Global Investigations Review

The Practitioner's Guide to Global Investigations

Editors
Judith Seddon, Clifford Chance
Eleanor Davison, Fountain Court Chambers
Christopher J Morvillo, Clifford Chance
Michael Bowes QC, Outer Temple Chambers
Luke Tolaini, Clifford Chance

GIR
Global Investigations Review

The Practitioner's Guide to Global Investigations

Editors:

Judith Seddon

Eleanor Davison

Christopher J Morvillo

Michael Bowes QC

Luke Tolaini

GIR

Global Investigations Review

Publisher
David Samuels

Senior Co-Publishing Business Development Manager
George Ingledew

Project Manager
Edward Perugia

Editorial Coordinator
Iain Wilson

Head of Production
Adam Myers

Senior Production Editor
Simon Busby

Copy-editor
Jonathan Allen

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.globalinvestigationsreview.com

ISBN 978-1-910813-95-9

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

Acknowledgements

The publisher acknowledges and thanks the following firms for their learned assistance throughout the preparation of this book:

ALLEN & OVERY LLP

ANAGNOSTOPOULOS

ARCHER & ANGEL

BAKER & MCKENZIE LLP

BARCLAYS BANK PLC

BCL SOLICITORS LLP

BDO USA, LLP

BRUNSWICK GROUP LLP

CADWALADER, WICKERSHAM & TAFT LLP

CLIFFORD CHANCE

CLOTH FAIR CHAMBERS

CORKER BINNING

DEBEVOISE & PLIMPTON LLP

DECHERT LLP

DREW & NAPIER LLC

ELIG, ATTORNEYS-AT-LAW

FOUNTAIN COURT CHAMBERS

FOX WILLIAMS LLP

FRESHFIELDS BRUCKHAUS DERINGER

GIBSON, DUNN & CRUTCHER LLP

GOODWIN PROCTER LLP

HERBERT SMITH FREEHILLS LLP

HOGAN LOVELLS

KINGSLEY NAPLEY LLP

MATHESON

NAVACELLE

NORTON ROSE FULBRIGHT LLP

OUTER TEMPLE CHAMBERS

PINSENT MASONS LLP

PROSKAUER ROSE LLP

QUINN EMANUEL URQUHART & SULLIVAN, LLP

RICHARDS KIBBE & ORBE LLP

ROPES & GRAY LLP

SCHELLENBERG WITTMER LTD

SIMMONS & SIMMONS LLP

SKADDEN, ARPS, SLATE, MEAGHER & FLOM (UK) LLP

SULLIVAN & CROMWELL LLP

WILLKIE FARR & GALLAGHER (UK) LLP

WILMER CUTLER PICKERING HALE AND DORR LLP

Publisher's Note

The Practitioner's Guide to Global Investigations is published by Global Investigations Review (www.globalinvestigationsreview.com) – a news and analysis service for lawyers and related professionals who specialise in cross-border white-collar crime.

The guide was suggested by the editors to fill a gap in the literature – namely, how does one conduct such an investigation, and what should one have in mind at various times?

It will be published annually as a single volume and is also available online, as an e-book and in PDF format.

The volume

This book is in two parts.

Part I takes the reader through the issues and risks faced at every stage in the lifecycle of a serious corporate investigation, from the discovery of a potential problem through its exploration (either by the company itself, a law firm or government officials) all the way to final resolution – be that in a regulatory proceeding, a criminal hearing, civil litigation, an employment tribunal, a trial in the court of public opinion, or, just occasionally, inside the company's own four walls. As such it uses the position in the two most active jurisdictions for investigations of corporate misfeasance – the United States and the United Kingdom – to illustrate the approach and thought processes of those who are at the cutting edge of this work, on the basis that others can learn much from their approach, and there is a read-across to the position elsewhere.

Part I is then complemented by Part II's granular look at the detail of various jurisdictions, highlighting among other things where they vary from the norm.

Online

The guide is available to subscribers at www.globalinvestigationsreview.com. As well as containing the most up-to-date versions of the chapters in Part I of the guide, the website allows visitors to quickly compare answers to questions in Part II across all the jurisdictions covered.

