



# Anti-Corruption Regulation

in 54 jurisdictions worldwide

Contributing editor: Homer E Moyer Jr

# 2012



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# Turkey

## Gönenç Gürkaynak and Ç Olgu Kama

ELIG Attorneys-at-Law

### 1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

Turkey is a signatory to and/or has ratified the following European and international anti-corruption conventions.

#### Council of Europe

- Council of Europe Criminal Law Convention on Corruption of 27 January 1999 (signed on 27 September 2001; ratified on 29 March 2004);
- Council of Europe Civil Law Convention on Corruption of 4 November 1999 (signed on 27 September 2001; ratified on 17 September 2003); and
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 8 November 1990 (signed on 28 March 2007).

#### International

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 17 December 1997 (including OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions) (signed on 17 December 1997; ratified on 26 July 2000);
- the United Nations Convention against Transnational Organized Crime, 15 November 2000 (signed on 13 December 2000; ratified on 25 March 2003); and
- the United Nations Convention against Corruption, 31 October 2003 (signed on 10 December 2003; ratified on 9 November 2006).

In addition to multilateral treaties, Turkey has also been a member of the Group of States against Corruption (GRECO) since 1 January 2004, the Financial Action Task Force since 1991 and the OECD Working Group on Bribery.

### 2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

The main legislation applying to acts of corruption is the Turkish Criminal Code No. 5237 (Turkish Criminal Code), which entered into force on 1 June 2005 and which prohibits bribery, malversation, malfeasance, embezzlement, and other forms of corruption such as negligence of supervisory duty, unauthorised disclosure of office secrets, fraudulent schemes to obtain illegal benefits, etc.

Apart from the Turkish Criminal Code, the core statutory basis of Turkish anti-corruption legislation can briefly be summarised and categorised as follows:

- Turkish Criminal Procedure Law No. 5271;
- Law No. 657 on Public Officers;
- Law No. 3628 on Declaration of Property and Fight Against Bribery and Corruption;
- Regulation No. 90/748 on Declaration of Property (Regulation No. 90/748);
- Regulation on Ethical Principles for Public Officers and Procedures and Principles for Application (published in the Official Gazette No. 25785 of 13 April 2005) (Regulation on Ethical Principles).

### Foreign bribery

#### 3 Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

The Turkish Criminal Code defines bribing as providing a benefit to a public official for the performance or omission of an act contrary to the requisites of the duties of the official (article 252/3).

Pursuant to the Turkish Criminal Code, bribery is committed when a person and a public official agree to exchange a benefit for the performance or omission of an act contrary to the requisites of the duties of the official (article 252/1). The actual transfer of money or another benefit is not an element for the crime of bribery to be deemed as being committed.

Additionally, Law No. 4782 on Amending Certain Laws for Combating Bribery of Foreign Public Officials in International Business Transactions (Law No. 4782), which was enacted on 2 January 2003, provides that:

*to offer, promise or give any of the advantages stated in paragraph 1 above, whether directly or through intermediaries, to the selected or appointed officials or officers of the foreign public authorities and institutions that perform a legislative or administrative or judicial duty, or the officials who perform a duty of an international nature, in order that such official or officer act or refrain from acting or to obtain or retain business in the conduct of international business shall also constitute the crime of bribery.*

While this law amended provisions that were stipulated in the Turkish Criminal Code No. 765 (Prior Turkish Criminal Code), which was abrogated with the enactment of the currently applicable Turkish Criminal Code, Law No. 5252 on the Enforcement and Application Method of the Turkish Criminal Code makes it clear under article 3/1 that any reference that is made in the legislation to the provisions of the Prior Turkish Criminal Code that were abrogated shall be deemed to have been made to the corresponding provisions in the Turkish Criminal Code. Accordingly, prior to the foregoing amendment that was introduced with Law No. 4782, bribing foreign public officials was not considered a crime in Turkish law.

Currently, the Turkish Criminal Code, article 252/5, provides that: offering, promising or giving a benefit, due to international commercial transactions, to officials who have been elected or appointed in a foreign country, or who work at public institutions or authorities that execute legislative, administrative or judicial work, or, regardless of the structuring and scope of work, to officials who work at international organisations which have been established by nations, governments or other international public organisations, for the purposes of fulfilling a job or not fulfilling a job or gaining unfair benefit or preserving thereof is also deemed to constitute bribery.

