

Check the weather before you hang the laundry!

Accounting Turkish Progress in Anti-Money Laundering Mechanisms

Abstract:

This paper examines the anti-money laundering (AML) legislation in Turkey and the European Union (EU). Given the fact that Turkey is officially a candidate country for the EU membership, harmonisation of Turkish and the EU AML frameworks has become increasingly important. These AML laws pose important responsibilities for the financial sector. Accordingly, the role of accountants both at global and regional level against money laundering has a great significance. We compare and evaluate specific AML provisions pertaining to obligations of Turkish accountants with those in the EU.

In order to facilitate the evaluation process, the AML regimes examined are compared in regards to various aspects such as criminalization of money laundering, recording and reporting obligations for accountants, enforcement and sanctions mechanisms. While we have found that each national regime has adopted a unique AML framework, minimum standards provided by international (e.g. the Financial Action Task Force) and regional (e.g. EU) instruments have been the main driving force behind all national laws.

It is clear that the Turkish AML provisions have important implications for accountants in practice. In Turkey there is a need for an adoption of training mechanisms and guidance for accountants can achieve further success in compliance with the AML provisions. In order to enhance effectiveness and efficiency of the AML in Turkey, it is important for the national regulatory and enforcement authorities to coordinate their efforts with the Turkish accountancy body.

While we have made some feasible recommendations for reform, based on our analysis, we have concluded that a comprehensive evaluation of the success of the Turkish AML regime is difficult to determine as there are no cases studies (e.g. prosecutions, convictions, etc.) and this will require further research.

1. INTRODUCTION

The current economic environment with its advanced information and communication technology provides potential benefits and opportunities for the global community. However, these opportunities also bring their own challenges with them. Among these challenges include financial crime which can take many forms of malfeasant activity. Majority of the proceeds from these crimes are camouflaged to make it look legitimate and this process is generally referred to as “money laundering”. Money laundering is an increasing cause of concern for the international financial community. Monetary volume and seriousness of this crime cannot be determined accurately¹ however, the International Monetary Fund (IMF) estimates it to be 2-5 percent of global gross domestic product. Another study indicates that the amount of money laundered on an annual basis ranges somewhere between \$300bn and \$1,000bn.² Spalek claims that the amount is approximately \$500bn.³ Maylam estimated that the annual figure could be as much as \$1.5trn.⁴ The UK government has estimated that the amount of money laundered annually ranges from £19bn to £48bn.⁵ Arguably, these estimates are inaccurate because they often represent only a percentage of the shadow or underground economy.⁶ Similarly, the exact amount of money laundering in Turkey is unknown, yet the illegal proceeds involved of in money laundering referrals from the Turkish Financial Crimes Investigation Board (MASAK) to the public prosecutors between 1997 and 2006 is more than \$1.7 billion.⁷

Money laundering and other forms of financial crime pose serious social and economic consequences not only for individual countries but also for the international community in general. As the dominant actors in capitalist economies and international transactions, financial institutions and their systems are the first to get affected. This in turn jeopardizes the socio-economic development of the territories in which these financial institutions operate. The preferred medium for laundering the illicit funds is often the legitimate financial institutions.⁸ One of the reasons for this trend is the expertise, efficiency and low cost of financial transactions undertaken by these institutions. Arguably, without these legitimate institutions and their actors (e.g. accountants) proceeds of crime cannot easily be laundered⁹ (Mitchell *et al.*, 1996; Ehrenfeld, 1992; Kochan and Whittington 1991; Compin 2008). For instance, Mitchell *et al.* provide a detailed account of such trends whereby the role and involvement of major accountancy firms

in money laundering are examined and “inconvenient facts” (Weber, 1946)¹⁰ are brought into the academic discourse.¹¹

Offe and Ronge assert that: *“Since state power depends on a process of accumulation which is beyond its power to organize, every occupant of state power is basically interested in promoting those political conditions most conducive to private accumulation ... the institutional self-interest of the state in accumulation is conditioned by the fact that the state is denied the power to control the flow of those resources which are nevertheless indispensable for the exercise of state power”* (page 120).¹²

Accordingly, pressures and demands of a capitalist economy put accountants in a particular relationship with the state as it is often the state that is responsible for organizing and regulating this sphere but it is the accountants among other professionals who become agents and leaders for achieving the aims and objectives of the state policy (Booth and Cocks, 1990; Sikka and Willmott, 1995).¹³ Subsequently, bankers, accountants, compliance officers, auditors, etc. find themselves in the midst of financial activities and thus have roles in detection, prevention and reporting of illegal acts such as money laundering. The conduct and responsibilities of these professions are regulated by law and states often rely on accountants to convey the “socio-economic reality” (Sikka and Willmott, 1995) in a given financial activity.¹⁴ Furthermore, being experts, these professions are called upon to act to a certain extent as agents of surveillance and law enforcement for the state. It could be argued that accountants inform and/or shape the “regulatory spaces” (Sikka *et al.*, 1995) both in the context of anti-money laundering legislation and desired professional conduct. Indeed, the incorporation of accountants into the AML provisions as liable and responsible professionals is an evidence of an increasing recognition that accountants and accounting organizations are a part and parcel of crime prevention and detection.¹⁵ Consequently, these trends challenge the conventional view that accounting activities are separate from the socio-legal and political environment in which it operates (Lehman and Okcabol, 2005).¹⁶

This article will compare and critique anti-money laundering legislation and policies pertaining to accountants in the European Union (EU) and Turkey. In doing so, areas for good practice and reform will be identified. We are aware that reforms may derive from a number of initiatives such as desire to secure and expand the scope and influence and privileges of accountants and/or deepen and broaden

the accountability of relevant professions and protection of stake holders (Sikka and Willmott, 1997).¹⁷ While it is clear that the latter is the main intention behind most AML provisions, the real impact and success of such measures are difficult to determine.

2. TURKISH MONEY LAUNDERING REGULATIONS

a) OVERVIEW

In Turkey, the recognition of money laundering as a crime and the subsequent anti-money laundering legislation date back to the 1980s. Besides being a national socio-economic concern, combating money laundering effectively has a particular importance in Turkey's objective as a candidate country for EU accession. History also reveals that Turkey has consistently supported anti-money laundering initiatives at international level. For instance, Turkey is a member of the Egmont Group of Financial Intelligence Units¹⁸ as well as the Financial Action Task Force which was established in 1989 by the G-7 countries and now has 32 member states along with two regional/international organisations as members. The Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, the United Nations Agreement Against Organized Crimes Across the Border (Palermo Convention) 2000 and the European Council Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990 were also ratified by Turkey on 21 September 1990, 26 February 2003 and 6 June 2004, respectively.¹⁹

Moreover, Turkey is a signatory to several bilateral anti-money laundering treaties established with countries such as Germany, Greece, Afghanistan, Syria, Romania, Georgia, Albania and Italy. Turkey also cooperates with other countries in combating money laundering effectively. For example, according to data from the Turkish Financial Crimes Investigation Board (*Mali Suçlar Araştırma Kurulu - MASAK*), 138 information requests have been made from 51 countries to MASAK, and MASAK has requested information from 143 different countries on 46 occasions in 2008 alone.²⁰ The Turkish Government's

primary anti-money laundering strategy seems to be the reduction in amount of the proceeds generated from criminal activity. It is argued that as tracking the proceeds of crime can be more effectively conducted in a controlled economy, preventing the unregistered economy is an associated priority.²¹ The FATF reports conducted in 1994, 1998 and 2006 evidence that Turkey has continually endeavored to improve its anti-money laundering provisions and followed the recommendations made by the FATF.²² As of February 2009, FATF's progression report indicates that as a result of the enhanced AML regime, Turkey has been taken off the list of countries under the 'enhanced follow-up' procedure.²³ However, it has also been commented that lack of awareness by the representatives of the prosecution and judicial authorities as well as disproportionate level of acquittals are of continuing concern.²⁴

i) MASAK:

MASAK has the authority to investigate the crimes stipulated by the Turkish anti-money laundering legislation.²⁵ MASAK was established by the Law No: 4208 on Prevention of Money Laundering in 1996 and started operation in 1997. MASAK is an administrative authority and operates as affiliated directly to the Ministry of Finance. The duties and powers of MASAK, provided by Article 19 of the Anti-Money Laundering Law, include developing policies and implementation strategies in order to prevent laundering proceeds of crime; drafting of legal instruments, by-laws and regulations in this regard; collection of data and suspicious transaction reports;²⁶ analysis and evaluation of these in the context of prevention of laundering proceeds of crime and terrorist financing; examination of the cases conveyed from Public Prosecutors and forwarding cases to the competent Public Prosecutor's Office in cases where serious suspicious activity exists that a money laundering or terrorist financing offence may be committed.

ii) LEGISLATION

Section 4.25.5 of 'Turkey's National Program on Undertaking of European Union *Acquis Communautaire*', which was accepted by Decree 2001/2129 of 19 March 2001, notes that:

- Cooperation and coordination between the competent Ministries and other public institutions will be enhanced;

- The relevant legislation will be reviewed to extend the scope of the definition of “money laundering offences” in the short term; and
- The EU *acquis* on the illicit use, production of and trafficking in drugs, organised crime, fraud and corruption, money laundering and judicial cooperation in civil and criminal matters will begin to be adopted in 2001, and international cooperation in these areas will be intensified.

With these policy directions as well as other international commitments in mind, the Turkish anti-money laundering legal regime has been evolving rapidly.

Anti-money laundering and client identification rules under Turkish law are mainly regulated by the Law No. 4208 on Prevention of Money Laundering,²⁷ Law No. 5549 Concerning the Prevention of Laundering Proceeds of Crime (the “Anti-Money Laundering Law”)²⁸ and the Regulation on the Application of Law No. 5549 Concerning the Prevention of Money Laundering and Financing Terrorism (the “Anti-Money Laundering Regulation”).²⁹

The Anti-Money Laundering Law and the subsequent the Ministerial Decree No. 2007/13012 (Article 4(1))³⁰ require that certain professions and legal entities, such as banks, insurance companies, public notaries, accountants, etc (referred to as the “Liable Persons”),³¹ identify their clients and keep records of their identification for a period of eight years and report any suspicious activity to MASAK (Article 27 of the Anti-Money Laundering Regulation).

b) THE CRIME OF ‘MONEY LAUNDERING’

By the ratification of the United Nations Agreement against Organized Crimes Across the Border (Palermo Convention) 2000 and the European Council Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, ‘money laundering’ has been recognized as a crime in Turkey.³² However, the initial provisions defined money laundering as an autonomous offence including legitimizing proceeds of crime, acquisition and possession, hiding the source, nature, possessor or

owner; and concealing or bringing the property across borders or transferring it in order to help the predicate offender evade the legal consequences of the specified crimes.³³

The recent Turkish Criminal Law (TCL) repealed this definition and pursuant to Article 282 of the TCL all crimes which are punishable by a minimum sentence of imprisonment of one year or more now constitute predicate offences for anti-money laundering prosecution purposes. This has significantly expanded the scope of predicate offences under Turkish law and complies with the FATF 40 Recommendations. It has to be noted that any money derived from criminal activity and subsequently integrated into the mainstream financial system under circumstances of concealment of the provenance of funds will often constitute money laundering under anti-money laundering provisions.³⁴

The elements of the new money laundering offence include transferring the proceeds of any predicate offence abroad, or subjecting the proceeds of predicate offences to any *transaction* for the purposes of disguising their illicit source and disguising them so that they seem to be derived from legitimate sources. While the English translation of Article 282(1) refers to *transaction*, in Turkish texts the term used is '*işlem*'. Turkish authorities explained to the FATF that '*işlem*' is a very broad term which encompasses all activities, operations or procedures. Given that there is no jurisprudence providing exact definition it is difficult to determine the scope of this term in practice. If this broad interpretation is accepted, the new ML offence would seem to cover any dealing with the proceeds of crime; however this may not be case in instances of possession and/or use.

c) KNOW YOUR CLIENT AND RECORD IT

Articles 4 to 14 of the Anti-Money Laundering Regulation and the Communiqué No. 5³⁵ set forth the principles and procedures as well as exceptions pertaining to identification requirements. Accordingly, client identification shall be made by receiving legible photocopies of original or certified copies of the documents, or by writing down the information about the identity on the back of the documents related to the transactions. During the identification process, the habitual residence and address declared by the real person who carries out the transaction must also be recorded.

