



FINANCIAL CRIMES INVESTIGATION BOARD

**THE PRINCIPLE OF
RELIANCE ON THIRD
PARTIES**

Financial institutions and some other professions are subject to certain obligations both internationally and domestically for the purpose of an effective fight against ML/TF and preventing the use of financial system by the criminals.

Regarding this matter, the concept of “obliged party” is defined in Article 2 (1)(d) of Law No. 5549 on Prevention of Laundering Proceeds of Crime defines”, and those specified in Article 4 (1) of Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism (RoM) and their branches, agents, representatives, commercial proxies and similar affiliated units are listed as obliged parties. Moreover, obliged parties specified in subparagraphs (a) to (h) and General Directorate of Post pertaining only to its banking activities are classified as financial institutions pursuant to Article 3 (1)(f) of the Regulation.

Obligations introduced as “preventive measures” in AML/CFT are specified in Articles 3 to 9/A in Chapter Two titled “Obligations and Information Exchange” of Law No. 5549, and the details are regulated in RoM.

In this scope, Article 3 of Law No. 5549 stipulates, within the scope of customer identification, that *obliged parties shall identify the persons carrying out transactions and the persons on behalf or for the benefit of whom the transactions are conducted within or through the obliged parties before the transactions are conducted.*

Article 5 of Chapter Three titled Principles Regarding Customer Due Diligence of RoM describes in which cases customer identification will be conducted and stipulates that when establishing permanent business relationship¹, information will be obtained on the purpose and intended nature of the business relationship. Chapter 3 of the regulation also sets forth various provisions regarding principles of customer identification of natural persons, legal persons registered to trade registry, associations and foundations, trade unions and confederations, political parties, non-resident legal persons, unincorporated organizations and public institutions, and principles of customer due diligence including customer identification of those acting on behalf of others, identification of beneficial owner, reliance on third parties and relationships with risky countries.²

The principle of “reliance on third parties” is regulated in Article 21 of RoM as follow:

ARTICLE 21- *(1) Financial institutions can establish business relationships or carry out transactions by relying on measures taken related to the customer by another financial institution on identification of the customer, the person acting on behalf of customer and the beneficial owner, and on obtaining of information on the purpose of business relationship or transaction. In such a circumstance, the ultimate responsibility shall remain with the financial institution carrying out transaction by relying on the third party under the Law and the related regulations.*

¹ Pursuant to Article 3(1)(i) of RoM, permanent business relation means business relationship that is established between obliged parties and their customers through services such as opening an account, lending loan, issuing credit cards, safe-deposit boxes, financing, factoring or financial leasing, life insurance and individual pension, and that is permanent due to its characteristic

² Pursuant to Article 3(1)(1) of RoM Risky countries mean the countries that are announced by the ministry out of those which do not have sufficient laws and regulations on prevention of money laundering and financing of terrorism, which do not cooperate on combating these offences or are considered risky countries by competent international organizations.

(2) Reliance on third parties shall be possible only if it is ensured that;

(Amended : Official Gazette - 02.01.2010 /27450) a) the third parties have taken other measures which will meet the requirements of customer identification, record keeping and the principles of “customer due diligence”, and are also subject to regulations and supervision in combating money laundering and terrorist financing in accordance with international standards if the third parties are resident abroad,

b) The certified copies of documents relating to customer identification shall immediately be provided from the third party when requested.

(3) The financial institution which establishes a business relationship or conducts a transaction by relying on a third party shall immediately receive the identity data of the customer from the third party.

(4) (Amended: Official Gazette - 02.01.2010 /27450) The transactions which the financial institutions conduct between themselves on behalf of customers and relationships between financial institution and its agents, similar units or outsourcing entities are not within the scope of the principle of “reliance on third parties.

(5) (Added: Official Gazette - 02.01.2010 /27450) the principle of “reliance on third parties” may not be applied to the cases where the third party is resident in a risky country.

Briefly, the Article sets forth the following:

I. In order for the application of the principle of reliance on third parties, “the one conducting the transaction” and the “third party” should be a financial institution within the scope of Article 3 (1) (f) of RoM.