#### 4 Definition of a foreign public official

How does your law define a foreign public official?

In cases where foreign public officials are bribed, the Turkish Criminal Code has allowed for the provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) to apply with an amendment that was introduced in 2005 to article 252 of the Turkish Criminal Code in line with the requirement envisaged by the Convention which extends the scope of bribery by including sanctioning of foreign public officials. What must be understood by 'foreign public officials' is: 'officials or officers of a public authority or a public institution that carry out legislative or administrative or judicial work and who have been elected or appointed in a foreign country.' Similarly, those who conduct business that is of an international nature in a foreign country are also deemed to be 'foreign public officials'. The fact that these persons have been provided with a material benefit due to international commercial transactions for doing or not doing a job or in order to obtain an unjust benefit or retain such benefit is also considered to constitute bribery. In this respect, bribery is considered to have been committed when a material benefit or a promise is provided or made to a 'foreign public official' as a result of 'international commercial transactions'.

#### 5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

Article 252 of the Turkish Criminal Code not only penalises the public official who receives a bribe (which could be in the form of gifts, travel expenses, meals or entertainment), but it also sanctions the individual who gives a bribe as if he were a public official (the second sentence of article 252/1 reads: 'The individual giving a bribe shall be punished as a public official.'). The penalty that is imposed is imprisonment from four to 12 years, which is the penalty that is imposed on the public official who is involved in receiving a bribe. However, as explained in question 3, in order for the crime of bribery to be committed there must be a mutual agreement to exchange a benefit for the performance or omission of an act contrary to the requisites of the duties of the official. As such, while merely providing foreign officials with gifts, travel expenses, meals or entertainment is punishable under the Turkish Criminal Code, it would not alone suffice to constitute the crime of bribery.

#### 6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

Unlike the anti-bribery provisions of the US Foreign Corrupt Practices Act, the relevant provisions of the Turkish Criminal Code clearly dictate the provisions of bribery and do not provide any exceptions regarding the facilitating payments. Facilitating payments, or grease payments, would constitute a crime in Turkey, even if they were to be done the way that is regulated as an exception under the US Foreign Corrupt Practices Act. To that end, compliance officers and in-house counsel would be well advised to hesitate in recognising a facilitating payment exception in Turkey.

#### 7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

Please refer to question 3.

#### 8 Individual and corporate liability

Can both individuals and companies be held liable for bribery of a foreign official?

While the Turkish Criminal Code allows for penalties to be sanctioned on real persons who commit the crime or are engaged in the committing of any such crime (ie, the Turkish Criminal Code does not stipulate that a company, having a legal personality, is to be the subject of penalties for crimes that it is involved in committing), companies can be subject to certain security measures, as described in detail in question 14.

#### 9 Civil and criminal enforcement

Is there civil and criminal enforcement of your country's foreign bribery laws?

Turkish laws that regulate bribery are subject to criminal enforcement, as the primary legislation regulating bribery (more specifically foreign bribery) is the Turkish Criminal Code. Hence, civil enforcement is not observed in the Turkish legal framework for bribery and corruption.

#### 10 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

There is no particular government agency that is responsible for enforcing foreign bribery laws in Turkey. The judiciary has full powers to apply the provisions stipulated under the relevant laws, as described in question 2, in relation to bribery and corruption.

#### 11 Leniency

Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

Pursuant to the Turkish Criminal Code, a person who gives or receives a bribe, but then informs the investigating authorities about the bribe before the initiation of an investigation, shall not be punished for the crime of bribery (article 254/1 and article 254/2). However, this rule shall not be applicable to the person who gives a bribe to foreign public officials (article 254/4).

#### 12 Dispute resolution

Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

Turkish criminal enforcement does not allow for any dispute resolution mechanism other than through a litigious approach.

#### 13 Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

Not applicable.

#### 14 Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery?

The general principle under Turkish criminal law is that penal sanctions cannot be imposed on legal entities (article 20 of the Turkish Criminal Law). In other words, the provisions of the Turkish Criminal Code are applicable to legal persons who have committed a crime as stipulated under the Turkish Criminal Code in the Republic of Turkey.