Furthermore, the Anti-Money Laundering Regulation provides that the 'Liable Persons' are subject to

client identification provisions:

- a) Where the relevant transaction or the total amount of more than one interconnected transactions is or exceeds YTL 20,000 (approximately €9,071);
- b) where electronic transfer or the total amount of more than one interconnected transfer is or exceeds YTL 2,000 (approximately €907);
- c) where the one year total amount of the premium of the transaction of a life insurance is or exceeds YTL 2,000 or the life insurance transaction is of one premium which is or exceeds YTL 5,000 (approximately €2,267);
- d) where financial leasing and opening accounts are out of the scope of this exemption;

However, according to this provision liable persons are still subject to client identification provisions regardless of the monetary amount in relation with the transactions establishing continuous work relationship or where suspicious transaction reporting is required or when there are suspects on sufficiency and accuracy of the ID-information beforehand obtained.

Pursuant to Article 18 of the Anti-Money Laundering Regulation the 'Liable Persons' are required to pay a special attention to large transactions without reasonable legal and economic aim and take the appropriate measures to acquire sufficient information about them. Article 19 stipulates that financial establishments shall determine the risk profile of their clients in relation to money laundering and terror financing taking into account the clients' profession, professional background, financial situation, accounts, commercial activities, residence of country and other relevant indicators.

By the virtue of Article 20 the financial establishments shall also pay a special attention on the risk of the new technologies which can be used in money laundering or financing terrorism and take the appropriate measures to prevent such risks.

In an event that the ID of the client cannot be determined or sufficient information about the aim of the work relationship cannot be obtained, Article 22 of the Anti-Money Laundering Regulation prohibits the 'Liable Persons' to establish a working relationship or conduct the requested transaction – '*işlem*'.

d) KNOW YOUR BUSINESS AND REPORT IT

Paragraph 1 of Article 4 of the new Anti-Money Laundering Law No. 5549 provides the obligation to report suspicious transactions to MASAK: “In case that 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, these transactions shall be reported to the Presidency [MASAK] by the liable parties.” In addition, Article 27 of the Anti-Money Laundering Regulation states that the ‘Liable Persons’ are under an obligation to report suspicious transactions and other financial activities.³⁶ Article 27 provides that if there is an information or a suspicion or a suspicious situation where money or convertible assets used in transactions carried out or attempted to be carried out in the name of the ‘Liable Persons’ or through their intermediaries stemming from illegal activities or used for illegal or terrorist activities or by terrorist organizations, terrorists or for financing of terrorism, the Liable Persons must report this to MASAK immediately.

Article 28 requires that suspicious transactions must be reported to MASAK within 10 days from the date on which the transaction has been detected.

The Communiqué No. 6 sets forth the guidance and principles in relation to reporting procedures and provides a total of 114 suspicious transactions as examples.³⁷ However, this list is not exhaustive thus, the ‘Liable Persons’ are also obliged to report suspicious transactions which are not mentioned in the Communiqué No. 6.

In addition, Article 8 of the Anti-Money Laundering Law No. 5549 provides that liable persons and their branch offices, agents, representatives, commercial deputies and their units in Turkey must keep documents for eight years from the date they were drawn up, must keep books and records for eight years from the last record date, and must keep identification documents for eight years from the last transaction date. Turkish authorities interpret ‘last record date’ as encompassing account closure date.

One additional legal instrument which is relevant for accountants in the context of AML is the Capital Markets Law. Capital Markets Board (CMB) is the regulatory and supervisory authority in charge of the securities markets in Turkey. Empowered by the *Capital Markets Law 1981*, CMB makes detailed regulations for organizing the markets and developing capital market instruments and institutions. The three primary areas within the responsibility of the CMB are: primary markets, secondary markets and financial intermediation. Its overarching objective is to take necessary measures to foster the development of capital markets and thus to contribute to the efficient allocation of financial resources in the country while ensuring investor protection. While performing its functions, the CMB implements the provisions of the Capital Market Law concerning insider trading and manipulation in order to protect investors, especially small investors, and to ensure market integrity. CMB experts may be tasked with money laundering research and investigations.

Article 68 of the Turkish Commercial Code 6762 of 9 July 1956, regardless of whether the transaction was completed, requires that all documents and records are recorded by non-erasable writing tools and kept true to its original.

e) SANCTIONS AND SENTENCING

The Anti-Money Laundering Law provides two types of sanction in the case of a breach; administrative fines and prison sentences.

Under Article 13, those who do not establish client identification in accordance with the framework of principles provided by the anti-money laundering legislation, and those who do not comply with the suspicious transaction reporting requirements shall be subject to a fine between YTL 5.000 and 10.000 (approximately, €2.850 - €5.700). Under Article 14, those who refrain from providing the information and documents requested by MASAK and other authorized bodies; those who do not keep the records on client identification for eight years; and those who fail to keep the information pertaining to reports to MASAK confidential shall be sentenced to imprisonment for one to two years.

In addition, under Articles 37-39 of Turkish Criminal Code No. 5237, inciting someone to commit a crime,

or to facilitate or assist someone to commit a crime are also punished in light of the degree of assistance and the type of punishment envisaged for the relevant crime.³⁸

The penalty for money laundering can range from 2 to 5 years of imprisonment and/or a judicial fine of between YTL 100 (approximately €45) and YTL 2,000,000 (approximately €905,000). Where this offence is committed by public servants or particular professionals the penalty is multiplied by 1.5. Where it is committed in the context of activities of a organized criminal organisation it is multiplied by 2. In addition, confiscation is executed in accordance with Articles 54 and 55 of the TCL. Under Article 282 any and all proceeds derived from crime, regardless of value, are in the scope of the money laundering offence. It is argued that while the penalties applicable for ML are in line with provisions for other financial offences in Turkey (from 2 to 5 years for insider trading; from 3 to 5 years for operating as a bank without permission), the penalty for money laundering is low when compared to other offences in the TCL (for example from 4 to 12 years for bribery, from 3 to 8 years for fraudulent bankruptcy and from 2 to 12 years for counterfeiting money).

In regards to violation of recording and reporting obligations emanating from the anti-money laundering provisions, Article 14 of the Anti-Money Laundering Law No. 5549 introduced a judicial penalty applicable for persons who act contrary to Article 8 of that law, which specifies record retention requirements for liable persons. Liable persons who do not retain, and submit to MASAK when requested, all documents, books and records, including identification documents, for eight years from the drawn up date, last record date or last transaction date may be sentenced to imprisonment from one year to three years, and a judicial fine of up to YTL 500,000. Those who do not comply with the requirement of determining the tax identification number and indicating it on documents, accounts and records set forth by the Ministry of Finance can be punished with special illegality in accordance with Article 353(7) of Tax Procedure Law No. 213 and may be sentenced to imprisonment from three months to one year. Those who conceal the tax identification number or misrepresent willingly or present false or misleading documents contrary to the Tax Procedure Law may be sentenced to imprisonment from three to 10 months.

f) MEASURING SUCCESS

While Turkey generally has a strong set of record keeping requirements and sound reporting procedures, the success of this regime is unclear.

According to statistics from MASAK, between 1997 and 2007 there were 230 prosecutions for money laundering offences while there were 34 cases in 2008. Out of these 264 cases in total only 81 were finalised and 19 convictions were secured. There are still 188 cases pending. During this period, 72 cases proceeded to a higher court. And 14 cases were concluded. Of these 14 cases further 5 were quashed and one conviction was upheld. There are still 58 cases pending.³⁹

It can be concluded that out of nearly 5,000 suspicious activity reports only a small number is referred to the public prosecutor.⁴⁰ Moreover, while the number of successful convictions is small, the number of acquittals in money laundering cases is high. As observed by the FATF's evaluation team, this trend may be due to the lack of awareness shown by the representatives of the prosecution and judicial authorities.⁴¹

3. THE EU ANTI-MONEY LAUNDERING REGIME

a) OVERVIEW

As a candidate country for the EU membership, Turkey has undertaken a plethora of legislative reforms both legally and politically in the last 10 years. The harmonization of national legal instruments with the EU law and standards is not only an ongoing task for Turkey but also essential in securing accession to the EU and building a sound business environment. Along with the FATF recommendations, it is evident that the EU legal framework pertaining to anti-money laundering and accountancy practices has been providing the main impetus for relevant reform initiatives in Turkey. Consequently, it is important to outline the current EU legal framework in this area.

The EU believes that the sustainability of the common market and the soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole could be seriously jeopardised by financial crimes such as money laundering.⁴² Accordingly, in order to protect its financial systems, the EU has deemed it necessary to adopt measures which are designed to be consistent with the functioning of the internal (EU) market, the rule of law and EU public policy and action in this area. In order to respond to these concerns in the field of money laundering, Council Directive 91/308/EEC of 10 June 1991 (the 1st Directive) on prevention of the use of the financial system for the purpose of money laundering was adopted.⁴³ This legal instrument required Member States to prohibit money laundering and to oblige the financial sector, comprising credit institutions and a wide range of other financial institutions and professions, to identify their customers, keep appropriate records, establish internal procedures to train staff and guard against money laundering and to report any indications of money laundering to the competent authorities.

Moreover, the EU has highlighted the fact that money laundering and terrorist financing are frequently carried out in an international context thus it has asserted that any measure adopted solely at national or even EU level, without taking account of international coordination and cooperation, would have very limited effect. The EU legal framework therefore has been designed to be consistent with other international standards, particularly those of the FATF,⁴⁴ the UN Security Council Resolutions, fundamental human rights and the World Trade Organisation (WTO) regime.⁴⁵

The EU Commission in the exercise of its executive powers under the EU AML law is assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing.⁴⁶

b) LEGISLATION

i) The crime of 'Money Laundering':

Along with 46 other countries Turkey is a member of the Council of Europe.⁴⁷ Hence, the legal instruments created under this institution are relevant not only for Turkey but also for the Member

States of the EU. Under Article 9, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005⁴⁸ (CE Convention) provides that in regards to laundering offences:

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:
 - a) the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
 - b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds; and, subject to its constitutional principles and the basic concepts of its legal system;
 - c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;
 - d) participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.
2. For the purposes of implementing or applying paragraph 1 of this article:
 - a) it shall not matter whether the predicate offence was subject to the criminal jurisdiction of the Party;
 - b) it may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;
 - c) knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.

3. Each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this Article, in either or both of the following cases where the offender;
 - a) suspected that the property was proceeds,
 - b) ought to have assumed that the property was proceeds.
4. Provided that paragraph 1 of this article applies to the categories of predicate offences in the appendix to the Convention, each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies:
 - a) only in so far as the predicate offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year, or for those Parties that have a minimum threshold for offences in their legal system, in so far as the offence is punishable by deprivation of liberty or a detention order for a minimum of more than six months; and/or
 - b) only to a list of specified predicate offences; and/or
 - c) to a category of serious offences in the national law of the Party.
5. Each Party shall ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering.
6. Each Party shall ensure that a conviction for money laundering under this Article is possible where it is proved that the property, the object of paragraph 1.a or b of this article, originated from a predicate offence, without it being necessary to establish precisely which offence.
7. Each Party shall ensure that predicate offences for money laundering extend to conduct that occurred in another State, which constitutes an offence in that State, and which would have constituted a predicate offence had it occurred domestically. Each Party may provide that the

only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically.

(Note that the aims of these provisions are replicated in Article 1 of the EU AMLD (2005/60)) and for the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:

- (a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
- (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
- (c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity; and
- (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the actions mentioned in the foregoing points.

