

From the Ministry of Finance

**The Financial Crimes Investigation Board
General Communiqué No 12**

1. Scope

Article 14 of the Regulation on The Procedures And Principles Regarding the Implementation of Law on the Prevention of the Financing of Terrorism which entered into force upon its publication in the Official Gazette of 31/05/2013 issue 28663 (hereinafter referred to as the Regulation) regulates that the Financial Crimes Investigation Board (hereinafter referred to as MASAK) shall be responsible for enforcing decisions on freezing of assets.

Article 15 of the Regulation includes provisions stating that the frozen assets shall be managed under permission of MASAK within the scope of the principles established in the Regulation provided that its possession remains on the natural or legal person whose assets have been frozen. Additionally, Article 16 of the Regulation identifies duties and powers of MASAK on the said issues.

The scope of this Communiqué consists of explanations on the enforcement of decisions on freezing of asset by the persons, institutions and organizations (hereinafter referred as liable parties) holding assets in their care or keeping the record of assets in accordance with the provisions of the Law and Regulation and on the management of frozen assets in accordance with provisions of the Law within the scope of the permission granted by MASAK.

2. Obligations of Liable Parties

2.1. Notification

MASAK shall notify decisions on freezing of asset to the followings

- a) For freezing immovables; the General Directorate of Land Registry and Cadastre with the request to enter annotation in the land register;
- b) For freezing land, marine and air transport vehicles; relevant departments of the Ministry of Transport, Maritime Affairs and Communications and the Ministry of Interior and the General Directorate of Civil Aviation with the request to enter annotation in the relevant registers
- c) For freezing any account, right and claim; banks and other financial institutions;
- d) For freezing partnership shares in a company; the relevant company, the relevant trade registry office and the Ministry of Customs and Trade;
- e) Relevant natural and legal persons and public entities deemed necessary.

From among the liable parties notified by MASAK; those who do not hold any assets in their care or do not keep the record of assets shall notify the information on this fact and those who hold assets in their care or keep the record of assets shall notify the information on the enforcement of freezing action and the assets frozen to MASAK by using the same communication channel they notified within 7 days following their receipt of the official request.

When the decision on freezing of assets is repealed, the liable parties who notify MASAK that they hold assets in their care or keep the record of assets shall also inform MASAK that such decision is enforced within the scope of the principles and procedures specified above.

In this regard, the following information and other information deemed necessary shall be communicated to MASAK:

- a) Information included in the title deed for immovables and if any, other annotations and registries regarding the immovable;
- b) Registration information included in relevant registers for land, maritime and air transport vehicles and if any, other annotations and registries regarding them;
- c) For assets in banks and other financial institutions, the type of the business relationship, customer/account number, amount or balance of rights and claims;
- ç) For partnership shares in companies, the company's title, tax identification number, partnership shares and other registries and annotations regarding the partnership.

2.2. Blocking Non-Face-to-Face Systems

All credit and bank cards of persons, institutions or organizations whose assets are frozen by financial institutions shall be blocked, and their access to online banking or all other non-face-to-face-systems shall be thwarted.

2.3. Freezing Joint Accounts

All of the accounts owned jointly by the third parties and the designated persons, institutions or organizations shall be frozen as a whole. Other shareholders of frozen accounts shall notify MASAK of their rights on such accounts and the information and documents regarding their basis. The designated persons, institutions or organizations shall pay their debts to other shareholders of joint accounts through the bank account only if MASAK permits so.

2.4. Increase in the Amount of the Asset

If there is an increase in the amount of assets frozen, such increase shall also be subject to provisions of the freezing of assets. Therefore, it shall not be possible to access the interest, profit share, dividend and any other revenue to be obtained from the frozen assets except in the cases permitted by MASAK.

Example 1

XYZ bank informed MASAK within 7 days that the designated person does not have any assets in the bank on the date of publication in the Official Gazette. At a later date, a money remittance/electronic fund transfer (EFT) is received by XYZ bank on the name of the designated person. In this case, the amount of received remittance/EFT shall be frozen and actions shall be taken according to the instructions of MASAK after the situation is notified to MASAK immediately.

Example 2

XYZ bank informed MASAK within 7 days that the designated person has a zero balance account in the bank on the date of publication in the Official Gazette. If a money remittance/EFT is received by XYZ bank in the account of the designated person at a later

date, this increase in the account shall be subjected to provisions of the freezing of assets and informed to MASAK within 7 days.