If a bribe creates an unlawful benefit to a legal entity, the entity shall be punished through three measures: invalidation of the licence granted by a public authority; seizure of the goods which are used in the commitment of, or the result of, a crime by the representatives of a legal entity; and seizure of pecuniary benefits arising from or provided for the commitment of a crime (article 253).

The principle of territoriality, hence, is a natural outcome of the applicability of sanctions under the Turkish Criminal Law regime. The Turkish Criminal Code has adopted the principle of the place where the crime is committed when determining whether a crime has been committed in Turkey, and hence, whether the Turkish Criminal Code is applicable. According to this principle, if the behaviour and the result that constitute the material elements of a crime are realised in Turkey, the crime is deemed to have been committed in Turkey (article 8/1 of the Turkish Criminal Code). Consequently, foreign companies (where they are subject to the above measures) and their legal personal representatives will be subject to the provisions of the Turkish Criminal Code only in the event that they commit a crime in the Republic of Turkey.

#### 15 Sanctions

What are the sanctions for individuals and companies violating the foreign bribery rules?

As per the Turkish criminal law regime, only acts that are committed in Turkey or that are deemed to have been committed in Turkey, as described in question 14, are subject to sanctioning. Therefore the acts that are punishable as per the principle of territoriality regime, that are committed by individuals and companies and that would constitute a crime pursuant to domestic bribery rules (ie, the Turkish Criminal Code) will also be subject to certain sanctions.

The penalties for acts of corruption under the Turkish Criminal Code can be summarised as follows:

- Bribery (articles 252 et seq) warrants imprisonment from four to 12 years for the incumbent government official and bribe-giver, and appropriate measures (such as confiscation of property, cancellation of licences, etc) against legal entities benefiting from bribery, subject to attenuating and aggravating circumstances as set forth in the Turkish Criminal Code. In addition to the foregoing, if the public official who receives a bribe is a judge, a notary public or a sworn financial consultant, the length of imprisonment shall be increased by one third (article 252/2).
- Malversation (articles 250 et seq) warrants imprisonment from five to 10 years for the defendant government official, subject to attenuating and aggravating circumstances as set forth in the Turkish Criminal Code.
- Depending on the form of the specific act, malfeasance (articles 255, 257, 259, 260, 261 et seq) may warrant various penalties against the defendant government official.
- Embezzlement (articles 247 et seq) warrants imprisonment from five to 12 years for the defendant government official, subject to attenuating and aggravating circumstances as set forth in the Turkish Criminal Code.

#### 16 Recent decisions and investigations

Identify and summarise recent landmark decisions or investigations involving foreign bribery.

The following is an account of recent foreign and domestic bribery cases and investigations:

- Turkcell's board of directors initiated internal investigations on allegations of bribery in Kazakhstan by its subsidiary KCell and the subsidiary's supplier, Swedish company Ericsson.
- In December 2010, the German media reported allegations that the German state-owned HSH Nordbank made payments to Turkish judges in 2009 to influence an action for damages filed against it by a Turkish company. According to reports, the bribes allegedly were paid via the German security company Prevent. These allegations reportedly resulted from an audit carried out by KPMG.
- Siemens AG and its Turkish subsidiary Siemens Sanayi ve Ticaret AŞ paid a fine of US\$800 million to the SEC and the American Ministry of Justice and €395 million to the German Ministry of Justice for the bribes given in order to win international tenders in December 2008. These two companies have also been the subject of another investigation which was opened in early 2011 by the Turkish Prime Ministry Inspection Board. The Under-Secretariat of Foreign Trade has also reportedly initiated an investigation into the matter, which has turned into a prosecution.
- Daimler AG, the manufacturer of Mercedes, paid a fine of US\$93.6 million to the Ministry of Justice and US\$91.4 million to the SEC for the bribes made by its subsidiaries in China, Egypt, Greece, Croatia, Hungary, Indonesia, Iraq, Ivory Coast, Nigeria, Latvia, Russia, Serbia, Montenegro, Thailand, Turkey, Turkmenistan, Uzbekistan and Vietnam in April 2010.

#### Financial record keeping

#### 17 Laws and regulations

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

As a general rule, the Turkish Tax Procedure Law No. 213 requires taxpayers to keep documentation for a period of five years after the end of the financial year to which they relate (article 253).

