REPUBLIC OF TÜRKİYE
MINISTRY OF TRADE

Prevention of Financing the Proliferation of Weapons of Mass Destruction

(Law no: 7262)

Guidelines

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1.Scope

Law No. 7262 on the Prevention of Financing the Proliferation of Weapons of Mass Destruction entered into force with its publication in the Official Gazette dated 31 December 2020. The purpose of the law is to regulate the procedures and principles regarding the implementation of the sanction decisions of the United Nations Security Council (UNSC) for the prevention of financing the proliferation of weapons of mass destruction.

Depending on the scope of UNSC resolutions; collecting or providing all kinds of funds to the persons or organizations involved in these decisions, or to persons or organizations directly or indirectly controlled by them, or to persons or organizations acting on their behalf or on behalf of them, or their establishment of business partnership in Türkiye or any other type of business relationship are forbidden.

It is prohibited to collect or provide any kind of funds to organizations or persons or entities directly or indirectly controlled by them, or persons or entities acting on their behalf or on behalf of them, or for their benefit, in connection with nuclear, ballistic missile programs or other activities that are banned in these resolutions. Said persons and institutions are also prohibited from setting up a representative office in Türkiye, carrying out any kind of activities, carrying out their activities, directly or indirectly, through real or legal persons, opening up branch or representative office of their banks, while establishing business partnership, equity partnership with their banks or developing correspondent bank relations with them are banned. Any such should be terminated.

Except for the cases permitted by the UNSC, the import, export, transit and transfer of technology or contribution or support to nuclear activities or the development of nuclear weapon launch systems are prohibited, depending on the scope of the relevant resolutions.

Presidential Decisions on the subject can be accessed on the internet address:

https://ticaret.gov.tr/dis-iliskiler/uluslararasi-guvenlik-isleri.

2. Definitions

Fund: Bank loans, bank and traveler's checks, money order, securities, stocks, guarantees, bonds, promissory notes, policies, letters of credit and similar securities, movable or immovable, regardless of how they were obtained, all kinds of documents, including those in electronic or digital media, that certify and represent any kind of property right, receivable, and a property right or interest on them, tangible or intangible, are called funds.

Assets: A natural or legal person; Fund and income that is partially or wholly owned or in the possession or directly or indirectly under its control, and the interest and value derived from them or their conversion to each other, the fund that is partially or completely owned or in the possession of the real or legal person acting on behalf of or on behalf of the person acting on their behalf. and income and the benefit and value derived from them or their conversion to each other.

Freezing of assets: In order to prevent the destruction, consumption, conversion, transfer, transfer and assignment of assets and other dispositional transactions, it means the removal of the power of disposition on the asset completely or its restriction within the framework of the exceptions in Article 12 of the Law No. 7262.

3. General Operation:

Public institutions and organizations are obliged to inform the commission of information, documents, findings and evaluations regarding the Prevention of the Financing of Weapons of Mass Destruction No. 7262. In order to benefit from the evaluations to be made by the Commission, the Presidency may request opinions, information and documents from the relevant persons, institutions and organizations. The said information and documents are submitted in the requested time and manner. Persons, institutions and organizations requested for the implementation of this article cannot avoid providing information and documents based on the provisions of other laws.

The Presidency, on the basis of its own database or the databases to which it has direct access, and the opinions, information and documents obtained pursuant to the second paragraph, upon the notification sent pursuant to the first paragraph of the Presidency, make its assessments regarding the determination of the assets of the relevant persons, institutions or organizations and the determination of reasonable grounds for the processing of prohibited transactions and activities. It prepares the financial research report containing it and submits it to the Commission. Based on the existence of reasonable reasons, the President may propose to the President of the Republic that the assets of persons or organizations controlled directly or indirectly by the specified organizations or persons or organizations acting on their behalf or account be frozen in Türkiye, and that persons and organizations and maritime transportation vehicles be proposed to the UNSC to be added to the lists. The Commission may propose to the President of the Republic that the decision to freeze the assets in Türkiye be revoked or that a proposal be made to the UNSC to be removed from the lists, in the event that reasonable grounds cease to exist.