The publisher would like to thank the editors for their exceptional energy and vision in putting this project together. Together we welcome any comments or suggestions from readers on how to improve it. Please write to us at:
copublishing@globalinvestigationsreview.com

Contents

Preface ..... **xvii**

PART I
GLOBAL INVESTIGATIONS IN THE UNITED KINGDOM AND THE UNITED STATES

1 Introduction **1**
Judith Seddon, Eleanor Davison, Christopher J Morvillo, Michael Bowes QC and Luke Tolaini

1.1 Bases of corporate criminal liability 1
1.2 Double jeopardy 8
1.3 The stages of an investigation 15

2 The Evolution of Risk Management in Global Investigations **19**
William H Devaney and Jonathan Peddie

2.1 Sources and triggers for investigations 19
2.2 Responding to internal events 20
2.3 Considerations for investigations triggered by external events 33

3 Self-Reporting to the Authorities and Other Disclosure Obligations: The UK Perspective **42**
Amanda Raad, Marcus Thompson and Katerina Sandford

3.1 Introduction 42
3.2 Reporting to the board 43
3.3 Advantages of self-reporting 44
3.4 Risks of self-reporting 47
3.5 When to disclose and to whom 52
3.6 Method of disclosure 55
3.7 Conclusion 56
Appendix to Chapter 3: Summary of Mandatory Disclosure Obligations 57

4	**Self-Reporting to the Authorities and Other Disclosure Obligations: The US Perspective**	**59**
	Amanda Raad, Kim Nemirow, Sean Seelinger, Jaime Orloff Feeney and Arefa Shakeel	
4.1	Introduction	59
4.2	Mandatory self-reporting to authorities	59
4.3	Voluntary self-reporting to authorities	62
5	**Beginning an Internal Investigation: The UK Perspective**	**70**
	Elly Proudlock, Christopher David and Lloyd Firth	
5.1	Introduction	70
5.2	Determining the terms of reference/scope of the investigation	73
5.3	Document preservation, collection and review	76
6	**Beginning an Internal Investigation: The US Perspective**	**81**
	Bruce E Yannett and David Sarratt	
6.1	Introduction	81
6.2	Assessing if an internal investigation is necessary	81
6.3	Identifying the client	83
6.4	Control of the investigation: in-house or outside counsel	84
6.5	Determining the scope of the investigation	84
6.6	Document preservation, collection and review	87
6.7	Documents located abroad	89
7	**Witness Interviews: The UK Perspective**	**91**
	Caroline Day and Louise Hodges	
7.1	Introduction	91
7.2	Types of interviews	92
7.3	Deciding whether authorities should be consulted	92
7.4	Providing details of the interviews to the authorities	94
7.5	Identifying witnesses and the order of interviews	95
7.6	When to interview	97
7.7	Planning for an interview	99
7.8	Conducting the interview: formalities and separate counsel	101
7.9	Conducting the interview: whether to caution the witness	102
7.10	Conducting the interview: record-keeping	103
7.11	Conducting the interview: employee amnesty and self-incrimination	104
7.12	Considerations when interviewing former employees	105
7.13	Considerations when interviewing employees abroad	106
7.14	Key points	107

8 Witness Interviews: The US Perspective 109
Keith Krakaur and Ryan Junck
8.1 The purpose of witness interviews 109
8.2 Need to consult relevant authorities 109
8.3 Employee co-operation 110
8.4 Identifying witnesses to interview 110
8.5 When to interview and in what order 110
8.6 Planning for an interview 111
8.7 Conducting the interview 111

9 Co-operating with Authorities: The UK Perspective 119
Ali Sallaway, Matthew Bruce, Nicholas Williams and Ruby Hamid
9.1 To co-operate or not to co-operate? 119
9.2 The status of the corporate and other initial considerations 120
9.3 Could the corporate be liable for the conduct? 122
9.4 What does co-operation mean? 123
9.5 Co-operation can lead to reduced penalties 130
9.6 Other options besides co-operation 132
9.7 Companies tend to co-operate for a number of reasons 133
9.8 Multi-agency and cross-border investigations 133
9.9 Strategies for dealing with multiple authorities 136
9.10 Conclusion 137