Additionally, article 68/1 of the Turkish Commercial Code requires from those persons who are obliged to keep books and their successors/representatives to keep their books for a period of 10 years after their last entry and to keep other accounts and documentation, which must be kept, for a period of 10 years as of their respective dates.

However, a distinction can be made regarding the rules applicable to publicly traded companies and non-public companies. Publicly traded companies are required to keep their corporate books and financial records in accordance with the provisions set out in Communiqué on the Principles and Provisions Regarding Financial Tables and Reports in the Capital Markets (Series No. XI, 1) and Communiqué on General Explanation Regarding the Determination of Independent Auditing Obligations, Public Disclosure and Issuance of Financial Records and Reports for Companies and Corporations Subject to the Capital Markets Law (Series No. XII, 1). According to article 7 of Communiqué Series No. XII, 1, publicly traded companies are obliged to keep interim financial statement and income statement on a quarterly basis. The second quarterly records are subject to external auditing that is conducted by an independent auditing company.

Additionally, Communiqué on Accounting Standards (Series No. XI, 11) further sets out certain provisions regarding the auditing of books and records for companies subject to the regulation of the Capital Markets Board.

Non-public companies, which are limited liability companies and joint stock companies under Turkish law, are primarily subject to the provisions of the Turkish Commercial Code in terms of keeping their financial records and books. As a general rule, article 167 of the Turkish Commercial Code provides that each shareholder of a company has the right to request the auditing (internal auditing) of the company records and books, as well as to request information on the actions of the respective company. An agreement to the contrary is regarded as being void.

On a more specific note, article 274 of the Turkish Commercial Code stipulates that commercial auditors of the Ministry of Industry and Commerce audits joint stock companies for its actions. As for limited liability companies, article 548 provides that in case the number of shareholders exceeds 20, one or more than one auditor is to be present within the company. Other than that, the provisions applicable to joint stock companies in regard to internal company controls are also applicable to limited liability companies.

### 18 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

Section 5 of the Turkish Constitution of 1982, entitled 'Privacy and Protection of Private Life', and in particular article 22, preserves the secrecy of communication. The Turkish Civil Code, article 23 et seq, includes provisions regulating the protection of personal rights in general. Also, according to article 24, an individual whose personal rights are violated unjustly is entitled to file a civil action.

Therefore, in practice, corporations place provisions within their employment contracts that are to be signed by the employee and the officer of the corporation, indicating what items constitute the 'property of the corporation' and these generally include computers, memory disks, and any kind of document, whether printed or not, in order to prevent any ambiguity in relation to employee claims regarding what may constitute personal data.

Second, while the principle of confidentiality prevails in matters relating to accounting (article 5 of Turkish Tax Procedure Law No. 213), the disclosure of violations (such as a forged document or misleading document) constituting accounting irregularity to the relevant public organisation and union and professional associations, which are established with Law No. 3568 on Independent Accountants and Financial Advisers, will not be a breach of the confidentiality principle. The Ministry of Finance is responsible for determining the procedure regarding the disclosure of such information.

Additionally, information and documents that are requested in relation to civil and administrative investigations conducted by public officials can be disclosed pursuant to Turkish Tax Procedure Law No. 213.

The obligation to keep financial records and books as stipulated in the Turkish Commercial Code must be fulfilled in accordance with the provisions of the Turkish Tax Procedure Law No. 213 (specifically article 215, requiring that the books be kept in Turkish; article 216, requiring that the books be kept in ink; article 217, requiring that any misinformation should be corrected by way of appropriate markings).

Furthermore, publicly held companies are subject to the provisions of the Communiqué on the Principles and Provisions Regarding Financial Tables and Reports in the Capital Markets (Series No. XI, 1) (article 2/2).

The Communiqué on General Explanations Regarding the Determination of the Obligations for Preparing Financial Statements and Tables, Announcing Them to the Public and Independent Auditing Obligations of Partnerships and Associations Subject to the Capital Markets Law (Series No. XII, 1) provides that annual and mid-year financial tables and reports that are to be made public must comply with standard principles and forms foreseen by the Capital Markets Board and that those financial statements and tables that

are contrary to these principles and forms shall be prohibited from being disclosed to the public (article 3/a).