The CE Convention aims to provide the necessary impetus for policy development and minimum standards for the signatory countries and is not subject to supranational adjudication of the European Court of Justice. However, the secondary legislation⁴⁹ enacted by the competent authorities of the EU⁵⁰ creates legally binding obligations and are subject to enforcement mechanisms of the EU.⁵¹ Consequently, this latter category of legal provisions (i.e. directives and regulations) forms the anti-money laundering framework of the EU. The most recent binding legal document is the EU's Third AMLD.⁵²

Analysis of the Third AMLD and the CE Convention makes it clear that the term 'money laundering' is misleading. It is not simply money, but property of virtually any kind, which is covered.⁵³ Thus, all persons are prohibited from laundering money (or indeed any property) which they know to be derived from serious crime. 'Serious crimes' means, at least:

- a) acts as defined in Articles 1 to 4 of Framework Decision 2002/475/JHA;
- b) any of the offences defined in Article 3(1)(a) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- c) the activities of criminal organisations as defined in Article 1 of Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union;
- d) fraud, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the Protection of the European Communities' Financial Interests;
- e) corruption;
- f) all offences which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;

Certain designated professionals including accountants are classed as 'liable persons' by Article 2(3)(a)) of the Third AMLD and required to carry out preventative measures (as explained below).⁵⁴

ii) *Know your client and record it:*

Under Article 13 of the CE Convention the following measures shall be taken to prevent money laundering:

1. Each Party shall adopt such legislative and other measures as may be necessary to institute a comprehensive domestic regulatory and supervisory or monitoring regime to prevent money laundering and shall take due account of applicable international standards, including in particular the recommendations adopted by the Financial Action Task Force on Money Laundering (FATF).

2. In that respect, each Party shall adopt, in particular, such legislative and other measures as may be necessary to:
 - a) require legal and natural persons which engage in activities which are particularly likely to be used for money laundering purposes, and as far as these activities are concerned, to:
 - i. identify and verify the identity of their customers and, where applicable, their ultimate beneficial owners, and to conduct ongoing due diligence on the business relationship, while taking into account a risk based approach;
 - ii. report suspicions on money laundering subject to safeguard;
 - iii. take supporting measures, such as record keeping on customer identification and transactions, training of personnel and the establishment of internal policies and procedures, and if appropriate, adapted to their size and nature of business;
 - b) prohibit, as appropriate, the persons referred to in sub-paragraph a from disclosing the fact that a suspicious transaction report or related information has been transmitted or that a money laundering investigation is being or may be carried out;
 - c) ensure that the persons referred to in sub-paragraph a are subject to effective systems for monitoring, and where applicable supervision, with a view to ensure their compliance with the requirements to combat money laundering, where appropriate on a risk sensitive basis.
- 3) In that respect, each Party shall adopt such legislative or other measures as may be necessary to detect the significant physical cross border transportation of cash and appropriate bearer negotiable instruments.

These standards are found in Chapter II of the Third AMLD which requires Member States to establish mechanisms for holding financial institutions and professional persons (such as accountants and lawyers) to conduct customer due diligence measures when establishing a business relationship or carrying out transactions above certain value, or where there is a suspicion of a terrorist or money laundering offence. For example, Article 6 states that the Member States “shall prohibit their credit and

financial institutions from keeping anonymous accounts or anonymous passbooks” and Article 9 explicitly requires liable persons to verify the identity of the customer and the beneficial owner before the establishment of a business relationship or the carrying-out of the transaction. Article 7 on the other hand provides that the institutions and persons covered by this Directive (i.e. accountants) “shall apply customer due diligence measures in the following cases:

- (a) when establishing a business relationship;
- (b) when carrying out occasional transactions amounting to EUR 15000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- (c) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;
- (d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

According to Article 8 of the Third AMLD, the customer due diligence measures shall include:

- (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
- (b) identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity so that the institution or person covered by this Directive is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer;
- (c) obtaining information on the purpose and intended nature of the business relationship;
- (d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including, where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date.

The Third AMLD also stipulates (under Article 8(2)) that while the liable persons are obliged to observe the customer due diligence requirements, they may determine the extent of such measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction. In addition, the liable persons shall be able to demonstrate to the competent authorities mentioned in Article 37, including self-regulatory bodies, that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

iii) Know your business and report it:

In line with principles above, Chapter III of the Third AMLD requires liable persons to report to the relevant competent authority any knowledge or suspicion that money laundering or terrorist financing has been or is being committed or attempted (Article 20). Provision under Article 24(1) also include a right and an obligation to refuse a transaction which is known or suspected to be related to money laundering or terrorist financing until they have completed the necessary action in accordance with Article 22(1)(a). While there is an obligation on the liable persons to report suspicious activities to relevant authorities, the authorities have also an obligation to take all appropriate measures in order to protect employees of the institutions or liable persons who report suspicions of money laundering or terrorist from being exposed to threats or hostile action.

In a similar vein, Chapter IV of the Third AMLD requires liable persons to keep records and information relating to customer due diligence and to the establishment of business relationships with their customers and their transactions for at least five years (Article 30(a)). Member States are also required to compile, keep and make available any statistics so that they are able to review the effectiveness of their systems to combat money laundering or terrorist financing (Article 33). Furthermore, Chapter V stipulates that liable persons shall establish appropriate policies and procedures, including training procedures, to ensure compliance with their obligations imposed pursuant to the Directive, and to establish appropriate penalties for the infringement of these obligations.

c) MEASURING SUCCESS

It is argued that there have been rapid waves of AML law making over short periods of time,⁵⁵ therefore the effect and success of one piece of legislation has not always been subject to proper assessment before another has come along.⁵⁶ While it is not possible to measure the success of this legal instrument in great detail, it can be asserted that in comparison to previous Directives,⁵⁷ the Third AMLD imposes a more prescriptive and detailed regime in relation to customer due diligence.⁵⁸ However, being a directive, this instrument allows a degree of discretion to Member States as to how they implement the provisions contained therein. For example, Article 39 states in general terms that Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive. Consequently, Member States can put in place penalties, sanctions, sentences or enforcement mechanisms they deem appropriate as long as these are effective, proportionate and dissuasive (Article 39). Accordingly, the German and UK AML regime differ considerably in terms of sentencing ML crimes: In Germany, criminal offences such money laundering under the German Criminal Code (§261(1) StGB) may be punished with imprisonment ranging from three months to five years (see §261(1) StGB).⁵⁹ The UK law on the other hand provides that money laundering offences are to be prosecuted with a maximum sentence of 14 years imprisonment and/or a fine (the Proceeds of Crime Act, 2002, s. 334(1)(b)) which is significantly higher than the punishment perpetrators are facing in Germany.

As a consequence of the availability of such discretion to each Member State, the cost, efficiency, effectiveness and successful convictions vary in each jurisdiction. For example, a study conducted by Z/Yen comparing AML-related costs of the UK, the USA, Germany, Italy and France suggests the best estimate for UK's AML-related costs is likely to be around £255 million per year - which equates to 0.26 per cent of UK's GDP and thus UK's costs are the highest of the five countries.⁶⁰ Moreover, the study by Z/Yen also offers estimates regarding the annual assets recovered by the law enforcement agencies in the UK, which, according to Z/Yen amounts to around £80 million per year. According to the Fleming Report, in 2003, 66,098 Suspicious Activity Reports (SARs) (out of a total number of 94,708) were forwarded the relevant UK law enforcement agencies for further investigation. In 2004 only 35,469 SARs (out of 154,536) were forwarded and only 36 SARs (out of 37,421) contributed to convictions.⁶¹

Interestingly, while the German regulated sectors (in other words, the liable persons) are required to report SARs under AML law,⁶² they are **not** obliged by criminal law to report suspicious activity.⁶³ Therefore, the number of annual SARs received by German authorities is also much lower than that of the UK. Between 2001 and 2005, Germany received on average 7,960 SARs a year, ranging from 7,284 in 2001 to 8,241 in 2005.⁶⁴ From the 7,960 SARs received in 2005, over a third (i.e. 2,661 SARs) were passed on by clearing offices to law enforcement agencies and tax authorities for further investigation - whilst 38 per cent of cases were dismissed and 26.1 per cent were still pending.⁶⁵ Similar to Turkey, statistics of successful convictions in Germany are neither comprehensive nor clear.

What this mini comparison portrays is that the overall success of the EU AML regime is difficult to assess unless a comprehensive study can be undertaken in each and every one of 27 Member States. However, it can be asserted that the relevant EU instruments such as the AML Directives have managed to establish minimum standards required by international agreements and standards (i.e. the FATF Recommendations).

It is worth mentioning that directives as stated in Article 288 of the Treaty on the Functioning of the European Union, are binding as to the result to be achieved in the Member States to which they are addressed, but national authorities often have the discretion as to what form and method to employ for achieving that result.⁶⁶ Consequently, so far as the individuals and/or accountants are concerned, when faced with a ML problem, first recourse is to national implementing measures. It should also be noted that Member States are liable in damages to individuals for their failure to implement a directive on time and properly.⁶⁷ Indeed, the European Commission did take enforcement measures against 15 Member States for non timely implementation.⁶⁸

As a result of these obligations and remedies, the timely implementation and correct transposition of the EU directives become important issues for Member States.

4. TURKISH ACCOUNTANCY REGULATIONS

a) OVERVIEW OF THE TURKISH ACCOUNTING ENVIRONMENT

Historically, accounting practices in Turkey have been greatly influenced by Western countries such as France, Germany, and the United States (U.S.). Until the 1930s, the French accounting system dominated Turkish accounting practice, which was replaced by the German accounting system in the 1960s. The accounting systems imported from these countries were adapted by central and local government units called State Economic Enterprises, which played an important role in the development of the accounting profession in Turkey.⁶⁹ After the Marshall plan in the 1950s, which was the primary plan of the US for rebuilding and creating a stronger relationship with Turkey, Turkish accounting practice was mostly influenced by the American accounting system over the following three decades.⁷⁰

The Turkish Commercial Code was revised and reformed in 1956 by Law No. 6762 with a minimum requirement for financial information and financial statements. This was followed by a new Tax Procedure Law (Law No. 193) in 1961, which identified accounting rules but only for taxpayers. This law was probably the most influential factor in the accounting environment until the Capital Market Law (Law No. 2499) was enacted in 1981. Public disclosures of financial information were almost unknown and in any case voluntary for the most of last 50 years.⁷¹

There are several key legal instruments which have been affecting the Turkish accounting practice. These are Tax Procedure Law (1961),⁷² Capital Market Law (1981),⁷³ Commercial Code (1956),⁷⁴ Banking Law (2005),⁷⁵ Accounting System Implementation Regulations (1992 and onwards),⁷⁶ The Financial Reporting in the Capital Market (2008),⁷⁷ and Accounting Profession Law (1989).⁷⁸

The Tax Procedure Law has introduced significant measurement rules and book keeping requirements (Articles 171-330). Utilizing this statute the Ministry of Finance introduced a uniform chart of accounts in order to fill the gap between financial reporting principles and tax rules in the 1990s. Since 1994, all

enterprises in Turkey except financial institutions are required to produce their financial statements under the provisions stated in the Accounting System Implementation Regulation (Ministry of Finance, 1992). This regulation prescribes generally accepted accounting principles, a uniform chart of accounts, and a format for presentation of financial statement.

The Capital Markets Board (CMB), by the virtue of the Capital Market Law (Law No. 2499), has also contributed significantly to the area of accounting and financial reporting by introducing a number of communiqués in relation to disclosure of financial information and financial reporting to publicly open companies registered with CMB. Until 2008, the companies registered with the CMB were required to prepare the financial statements, a balance sheet, an income statement, a statement of cash flows and a statement of changes in equity, in compliance with the rules issued by the CMB. The rules⁷⁹ outlined the accounting standards (CMB, serial XI, No. 25) in full compliance with International Financial Reporting Standards (IFRSs) were used until 2008 and required open public companies to adapt the new set of accounting standards from the 1st of January, 2005. This was the date IFRSs were adapted on mandatory basis in the capital markets of Turkey. In 2008 the CMB introduced a new regulation of financial reporting standards.⁸⁰ According to the new regulation (2008), companies registered with the CMB are required to follow the accounting standards, fully in line with IFRSs, issued by the Turkish Accounting Standard Boards (TASB) from the 1 January 2008. By relying on a regulation through the professional bodies such as the TASB, the government is not only spared the administrative burden but also seeks to pass on the crime detection, prevention responsibilities to private bodies (Power, 1993).⁸¹ Thus, it could be argued that the role of the accountants has been transformed as a quasi-state regulator and a law enforcement agency. This in turn is an indication that in its AML initiatives, the state is dependent on the accountancy profession so that confidence and integrity in the financial sector can be maintained.