10 Co-operating with Authorities: The US Perspective 138
F Joseph Warin, Winston Y Chan, Pedro G Soto and Kevin Yeh
10.1 To co-operate or not to co-operate? 138
10.2 Authority programmes to encourage and reward co-operation 148
10.3 Special challenges with cross-border investigations 149
10.4 Other options besides co-operation 151

11 Production of Information to the Authorities 153
Hector Gonzalez, Rebecca Kahan Waldman, Caroline Black, William Fotherby and Stephen McDaid
11.1 Introduction 153
11.2 Production of documents to the authorities 154
11.3 Documents obtained through dawn raids, arrest and search 166
11.4 Disclosure of results of internal investigation 168
11.5 Privilege considerations 172
11.6 Concluding remarks 174

12 Employee Rights: The UK Perspective 175
James Carlton, Sona Ganatra and David Murphy
12.1 Contractual and statutory employee rights 175
12.2 Representation 179
12.3 Indemnification and insurance coverage 181
12.4 Privilege concerns for employees and other individuals 184

13 Employee Rights: The US Perspective 186
Sigal P Mandelker, Seth B Schafler and Latoya S Moore
13.1 Introduction 186
13.2 Rights afforded by company policy, manual, contracts, by-laws 186
13.3 Rights afforded by US law 187
13.4 Employee protection in internal versus external investigations 192
13.5 Representation 193
13.6 Indemnification and insurance coverage 196
13.7 Privilege concerns for employees and individuals 200

14 Representing Individuals in Interviews: The UK Perspective 202
Jessica Parker and Andrew Smith
14.1 Introduction 202
14.2 Interviews in corporate internal investigations 202
14.3 Interviews of witnesses in law enforcement investigations 205
14.4 Interviews of suspects in law enforcement investigations 208

15 Representing Individuals in Interviews: The US Perspective 211
William Burck, Ben O'Neil and Daniel Koffmann
15.1 Introduction 211
15.2 Issues to bear in mind when representing an individual 211
15.3 Witness, subject or target: whether individuals require counsel 212
15.4 Privilege against self-incrimination 214
15.5 Interview by counsel representing the company 215
15.6 Interview by law enforcement 215
15.7 Preparing for interview 218
15.8 Notes and recordings of the interview 218

16 Individuals in Cross-Border Investigations or Proceedings: The UK Perspective 219
Brian Spiro
16.1 Introduction 219
16.2 Extradition 219
16.3 Asset seizures, forfeiture and recovery 223
16.4 Interviewing individuals in cross-border investigations 227
16.5 Privilege considerations for the individual 229
16.6 Evidentiary issues 231
16.7 Settlement considerations 233
16.8 Reputational considerations 234

17 Individuals in Cross-Border Investigations or Proceedings: The US Perspective 236
William Barry, Jeffrey A Lehtman and Margot Laporte
17.1 Introduction 236
17.2 Extradition 237
17.3 Asset seizures and forfeiture 240
17.4 Interviewing individuals in cross-border investigations 245
17.5 Effect of varying privilege laws across jurisdictions 248
17.6 Evidentiary issues 250
17.7 Settlement considerations 253
17.8 Reputational considerations 254

18 Whistleblowers: The UK Perspective 255
Peter Binning, Elisabeth Bremner and Catrina Smith
18.1 Introduction 255
18.2 The corporate perspective: representing the firm 256
18.3 The individual perspective: representing whistleblowers 263

19 Whistleblowers: The US Perspective 269
Daniel Silver and Benjamin A Berringer
19.1 Overview of US whistleblower statutes 269
19.2 The corporate perspective: preparation and response 274
19.3 The whistleblower's perspective: representing whistleblowers 278
19.4 Filing a *qui tam* action under the False Claims Act 280