The Commission is chaired by the Chairman of the Financial Crimes Investigation Board; Ministry of Justice, Ministry of Foreign Affairs, Ministry of Energy and Natural Resources, Ministry of Interior, Ministry of National Defense, Ministry of Commerce, Banking Regulation and Supervision Agency, Presidency of Treasury Controllers Board, Presidency of National Intelligence Agency, Nuclear Regulatory Agency and Capital Markets Board at least vice president or It consists of one member to be notified at the general manager level.

The commission convenes under the chairmanship of the Chairman of the Financial Crimes Investigation Board and consists of the members to be notified by the relevant institutions, at least at the level of general manager or vice president. The secretariat services of the Commission are carried out by the Financial Crimes Investigation Board. The commission meets at least twice a year with the participation of the chairman and at least nine of the members. While the Chairman and members are in office, they cannot appoint others to replace them. The Commission decides with the votes of at least nine of the members. Members cannot abstain.

4. Task Areas Carried Out by Ministry of Trade:

a) Strategic Trade Controls

Within the scope of strategic trade controls, Ministry of Trade has two separate roles as licensing (export license) and enforcement. Customs administrations have a key role in preventing transfer (import, export, transit) of the goods subject to controls within the frame of national and international legislation.

The main 3 methods for detection of strategic goods at customs are intelligence, targeting and random inspection. In this context, in case of doubt whether an inspected item is subject to control or not;

- The matter is conveyed to Ministry of Trade (General Directorate of Customs) through Regional Directorate of External Trade and Customs. At this stage, sending technical documents of the goods (catalogue, user manual, etc.) and documents showing the buyer (invoice, etc.) is of utmost importance in terms of preventing repetitive correspondence.
- According to the nature of the goods, the assessment of the relevant authorized institution is requested by our Ministry (General Directorate of Customs).
- If the goods are *export* goods and it is determined that it is subject to control after the assessment of the authorized institution, the exporter is directed to the authorized institution in order to obtain a preliminary permit for the export of the goods.
- If the goods are *transit* goods and it is determined that it is subject to control after the assessment of the authorized institution, action is taken according to the decision to be taken by the Ministry of Foreign Affairs, taking into account the assessment of the authorized institution.
- If it is determined that the goods are (both export and transit) not subject to control after the assessment of the authorized institution, the transactions are completed in their normal course.

The control procedures of the goods within the scope of the Law No 7262 on the Prevention of Financing the Proliferation of Weapons of Mass Destruction, related Regulation and Presidential Decision No.3578 are also carried out as stated above.

Pursuant to the third paragraph of Article 2 of the Law No.7262 depending on the scope of relevant UNSCR except for the cases permitted by the UNSC;

First article of Presidential Decision No.3578 has prohibited import, export and transit of the goods within the scope of UNSCR 1718(2006) on North Korea,

Second article of aforementioned Decision has prohibited import, export and transit of the goods within the scope of UNSCR 2231(2015) on Iran.

The goods that are prohibited from being traded with North Korea are listed in Annexes 2 and 3 of the Decision, and the goods that are prohibited from traded with Iran are listed in Annexes 6, 7 and 8 of the Decision.

The chapter and customs tariff positions of some of the goods listed in Annexes 2 and 3 were determined on the basis of the findings of the Panel of Experts established with the UNSCR 1874 (2009) on North Korea and they were identified in BILGE (customs declaration software). In case of declaration of North Korea (724) in any country field of customs declaration, measures have been taken to stop registration process directly. However, the goods that are prohibited from trading with North Korea are not limited to these items but also include many dual-use items such as nuclear dual-use items and missile technology related items. This leads to a situation where in large number of goods that are under the same chapter or customs tariff position but not subject to control will also be subject to prevention. Since it is not possible to take measures on the basis of chapter or customs tariff position for the goods other than those identified in BILGE, it is envisaged to take measures to stop or continue the transaction according to the warning message depending on the country declaration and the responses to be given by the declarant.

Similarly, since the items in the 6th, 7th and 8th Annexes of the Decision are nuclear, nuclear dual-use and missile technology items, for the same reason, it is envisaged to take measures to stop or continue the transaction according to the warning message depending on the country declaration and the responses to it.

On the other hand, the export of nuclear and nuclear dual-use goods is already subject to the permission of the Nuclear Regulatory Authority, regardless of country, and the export and import of goods within the scope of missile technology is subject to the permission of the Ministry of National Defense, regardless of country, and permit documents are sought by customs administrations during export and import transactions.