The Commercial Code (1956) is another legal instrument, which sets out the minimum requirements for bookkeeping and regulates the responsibilities of the statutory auditors. This is jointly administrated by the Ministry of Justice and Ministry of Industry and Commerce. The most common forms of business in Turkey are the Limited Liability Company (Limited Şirket) and The Joint Stock Company (Anonim Şirket)⁸² The limited liability companies whose number of shareholders are over 20 and the joint stock companies

are required to appoint an statutory auditor to oversee the affairs of the company by auditing the transactions and to write an auditor's opinion on the company records. In 2005, the government introduced a new draft Commercial Code. This is expected to replace the existing Code (1956) in 2010. The new code will have a significant impact on company accounts by establishing that all companies (including non-public companies) under the Turkish Commercial Code are required to comply with Turkish Accounting Standards issued by the Turkish Accounting Standards Board.⁸³ The TASB was set up as an independent national standard-setting body by Law No. 4487 in 2004 and transposed "full IFRS" into the national regime with full effect from 2006 onwards. When the new draft Commercial Code takes effect, all companies whether listed or unlisted shall prepare their financial statements in accordance with the Turkish Accounting Standards. In addition, the new draft Code requires companies to appoint an independent auditor or an audit firm, which are authorized by the Law No 3568. Under the existing code, there is not such a requirement for companies to have an authorized and qualified auditor.

Financial institutions such as banks, leasing and factoring companies are required to produce their financial statements in compliance with the accounting regulations set out by the Banking Regulation and Supervision Agency (BRSA). Since 2006, the BRSA requires banks to follow Turkish Accounting Standards issued by the TASB.⁸⁴

There were no regulations for the accountancy profession in Turkey until 1994. The Law of Certified Public Accountants was enacted in 1989 and the accounting profession standards were set up by Law No 3568. These rules aim to provide objective and reliable accountancy and audit services to the private sector. The law encompasses three categories of accounting and auditing professionals: Independent Accountants, Certified Public Accountants and sworn-in Certified Public Accountants, who are largely authorized by Ministry of Finance in the tax audit. Accountancy professionals in every category as indicated above are required to pass a qualification exam before being awarded a license for the membership of the accounting profession. Chambers of Certified Public Accountants (TURMOB) is the sole accounting body and was set up in 1989 by Law No. 3568. The governance of qualified accountants is provided by a number of instruments such as Law No. 3568; Capital Market Law (1989); Tax Procedure

Law (1961) (requiring tax-based financial statements to be audited by a sworn-in CPA) and Banking Law (2005). According to the annual report in 2008 by TURMOB there are 77,000 qualified accountants, 40,000 of which work as an external CPA and 2,000 practicing as a sworn-in CPA.

b) IMPLICATIONS OF THE TURKISH AML REGIME FOR THE TURKISH ACCOUNTANTS

i) Anti-money laundering Regulations and Law No. 3568

The anti-money laundering (AML) regulations which specifically include accountants into the 'liable persons' list came into effect in Turkey on 18 October 2006. These regulations implement the principles and procedures for prevention of laundering proceeds of crime. The regulation for the implementation of Law No. 5549 was introduced by the Ministry of Finance on 9 January 2008.⁸⁵ The responsibilities of accountants are explicitly outlined by Article 4(t) of the regulation. Accordingly, Turkish certified accountants, i.e. independent accountants, certified public accountants and sworn-in certified public accountants, have various responsibilities under the Turkish AML regime. Moreover, the requirements of the Turkish AML regulations are applied to all certified public accountants who carry out relevant businesses such as establishing, managing and transferring companies, foundations and associations. All three types of accountant had been prohibited from disclosing information gained in the course of their work. However, while accountants were not subject to anti-money laundering and counter terrorism financing obligations initially, this has been changed by the Ministerial Decree No. 2007/13012 (Article 4(1))⁸⁶ which came into force on 09 January 2008. As outlined in Article 7 of the new Anti-Money Laundering Law No. 5549 and Article 7 of the Regulation Regarding the Implementation of the Law No. 5208, accountants are now obliged to comply with MASAK's requests within seven days and cannot claim exemption due to secrecy provisions.⁸⁷

Only external certified public accountants without being attached to an employer are included in the liable persons' list under the Turkish AML. The regulation lists the relevant businesses carried out by certified public accountants however, does not define accountancy services clearly. It is recommended that the definition of responsibilities in this regulation ought to be extended by the Accounting Profession Law No. 3568.

Article 2 of Law No. 3568 prescribes the activities of the accounting profession to be carried out in Turkey. The regulation issued in 1990⁸⁸ for the implementation of Law No. 3568 also outlines, *inter alia*, the competences and areas of practice for each group:

- Independent accountants can engage with bookkeeping services, prepare financial statements in compliance with generally accepted accounting principles, tax declarations and other relevant documents. They are not allowed to provide any audit services.
- Certified public accountants provide consulting services pertaining to accounting, finance, auditing and other relevant businesses. In addition, they are entitled to engage with the businesses provided by independent accountants. Certified public accountants are also allowed to conduct other businesses such as financial analysis, financial auditing services, commercial arbitration, legal expertise, rating services but not allowed to conduct tax-auditing services on behalf of the Ministry of Finance.
- Sworn-in certified public accountants conduct all services provided by independent accountants and certified public accountants as described above but are not allowed for bookkeeping services. Moreover, sworn-in certified public accountants are authorized by Ministry of Finance to approve financial statements in compliance with tax rules and tax declarations.

The activities of certified public accountants are not limited to the businesses outlined above. These can be expanded by other services indicated in the minimum compulsory fee tariff determined by the Ministry of Finance.⁸⁹

Importantly, the certified public accountants should be aware of the confines of their responsibilities under the AML framework in Turkey. They have responsibilities emanating not only from the accounting profession law but also from the recent AML regime. The guidance notes issued by the FATF⁹⁰ indicate that accountants in businesses are referred to professional regulatory bodies and/or to other alternative sources for guidance when it comes to if and what action to take in relation to suspected illegal activity by their employer and/or a third party. Some of the functions performed by accountants that may be useful to the potential money launderer are also outlined in the FATF guidance:

- a. Financial and tax advice – Criminals with a large amount of money to invest may pose as individuals hoping to minimize their tax liabilities or desiring to place assets out of reach in order to avoid future liabilities.
- b. Creation of corporate vehicles or other complex legal arrangements (trusts, for example) – such structures may serve to confuse or disguise the links between the proceeds of a crime and the perpetrator.
- c. Buying or selling of property – Property transfers serve as either the cover for transfers of illegal funds (layering stage) or else they represent the final investment of these proceeds after their having passed through the laundering process (integration stage).
- d. Performing financial transactions – Sometimes accountants may carry out various financial operations on behalf of the client (for example, cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchase and sale of stock, sending and receiving international funds transfers, etc.).
- e. Gaining introductions to financial institutions.

Undoubtedly, these regulations introduce radical changes in business relationships between the professional accountants and their clients or employers. It can be asserted that the public trust and privileges accorded to accountants are given in good faith and in light of the perceived independence and objectivity of this profession. However, as Sikka (1995) aptly observes, when auditors and/or accountants are too close to the companies who employ them, they may be compelled to oversee and

fail to report some of the malfeasant activities.⁹¹ However, the recent legislative changes pertaining to AML indicate that this trend is about to end although there has not been any action initiated against any accountant or firm by the competent law enforcement agencies such as MASAK. The additional obligations for the accounting profession in Turkey which have been introduced by the recent AML legal regime are summarized below:

ii) Compliance responsibilities and risk assessment

One of the core requirements that will affect the Turkish accounting profession encompass client due diligence, suspicious transaction reports and threshold periodical reports, and record keeping.

Accountants are required to identify the new clients and verify the clients' identity on the basis of the reliable documents, data and information obtained from independent sources. Accountants are also obliged to compare and verify the subsequent transactions, as part of permanent relationship with clients, with the data identified previously.

In regards to the client due diligence procedures, Article 17 of the Regulation No. 2007/13012 provides that professional accountants shall be required to take necessary measures in order to detect whether action is carried out for the benefit of another person and to identify the beneficial owner of the transaction. Furthermore, Article 18 states that professional accountants are required to pay special attention to complex and unusual large transactions and the ones which have no apparent reasonable legitimate economic purpose, and to take 'necessary measures' in order to obtain adequate information on the purpose of the requested transaction. The accountants also need to keep this information, documents and records obtained so as to be able to respond to the requests by the authorities effectively. However, anti-money regulations of Turkey do not define the meaning of the term 'necessary measures'. Subsequently, this point pertaining to 'clients due diligence measures' requires further consideration in order to clarify its implications for the accounting profession in Turkey.

According to the Third Anti-money Laundering EU Directive (AMLD),⁹² clients due diligence measures include *inter alia*, the identification and verification of clients' identity; obtaining information on the purpose and intended nature of the business relationship; ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship.

In order to provide a robust basis for further developments, the Federation of European Accountants (FEE)⁹³ has launched a "Survey on European and National Legislation and Guidance on the Prevention of Money Laundering and Terrorist Financing" in 23 EU Member States in July 2009.⁹⁴ This survey identifies that there are certain interpretation differences among EU countries. For example, UK provides simplified due diligence measures for certain type of companies such as listed companies.⁹⁵ There are other types of exemptions or optional measures in other countries for example in Ireland if the clients are other accountants, auditors or tax advisors, solicitors, banks, building societies and life assurance companies client identification is not required; in the Netherlands when the accountant provides non-accountancy services then client identification is not required.⁹⁶ There are also some exemptions related to statutory audits. For example, Malta provides exemption when the client is in an accountancy related profession who is registered or the client is introduced by a registered accountant and provides a letter that all the checks have been made by that accountant; in the Netherlands listed companies and governmental organizations are exempt.⁹⁷

The EU regime clearly emphasizes that clients due diligence measures are subject to the assessment of risk. The risk assessment is one of the five elements of control and could be adapted by the professional accountants to understand what is normal, abnormal, or potentially suspicious in the client's business during the due diligence procedures.

The risk assessment process, which is defined by the international Federation of Accountants (IFAC),⁹⁸ entails a procedure through which management decides how it will respond to business risks that pose a threat to achieving business and control objectives. While the application of this process is particularly

suggested to banks, the risk assessment is also an important decision element for the accounting profession to measure the potential risks of the client's business emanating from ML. For example, the risk based approach in AML strategies has been implemented and recommended by the FATF, the EU and the UK Financial Services Authority.⁹⁹

In fact, the risk-based approach is a significant measurement tool and strongly recommended by the FATF guidance prepared for accountants in public practice on the risk-based approach. A risk-based approach is not compulsory and a properly applied risk-based approach does not necessarily mean a reduced burden. However, it can result in a more cost effective use of resources. For some countries, applying a rules-based system rather than a risk-based system may be more appropriate. Countries will need to make their own determinations on whether to apply a risk-based approach, based on their specific money laundering risks.¹⁰⁰

The Third Anti-Money Laundering Directive allows the use of risk based approach so that the resources can focus on clients, accounts or transactions that may be more vulnerable to ML activities. In the EU, this approach is permitted at the national level in most Member States apart from Czech Republic, France, Ireland, Malta, Portugal and Spain.¹⁰¹

Under the UK AML law,¹⁰² professional accountants should establish not only risk-sensitive policies in relation to customer due diligence measures but also ensure ongoing monitoring, internal control, internal policies and procedure, and record keeping in order to prevent the use of their clients' for money laundering activities.¹⁰³

We are in the opinion that a well-designed risk-based approach can provide a robust framework for professional accountants. By this way, the accountants can identify the degree of money laundering risks pertaining to their clients. This also allows professional accountants to further focus on potentially greater risk of money laundering.

The anti-money laundering guidance¹⁰⁴ issued for the accountancy sector by the Consultative Committee of Accountancy Bodies (CCAB),¹⁰⁵ which is an independent organization formed to provide a

forum by the six major accountancy professional bodies in the UK, emphasizes that it is necessary to review the business and consider what money laundering risks might be attached to each client type (Article 4(14)). For example, clients can be categorized according to their risk level which can be measured according to involvement in higher risk sectors and/or jurisdictions which are known to be a petri dish for illegal activities.