20 Forensic Accounting Skills in Investigations 285
Glenn Pomerantz
20.1 Introduction 285
20.2 Preservation, mitigation and stabilisation 286
20.3 Violation of internal controls 286
20.4 Forensic data analysis 287
20.5 Analysis of financial data 291
20.6 Analysis of non-financial records 292
20.7 Use of external data in an investigation 294
20.8 e-Discovery and litigation holds 295
20.9 Review of supporting documents 296
20.10 Tracing assets 296
20.11 Conclusion 297

21 Negotiating Global Settlements: The UK Perspective 298
Rod Fletcher and Nicholas Purnell QC
21.1 Introduction 298
21.2 Initial considerations 301
21.3 Legal considerations 313
21.4 Practical issues arising from the negotiation of the first UK DPA 314
21.5 Resolving parallel investigations 316

22 Negotiating Global Settlements: The US Perspective 318
Nicolas Bourtin, Stephanie Heglund and Ryan Galisewski
22.1 Introduction 318
22.2 Strategic considerations 318
22.3 Legal considerations 322
22.4 Forms of resolution 325
22.5 Key settlement terms 328
22.6 Resolving parallel investigations 335

23 Fines, Disgorgement, Injunctions, Disbarment: The UK Perspective 337
Peter Burrell and Paul Feldberg
23.1 Criminal financial penalties 337
23.2 Compensation 338
23.3 Confiscation 338
23.4 Fine 339
23.5 Guilty plea 341
23.6 Costs 341
23.7 Director disqualifications 341
23.8 Civil recovery orders 342
23.9 Criminal restraint orders 343
23.10 Serious crime prevention orders 344
23.11 Regulatory financial penalties and other remedies 346
23.12 Withdrawing a firm's authorisation 348
23.13 Approved persons 349
23.14 Restitution orders 350
23.15 Debarment 350
23.16 Outcomes under a DPA 352
23.17 Disclosure to other authorities 352

24 Fines, Disgorgement, Injunctions, Debarment: The US Perspective 354
Rita D Mitchell
24.1 Introduction 354
24.2 Standard criminal fines and penalties available under federal law 355
24.3 Civil penalties 357
24.4 Disgorgement and prejudgment interest 358
24.5 Injunctions 361
24.6 Other collateral consequences 362
24.7 Financial penalties (and prison terms) under specific statutes 363

25 Global Settlements: The In-house Perspective 367
Stephanie Pagni
25.1 Introduction 367
25.2 Commercial considerations for executive management 368
25.3 Shareholders 369
25.4 Employees 370
25.5 Enforcement agencies 371
25.6 Other stakeholders 373
25.7 Conclusion 374

26 Individual Penalties and Third-Party Rights: The UK Perspective 375
Elizabeth Robertson
26.1 Individuals: criminal liability 375
26.2 Individuals: regulatory liability 382
26.3 Other issues: UK third-party rights 382

27 Individual Penalties and Third-Party Rights: The US Perspective 384
Joseph V Moreno and Anne M Tompkins
27.1 Prosecutorial discretion 384
27.2 Sentencing 389

28 Monitorships 396
Richard Lissack QC, Nico Leslie, Christopher J Morvillo, Tara McGrath and Kaitlyn Ferguson
28.1 Introduction 396
28.2 Evolution of the modern monitor 398
28.3 Selecting a monitor 403
28.4 The role of the monitor 406
28.5 Costs and other considerations 412
28.6 Conclusion 413

29 Parallel Civil Litigation: The UK Perspective 415
Michelle de Kluyver and Edward McCullagh
29.1 Introduction 415
29.2 Stay of proceedings 415
29.3 Multi-party litigation 417
29.4 Derivative claims and unfair prejudice petitions 420
29.5 Securities litigation 422
29.6 Other private litigation 423
29.7 Evidentiary issues 430
29.8 Practical considerations 432
29.9 Concurrent settlements 433
29.10 Concluding remarks 434

30 Parallel Civil Litigation: The US Perspective 436
Laura R Hall and Justin L Ormand
30.1 Introduction 436
30.2 Stay of proceedings 437
30.3 Class actions 437
30.4 Derivative actions 441
30.5 Other private litigation 441
30.6 Evidentiary issues 445
30.7 Practical considerations 446
30.8 Concurrent settlements 447