Example 3

XYZ bank informed MASAK within 7 days that the person for whom a decision to freeze assets has been made holds a time deposit account in the bank on the date of publication in the Official Gazette. The interest accrued on this account after the decision of freezing shall be added to this account and subjected to provisions of freezing.

2.5. Uncertain Situations in Execution of Freezing Action

Liable parties shall freeze assets of designated persons, institutions and organizations if the information in the list which is published in the annexes of freezing decisions of the Council of Ministers and updated version of which is included in the MASAK website matches the information they have.

If a designated person does not have any distinguishing information (such as date of birth, place of birth, passport or national identity number), assets of those whose name matches with the name of that designated person or other names s/he uses/known shall be frozen.

On the other hand, if the person whose assets are frozen claims that s/he is not the person listed by the United Nations Security Council (hereinafter referred to as UNSC) Resolution, and an erroneous freezing action has been taken due to name resemblance, incorrect or deficient identity information and similar reasons, the objection should be made to MASAK in writing together with its grounds and by adding relevant documents, if any. If MASAK approves, the situation shall be informed to liable parties immediately and the erroneous freezing action shall be corrected.

3. Access to Frozen Assets

3.1. General Considerations

The power of disposition on frozen assets shall only be exercised upon the permission of MASAK. Except for the cases permitted by MASAK, those whose assets are frozen may not engage in actions for obliteration, consumption, conversion, transfer, assignation, conveyance and other dispositional actions of the asset. Liable parties shall not allow or facilitate the execution of such actions.

The designated persons shall notify all their rights, receivables and payables and other assets and the information and documents regarding their basis and those who have receivables from or payables to them shall notify the information and documents regarding the amount of the receivables or payables and their basis to MASAK electronically and in writing within thirty days as from the date of publication of the decision in the Official Gazette by filling the forms published on the website of the Directorate.

The UNSC Resolution No. 1452(2002) which regulates the procedures for accessing frozen assets stipulates that the said procedures shall apply to frozen assets pursuant to UNSC Resolutions No. 1267 and 1373 and their successor Resolutions. Therefore, while granting permission to access the frozen assets under UNSC Resolutions No. 1267 and 1373, MASAK shall also follow the procedures proposed in the UNSC Resolution No. 1452(2002) and its successor Resolutions.

3.2. Purpose of Access to Frozen Assets

With regard to frozen assets, MASAK may permit the followings:

- a) Payment for such basic expenses as foodstuffs, rent, mortgage, medicines and medical treatment, education, insurance premium, attorney and court expenses in order to provide the minimum subsistence for the natural person whose assets are frozen and his/her dependants;
- b) Purchasing and selling goods and services and making such mandatory payments as maintenance, operation, repair costs, payables registered in books and documents, rent, credit, trustee service, insurance premium, attorney's fee, wage and salary in order to enable commercial enterprises and other legal persons to maintain their activities and to hold their routine;
- c) Payment for fees regarding expert witness, chartered accountant, expertise, etc. reports requested by MASAK on the management of assets;
- d) Payment for debts which have arisen before the decision of freezing.

When granting permission MASAK shall take account of the necessity to protect the value of assets.

3.3 Obligatory Payments from Frozen Assets

Article 13/3 of the Law No. 6415 rules that all such obligatory payments to be made to public institutions or quasi-public organizations as taxes, levies, duties, rents, social security premiums that must be paid from the frozen assets may be subject to permission. In pursuance with this provision all obligatory payments has been included within the scope of the actions to be taken with the permission of MASAK.

However, all such deductions at source as taxes and funds to be made from the accounts in financial institutions shall be made by the relevant financial institution without being subject to permission.

3.4. Permission of Access to Frozen Assets

3.4.1. With regard to Natural Persons

3.4.1.1. General Considerations

Applications for permission shall be made by submitting MASAK the forms. published on MASAK website and certifying documents

MASAK may permit access to assets by taking into account the declarations, information and documents submitted within the scope of the applications for permission and other information and documents it will provide from other institutions and organizations where necessary in order to determine the level of minimum subsistence. MASAK shall follow of the permission procedure proposed in the UNSC Resolution No. 1452(2002) and its successor resolutions within the scope of the permission to be given.

An annual permission document may be issued for the amount fixed by MASAK in order to provide the minimum subsistence of the natural person whose assets are frozen and his/her dependants. Transactions conducted in accordance with the permission document shall be notified by liable parties to MASAK urgently.

The scope or duration of the permission may be amended or the permission may be revoked where deemed necessary. MASAK shall inform relevant parties of the decision to amend or revoke the permission in accordance with the principles and procedures applied to the notification of the permission decision.

