center and ATM Transactions, Collection of Personal Checks Drawn on Foreign Banks*)
- Reporting of Suspicious Transactions
- In-House Training Activities
- Monitoring, Control and Reporting Activities
- Record Keeping
- Obligation to Give Information and Documents
- Documents Used in the Scope of This "Implementation Guidelines" Document

This "implementation guidelines" document is applicable on the Units of Head Offices and all local and foreign branches. Subsidiaries and affiliates under control and supervision of our Bank are liable to determine and apply their own internal policies and implementation principles in accord with the legal obligations, basic policies and principles contained in this document, according to and depending on their fields of business. The subsidiaries and affiliates will be audited by the Committee of Inspectors in terms of formulation of the said internal policies and implementation principles.

Compliance with these policies and procedures will assure safe and secure banking activities and maintenance of customer quality, and will reduce the loss risk of both our Bank and its customers, as the standards of fight against dirty money are at the same time the procedures of fight against swindling.

TEB vision itself as a reliable business partner in banking sector effort to effectively participate in the global struggle against money laundering and terror financing. We will be happy to cooperate with our business partners on the struggle against money laundering and financing of terrorism to develop better practice and improve such operations.

**Related Links :**

[Presidency of Financial Crime Investigation Board of Turkey \(MASAK\)](#)  
[Financial Action Task Force](#)  
[EU Directive on Money laundering](#)  
[United Nations Global Programme Against Money Laundering](#)  
[USA Bank Secrecy Act / Anti-Money Laundering](#)  
[The Patriot Act-Prohibition of shell banks](#)  
[OFAC-Office of Foreign Assets Control Sanctions Program and Country Summaries](#)  
[Basel Committee on Banking Supervision "Customer Due Dilligence for Banks"](#)  
[Wolfsberg Principles and Standarts](#)  
[The IMF and the Fight Against Money Laundering and the Financing of Terrorism](#)  
[The World Bank and AML & CFT](#)