31 Privilege: The UK Perspective 449
Bankim Thanki QC, Tamara Oppenheimer and Rebecca Loveridge
31.1 Introduction 449
31.2 Legal professional privilege: general principles 449
31.3 Legal advice privilege 454
31.4 Litigation privilege 460
31.5 Common interest privilege 464
31.6 Without prejudice privilege 467
31.7 Exceptions to privilege 471
31.8 Loss of privilege and waiver 475
31.9 Maintaining privilege – practical issues 481

32 Privilege: The US Perspective 485
Richard M Strassberg and Meghan K Spillane
32.1 Privilege in law enforcement investigations 485
32.2 Identifying the client 491
32.3 Maintaining privilege 492
32.4 Waiving privilege 495
32.5 Selective waiver 498
32.6 Disclosure to third parties 500
32.7 Expert witnesses 504

33 Publicity: The UK Perspective 506
Stephen Gentle
33.1 Overview – general principles 506
33.2 Publicity and investigations 508
33.3 Publicity and criminal proceedings 510
33.4 Penalties 514
33.5 Hearings in private 514
33.6 Trial in private 515
33.7 Public relations, media and social media 515

34 Publicity: The US Perspective 517
Jodi Avergun and Bret Campbell
34.1 Restrictions in a criminal investigation or trial 517
34.2 Social media and the press 523
34.3 Risks and rewards of publicity 525

35 Protecting Corporate Reputation in a Government Investigation 527
Kevin Bailey and Charlie Potter
35.1 Introduction 527
35.2 Planning for the worst 528
35.3 Ensuring close integration of legal and communications advisers 529
35.4 The key moments in any investigation 530
35.5 The impact of whistleblowers 532
35.6 Managing disclosures by regulators or prosecutors 532
35.7 Communications with stakeholders 535
35.8 Managing leaks 535
35.9 Role of third-party advocates 536
35.10 To fight or not to fight 536
35.11 The endgame: announcing a settlement 537
35.12 Rebuilding reputation 539
35.13 Summary – 10 key considerations 539

PART II
GLOBAL INVESTIGATIONS AROUND THE WORLD

36 Brazil 543
Isabel Costa Carvalho and Arthur Rodrigues do Amaral

37 France 555
Stéphane de Navacelle, Sandrine dos Santos and Julie Zorrilla

38 Germany 569
Sebastian Lach, Désirée Maier and Nadine Lubojanski

39 Greece 583
Ilias G Anagnostopoulos, Jerina Zapanti and Alexandros Tsagkalidis

40 India 599
Srijoy Das and Disha Mohanty

41 Ireland 614
Carina Lawlor

42 Russia 633
Alexei Dudko

43 Singapore 648
Mahesh Rai

44 Switzerland 665
Benjamin Borsodi and Louis Burrus

45 Turkey 679
Gönenç Gürkaynak and Ç Olgu Kama

46 United Kingdom 695
Barry Vitou, Anne-Marie Ottaway and Laura Dunseath

47 United States 717
Michael P Kelly

About the Authors 735
Contributing Law Firms' Contact Details 771

Preface

The history of the global investigation

Over the past decade, the number and profile of multi-agency, multi-jurisdictional regulatory and criminal investigations have risen exponentially. Naturally, this global phenomenon exposes corporations and their employees to greater risk of potentially hostile encounters with foreign law enforcement authorities and regulators than ever before. This is partly owing to the continued globalisation of commerce, as well as the increasing enthusiasm of some prosecutors to use expansive theories of corporate criminal liability to extract exorbitant penalties against corporations as a deterrent, and public pressure to hold individuals accountable for the misconduct. The globalisation of corporate law enforcement, of course, has also spawned greater coordination between law enforcement agencies domestically and across borders. As a result, the pace and complexity of cross-border corporate investigations has markedly increased and created an environment in which the potential consequences, both direct and collateral, for individuals and businesses are of unprecedented magnitude.

The guide

To aid practitioners faced with the myriad and often unexpected challenges of navigating a cross-border investigation, this book brings together for the first time the perspectives of leading experts from across the globe.

