Anti-Corruption Regulation

Contributing editor
Homer E Moyer Jr

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GETTING THE DEAL THROUGH

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Homer E Moyer Jr

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Transparency International

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 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 27 September 2001; ratified 29 March 2004);
- Council of Europe Civil Law Convention on Corruption of 4 November 1999 (signed 27 September 2001; ratified 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 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 17 December 1997; ratified 26 July 2000);
- the United Nations Convention against Transnational Organized Crime, 15 November 2000 (signed 13 December 2000; ratified 25 March 2003); and
- the United Nations Convention against Corruption, 31 October 2003 (signed 10 December 2003; ratified 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 (the 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 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); and
- the Regulation on Ethical Principles for Public Officers and Procedures and Principles for Application (published in the Official Gazette No. 25785 of 13 April 2005) (the Regulation on Ethical Principles).

Foreign bribery

3 Legal framework

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

Prior to 2003, bribing foreign public officials was not considered a crime in Turkish law. In 2003, Turkish Criminal Code No. 765 (the former Criminal Code) was amended so that offering, promising or giving advantages to foreign public officials or officials who perform a duty of an international nature, in order that the official 'act or refrain from acting or to obtain or retain business in the conduct of international business' was also considered bribery (Law No. 4782 on Amending Certain Laws for Combating Bribery of Foreign Public Officials in International Business Transactions). The provision regulating bribery in the Criminal Code (article 252) was amended in July 2012 so as to broaden the scope of this amendment. The provision now provides that bribery is committed if a benefit is provided, offered or promised directly or via intermediaries, or if the respective individuals request or accept such benefit directly or via intermediaries (both of which would be in relation to the execution of that individual's duty to perform or not to perform) (article 252(9), Criminal Code):
- in order to obtain or preserve a task or an illegal benefit due to international commercial transactions to public officials who have been elected or appointed in a foreign country;
- judges, jury members or other officials who work at international or supranational courts or foreign state courts;
- members of the international or supranational parliaments; individuals who carry out a public duty for a foreign country, including public institutions or public enterprises;
- a citizen or foreign arbitrators who have been entrusted with a task within the arbitration procedure resorted to in order to resolve a legal dispute; and
- officials or representatives working at international or supranational organisations that have been established based on an international agreement.

If bribery of foreign public officials is committed abroad by a foreigner, and if this type of bribery is committed in order to perform or not to perform an activity in relation to a dispute to which Turkey, a public institution in Turkey, a private legal person incorporated pursuant to Turkish laws or a Turkish citizen is a party to, or in relation to an authority or individuals, then an ex officio investigation and prosecution will be conducted into those individuals:
- who provide, offer or promise to bribe;
- who accept, request, or agree to the offer or promise for the bribe;
- who mediate such; and
- to whom a benefit is provided due to this relationship.

This is contingent on these individuals being present in Turkey (article 252(10), Criminal Code).

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 former Turkish Criminal Code, which was abrogated with the enactment of the current applicable Criminal Code (Law No. 5252 on the Enforcement and Application Method of the Turkish Criminal Code) that makes it clear under article 3(1) that any reference that is made in the legislation to the provisions of the former Turkish Criminal Code that were abrogated are deemed to have been made to the corresponding provisions in the 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.

4 Definition of a foreign public official

How does your law define a foreign public official?

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 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, irrespective of whether there is actually an agreement between them to enter into a bribe (article 252 (4), Criminal Code).

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 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?

As of July 2012, the Criminal Code sanctions an individual who acts as an intermediary for conveying the offer or the request to bribe to another party for accommodating the bribery agreement or for providing bribery (article 252(5), Criminal Code).

8 Individual and corporate liability

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

While the Criminal Code allows for penalties to be sanctioned on real persons who commit a crime or are engaged in the committing of any such crime (ie, the 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 15. On the other hand, Law No. 5326 on Misdemeanours (Law No. 5326) also regulates criminal liability of legal persons that arises from the behaviour of anybody or representative in case of a misdemeanour, which is defined as unfairness as a result of which a legal administrative sanction is imposed on the perpetrator (article 2, Law No. 5326). Pursuant to article 8 of Law No. 5326, in order for a legal person to be liable for another person's behaviour, the natural person who commits an act that constitutes a misdemeanour as per Law No. 5326 must be a representative of the respective legal person, or must undertake to perform an act within the field of operations of the legal person. In such a case, the legal person may be subject to an administrative sanction, as well as the natural person who commits the misdemeanour (the natural person who commits the misdemeanour and the legal person will be sanctioned separately).