The types of risk in relation to clients and their potentially suspicious transactions can be followed in a matrix based statement to be created by the professional accountant. It is highlighted in the CCAB guidance that this matrix can then be incorporated into client acceptance procedures, and allows the money laundering risk level to be assigned to ensure appropriate, but not excessive, customer due diligence work to be carried out. It is important for the approach adopted to incorporate a provision for raising the risk rating from low or normal to high if any information comes to light in conducting the customer due diligence that causes concern or suspicion. The CCAB guidance in Article 4(19) suggests that in all cases, professional accountants should gather knowledge about the client to allow understanding of:

- who the client is;
- where required, who owns it;
- the purpose and intended nature of the business relationship;
- the nature of the client;
- the client's source of funds; and
- the client's business and economic purpose.

There is no global agreement on the degree or types of money laundering which may expose clients to a greater risk. Instead, accountants can create risk ratings for their clients based on the characteristics of their clients. This can help accountants to determine the level of focus on their clients. Furthermore, accountants may consider determining a risk threshold with their clients, who are potentially in a position to show a higher risk than a certain level. At the same time these risk ratings ought to be established objectively in light of the facts and evidence available. In turn, this approach is likely to prevent any profiling of clients and discrimination.

Indeed the Turkish AML regime also provides several reporting requirements for accountants such as suspicious transaction reports or periodical reports. The Regulation No. 2007/13012 in particular requires accountants to monitor and report suspicious transactions being carried out by and on behalf of the client (Article 27). Moreover, accountants should report to MASAK any transactions to which they are parties and if the volume of the transaction exceeds the amount determined by the Ministry (Article 32). The documents, in all forms, regarding their transactions and obligations must be retained for eight years (Article 46).

There is no such a requirement in the Turkish money laundering regulations that accountants should appoint a person to act as 'nominated officer'. This is a case in the UK regulations requiring accountants to recruit a person, who acts as the liaison point between the firm and the relevant UK government agency (i.e. Financial Services Authority (FSA),¹⁰⁶ Serious Organised Crime Agency (SOCA), etc).

Furthermore, the FEE survey indicates that many European countries have introduced the concept of Money Laundering Reporting Officers (MLRO) who receive internal reports, assess them and if appropriate file them with the competent authority. Other persons who are responsible for reporting suspicious cases vary depending on the country, some replace the MLRO and some has the responsibility whether there is a MLRO or not. These can be audit partners, statutory auditors, who sign the audit report, any professional accountant or any person operating in an audit firm.¹⁰⁷ The size of the transaction does not provide exemptions from the reporting obligation but in some countries, the reporting obligation is linked to some monetary limits (ranging between EUR 1,000 to EUR 15,000) and types of transactions. In addition, the professional bodies in many European countries have issued a standard or another type of guidance to address the reporting obligations and provide interpretations on the suspicion or reasonable grounds to suspect.¹⁰⁸

iii) Supervision

The role of accountants as well as auditors in countering against money laundering is significant. Mitchell et al., (1998)¹⁰⁹ argues that accountants have the technical knowledge of the world's financial

system and can easily create and manipulate the complex transactions that are difficult to be identified. On the contrary, the accountants are reluctant to report such activity when acting as auditors. The reason could be explained by the contractual relationships between accountants and their employer within the framework of money laundering operations. Accountants remain in a subordinate position to their employer (Compin, 2008)¹¹⁰. Mitchell et al., (1998) suggest that accountants should be regulated by an independent regulatory body if a government is interested in seriously combating money laundering. The public interest should be taken into account by the independent body rather than market concerns of their members. In addition, the independent body should be able to have a power to examine any files or documents held by those providing accountancy, tax advisory and other related services.

According to the Third EU AML Directive (article 37) EU Member States should require the competent authorities at least to effectively monitor and to take the necessary measures with a view to ensuring compliance with the requirements of this legal instrument by all the institutions and persons covered therein. In addition the article 3 indicates that the activity conducted by the customer shall be supervised by competent authorities. Supervision is to be understood in this context as meaning the type of supervisory activity with the highest supervisory powers, including the possibility of conducting on-site inspections.

The Turkish AML (2008/13460, article 4/t) defines certified general accountants, certified public accountants and sworn-in certified public accountants as obliged parties, who are required to identify their customers under due diligence requirements and follow the Turkish AML regulations. However, compliance obligations of accountants and auditors in practice are inspected by the government inspectors under the Turkish AML. There is no supervisory system to assign this role to an independent professional body so that AML compliance can be monitored.

In most of the EU countries indicated above professional accountants and auditors are required to demonstrate to their supervisory authority that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

According to the FEE survey in most Member States, the ‘competent authority’ is a national authority rather than national professional bodies. However, in Belgium, Cyprus, Hungary, Luxembourg, Slovenia and the UK, the supervisory tasks are given to the professional bodies alone and in some other countries (Czech Republic, Italy, Latvia, Luxembourg, Romania and Norway) professional bodies perform this task in tandem with the national authorities. Supervision is generally performed on a regular basis rather than as and when an money laundering incident occurs. If infringements are detected, in countries where the national professional bodies are the monitoring bodies, disciplinary sanctions are imposed but in some countries (Belgium, Czech Republic, Cyprus, Hungary, Romania and Slovenia) in addition to the disciplinary sanctions some administrative measures can be taken or the disciplinary body can bring the case before a criminal court (i.e. in the Czech Republic). If the national authority is the monitoring body, the national authority generally imposes administrative measures or additionally brings the case before a criminal court.¹¹¹

For example, in the UK, each professional body listed in the UK Money Laundering Regulation 2007 is defined as the supervisory authority that is responsible for supervision of their members. Accountancy professional bodies in the UK such as the Association of Chartered Certified Accountants (ACCA) and Institute of Chartered Accountants in England and Wales (ICAEW) are required to supervise their members for compliance with their legal AML obligations. These supervisory bodies not only conduct regular monitoring visits but also offer practical support and advice so as to enable accountants to cope with the requirements.

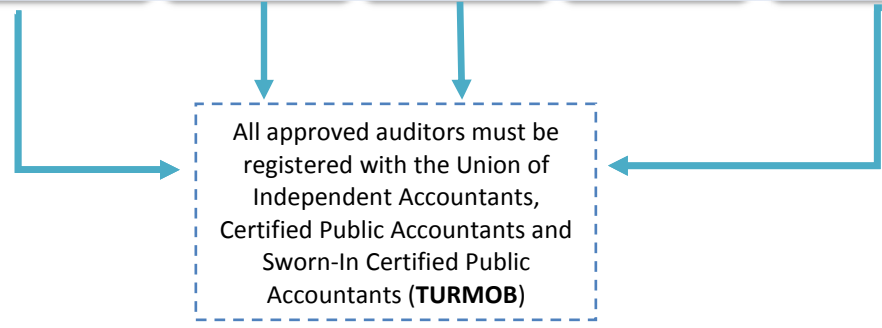
This analysis implies that Turkey needs to carry out an effective supervisory system which is appropriately resourced by an independent supervisory authority in charge of supervision and monitoring of accounting and auditing professionals so as to detect and report money laundering to the relevant law enforcement agencies. Currently, Turkish regulatory regime relies on accountants and auditors to report suspicious transactions to MASAK, who evaluates such reports and may forward these to the attention of the relevant public prosecutor. There is no provision which authorizes a supervisory body for supervising, monitoring, supporting and advising its members on AML requirements.

In Turkey qualified accountants and auditors are regulated by TURMOB which is authorized to issue licenses and to set professional standards. TURMOB, as a self-regulatory accountancy body, can be authorized as a supervisory authority to monitor accountancy professionals. MASAK also needs to collaborate with this body to enhance efficiency and effectiveness in combating money laundering. TURMOB must effectively monitor independent qualified accountants and auditors for the purpose of the requirements of the Turkish AML regulations. The functions of TURMOB such as monitoring, supervision, training, reporting should clearly be defined under the AML regulations.

In Turkey external audit requirements are carried out by various regulators according to their objectives and scope. The following figure (Table 1) shows the main regulators and their scope in compulsory audit requirements of Turkey.

Table 1: Compulsory Audit Requirements in Turkey

	Statutory audit				Independent audit
Regulators	Ministry of Finance	Banking Regulation and Supervision Agency (BRSA)	Undersecretariat of Treasury	Min. of Justice & Min. of Industry and Trade	Capital Markets Board
Objectives	Tax audit of financial statements	Accounting audit of financial statements	Accounting audit of financial statements	Accounting audit of financial statements	Accounting audit of financial statements
Scope	Large and medium size companies	Banks and other financial institutions	Insurance companies	Limited liability and joint stock companies	Publicly held companies
Law	Tax Procedure Law No. 213 (1961)	Banking Law No. 5411 (2005)	Insurance Law No. 5684 (2007)	Turkish Commercial Code No. 6762 (1956)	Capital Market Law No. 2499 (1981)



The statutory audit is required by various regulators based on the requirements of their regulations. For example, the taxation authorities required tax-based financial statements to be audited by TURMOB qualified auditors on the basis of company size. Other regulators such as BRSA and the Undersecretariat

of Treasury are responsible to approve audit firms according to their regulations. All approved auditors must be registered with TURMOB.

According to the Capital Market Law (1981) financial statements of all publicly-held companies registered with the Capital Market Boards (CMB) must be audited by audit firms registered with TURMOB. The CMB must approve all auditors of publicly-held companies. Such auditors are required to pass a further examination set by the CMB.

As it can be seen from Figure 1, there is a loophole in the existing Turkish Commercial Code (1956). According to this law the financial statements of all joint stock companies and the limited liabilities whose shareholders number is greater than 20 are required to be audited by statutory auditors. The existing law is very permissive. Anyone who is a Turkish citizen, with the exception of a close relative of one of the company's board members, can become a statutory auditor. The law does not specify the required qualifications of statutory auditors. So in the absence of such qualification requirements, AML regulations is powerless to fight against money laundering if the shareholders of a company appoints a non-qualified 'auditor' to audit the financial statements of the company. This old legal instrument needs to be replaced with the new draft Turkish Commercial Code, which requires all companies to have an independent audit conducted by TURMOB qualified auditors or independent audit firms.

Although the Turkish anti-money laundering legislation are seemingly in harmony with the EU AML framework certain aspects of this regime leave it open for potential abuse. For example, one of the amendments introduced by the Law No.5520 (Corporate Income Tax Law of 13 June 2006) provides for a new 'thin capitalization' rules for the borrowings received from shareholders or related parties. According Article 12, if a firm is financed by the borrowings received from shareholders or other related parties the borrowings are not considered as thin capital unless they exceed three times of the shareholders' equity of the firm. The exceeding portion of the borrowing is considered as thin capitalization, which will be subject to additional tax assessment with penalty for the interest charge

and dividend distribution. Interest disallowed under these thin capitalization rules are considered as a hidden capital distribution or play a constructive role in dividend payments.

It can be argued that the balance sheet accounts used to record transactions related to the borrowings from shareholders or other related parties may be used for improper or hidden transactions. Unknown sources of cash may be injected into the firm through this account. For example, suppose that a firm realized the revenue of CU100,000 derived from criminal activity (i.e. a predicate offence) but did not record the transaction to the statutory books. The firm could record the cash collection of the sales as it was borrowed from its shareholders then could transfer the cash to its bank account. Consider the following set of journal entries to record the revenue:

Cash	CU100,000
Borrowings from shareholders	CU100,000
Bank account	CU100,000
Cash	CU100,000

Under the existing Turkish Commercial Code, financial statements are not required to be audited by TURMOB qualified accountants. This requirement only exists for tax-based financial statements, which are audited by TURMOB qualified accountants. In the above case where shareholders' contributions are not more than three times of the shareholders' equity of the firm, qualified accountants may neglect to investigate such accounts in detail.

Overall TURMOB is a national umbrella, which meets the minimum requirements of the national accounting and audit licenses in Turkey. It is an important body which has the competence to take on the supervisory authority to monitor auditors for the purpose of compliance with the requirements of AML regulations of Turkey.