The chapters that follow in Part I of the guide cover in depth the broad spectrum of the law, practice and procedure applicable to cross-border investigations in both the United Kingdom and United States. Part I tracks the development of a serious allegation (whether originating from an internal or external source) through its stages of development, considering the key risks and challenges as matters progress; it provides expert insight into the fact-gathering stage, document preservation and collection, witness interviews, and the complexities of cross-border privilege issues; and it discusses strategies to successfully resolve cross-border probes and manage corporate reputation throughout an investigation.

In Part II of the book, local experts from 12 national jurisdictions respond to a common set of questions designed to identify the local nuances of law and practice that practitioners may encounter in responding to a cross-border investigation. We look forward to updating and expanding both parts of the book in future editions as the law and practice continues to evolve in this emerging field. *The Practitioner's Guide to Global Investigations* has been designed for external and in-house legal counsel; compliance officers and accounting practitioners who wish to benchmark their own practice against that of leaders in the fields; and prosecutors, regulators and advisers operating in this complex environment.

Acknowledgements

The Editors gratefully acknowledge the insightful contributions of the following lawyers from Clifford Chance: Chris Stott, Zoe Osborne and Oliver Pegden in London; Megan Farrell, Jayla Jones, Delphine Miller, Amy Montour and Mary Jane Yoon in New York; and Hena Schommer and Michelle Williams in Washington, DC.

The Editors would also especially like to thank Clifford Chance lawyers Tara McGrath (who went above and beyond to bring this book together) and Kaitlyn Ferguson for their significant contributions.

Judith Seddon, Eleanor Davison, Christopher J Morvillo, Michael Bowes QC, Luke Tolaini
November 2016
London and New York

45

Turkey

Gönenç Gürkaynak and Ç Olgu Kama[1]

General context and principles

1 Identify the highest-profile corporate investigation under way in your country, describing and commenting on its most noteworthy aspects as it relates to your country.

The *Roche* case stemmed from an employee tip-off with regard to the difference in medicine prices between public and private hospitals, leading to criminal judgment against 18 defendants with bid-rigging and abuse of duty charges 12 years ago. The case had, however, been dismissed as the limitation period for the offences had expired. In 2015, the High Court of Appeals decided that since the crimes that are the subject matter of the case require a minimum of 10 years' imprisonment, the case should have been decided before high criminal courts, instead of the criminal courts of first instance, and therefore the case should be retried. In 2016, 10 defendants including the former general manager of the company and former managers of the Social Insurance Institute were sentenced to imprisonment for four years and two months.

2 Outline the legal framework for corporate liability in your country.

There is no corporate criminal liability in Turkey. However, security measures might be imposed on legal persons in case certain crimes are committed to the benefit of the relevant legal persons as per the Criminal Code No. 5237 (CC) at Article 60. These measures are invalidation of the licence granted by a public authority; seizure of the goods used in the commission of, or the result of, a crime by the representatives of a legal entity; or seizure of pecuniary benefits arising from or provided for the commission of a crime. In addition,

1 Gönenç Gürkaynak is the managing partner and Ç Olgu Kama is a partner at ELIG, Attorneys-at-Law.

administrative fines can be imposed on legal persons for certain crimes. Law No. 5326 on Misdemeanours (Law No. 5326) states that an administrative fine of between 15,804 and 3,161,421 lira may be imposed on the legal person if a natural person, who is not a representative, but who has undertaken a task that falls within the field of operations of the legal person, commits, *inter alia*, bribery for the benefit of the legal person (Article 43/A).

3 In your country, what law enforcement authorities regulate corporations? How is jurisdiction between the authorities allocated? Do the authorities have policies relating to the prosecution of corporations?

Legal persons cannot be held criminally liable under Turkish law, however, security measures can be imposed upon them (CC Article 60). Accordingly, there is no separate institution authorised to deal with corporate crimes. Public prosecutors and criminal courts are authorised to deal with crimes perpetrated to the benefit of a legal person by its representatives.

4 What grounds must the authorities in your country have to initiate an investigation? Is a certain threshold of suspicion necessary to trigger an investigation?