Article 43/A of Law No. 5326 specifically states that an administrative fine of between 14,969 and 2,994,337 Turkish lira may be imposed upon the legal person if a natural person, who is not a representative of a legal person, but who has undertaken a task that falls within the field of operations of the legal person, commits, inter alia, bribery, as per article 252 of the Criminal Code, for the benefit of the legal person.

Individual liability under the Criminal Code is subject to the general principle of the individuality of the penalties under Turkish law (article 20, Criminal Code). This means that the sanctions that are applicable to natural persons under the Turkish criminal law framework can only be imposed on individuals who have committed the crime, and not to anyone else (including the company who may be the employer of an employee committing a crime). While lacking criminal capacity, legal persons, as per article 20(2), may be subject to security measures (article 60, Criminal Code).

9 Successor liability

Can a successor entity be held liable for bribery of foreign officials by the target entity that occurred prior to the merger or acquisition?

The enforcement of successor liability for anti-corruption offences is not a frequently observed legal phenomenon in the Turkish jurisdiction. This being said, the legislation allows for a form of successor liability. Article 202 of the Turkish Code of Obligations No. 6098 provides that a person who takes over an enterprise with its active and passive assets will be liable for that enterprise's debts. Therefore, an acquiring company would be liable for the unpaid debts of the acquired company, arising from article 43/A of Law No. 5326, because of the corruption offence perpetrated by the representatives of the acquired company for the benefit of the acquired company.

10 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 Criminal Code. Hence, civil enforcement is not observed in the Turkish legal framework for bribery and corruption. This being said, those injured by the crimes of the perpetrators can always file for damages before a civil court of law.

11 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.

12 Leniency

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

Pursuant to the 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)).

13 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.

14 Patterns in enforcement

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

Not applicable.

15 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), save for the analyses provided under question 8. In other words, the provisions of the Turkish Criminal Code are applicable to legal persons who have committed a crime as stipulated under the 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 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 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 Criminal Code only in the event that they commit a crime in the Republic of Turkey.

16 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 15, are subject to sanctioning. Therefore 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.

Fraud is punished by (article 157, Criminal Code) one to five years' imprisonment and up to 5,000 days of judicial monetary fine. Qualified fraud is punished by (article 158, Criminal Code) two to seven years' imprisonment and up to 5,000 days of judicial monetary fine. The judicial monetary fine can vary between 20 and 100 Turkish lira. The judge determines the rate of the fine depending on the individual's economic and other personal status. Generally, penalties for fraud can only be imposed on natural persons, as companies, as legal entities, do not attract criminal liability (article 20, Criminal Code).

Bribery (articles 252 et seq) warrants imprisonment of 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 Criminal Code. In addition to the foregoing, the length of potential imprisonment can be increased by one-third to one-half if the individual who receives a bribe or offers bribe or agrees to act as such conducts judicial duty, or is an arbitrator, expert, notary public, or sworn financial consultant (article 252(7), Criminal Code).

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 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 Criminal Code.

17 Recent decisions and investigations

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

To date, there have not been any foreign bribery cases under Turkish law. The following is an account of recent foreign bribery cases that involve corruption crimes committed under Turkish jurisdiction and internal investigations by Turkish companies:

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 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. 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, Croatia, Egypt, Greece, Hungary, Indonesia, Iraq, Ivory Coast, Latvia, Montenegro, Nigeria, Russia, Serbia, Thailand, Turkey, Turkmenistan, Uzbekistan and Vietnam in April 2010.

In 2014 Smith & Wesson paid a fine of US$2 million to SEC for the bribes to win gun sales to military and police forces in Pakistan, Indonesia and other countries. In addition the company made illegal payments to third parties for them to convey the payments to government officials in Turkey, Nepal and Bangladesh.

Financial record keeping

18 Laws and regulations

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

Article 64(1) of the Turkish Commercial Code No. 6102 (Law No. 6102) stipulates that every merchant has to keep corporate books, within which it would have to show explicitly as per Law No. 6102, its commercial acts and the economic and fiscal status of its commercial business and its accounts receivable and accounts payable along with the results it obtains in each accounting period. Books have to be kept so as to allow third-party experts to gain insight into the activities and financial status of the relevant commercial business, through an audit they would carry out in a reasonable

period of time. One novelty of the Law No. 6102 was that it widened the scope of the corporate books by way of including share ledger, book of board of directors' resolutions and book of general assembly minutes and resolutions, which do not pertain to accounting, among the corporate books. Except for the types of books mentioned explicitly under article 64 of Law No. 6102, additional books to be kept shall be determined as per the Turkish Tax Procedure Law No. 213, through reference of article 64(5) of Law No. 6102.