Moreover, MASAK may give permission for once only or for a definite time under certain conditions or limits.

3.4.1.2. Use of Accounts in Banks or Other Financial Institutions

MASAK shall issue a permission document for natural persons to exercise the power of disposition on accounts in banks or other financial institutions. The permission document shall include the name of the bank/financial institution, its branch and information of the account through which the action can be conducted.

MASAK shall provide the person whose assets are frozen with one copy of permission documents issued within this scope. MASAK shall pass the other copy to the institution which holds assets in its care or keeps the record of assets.

The person who is receiving the permission may conduct an action only after submitting the original copy of the permission document to the relevant institution. The relevant institution shall verify the submitted permission document by comparing it with its own copy before conducting the transaction for the person who applied to it.

If a person whose assets are frozen asks for conducting an action without the permission document or for conducting an action not included among the actions specified in the permission document, the action asked shall not be conducted and the situation shall immediately be reported to MASAK by the bank/financial institution.

Banks/financial institutions shall make payments in cash in a single sum or in parts according to the demand of the person under the conditions specified in the permission document. Banks/financial institutions shall take necessary measures not to exceed the amount set out in the permission document for payments made in parts.

If it is permitted; such obligatory payments to be made to public institutions or quasi-public organizations as taxes, levies, duties, rents, social security premiums shall be made to the bank account of the relevant institution. No cash payment shall be made to the person within the scope of this permission. The fees regarding the payment shall be covered from the frozen account.

Besides this except from foodstuffs payment for basic expenses comprising major part of the permitted amount such as , rent, mortgage, medicines and medical treatment, education, insurance premium, attorney and court fees in order to provide the minimum subsistence for the natural person, shall be made through bank accounts.

3.4.2. With regard to Persons Other than Natural Persons

3.4.2.1. General Considerations

Sole proprietorships, commercial companies, legal persons or entities which do not have legal personality shall submit the followings to MASAK in their permission applications to be made by filling the forms published on MASAK website.

- 1) Financial statements, books, documents and records of the last two years;
- 2) The statement showing the payments they must make within one year in the form of monthly payments and documents and records certifying such payments;
- 3) Information on the bank account through which actions will be conducted within the scope of the permission;
- 4) Copy of the identity certificate of the person authorized to represent the legal person.

MASAK may ask for reports to be drawn up by Certified Accountants, Independent Auditors or other bodies to be deemed appropriate by MASAK on the evaluation of documents if needed.

MASAK shall follow of the procedures proposed in the UNSC Resolution No. 1452(2002) and its successor Resolutions while evaluating the application for permission. In this scope, if MASAK grants permission, a permission document including the amount and periods of expenditure shall be issued for allowing the exercise of the power of disposition.

Moreover, MASAK may grant permission for once only or for a definite time under certain conditions or limits.

3.4.2.2. Use of Accounts in Banks or Other Financial Institutions

The permission may be granted for once only or for a definite time under certain conditions or limits. One copy of the permission document issued by MASAK shall be given to the applicant. Another copy of the document shall be passed by MASAK to the bank/financial institution holding the account on which actions will be conducted within the scope of the permission. The permission document shall include the name of the bank/financial institution, its branch and information of the account through which the action can be conducted.

The relevant bank/financial institution shall verify the original copy of the permission document by comparing it with its own copy before conducting any action for the person who applied to it with the permission document. All actions to be conducted within the scope of the permission document shall be conducted over bank accounts. No cash payment can be made to the person authorized to represent the legal person.

Any payment to be made to sole proprietorships, commercial companies, legal persons or entities which do not have legal personality as from the date of publication of the freezing decision in the Official Gazette may be made to a bank account belonging to them. In this scope, sole proprietorships, commercial companies, legal persons or entities which do not have legal personality whose assets are frozen may not accept cash while purchasing or selling goods and services or collecting their receivables in order to continue their activities. All collections to be made by them shall be made by using point-of-sale devices or through bank accounts.

Sole proprietorships, commercial companies, legal persons or entities which do not have legal personality shall report MASAK the actions they take within the scope of the permission and financial statements, information and documents required by MASAK in the form, context and durations requested from them.

MASAK may amend the scope or duration of the permission or revoke the permission it has given within the scope of the access to assets, in the cases it deems necessary. MASAK shall inform relevant parties of the decision to amend or revoke the permission in accordance with the principles and procedures applying to the notification of the permission decision.