In conclusion, it is clear that the Turkish AML provisions have significant implications for accountants in practice and in some instances need to be clarified as to their specific affect on the accounting profession. The following points may be highlighted in this regard:

- The activities to be carried out by the professional accountants could be clearer and explicitly identified;
- Client due diligence measures could be identified for the benefit of all liable persons;
- A risk assessment is an important element in control and prevention of ML. Consequently, accountants could be encouraged to evaluate their clients' risks pertaining to money laundering;
- A risk-based approach is potentially an effective and efficient measure in countering ML. This approach may be adopted in the client due diligence process;
- The AML regulations may be created only for large financial institutions. Small-scale accounting firms conducting business below a *de minimis* value may be exempted from AML obligations.
- The accountancy professional bodies in Turkey should organize training and raise awareness for anti-money laundering practices and legal obligations;
- There is a need for the regulatory and enforcement authorities to coordinate their efforts with TURMOB as a supervisory authority in order to enhance effectiveness and efficiency of the money laundering regulations in Turkey.

5. CONCLUSION

Significant proportion of crime driven by profit is business related and committed by those with expertise in the business. Often such 'white collar' malfeasant activities are difficult to prevent, prove and bring to justice. The ML offences and AML provisions are therefore *potentially* effective means of preventing, detecting and adjudicating such criminal activities. All the legal instruments outlined in this

paper encompass a framework based on suspicious activity reporting and evidence and subsequently impose significant responsibility on the professionals such accountants operating within the financial sector. While the enforcement mechanisms may have a number of differences, the AML frameworks both in the EU Member States and Turkey are based on the idea that professionals are responsible for guarding the integrity of financial services with appropriate record keeping, due diligence, reporting and training obligations imposed.

While the authorities have tried to simplify the system of ML reporting and investigation, in practice, the requirement of reporting based on suspicion and the lack of training are likely to pose their own challenges to both those under an obligation to report and those who are in charge of enforcement of AML provisions. Turkish Government should raise the competence of the supervisory authorities for effective implementation of the AML regulations and provide sufficient training for professional accountants. An effective coordination for the monitoring of suspicious transactions between relevant agencies is also needed urgently. Under the current regime neither TURMOB nor MASAK are required to report any suspicious transaction to each other. For example, if a member of TURMOB is investigated by MASAK and subsequently reported to the prosecutor's office in connection with money laundering, TURMOB is unlikely to receive information about this prosecution. The disconnection between these two organizations may work against anti-money laundering measures. A strong local network and the information shared between MASAK and TURMOB will increase success in the fight against money laundering.

This study has revealed that international standards (e.g. FATF Recommendations) and the EU AML provisions have been informing the AML policy development in Turkey. It can be also argued that Turkey has increasingly been cooperating with international partners and harmonising its AML regime with the FATF recommendations and the EU AML framework.

Both at international and the EU level it is evident that each country has created a unique AML regime with national variations albeit in accordance with international standards. This trend can also be observed in accountancy regulations. In many aspects, the Turkish AML provisions are similar to those found in the EU Member States. Moreover, in light of the FEE survey on the transposition of the Third

EU AML Directive, it can be argued that Turkish provisions are likely to satisfy the FEE standards. However, given the size of its shadow economy and the lack of successful prosecutions similar to a number of other countries in Europe, Turkey needs to think seriously about improving its AML enforcement and training strategy for relevant professions and law enforcement agencies. Subsequently, a liaison with the Turkish accountancy body, TURMOB, is crucial for an effective AML policy. It has been argued that “accountancy and major firms have been adept at lobbying, hiring and recruiting politicians to influence policymaking” (Sikka and Willmott , 1997).¹¹² In this context TURMOB should actively lobby policy makers for being a supervisory authority to monitor its members. As indicated by Sikka and Willmott (1997) what remains silent and invisible does not get talked about and is unlikely to appear as a topic in the policymaking arena. This study also highlights the fact that further research is necessary in order to assess the success of the overall EU AML framework. This can only be determined by a comprehensive study and critique of all AML regimes in Member States.

References:

- Accounting Profession Law No. 3568 (Independent Accountants, Certified Public Accountants and Sworn-in Certified Public Accountants), The Official Gazette No: 20194, 13 June 1989.
- Accounting System Implementation Regulations, No. 1-15, 1992-2008 (The first regulation was issued on the Official Gazette No: 21447M in 1992).
- M.A. Aysan, ‘A History of the Accounting Profession in Turkey’, *Journal of Financial Analysis*, Special Issue, 13-16 November 2006.
- Banking Law, No. 5411, Official Gazette No: 25983M (2005).
- Banking Regulation and Supervisory Agency, Regulation on Accounting Implementation and Retaining Documents, The Official Gazette, No. 26333, 1 November 2006.
- M. E. Beare (Ed.), Critical Reflections on Transnational Organised Crime, Money Laundering, and Corruption, (University of Toronto Press, 2005)
- W. Blair and R. Brent, Banks and Financial Crime, (Oxford: OUP, 2008)

BKA (2006), *Annual Report 2005 - Financial Intelligence Unit (FIU) Germany (English)*, www.bka.de/profil/zentralstellen/geldwaesche/pdf/fiu_germany_annual_report_2005.pdf.

K. Blocker, 'The risks for financial intermediaries and advisers in Germany', (2005) *Journal of Money Laundering Control*, [8\(3\)](#), [220-226](#).

Capital Markets Board, Financial Reporting in the Capital Market, Serial XI No. 29 Official Gazette No: 26842 (2008).

Capital Market Boards, Accounting Standards, Serial XI No.25, Official Gazette No: 25290 (2003).

Capital Markets Board, Financial Reporting in the Capital Market, Serial XI No. 29 Official Gazette No: 26842 (2008).

Capital Market Law, No. 2499, Official Gazette No.17416 (1981).

Commercial Code, No.6762, Official Gazette No: 9353, (1956).

F. Compin, 'The role of accounting in money laundering and money dirtying' *Critical Perspectives on Accounting* 19 (2008) 592-602.

T. E. Cooke, T.E. and T. Çürük, 'Accounting in Turkey with Reference to the Particular Problems of Lease Transactions', *European Accounting Review*, 1996, 5:2, 339-359.

Council Regulation 1889/2005

Consultative Committee of Accountancy Bodies, Anti-Money Laundering Guidance for Accountancy Sector, August 2008, www.ccab.org.uk.

Compin, F., (2008) "The Role of Accounting in Money Laundering and Money Dirtying", *Critical Perspectives on Accounting*, 19, pp. 592-602.

The Egmont Group of Financial Intelligence Units, <http://www.egmontgroup.org/>.

EU Directive 2005/60

EU Directive 91/308

EU Directive 2001/97

Europa Press Release, 05 June 2008,

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/860&format=HTML&aged=0&language=EN&guiLanguage=en>.

Financial Action Task Force (FATF), RBA Guidance for Accountants, 8 July 2008, www.fatf-gafi.org.

FATF, Mutual Evaluation Report (MER) 2007, <http://www.fatfgafi.org/dataoecd/14/7/38341173.pdf>.

FEE Working Group on Anti-Money Laundering, <http://www.fee.be>.

M.H. Fleming, (2005), "UK law enforcement agency use and management of suspicious activity reports: towards determining the value of the regime", available at: www.jdi.ucl.ac.uk/downloads/publications/research_reports/Fleming_LEA_Use_and_Mgmt_of_SARs_June2005.pdf.

Francovich and Bonifaci v Republic of Italy C-6/90 and 9/90.

'Gesetz zur Verbesserung der Bekämpfung der Geldwäsche und der Bekämpfung des Terrorismus' (Geldwäschebekämpfungsgesetz), (Combat against Money Laundering Act) BGB1. Part I, 2002, No. 57.

J. Harvey, "An evaluation of money laundering policies" 8 *Journal of Money Laundering Control* [2005] 340.

Hellner and Steuer (2002) '*Bankrecht und Bankpraxis*', ('Banking Law and Banking Practice') Vol. 5, 16/181.

International Federation of Accountants, Anti- Money Laundering, 2nd Edition, March 2004, www.ifac.org

J. Johnson and Y. C. D. Lim, "Money laundering: has the Financial Action Task Force made a difference" 10 *Journal of Financial Crime* [2004] 11.

Marleasing SA v La Comercial Internacional de Alimentacion SA, C-106/89.

Mitchell A., Sikka P., and Willmott H., (1998) "The Accountants' Laundromat", Association for Accountancy & Business Affairs, ISBN 1-902384-01-6, Basildon, Essex.

D. Masciandaro, "Money Laundering: The Economics of Regulation" 7 *European Journal of Law & Economics* [1999] 225.

S. Maylam, "Prosecution for money laundering in the UK" 10 *Journal of Money Laundering Control* [2002] 157.

G. Okuyucu, "Anti Money Laundering under Turkish Law", 12 (1) *Journal of Money Laundering Control* (2009).

Proceeds of Crime Act - PoCA, 2002

J. Robinson, The Laundrymen, (London 1995).

R. Spalek, "Regulation, White-Collar Crime and the Bank of Credit and Commerce International" 40 *Howard Journal of Criminal Justice* [2001] 166.

Tax Procedure Law, No. 213, Official Gazette No.10703 (1961).

The European Economic and Social Committee, EESC Opinion ECO/147 of 11 May 2005

The European Parliament's Committee on Legal Affairs, 2004/0137 (COD) of 8 March 2005.

The Republic of Turkey, Official Gazette.

The Rome (EC) Treaty 1957.

Treaty of the European Union as amended by Lisbon Treaty 2007.

Turkish Accounting Standards Board, www.tmsk.org.tr

Turkish Central Bank, www.tcmb.gov.tr.

Turkish Criminal Procedure Law 5271 of 1 June 2005.

Turkish Financial Crimes Investigation Board - MASAK, Annual Activity Report (AAR) 2008, http://www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faalrap_2008.pdf.

Turkish Financial Crimes Investigation Board - MASAK - Communiqué No. 5, The Official Gazette – 09 April 2008.

Turkish Financial Crimes Investigation Board - MASAK, Suspicious Activity reporting Guide – 2006, http://www.masak.gov.tr/Kurulumuz/yayinlar/supheli_islem_bildirim_rehberi.pdf.

Turkish Ministry of Finance, Minimum Compulsory Fee Tariff, Official Gazette No.27120, 24 January 2009.

Turkish Statistical Institute, www.turkstat.gov.tr

UK Financial Services, The Money Laundering Regulations 2007, No 2157, Article 20.

United Nations Security Council Resolutions 1267 (S/RES/1267 (1999) and 1373 (SC/RES/1373 (2001).

M. Yeandle, M. Mainelli, A. Berendt and B. Healy, Anti-money Laundering Requirements: Costs, Benefits and Perceptions, (London 2005).

Van Duyn v Home Office, C-41/74

Von Colson and Kamann v Land Nordrhein-Westfalen, C-14/83

Z/Yen (2005), "Anti-money laundering requirements: costs, benefits and perceptions", (2008) *Journal of Money Laundering Control*, 11(3).

NOTES

¹ J. Robinson, The Laundermen, (London 1995), p.4.

² J. Johnson and Y. C. D. Lim, "Money laundering: has the Financial Action Task Force made a difference" 10 *Journal of Financial Crime* [2004] 11.

³ R. Spalek, "Regulation, White-Collar Crime and the Bank of Credit and Commerce International" 40 *Howard Journal of Criminal Justice* [2001] 166.

⁴ S. Maylam, "Prosecution for money laundering in the UK" 10 *Journal of Money Laundering Control* [2002] 157.

⁵ J. Harvey, "An evaluation of money laundering policies" 8 *Journal of Money Laundering Control* [2005] 340.

⁶ M. Yeandle, M. Mainelli, A. Berendt and B. Healy, Anti-money Laundering Requirements: Costs, Benefits and Perceptions, (London 2005), p. 15.

⁷ The FATF, Mutual Evaluation Report (MER) 2007, Available at; <http://www.fatfgafi.org/dataoecd/14/7/38341173.pdf>. Another detailed study on Turkey by the Turkish Central Bank reveals that since 1991, the volume of shadow economy has consistently been larger than the volume of recorded official economy. The figure in 2004 was 429 trillion for recorded trade and 460 trillion for the shadow economy. Statistics 1923 - 2005, available at; www.die.gov.tr and www.tcmb.gov.tr.