II. The principle of reliance on third parties applies only within the scope of “customer identification”, and is limited to matters related to identification of the customer, the person acting on behalf of the customer and the beneficial owner and obtaining information on the purpose of the business relationship or the transaction. As stated above, Chapter 3 titled “Principles Regarding Customer Due Diligence “of RoM elaborately specifies which information shall be obtained and which documents shall be used for the verification of such information in cases where the customer is a natural person, a legal person registered to trade registry, an association or foundation, a trade union or confederation, a political party, a non-resident legal person, an unincorporated organization or a public institution. In which cases and how those acting on behalf of others and beneficial owners will be identified are specified in Articles 14 and 17/A of the RoM respectively.

III. A financial institution “conducting a transaction” by relying on a third party based on the principle of reliance on third parties will immediately obtain the identity information of the customer, the person acting on behalf of the customer and the beneficial owner, and information on the purpose of the business relationship or transaction from the third party.

IV. In the principle of reliance on third parties, the responsibility lies with the financial institution establishing a business relationship or conducting transaction by relying on a third party. In other words, in cases where the “third party” conducts customer identification deficiently or defectively and the financial institution “conducting the transaction” obtains the

identification information and documents from the said financial institution, it is not possible to claim that the third party is responsible for the deficient or defective customer identification. Therefore, when a violation of customer identification are detected in cases of reliance on third parties, the administrative fine should be imposed on financial institution “conducting the transaction”, not on the “third party”.

V. In order to rely on third parties, it should be ensured that the “third party” has taken necessary measures within the scope of customer due diligence, particularly, customer identification; that it is subject to regulations and supervisions compatible with international AML/CFT standards, and that certified copies of the documents can immediately be obtained from the third party when requested. It is deemed sufficient that the third party certifies the customer identification documents as “the true copy of the original”.

VI. The financial institution establishing a business relationship or conducting transaction should obtain identification information and documents of the customer, person acting on behalf of the customer or beneficial owner and the statement about the purpose of the business relationship or transaction from the third party as soon as possible.

VII. Transactions which the financial institutions conduct between themselves on behalf of customers and relationships between financial institution and its agents, similar units or outsourcing entities should not be deemed to be in the scope of the principle of “reliance on third parties.

VIII. Transactions cannot be conducted by relying on third parties if the financial institution that is a “third party” is resident in a risky country.

Given below are a few examples to explain the principle of reliance on third parties.

Example 1: As it is known, assets in the portfolio of collective investment enterprises (investment companies, portfolio management companies and investment funds) should be entrusted to portfolio custody services (banks and intermediaries authorized by CMB) in order to be kept in a separate custody account opened in the name of these enterprises, and a contract should be signed between portfolio custody service and the firm or the investment company.

Banks and **portfolio management companies** are defined as obliged parties in Article 4 (1) (a) and (d) and as financial institutions in of Article 3 (1) (f) of RoM. Considering that the assets in the portfolio of **A Portfolio Management Company** are held in the custody account with **B Bank A.Ş.**, each investor that is a customer of **A Portfolio Management Company** should both sign a “portfolio management contract” with **A Portfolio Management Company** and open an account with **B Bank A.Ş.**, which is the custody service.

At this point, **B Bank A.Ş.** may obtain information and documents related to the identification of the investor, person acting on behalf of the investor and the beneficial owner, and information the purpose of the business relationship or the transaction from **A Portfolio Management Company** by relying on the third party. In such a case, the relevant information and documents should immediately be obtained from **A Portfolio Management Company** and in cases where a violation related to these obligations is detected during the supervision of **B Bank A.Ş.**, an administrative fine should be imposed on **B Bank A.Ş.**

Example 2: Reliance on third parties may also be applied in cases where non face-to-face transactions related to insurance activities are conducted through another financial institution

(bank). **C Insurance Company** should pay a claim to **A Person**, however, it cannot make a face-to-face payment as the person is residing in another city. In such a case, as **C Insurance Company** is not able to make customer identification, in the event that the transaction is conducted by another financial institution (**D Bank A.Ş.**), the principle of reliance on third parties can be applied provided that the requirements specified in Article 21 of RoM are met. In this regard, **C Insurance Company** should immediately obtain the information and documents related to the identification of the person to whom **D Bank A.Ş.** pays claims, the person acting on behalf of him/her and the beneficial owner, and the purpose of the business relationship or transaction.