3.4.3. Exercise of Power of Disposition on Negotiable Instruments

The persons, institutions or organizations whose assets are frozen may exercise the power of disposition on a negotiable instrument only with the permission document issued by MASAK with regard to that specific negotiable instrument.

The persons, institutions or organizations shall not be given cheque-books by financial institutions as from the date of publication of the decision in the Official Gazette. The information on cheque-books given before such date shall be notified to MASAK by financial institutions by using the same communication channel they notified within 7 days following their receipt of the official request. Similarly, if a designated person gives a registered or bearer cheque to the financial institution for collection after this date without submitting the permission document, the cheque shall not be paid and the situation shall be notified to MASAK.

All actions that the designated person conducts in contradiction with the decision after the freezing of assets shall be null and void.

3.4.4. Exercise of Power of Disposition on Safe Deposit Boxes

If MASAK allows the use of the **power of disposition** on safe deposit boxes; the safe deposit box shall be opened with the supervision of the designated person as well as the bank officer and a person assigned by MASAK. Its content shall be recorded in a minute. The amount to be given to the person within the scope of MASAK's permission shall be taken from the assets in the safe deposit box and the remaining part shall be kept in the safe deposit box. The determination regarding the content of the safe deposit box and the amount taken shall be recorded in minute and the minute shall be delivered to MASAK after it is signed by parties.

3.4.5. Exercise of Power of Disposition on Movables, Immovables or Partnership Shares in Companies

The designated person, institution or organization shall apply for permission to sell movables, immovables or partnership shares in companies by filling the forms published on the MASAK website of in company with the sales price and the citizenship number, tax identification number, name, title and address information of the purchaser.

If deems necessary, MASAK may ask designated persons for an expertise, expert witness or similar report in order to determine the real value of the assets subject to the action in the application for permission to sell the assets.

If MASAK approves the application it shall send one copy of the permission document to the purchaser, one copy to the seller and another copy to the organization which holds assets in its care or keeps the record of assets. The permission document shall also include information on the bank account to which the payment will be made.

The relevant organization shall verify the original copy of the permission document by comparing it with its own copy before conducting any action for the person who applied to it

with the permission document and take the original copy of the receipt certifying that the purchaser has deposited the amount in the bank account identified in the permission document. Following the verification, actions regarding the transfer shall be conducted and one copy of the relevant document shall be sent to MASAK.

Designated persons may apply for permission for leasing out movables and immovables and for similar establishment of rights by filling the forms published on the MASAK website. The application for permission shall include the rental fee as well as the citizenship number, tax identification number, name, title and address information of the person to which the movable or immovable will be hired.

If deems necessary, MASAK may ask designated persons for an expertise, expert witness or similar report in order to determine the real value of the assets subject to the action in the application for approval to lease the assets.

If MASAK approves the application it shall send one copy of the permission document to the person who applied and one copy to the lessee. The permission document shall include information on the account to which the payment will be made.

The designated persons, institution or organization shall provide MASAK with a copy of the contract text and the information on the amount of money or value of other assets to be paid pursuant to the contract, the schedule of payment, and the bank account to which the payment will be made within fifteen days as from the date of establishment of the right. Any payment to be made in this scope may only be made to the bank accounts specified in the permission document of such persons.

MASAK may amend the scope or duration of the permission or revoke the permission it has given for the exercise of the power of disposition on the assets, in cases it deems necessary. MASAK shall inform relevant parties of the decision to amend or revoke the permission in accordance with the principles and procedures applying to the notification of the permission decision.

4. Supervision and Punishment

Article 15 of the Law includes the following provisions:

“(1) Persons who do not obey or who neglect or delay to obey the decision made regarding freezing of asset in accordance with this Law shall be punished by an imprisonment for a term of six months to two years or a judicial fine unless such act constitutes a serious offence requiring a heavier penalty.

(2) In case that the person who does not obey the decision on freezing of asset made in accordance with paragraph (1) is an organ or a representative of a legal person; or a person, who is not the organ or representative but undertakes a duty within the scope of that legal person’s operational framework, this legal person shall also be punished by an administrative fine between 10,000 and 100,000 Turkish Liras.”

MASAK shall supervise whether the liable parties act in accordance with the freezing decision and whether the frozen assets are managed by relevant persons in accordance with provisions of the Law, by making investigations and examinations on documents and records.

MASAK shall carry out its duty to supervise through examiners and finance experts employed in MASAK.

The abovementioned fines shall apply if the decision made regarding the freezing of assets pursuant to provisions of the Law is not enforced or if its enforcement is neglected or delayed.