⁸ D. Masciandaro, "Money Laundering: The Economics of Regulation" 7 *European Journal of Law & Economics* [1999] 225; The FATF, MER 2007; and the Turkish Financial Crimes Investigation Board - MASAK, Suspicious Activity reporting Guide – 2006, p. 2. Available at; http://www.masak.gov.tr/Kurulumuz/yayinlar/supheli_islem_bildirim_rehberi.pdf.

⁹ Mitchell, A. and Sikka, P., (1996). 'Corporate Governance Matters', London, Fabian Society; Ehrenfeld, R., (1992). 'Evil Money', New York Harper; and Kochan, N. and Whittington, B., (1991). 'Bankrupt, The BCCI Fraud', London, Gollancz.

¹⁰ Weber, M. (1946), "Science as a vocation", in Gerth, H.H. and Mills, C.W. (Eds), *From Max Weber: Essays in Sociology*, Oxford University Press, New York, NY

¹¹ For detailed analysis on how the accountants also contribute to intellectual thinking and social fabric of the society see, Sikka P., Willmott H., and Puxty T. (1995), "The mountains are still there – Accounting academics and the bearings of intellectuals", *Accounting, Auditing and Accountability*, Vol. 8, No. 3, pp113-40.

¹² Offe C. and Ronge V., 'Theses on the theory of state' in Offe C. and Keane J. (ed.), *Contradictions of the welfare state*, (London: Hutchinson, 1984)

¹³ Sikka P. and Willmott H., (1995) "Illuminating the state –profession relationship: Accountants as department of trade and industry investigators", *Critical Perspectives on Accounting*, Vol. 6, pp 341-369; Booth, P., Cocks, N. (1990), "Power and the study of the accounting profession", in Cooper, D.J., Hopper, T.M. (Eds), *Critical Accounts*, The Macmillan Press, London, pp.391-408.

¹⁴ Sikka P. and Willmott H., (1995) "Illuminating the state –profession relationship: Accountants as department of trade and industry investigators", *Critical Perspectives on Accounting*, Vol. 6, pp 341-369.

¹⁵ For similar assertions regarding the recognition that accounting is used as an instrument of social control see, Zeff, S.A. (1982), "Truth in accounting: the ordeal of Kenneth MacNeal", *Accounting Review*, July, pp. 528-53; Loft, A. (1986), "Towards a critical understanding of accounting: the case of cost accounting in the UK 1914-1925", *Accounting, Organizations and Society*, Vol. 11 No. 2, pp. 137-71; and Sikka P., Willmott H., and Puxty T. (1995), "The mountains are still there – Accounting academics and the bearings of intellectuals", *Accounting, Auditing and Accountability*, Vol. 8, No. 3, pp113-40.

¹⁶ Lehman C. and Okcabol F., (2005), 'Accounting for Crime', *Critical Perspectives on Accounting*, Vol. 6, pp. 613-639. Lehman and Okcabol argue that "accounting and issues regarding fraud and crime are part of a broad social fabric: including issues of regulation, governance, economic crises, poverty, race, youth, politics, and class".

¹⁷ Sikka P. and Willmott H., (1997) *Practicing Critical Accounting*, *Critical Perspectives on Accounting*, Vol. 8, pp.149-165.

¹⁸ The Egmont Group of Financial Intelligence Units was established in 1995 and is an informal international gathering of financial intelligence units from over 100 countries. It is responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information: (i) concerning suspected proceeds of crime and potential financing of terrorism, or (ii) required by national legislation or regulation, in order to counter money laundering and terrorism financing. See, <http://www.egmontgroup.org/>.

¹⁹ G. Okuyucu, "Anti Money Laundering under Turkish Law", 12 (1) *Journal of Money Laundering Control* (2009), p. 92. However, note that while Turkey has implemented the United Nations Security Council Resolution 1267 (S/RES/1267 (1999)) and its successor resolutions via decrees of the Council of Ministers, it has not established formal procedures for, or guidance relating to, gaining access to frozen funds for necessary expenses, delisting, unfreezing or sanctions for failure to observe a freezing order. There is no system in place for communicating the decrees to designated non-financial business and professions and no deadlines are set for action by financial institutions in accordance with the decrees. In addition, Turkey does not have a mechanism that will permit it to freeze the assets of persons designated by other jurisdictions as foreseen by SR.III in the context of Security Council Resolution 1373 (SC/RES/1373 (200)).

²⁰ MASAK, Annual Activity Report (AAR) 2008, p. 21. Available at; http://www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faalrap_2008.pdf.

²¹ The FATF, MER 2007.

²² *Ibid.*

²³ It is reported that during its annual meeting in February 2009 the FATF has decided to lift its 'enhanced follow up' on Turkey and reverted to 'ordinary follow up'.

²⁴ The FATF, MER 2007.

²⁵ The Institutional framework for combating money laundering and terrorist financing in Turkey is complex and multilayered. Among MASAK, several other institutions such as the Ministry of Finance, Ministry of Interior, Central Bank of Republic of Turkey, Ministry of Industry and Trade, Banking Regulation and Supervision Agency, Capital Markets Board, Undersecretariat of the Treasury, Directorate General of Foundations, Revenue Administration, and The Coordination Board for Combating Financial Crimes all have various responsibilities and roles in anti-money laundering legal regime.

²⁶ Since the commencement of its operations in 1997, MASAK has received a total of 4924 suspicious transaction reports. Most of these were conveyed by the banks with 4889 reports. See, MASAK - Annual Activity Report 2008, p. 22. However, it has been asserted that the level of suspicious transaction reporting is low when the size and nature of the financial sector is considered. See, the FATF, MER 2007.

²⁷ The Official Gazette - 19 November 1996. Under Turkish legal system legal instruments come into effect from the date they are published in The Official Gazette.

²⁸ The Official Gazette - 18 October 2006. Law No. 5549 has replaced and strengthened a large number of provisions contained in Law No. 4208.

²⁹ The Official Gazette - 09 January 2008.

³⁰ *Ibid.*

³¹ The Anti-Money Laundering Law together with the Ministerial Decree No. 2007/13012 stipulate a list of professions and legal entities: The banks, private financial institutions, credit card issuing institutions, money lenders, consumers finance companies and factoring companies, insurance and reinsurance companies, Istanbul Stock Exchange (ISE) Settlement and Custody Bank Inc., capital market intermediaries and portfolio management companies, mutual funds, investment companies, precious metals exchange intermediaries, precious metal, stone and jewelry dealers, authorized institutions operating within the framework of exchange legislation, every kind of postal service and cargo companies, financial leasing companies, real estate agencies or individuals, lottery hall operators, all kinds of ship, aircraft and vehicle dealers, collector of historical arts, antiques and art works as well as dealers or auctioneers, sports clubs, public notaries, General Directorate of National Lottery, Directorate of Land Register, and Turkish Jockey Club, lawyers, financial consultants, accountants, etc.

³² Law No. 4800.

³³ The list of predicate offences included many crimes, such as drug trafficking, smuggling offences including those in relation to items of cultural or natural value, offences involving illegal trade in weapons and explosives or in organs and tissues, terrorism and other felonies against the State, certain tax offences, and a large number of offences against the Criminal Code such as kidnapping, blackmail, counterfeiting, and other types of fraud. The offence was punishable with imprisonment from two years to five years and a fine of the same value as the money laundered.

³⁴ M. E. Beare (Ed.), Critical Reflections on Transnational Organised Crime, Money Laundering, and Corruption, (University of Toronto Press, 2005) p. 5.

³⁵ MASAK - Communiqué No. 5, The Official Gazette – 09 April 2008. Also see Communiqué No. 7 (The Official Gazette – 15 April 2008) which provides a timescale and a number of clarifications in regards to the implementation of the ID requirements.

³⁶ Liable persons are not required to investigate the purpose of complex/unusual large transactions and thus to keep record of the written findings. Furthermore, there is no requirement to establish the purpose and background of unusual transactions or to maintain this information in writing and keep records which will be accessible by authorities. The FATF has called on Turkey to address these two potential gaps. See, FATF, MER 2007, para. 315.

³⁷ MASAK - Communiqué No. 6, The Official Gazette – 27 September 2008.

³⁸ The general principles and procedures on calculating judicial fines are provided by Article 52 of the TCL. Judicial fines are calculated by multiplying the number of days (which must be equal to or between 5 days and 730 days) and the amount assessed for a day, unless stated otherwise. The amount of judicial fine per day (as minimum TRY 20 and maximum TRY 100) is assessed by considering economic and other personal situations of the person. Thus the lower limit of judicial fines is TRY 100 and the upper limit is TRY 2,000,000.

³⁹ MASAK, AAR 2008.

⁴⁰ In Turkey, under Articles 160 to 170 of the Criminal Procedure Law 5271 of 1 June 2005, the authority of and responsibility for conducting money laundering prosecutions rests with the public prosecutors. Under the authority of a public prosecutor two departments within the Ministry of Interior's General Directorate of Security, the Departments of Anti-Smuggling and Organised Crime, and of Anti-Terror and Intelligence, can also be authorised to and responsible for combating money laundering.

⁴¹ The FATF, MER 2007, para. 212.

⁴² Directive 2005/60/EC, 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

⁴³ OJ L 166, 28.6.1991, p. 77. Directive as amended by Directive 2001/97/EC of the European Parliament and of the Council (OJ L 344, 28.12.2001, p. 76). This directive was amended by the Directive 2001/97/EC (the 2nd Directive) and 2005/60/EC (the 3rd Directive) respectively.

⁴⁴ A review of the EU's anti-money laundering provisions reveals that the Committee on the Prevention of Money Laundering and Terrorist Financing has taken reforms initiatives in accordance with the FATF recommendations. Moreover, the European Parliament and Council adopted a number of regulations implementing specific recommendations of the FATF. For example, Council Regulation 1889/2005 implements the FATF Special Recommendation IX (see Recital (4)); and Council Regulation 1781/2006 implements the FATF Special Recommendation VII respectively (see Recitals (2) and (5)).

⁴⁵ One of the covered agreements under the WTO legal frame work, the General Agreement on Trade in Services (GATS), allows Members to adopt measures necessary to protect public morals and prevent fraud and adopt measures for prudential reasons, including for ensuring the stability and integrity of the financial system.

⁴⁶ The Third Money Laundering Directive 2005/60, Article 41.

⁴⁷ When the Treaty of 2007 comes into force European Council will be formally recognised as an EU institution of the European Union. See, Article 13(1) Treaty of the European Union.

⁴⁸ Council of Europe Treaty Series – No. 198. The CE Convention was opened for signature in November 1990 and it was intentionally not called a ‘European Convention’ because non-members of the Council of Europe such as Australia, Canada and the United States participated in its drafting. In fact, two non-members countries, Australia and Montenegro have signed the CE Convention.

⁴⁹ Article 249, EC Treaty 1957.

⁵⁰ Article 7, EC Treaty 1957.

⁵¹ For example see, procedures and principles provided under Articles 226, 228 EC Treaty and State Liability under *Francovich and Bonifaci v Republic of Italy* C-6/90 and 9/90.

⁵² Directive 2005/60/EC of 26 October 2005 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing.

⁵³ See, Article 3(3) of the Directive 2005/60/EC and Article 6 of the CE Convention (covering any property originated from a predicate offence).

⁵⁴ Article 4 of the Third ML Directive encourages Member States to apply these provisions to professions (other than those listed in Article 2) as they see fit.

⁵⁵ The changes have been fueled mainly by external and internal threats and events such as terrorist attacks in the US, Madrid and London as well as fraud cases and commercial interests. For detailed historical analysis of the EU AML regime see, W. Blair and R. Brent, Banks and Financial Crime, (Oxford: OUP, 2008) Ch. 6.

⁵⁶ The European Economic and Social Committee and the European Parliament’s Committee on Legal Affairs have noted the absence of any comprehensive study on the effectiveness of the pre-Third ML Directive regime. See, EESC Opinion ECO/147 of 11 May 2005, para.2.7.; and 2004/0137 (COD) of 8 March 2005.