### 19 Prosecution under financial record keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

All the rules and legislation described above under article 17 and article 18 shall be applied to each company's record and book-keeping. A company's failure to perform its obligations under the relevant legislation would lead to the company and its directors being liable towards the authorities, if they carry indications of domestic or foreign bribery.

### 20 Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

Article 341 of the Turkish Tax Procedure Law No. 213 defines what must be understood from loss of tax, although the definition does not distinguish between losses of tax as a result of bribery, be it domestic or foreign. Accordingly, loss of tax is when tax is not computed on time or is computed incompletely, as a result of the inability to fulfil or incompletely fulfil the relevant taxation duties borne by the taxpayer or the responsible individual. In this regard, article 343 sets out the minimum penalty for committing a loss of tax as no less than 8 liras for each document, bond and bill.

Article 47/B/2 of the Capital Markets Law No. 2499 stipulates that those who falsify their books and records, or who open an account as such, or conduct any financial fraudulent behaviour over the foregoing or who misstate an independent auditing report or allow for such a report to be issued shall be penalised in accordance with the provisions relating to forgery under the Turkish Criminal Code.

The General Communiqué on Tax Procedure Law (Series No. 229) regulates, inter alia, the penalty imposed in the event of committing fraud, the description of what is to be understood from gross fault and special irregularities (such as invoicing a service or good that has not been purchased and not issuing a retail sales certificate).

Issuing fake invoices and irregularity on invoices (such as obtaining an invoice for a donation that was not given) are penalised according to the provisions of the Turkish Criminal Code (article 207 – imprisonment from one to three years) and the Turkish Tax Procedure Law No. 213 (article 353 – penalty of 10 per cent of the difference between the actual value of the invoice and the value forged, but that is no lower than 180 liras).

### 21 Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

In order to assess the net profit, article 40 of the Income Tax Law No. 193 regulates those expenses that can be deducted from income tax. These expenses are: general expenses that are incurred to generate and maintain commercial income, accommodation expenses for staff and employees at the workplace or for the equipment of the workplace, treatment and medical expenses, insurance premium and retirement allowance, damages, costs and compensation that is paid as per an agreement, judicial decision or a legal provision (subject to its being related to the respective work), work and residence expenses that are related to the respective work and that are reasonable in relation to the scope and nature of the relevant work, expenses relating to vehicles used in relation to the work, real tax, duties and charges amortisations indicated in the Turkish Tax Procedural Law. Expenses other than those enumerated under the foregoing article cannot be deducted from tax and any indication of other expenses in company and financial records will violate both the Turkish Tax Procedure Law No. 213 and the Turkish Criminal Law, depending on the facts.

### Update and trends

Prior to 2005, the legislative landscape for Turkish anti-corruption matters was limited to the provisions set out in the Prior Criminal Code, with a few regulations and relevant other laws guiding individuals, corporations, the judiciary and law enforcement entities in interpreting and understanding what constituted bribery and how to combat corruption in the Turkish public sphere. After the enactment of the new Turkish Criminal Code in 2005, and together with a general increase in frequency and severity of enforcement activity observed regarding foreign public officials and foreign companies active in Turkey, the Turkish anti-corruption forums started undergoing a rapid increase in legislation regulating bribery and corruption

matters. Notices and additional provisions as amendments to the main domestic and foreign bribery laws are now setting more lucid standards by which the general grassroots principles and provisions adopted by and stipulated in the Turkish Criminal Code are interpreted and enforced by both the judiciary and law enforcement offices (such as the police and the gendarmerie). Nevertheless, the inadequacies in the framework, including a lack of criminal liability of legal persons, and an overly narrow definition of bribery, reflect how Turkey is a jurisdiction that is continuing to grow and develop on both the domestic front, filling the gap made by such inadequacies, and the international front, following suit with global anti-corruption practices.

### Domestic bribery

#### 22 Legal framework

Describe the individual elements of the law prohibiting bribery of a domestic public official.

Please refer to question 3.

#### 23 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

Please refer to question 5.