Furthermore, article 88(1) of Law No. 6102 stipulates that natural and legal persons, in preparing their individual and consolidated financial tables, should comply with and apply Turkish Accounting Standards (TAS), accounting principles found within the conceptual framework, and commentary, which is an integral part thereof. TAS is the translation of International Financial Reporting Standards (IFRS). Unlike the IFRS, article 88(1) explicitly mentions the conceptual framework and commentary, thus creating a legal basis for their application.

In addition to and along with the financial tables, the corporate books had to be prepared also in accordance with TAS, thus IFRS, before Law No. 6102 was amended. Through an amendment of the law, the mandatory compliance with TAS, thus IFRS, with respect to corporate books, has been repealed. That said, preliminary article 1 of Law No. 6102 stipulates that the companies (as listed below) should apply TAS, thus IFRS:

- companies that issue capital markets instruments, which are traded in the exchange or some other standardised market, intermediaries, asset manager companies and other companies that are within scope of consolidation;
- banks and their affiliated entities, as defined under article 3 of the Banking Law No. 5411;
- insurance and reassurance companies, as defined under Insurance Law No. 5684; and
- pension companies, as defined under Personal Pension Savings and Investment System Law No. 4632.

Publicly traded companies should also comply with the rules and regulations, as set out by the Capital Markets Board. Article 14 of the Capital Markets Law No. 6362 stipulates that issuers have to prepare and present financial tables and reports, which are to be disclosed to public or could be requested by the Capital Markets Board, when need be; on time, fully and correctly; and in compliance with the requirements set out by the Board, within scope of TAS, with respect to content and form. Issuers, as per Capital Markets Law No. 6362, are legal persons who issue capital markets instruments, who apply to the Capital Markets Board to issue such instruments or whose capital markets instruments are offered to the public, and the investment funds, who are subject to the Capital Markets Law No. 6362.

Additionally, issuers and capital markets entities, except the investment funds and funds of housing financing and asset financing, are also subject to the provisions set out in Communiqué on Financial Reporting in Capital Markets (Communiqué Series No. II, 14.1). According to article 7 of Communiqué Series No. II, 14.1, companies that issue capital markets instruments, which are traded in the exchange or some other standardised market, investment companies, investment funds, asset management companies, mortgage financing companies and asset leasing companies are obliged to keep interim financial statements and income statements on a quarterly basis. As per article 14 of Communiqué Series No. II, 14.1, issuers and capital markets entities, except the investment funds and funds of housing financing and asset financing, are also obliged to publish their annual and interim financial reports on their websites, once these are publicly announced.

As for internal company controls and external auditing; first, with respect to joint-stock companies, article 397 of Law No. 6102 rules that such companies that meet certain criteria, as determined and published by the Turkish Council of Ministers, are obliged to appoint an independent auditor. Accordingly, pursuant to the Decree on the Determination of the Companies Subject to Independent Audit, which is published in the Official Gazette dated 23 January 2013, companies that meet at least two of the three criteria stated below, solely or together with their subsidiaries and affiliates, shall be subject to independent audit:

- having total assets amounting to fifty million or more Turkish lira,
- having a net sales revenue of one hundred million or more Turkish lira, and
- employing two hundred or more employees.

Joint-stock companies that do not fall within scope of the Decree on the Determination of the Companies Subject to Independent Audit, thus, that are not obliged to appoint an independent auditor, are required to appoint 'statutory auditors' under article 397(5) of Law No. 6102. This said, secondary legislation that will determine the details of statutory audit and auditors has not been published yet. Therefore, requirements regarding the appointment of statutory auditors is not yet applicable as of the date this chapter was written. Although the independent audit has only recently been introduced by Law No. 6102, it, in itself, is not a novelty for the practice in Turkey, as the Capital Markets Board and Banking Regulation and Supervision Agency, through their relevant legislation, have already been imposing such requirement on companies, which are subject to their rules and regulations.

Article 635 of Law No. 6102 provides that the same provisions, which apply to joint-stock companies, shall also apply to limited liability companies, subject to certain exceptions.