⁵⁷ E.g. Directive 91/308 and Directive 2001/97 (also known as the First and Second AML Directives).

⁵⁸ Chapter II of the Third AML Directive.

⁵⁹ German law also allows the extension of the sentence to a maximum imprisonment of ten years, in serious cases (see §261(4) StGB).

⁶⁰ Z/Yen (2005), “Anti-money laundering requirements: costs, benefits and perceptions”, (2008) *Journal of Money Laundering Control*, 11(3), pp. 234-250. The study estimates that the annual AML-related costs in Germany amount to around £150 pounds - which is significantly lower than UK’s costs.

⁶¹ M.H. Fleming, (2005), “UK law enforcement agency use and management of suspicious activity reports: towards determining the value of the regime”, available at: www.jdi.ucl.ac.uk/downloads/publications/research_reports/Fleming_LEA_Use_and_Mgmt_of_SARs_June2005.pdf. It should be noted that in most jurisdictions the SARs have yielded very few success in terms of combating ML. See, The US National Money Laundering Strategy 2007, available at: www.treas.gov/press/releases/docs/nmls.pdf and N. Ryder and U. Turksen, ‘Islamophobia or an Important Weapon? An Analysis of Legislative Approaches Towards the Prevention of Terrorist Finance by the United States of America Since 9/11’, (2009) *Journal of Banking Regulation*, 10 (4), 307-320. In the United States (US), according to the Financial Crimes Enforcement Network (FinCEN) the SARs increased from approximately 163,000 in year 2000 to 649,000 in 2007. FinCEN: Special Information Sharing Procedures to

Deter Money Laundering and Terrorist Activity, see, www.fincen.gov/stautes_regs/frn/pdf/bothrules.pdf ; and Bank Secrecy Act: 'Suspicious Activity Report Use Is Increasing, but FinCen Needs to Further Develop and Document Its Form Revision Process', Government Accountability Office Report [February 2009] available at; www.gao.gov/new.items/d09226.pdf .

⁶² Section 11 of the '*Gesetz zur Verbesserung der Bekämpfung der Geldwäsche und der Bekämpfung des Terrorismus*' (Geldwäschebekämpfungsgesetz), (Combat against Money Laundering Act) BGB1. Part I, 2002, No. 57, pp. 3105-3111, entered into force 14 August, 2002.

⁶³ In Germany, administrative offences such as non-compliance with ML regulations are unlawful acts which are not subject to punishment but can be prosecuted with a fine. Hellner and Steuer (2002) '*Bankrecht und Bankpraxis*', ('Banking Law and Banking Practice') Vol. 5, 16/181. The duty to identify in suspicious cases, the duty to inform the relevant law enforcement authorities and the duty to refrain from executing a transaction in case of a suspicion until the prosecution has given their consent are not mentioned in the list of administrative offences. It is asserted that there is a reason for this is. As the relevant acts are not sufficiently specific to allow a clear demarcation from acts that are permitted, a clear and unequivocal definition of the act to be subject to a fine is not possible in this area as a suspicion will always be based on the individual situation and the subjective knowledge and capabilities of the relevant person. For further analysis see, K. Blocker, 'The risks for financial intermediaries and advisers in Germany', (2005) *Journal of Money Laundering Control*, 8(3), 220-226.

⁶⁴ BKA (2006), *Annual Report 2005 - Financial Intelligence Unit (FIU) Germany (English)*, available at: www.bka.de/profil/zentralstellen/geldwaesche/pdf/fiu_germany_annual_report_2005.pdf.

⁶⁵ *Ibid.*

⁶⁶ At the same time however, directives are not without legal effect in the domestic legal order. National implementing measures must be interpreted in accordance with the wording and the purpose of the directive. See, *Von Colson and Kamann v Land Nordrhein-Westfalen*, C-14/83, para. 26 and *Marleasing SA v La Comercial Internacional de Alimentacion SA*, C-106/89. When the Lisbon Treaty comes into force on 01 December 2009, Article 83(1) of the TFEU will provide that the European Parliament and the Council may establish common minimum rules concerning crimes with cross border dimension including money laundering.

⁶⁷ *Van Duyn v Home Office*, C-41/74 and *Francovich and Bonifaci v Italy*, C-9/90. Under Article 226 and 228 EC Treaty, the European Court of Justice may also impose penalty payments for non-implementation and/or misinterpretation of the directives. See for example, *Commission v Portugal*, C-70/06.

⁶⁸ The European Commission has decided to pursue infringement procedures against Belgium, Czech Republic, Germany, Greece, Spain, Finland, France, Ireland, Luxembourg, Malta, the Netherlands, Poland, Portugal, Sweden and Slovakia for failure to implement the Third Anti-Money Laundering Directive in national law on time (15 December 2007). See, Europa Press Release, 05 June 2008, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/860&format=HTML&aged=0&language=EN&guiLanguage=en>.

⁶⁹ M.A. Aysan, 'A History of the Accounting Profession in Turkey', *Journal of Financial Analysis*, Special Issue, 13-16 November 2006.

⁷⁰ T. E. Cooke, T.E. and T. Çürük, 'Accounting in Turkey with Reference to the Particular Problems of Lease Transactions', *European Accounting Review*, 1996, 5:2, 339-359.

⁷¹ *Supra note*, Aysan.

⁷² Tax Procedure Law, No. 213, Official Gazette No.10703 (1961).

⁷³ Capital Market Law, No. 2499, Official Gazette No.17416 (1981).

⁷⁴ Commercial Code, No.6762, Official Gazette No: 9353, (1956).

⁷⁵ Banking Law , No. 5411, Official Gazette No: 25983M (2005).

⁷⁶ Accounting System Implementation Regulations, No. 1-15, 1992-2008 (The first regulation was issued on the Official Gazette No: 21447M in 1992).

⁷⁷ Capital Markets Board, Financial Reporting in the Capital Market, Serial XI No. 29 Official Gazette No: 26842 (2008).

⁷⁸ Accounting Profession Law No. 3568 (Independent Accountants, Certified Public Accountants and Sworn-in Certified Public Accountants), The Official Gazette No: 20194, 13 June 1989.

⁷⁹ Capital Market Boards, Accounting Standards, Serial XI No.25, Official Gazette No: 25290 (2003).

⁸⁰ Capital Markets Board, Financial Reporting in the Capital Market, Serial XI No. 29 Official Gazette No: 26842 (2008).

⁸¹ Power M., 'The politics of financial auditing', The Political Quarterly, 1993, Vol. 64, No. 3, pp 272-284.

⁸² www.tukstat.gov.tr

⁸³ www.tmsk.org.tr

⁸⁴ Banking Regulation and Supervisory Agency, Regulation on Accounting Implementation and Retaining Documents, The Official Gazette, No. 26333, 1 November 2006. It is worth noting that MASAK has found that 17 banks lack effective mechanisms to tackle money laundering and financing of terrorism. See, Deniz Cicek, Supheli Islem Online Olarak MASAK'a Bildirilecek, Aksam, 22 August 2010, http://www.aksam.com.tr/2010/08/22/haber/ekonomi/8745/supheli_islem_online_olarak_masak_a_bildirilecek.html.

⁸⁵ The Official Gazette, No 26751, 9 January 2008, Resolution No: 2007/13012.

⁸⁶ *Ibid.*

⁸⁷ According to Article 95 of *Banking Law 5411* the *Banking Regulation and Supervision Agency* is authorised to request any information confidential or otherwise. Moreover, Article 5 of the *Tax Procedure Law 213* explicitly states that any requested information and documents can be given regarding the legal and administrative inquiries carried out by public officials. While the Third EU Directive 2005/60 provides similar provisions, it permits Member States not to oblige independent legal professions and accountants to make suspicious transaction reports where they receive relevant information 'in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning, judicial proceedings, including advice on instituting or avoiding proceedings' (Article 23(2)). This seems to be in line with the FATF Recommendation 16.

⁸⁸ The Official Gazette, No. 20391, 03 January 1990.

⁸⁹ Ministry of Finance, Minimum Compulsory Fee Tariff, Official Gazette No.27120, 24 January 2009.

⁹⁰ Financial Action Task Force (FATF), RBA Guidance for Accountants, 8 July 2008, www.fatf-gafi.org .

⁹¹ Christain Doherty, Accountancy Age 29 Jan 2009 cited Sikka as asserting "Auditors are too close to the companies and they can't bite the hand that feeds them," "How can one bunch of commercial entrepreneurs audit another bunch of commercial entrepreneurs? That kind of model is broken and cannot work." For detailed critique of the accountancy profession in this regard see, Sikka P. and Willmott H., (1995) "Illuminating the state –profession relationship: Accountants as department of trade and industry investigators", *Critical Perspectives on Accounting*, Vol. 6, pp 341-369.

⁹² European Union (EU), Directive of the European Parliament and of the Council on the Prevention of the Financial System for the Purpose of the Money Laundering and Terrorist Financing, Directive - 2005/60 of 26 October 2005.

⁹³ Federation of European Accountants (FEE) works as the main representative of 43 professional institutes of accountants and auditors from 32 European countries⁹³. Turkish accountancy profession is not represented in the FEE as the representing bodies are not members of FEE. The FEE operates with 14 working parties, which address policy issues in their own areas.

⁹⁴ FEE Working Group on Anti-Money Laundering, Survey on European and National Legislation and Guidance on the Prevention of Money Laundering and Terrorist Financing, July 2009, <http://www.fee.be>.

⁹⁵ FEE Working Group on Anti-Money Laundering (2009), p. 19.

⁹⁶ FEE Working Group on Anti-Money Laundering (2009), p. 20.

⁹⁷ FEE Working Group on Anti-Money Laundering (2009), p. 20.

⁹⁸ International Federation of Accountants, Anti- Money Laundering, 2nd Edition, March 2004, www.ifac.org, p.15.

⁹⁹ . Ross and M. Hannan, 'Money Laundering Regulation and Risk-based Decision Making', (2007) *Journal of Money Laundering Control*, 10, 106-115 and N. Ryder, 'The Financial Services Authority and Money Laundering – A Game of Cat and Mouse', (2008) *Cambridge Law Journal*, 67(3), 635-653.

¹⁰⁰ Financial Action Task Force (FATF), p.2

¹⁰¹ FEE Working Group on Anti-Money Laundering (2009), p. 22.

¹⁰² Financial Services, The Money Laundering Regulations 2007, No 2157, Article 20.

¹⁰³ While it is beyond the scope of this paper, the legal framework, on which the UK AML regime is based in can be summarised as, the Proceeds of Crime Act - PoCA, 2002, the Money Laundering Regulations - MLRs and relevant guidelines of government and industry advisory bodies, which have to be approved by the treasury. Money Laundering Regulations (2007) are secondary to PoCA, 2002, the former of which clarifies the AML obligations on businesses in greater detail.

¹⁰⁴ Consultative Committee of Accountancy Bodies, Anti-Money Laundering Guidance for Accountancy Sector, August 2008, article 4.14, www.ccab.org.uk .

¹⁰⁵ CCAB provides a forum in which matters affecting the profession as a whole can be discussed and coordinated and enables the profession to speak with a unified voice to government.

¹⁰⁶ One of the unique attributes of the FSA is that it has the power to prosecute ML offences as outlined in the sections 401 and 402 of the Financial Services and Markets Act 2000. See, the recent case of *R v Collins; R v McInerney* [2009] EWCA Crim 1941.

¹⁰⁷ FEE Working Group on Anti-Money Laundering (2009), p. 26.

¹⁰⁸ FEE Working Group on Anti-Money Laundering (2009), p. 27.

¹⁰⁹ Mitchell A., Sikka P., and Willmott H., (1998) "The Accountants' Laundromat", Association for Accountancy & Business Affairs, ISBN 1-902384-01-6, Basildon, Essex.

¹¹⁰ Compin, F., (2008) "The Role of Accounting in Money Laundering and Money Dirtying", *Critical Perspectives on Accounting*, 19, pp. 592-602.

¹¹¹ FEE Working Group on Anti-Money Laundering (2009), p. 25

¹¹² Sikka P. and Willmott H., (1997) *Practicing Critical Accounting*, *Critical Perspectives on Accounting*, Vol. 8, pp.149-165