In case of a determination by customs administrations that the prohibited transactions and activities specified in Article 2 of the Law No. 7262 are carried out after the control procedures, the following actions should be taken:

- Implementation of the necessary penal action within the framework of customs legislation.
- Filing a criminal complaint to the Office of the Chief Public Prosecutor in accordance with the second paragraph of Article 9 of the Regulation related to Law No.7262.
- Informing our Ministry (General Directorate of Customs) about the result of the process in order to convey it to the Audit and Cooperation Commission established by the Law No. 7262.

Adding or removing natural or legal persons subject to UNSC sanctions to the sanction list, etc. regarding the transactions, the necessary information is given to the General Secretariat of the Turkish Exporters Assembly in order to be announced by Ministry of Trade (General Directorate of Exports) to the companies.

b) Activities in the Asset Freezing Stage

As it is known, in accordance with the third paragraph of Article 24 of the Turkish Commercial Code No. 6102, it is envisaged that the central common database, where the contents that must be registered and announced in the trade registry are regularly stored and presented in the electronic environment, will be established by the Ministry of Trade and the Union of Chambers and Commodity Exchanges of Türkiye.

In line with the aforementioned provision, the Central Registry System (MERSIS) was established by Ministry of Trade (General Directorate of Domestic Trade). Trade registry records are kept individually by 238 trade registry directorates and all documents related to these records are kept there, and trade registry transactions are carried out electronically via MERSIS.

The list of persons or organizations whose assets have been decided to be frozen or who have the annulment of decisions regarding the freezing of assets within the scope of the Law on the Prevention of the Proliferation of Weapons of Mass Destruction No. 7262 is submitted to Ministry of Trade (Directorate General of Domestic Trade) by the Financial Crimes Investigation Board (MASAK) of the Ministry of Treasury and Finance.

The steps taken by our General Directorate on the lists sent by MASAK are described below:

1) In case of detection of a record regarding the persons and organizations included in the aforementioned lists, such as being owner of a commercial enterprise or having a partnership, necessary instructions are given to all trade registry directorates without delay by distributed letter by the Ministry of Trade (General Directorate of Domestic Trade) in order to freeze the assets registered in the trade registry and to follow up the applications to be made against these persons.
2) In line with the instructions and information communicated, the trade registry directorates process the necessary explanations on MERSIS and the records placed in MERSIS are carefully and meticulously evaluated, and the use of the right of the enterprise or partnership is prevented by the trade registry.

3) Decisions regarding the annulment of the decisions regarding the freezing of assets are carried out without delay with the same procedure.
4) Necessary information is given to MASAK in writing by the relevant trade registry directorates about the transaction findings, considering their requests in this regard.

In addition, a study was carried out to ensure that all transactions are carried out and followed up immediately in electronic environment without a need for physical correspondence between MERSIS and the Information System of the Ministry of Treasury and Finance, and the said study was completed on 24.05.2022. Within the scope of the study, it has been ensured that the data of real and legal persons subject to prohibitions are directly obtained from the MASAK Information System in electronic environment and this information is displayed up-to-date via MERSIS by the trade registry directorates.

c) Operations Executed by Customs Law Enforcement Officers

The import, export, transit and transfer of technology or nuclear activities or activities of the substances, materials and equipment specified in the Sanction Decisions of the Security Council on the prevention of financing the proliferation of weapons of mass destruction, except for the cases permitted by the UNSC pursuant to the third paragraph of article 2 of the Law No. 7262, contributing to or supporting the development of nuclear weapon launch systems is prohibited. According to the second paragraph of Article 5 of the Law, those who violate the said prohibition shall be sentenced to imprisonment from two years to eight years, unless the act does not constitute another crime requiring a heavier penalty.

Upon the determination made by the Customs Enforcement units that the specified crime has been committed, a criminal complaint is filed with the Office of the Chief Public Prosecutor about the persons concerned. The General Directorate of Customs Enforcement is informed that a criminal complaint has been made.

Notifications or complaints sent to the Customs Enforcement units regarding the commission of the specified crime are immediately notified to the Public Prosecutor, as explained in the Customs Enforcement Services Directive, and the necessary investigation procedures are initiated in line with the order of the Public Prosecutor.