#### 24 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

The Turkish Criminal Code defines ‘public official’ as any person who performs a public activity through appointment or selection on an unlimited, permanent or temporary basis (article 6/1/c). This general definition of public official is extended for the purposes of the crime of bribery. The following persons are also considered public officials – officials of:

- professional institutions that are considered as public entities, such as chambers of commerce and industry or the union of bar associations;
- companies of which public entities are shareholders;
- foundations founded by public entities;
- associations working for the benefit of the public;
- cooperative companies; and
- joint stock companies whose shares are quoted on stock exchanges (article 252/4).

#### 25 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

Law No. 657 on Public Officials prohibits public officials from being involved in any commercial activity. Therefore, throughout their employment with the government, public officials can neither be employed by nor provide consultancy services to any private entity (article 28).

#### 26 Travel and entertainment

Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

Please refer to question 27.

#### 27 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

Article 29 of Law No. 657 explicitly regulates the prohibition of public officials receiving gifts and providing benefits. According to this article, it is prohibited for public officials to directly or via an intermediary request gifts and accept gifts for the purpose of taking advantage, even if such act is not taken on duty, or to request to borrow money from their employers or receive such money. Pursuant to the second paragraph of the same article, the Public Officials Council of Ethics is authorised to determine the scope of the prohibition of receiving gifts and, where necessary, request a list, at the end of each calendar year, of gifts that were accepted by public officials who are at least at general director level or an equivalent high-level official.

The Regulation on the Ethical Behaviour Principles of Public Officials (the Regulation) prohibits public officials from receiving gifts or obtaining further benefits for themselves, their relatives, third parties or institutions from individuals or legal entities in relation to their duties. The Regulation does not set any monetary limit on such gifts or benefits. According to Resolution No. 2007/1 of the Council of Ethics for Public Officials, the receipt of gift or hospitality, irrespective of its monetary value, constitutes a violation of the rule set forth by both Law No. 657 and the Regulation.

However, article 15 of the Regulation provides that the following items do not fall within the scope of the rule stipulated thereunder:

- gifts donated to institutions or received on the condition that they are allocated to public service, registered with the inventory list of the relevant public institution and announced to the public;
- books, magazines, articles, cassettes, calendars, CDs or similar material;
- rewards and gifts received within public contests, campaigns or events;
- souvenirs given in public conferences, symposiums, forums, panels, meals, receptions and similar events;
- advertisement and handicraft products distributed to everyone and having symbolic value; and
- loans extended by financial institutions on market conditions.

In addition to the foregoing, Notice No. 2004/27 on the Public Officials Council of Ethics regulates the duties and obligations of the Council of Ethics, which was established with Law No. 5176 on the Establishment of the Public Officials Council of Ethics and Certain Laws. According to the foregoing notice, the Council of Ethics determines the scope of the prohibition on receiving gifts and can request, if need be, at the end of each calendar year, a list of the gifts that have been received by senior-level public officials who are at least of a general manager level or equivalent.

#### 28 Private commercial bribery

Does your country also prohibit private commercial bribery?

Not applicable.

**29 Penalties and enforcement**

What are the sanctions for individuals and companies violating the domestic bribery rules?

Please refer to questions 14 and 15 respectively for the sanctions imposed on companies and individuals violating domestic bribery rules.

**30 Facilitating payments**

Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

Please refer to question 6.

**31 Recent decisions and investigations**

Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

Recent decisions and investigations include:

- The research-focused healthcare company Roche was made subject to a lawsuit on the grounds that it refrained from paying taxes in Turkey and that it received specialist advice from an

accounting company in order not to pay taxes. It was alleged that in order to win a tender, Roche allegedly told its pharmaceutical warehouse to bid lower prices than the tender price and, in any case, win the tender. Afterwards, the pharmaceutical warehouse issued an invoice to Roche as a 'service invoice' in order to compensate for its losses as a result of this practice. This way, part of the invoiced amount was received by the pharmaceutical warehouse to compensate for its losses, while the remaining amount was shared between the executives of Roche, gaining unfair benefit. In this way, it was believed by the authorities that Roche also evaded tax.

- The Ankara Public Prosecutor's Office reportedly received a mutual legal assistance request from the United States in 2010 concerning allegations that the Turkish subsidiary of the US company 3M had engaged in bribery to secure sales of goods and services to Turkish public institutions. The parent company reportedly initiated an internal investigation.

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