In addition to and along with the two types of auditing explained above, a provision specific to groups of companies, article 207 of Law No. 6102, stipulates that each of the shareholders of a subsidiary company might apply to the commercial courts of first instance, requesting the appointment of a private auditor, in cases where the need to protect the subsidiary company against the parent company arises, as stipulated by the same article. Article 210 of Law No. 6102 and the regulation issued in accordance with the relevant article, stipulate that the Ministry of Customs and Commerce might audit companies on its own accord, or as per request, notice or complaint of shareholders or third parties.

Finally, as per article 1524 of Law No. 6102, and the relevant regulation, joint-stock companies subject to independent auditing, as explained above, will be required to set up and maintain a company website (for new companies, within three months of their incorporation), and must allocate a part of the website to the required announcements. The authorised bodies of companies who do not publish their websites within three months of incorporation will be subject to a judicial fine of between 20 and 100 Turkish lira per day, depending on the court's discretion, for between 100 and 300 days. Authorised bodies of companies that do not include the requisite information on their websites for the information society to have access to will be subject to a judicial fine of up to 100 days.

19 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.

Additionally, while the principle of confidentiality prevails in matters relating to accounting (article 5 of Turkish Tax Procedure Law No. 213), the disclosure of certain violations, which are established with Turkish Tax Procedure Law No. 213, 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.

The internal actions which could be taken, with respect to joint-stock companies, are set out in articles 392 and 437 of Law No. 6102. Article 392 of Law No. 6102 stipulates that each member of the board of directors is entitled to direct to the chairman of the board, outside the board meetings, requests for collecting information, asking questions and making examinations on all transactions of the company. If such request of a board member is rejected by the chairman of the board of directors, the matter that the information request relates to should be discussed at a board of directors' meeting within two days. If the board of directors cannot convene or rejects the information request of the board member, the board member making the request may apply to the commercial courts of first instance to receive the requested information.

A request of a board member to review, discuss records or obtain information from an employee or executive of the company cannot be rejected by the relevant employee or executive.

During board meetings, individuals authorised for company day-to-day management and, if any, management committees as well all members of the board of directors are obliged to provide information. Unlike above (ie, request of information outside board meetings), a request of any board member in this respect that is directed during a board meeting cannot be rejected or left unanswered.

The above summarised rights of board members cannot be limited or abolished, but further rights may be granted to board members through the articles of association of the company.

Furthermore, publicly held companies are subject to the provisions of the Communiqué on Financial Reporting in Capital Markets (Series No. II, 14.1) and Material Events Communiqué (Series No. II, 15.1), through which they have to inform the public of changes to the internal and continuous information that might impact the value and price of the capital markets instruments and the investment decisions of the investors.

20 Prosecution under financial record keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

All the rules and legislation described above under questions 18 and article 19 shall be applied to each company's record and bookkeeping. A company's failure to perform its obligations under the relevant legislation could lead to the company and its relevant authorised body being liable towards the authorities, if they carry indications of domestic or foreign bribery.

21 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 10.6 Turkish lira for each document, bond and bill.

Article 112(2) of the Capital Markets Law No. 6362 stipulates that the persons who intentionally prepare financial tables and reports that do not reflect the truth, falsely open an account, conduct any type of accounting fraud or who prepare false or misleading independent auditing and evaluation reports or the responsible board of directors members or responsible managers for issuers who allow for these to be prepared may be punished according to the Criminal Code. The first paragraph of the same article also provides that the persons who intentionally keep books and records as required by the law irregularly, or not within the time periods stipulated by law shall be punished with up to two years' imprisonment and up to 5,000 days of judicial monetary fine.

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 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 200 Turkish lira).

22 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.

Domestic bribery

23 Legal framework

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

Bribing domestic public officials under the Criminal Code is regulated both for individuals who provides benefit to public officials or other persons whom they indicate, as well as for public officials who benefit for themselves or provide benefit to other persons (article 252(1) and article 252(2), Criminal Code). In both cases, bribery takes place in relation to the execution of their duty to perform or not to perform directly or via intermediaries. Both the persons granting the benefit and the government official are subject to criminal liability, irrespective of whether there are actually agreements between them to enter into a bribe. Sanctions – albeit reduced ones – are imposed on parties proposing to bribe their counterparts, even if the counterparts do not agree to such proposal (article 252(4), Criminal Code).

24 Prohibitions

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

See question 5.