According to Law No. 5271 on Criminal Procedure (LCP) at Article 160, the public prosecutor may initiate an investigation whose aim is the investigation of material truth and ensuring a fair adjudication. Once the public prosecutor learns of a matter that creates the impression that a crime has been committed, either through reporting of a crime or any other way, the public prosecutor initiates an investigation to find out whether a criminal lawsuit should be filed. Accordingly, the impression of a crime is sufficient for the initiation of an investigation. The threshold for the preparation of an indictment on the other hand is sufficient doubt (LCP, Article 170).

5 Does double jeopardy, or a similar concept, apply to prevent a corporation from facing criminal exposure in your country after it resolves charges on the same core set of facts in another country?

The principle of *ne bis in idem* is accepted as one of the principles of Turkish criminal law, with certain exceptions. That said, legal persons cannot be held criminally liable under Turkish law. Corporations held criminally liable in other jurisdictions may face administrative liability under Turkish law as per Law No. 5326 (Article 43/A), as explained above. Notwithstanding, legal persons may be held civilly liable in Turkey for offences prosecuted abroad, if the necessary conditions are met.

6 Describe the principal challenges in your country that arise in cross-border investigations, and explain whether and how such challenges are dependent on other countries involved.

Data protection regulations pose a challenge in cross-border investigations. Similar to the EU rules, Law No. 6698 on Protection of Personal Data (Law No. 6698), which came into force on 7 April 2016, provides that personal data cannot be transferred abroad without the explicit consent of the data subject.

The exceptions where personal data can be transferred abroad without explicit consent of the data subject are if the country to which the personal data will be transferred provides an adequate level of protection; or, if the protection is not adequate in such country, then the data controllers in Turkey and in such country may provide a written undertaking guaranteeing an adequate level of protection, which should be authorised by the Data Protection Board (the Board). The Board will determine which countries have an adequate level of protection and announce them publicly. The Board will also determine whether a foreign country can afford an adequate level of protection and whether data transfers will be authorised after consulting with the relevant public administrations and agencies, if necessary.

However, the Board as of September 2016 had not been established as at the time of writing, and the procedures will become known after its establishment and the enactment of secondary legislation under Law No. 6698.

7 What bearing do the decisions of foreign authorities have on an investigation of the same matter in your country?

According to the LCP, the public prosecutor shall start to investigate the material fact upon being informed of a fact attesting that a crime has been committed (Article 160). That said there are no rules or provisions under Turkish law that regulate what bearing foreign decisions should have on the investigation of the same matter in Turkey, which ultimately means that foreign decisions or judgments do not have any legal validity in Turkey unless deemed enforceable through the enforcement procedure mechanism.

8 Do your country's law enforcement authorities have regard to corporate culture in assessing a company's liability for misconduct?

Currently, there are no regulations or guidance that provides discretionary power to authorities to use corporate culture as a factor in assessing a company's liability for misconduct. Under current legislation this could only be possible for administrative liability rather than criminal, since legal persons cannot be held criminally liable under Turkish legislation.

9 What are the top priorities for your country's law enforcement authorities?

The latest amendments and regulatory efforts regarding internet-related crimes suggest a tendency towards enforcement of cybercrimes. The powers of the Information and Communications Technologies Authority has been thoroughly discussed and provided for under Turkish law. Turkey has only recently enacted the Law on Protection of Personal Data No. 6698, which has provided a legislative framework with regard to protection, processing and transfer of personal data. On top of that, the increase in work accidents triggered legislation on work health and safety, namely the Law on Work Health and Safety No. 6331. This law mostly stipulates monetary fines but violation thereof could also entail criminal sanctions under the CC.

10 How are internal investigations viewed by local enforcement bodies in your country?

There are no clear guidelines or regulations under Turkish law regulating how internal investigations should be regarded by the authorities. There are no specific provisions that determine investigations as mitigating factors. Accordingly, during investigations, how a public prosecutor will react in the face of internal investigation findings will depend on the attitude of the public prosecutor as well as the other circumstances of the investigation. The same applies to competition practice as well.