25 Public officials

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

The 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(1c)). 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 public institutions, such as chambers of commerce and industry or the union of bar associations;
- officials of companies that have been incorporated by the participation of public institutions or entities, or professional organisations that are public institutions;
- officials of foundations that carry out their activities within a body of public institutions or entities, or professionals;
- officials of cooperatives; and
- officials of publicly traded joint-stock companies (article 252(8)).

26 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).

27 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?

See question 28.

28 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 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.

Update and trends

Since Turkey held the G20 presidency in 2015 and supported the formation of an Anti-Corruption Working Group on both G20 and B20 levels, this resulted in the thorough discussion of certain issues with regard to corruption. As reflected in B20 Anti-Corruption Working Group's Policy Paper, these issues are:

- implementation of G20 High-Level Principles on Beneficial Ownership Transparency;
- moving towards a comprehensive digital environment for customs and border clearance;
- committing to encourage enforcement of the OECD Anti-Bribery Convention and UN Convention against Corruption;
- promoting integrity in public procurement; and
- enhancing anti-corruption training for SMEs.

29 Private commercial bribery

Does your country also prohibit private commercial bribery?

As of July 2012, the Criminal Code regulates private commercial bribery. Accordingly, if a benefit is provided, offered or promised; if the respective individuals request or accept such benefit; if such is mediated; and if benefit is provided to another individual due to the foregoing relationship, the general provisions regulating domestic bribery are applicable to individuals acting on behalf of the following entities, irrespective of whether the individual is a public official, and in relation to the execution of the respective individual's duty to directly or, via intermediaries, perform or not perform:

- occupational organisations that are public institutions;
- companies that have been incorporated by the participation of public institutions or entities, or occupational organisations that are public institutions;
- foundations that carry out their activities within a body of public institutions or entities, or occupational organisations that are public institutions;
- associations working in the public interest;
- cooperatives; and
- publicly traded joint-stock companies (article 252(8), Criminal Code).

30 Penalties and enforcement

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

Please refer to questions 15 and 16 respectively for the sanctions imposed on companies and individuals violating domestic bribery rules.

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31 Facilitating payments

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

See question 6.

32 Recent decisions and investigations

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

In December 2013, allegations with regard to money-laundering, bribery and gold smuggling led to the detentions of sons of three then-cabinet ministers, along with the general manager of state-owned Halkbank and a business tycoon known for trading gold, as suspects through the course of the investigation. Subsequently, the three cabinet ministers have resigned in the face of the allegations. In October 2014, the Public Prosecutor issued a non-prosecution decision about the case. The investigation conducted by the Parliamentary Inquiry Commission with regard to the four previous cabinet members involved in the corruption investigation resulted in a negative decision regarding the trial of the said four persons before the Turkish constitutional court. Eventually, the parliament also voted not to adjudicate the case before the Turkish Constitutional Court.

Another recent corruption case again concerns the bribery of domestic public officials. In September 2014, a three-year investigation into the allegations of bribery and bid-rigging regarding purchases made by the military culminated in the indictment of the suspects. The indictment demands that the suspects should be sentenced to four to 198 years' imprisonment.

One of the most recent cases is a bribery investigation against public authorities working under the Firefighting Department of the Istanbul Metropolitan Municipality and multiple business owners. In October 2014, multiple public authorities and business owners were taken into custody for reasons of soliciting and providing bribes in order for undue work place permits to be provided. The case is ongoing.

In 2015, the adjudication process, against high-level executives of the Turkish Aeronautical Association (the Association) with charges of embezzlement, forgery and bribery, started. Allegedly, the president of the Association accepted bribes indirectly, through a shell company that was established by a friend of his son, so that the Association would buy ambulances from a certain company. The case is ongoing.

In March 2015 the *Roche* case, which was initially dismissed in 2013 due to the expiration of statute of limitations, was overturned by the High Court of Appeals to be adjudicated once again, before the competent courts. According to the High Court of Appeals, since the crimes that are the subject matter of the case require more than 10 years of prison time, the case should have been adjudicated before high criminal courts, instead of the criminal courts of first instance. The *Roche* case stemmed from an employee tip with regard to the difference in medicine prices between public and private hospitals, leading to criminal adjudication against 18 defendants with bid-rigging and abuse of duty charges. Accordingly, the case has been referred to the competent high criminal courts and will be adjudicated once again.

Getting the Deal Through

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Anti-Money Laundering
Arbitration
Asset Recovery
Aviation Finance & Leasing
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Class Actions
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Copyright
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