Before an internal investigation

11 How do allegations of misconduct most often come to light in companies in your country?

There are countless ways misconduct concerning the actions of a legal person may come to light. The most frequent of these is private complaints, which mostly arise in the context of terminated employees or distributors. These complaints require a delicate balancing act to meet the expectations of the external whistleblowers to prevent them from disclosing the matter to a wider audience before the company's internal investigation is completed. Such balancing can be realised through informing them that the matter is being investigated, but the matter is highly confidential.

Another way the misconduct comes to light is through disclosures made by internal whistleblowers. Employers should be careful not to retaliate against these through, for example, unjust terminations.

Aside from the above, misconduct can also frequently come to light through internal audits or investigations conducted by other public authorities (e.g., corrupt conduct determined by the Competition Board). An investigation might be initiated into an alleged competition restrictive activity *ex officio* or in response to a complaint. Third parties can file a complaint with the Competition Board. The Competition Board decides to conduct a pre-investigation if it finds the notice or complaint to be serious. The Competition Authority also conducts market monitoring and prepares sector reports.

12 Are search warrants or dawn raids on companies a feature of law enforcement in your country? Describe any legal limitations on authorities executing search warrants or dawn raids, and what redress the company has if those limits are exceeded.

According to the LCP, law enforcement shall conduct searches in workplaces upon the decision of a judge and where in the search should not be delayed, upon the written order of the public prosecutor (Article 119). It is possible to file an objection against the decision of the judge within seven days (Article 268). Those who were subjected to disproportionate search warrants or undue seizures can ask for pecuniary and non-pecuniary compensation from the government (Article 141). Generally, staying inside the scope of search warrant or focusing the search on the materials that are relevant to the purpose of the dawn raid is crucial to run a legitimate search or raid. The majority of the problems with the legitimacy of a search or dawn raid stems from this.

13 How can privileged material be lawfully protected from seizure during a dawn raid or in response to a search warrant in your country?

According to the general principles applicable to attorney–client privilege, material is deemed to be privileged if it has been prepared by an independent attorney (i.e., without an employment relationship with his or her client) and to the extent it concerns the client's right of defence.

Accordingly, to render such material out of the scope of the discovery it is recommended to mark the materials as confidential, privileged and as relating to defence rights. It is further recommended to have a lawyer present in the company offices during a dawn raid. According to the recent *Dow Turkey* decision of the Competition Board (2 December 2015, 15-42/690-259 (*Dow Turkey*), if the case handlers intend to obtain a document protected under the attorney–client privilege; all objections should be raised in the course of the dawn raid and these objections should be put in writing in the on-site inspection minutes, if possible. Furthermore, the relevant objection should be justified by indicating the following information either in the minutes or a separate objection petition: information on the individual who prepares the document and for whom the document is prepared, duties and responsibilities of both parties, and information such as the reason behind the preparation of the document.

14 Are there any privileges in your country that would prevent an individual or company from providing testimony? Under what circumstances may an individual's testimony be compelled in your country? What consequences flow in your country from such compelled testimony?

According to the LCP a witness may refrain from testimonies that would incriminate the witness himself or herself or his or her relatives as specified in the LCP (Article 48). Members of the legal profession and health sector as well as financial advisors may refrain from testifying with regard to the information they obtained during the discharge of their profession. However, these cannot refrain from testifying once the relevant persons waive the privilege (Article 46). Aside from these, witnesses who fail to appear after having been summoned according to the regular procedural rules and who do not give notice of the reason of their absence shall be brought to testify by force. The expenses caused by such conduct will be requested from the witness (Article 44). This does not, however, mean that the witness must make a statement: the witness could simply not answer the questions and remain silent.

15 What legal protections are in place for whistleblowers in your country?

Turkish legislation is silent on the issue of protection of whistleblowers.

16 What rights do employees possess under local employment law that determine how they are treated within a company if their conduct is within the scope of an investigation? What employment rights would attach if they are deemed to have engaged in misconduct? Does it differ for officers and directors of the company?

Turkish law does not specifically regulate the rights of employees within the scope of internal and external investigations. The right of an employee stays the same even though there is a pending investigation concerning that particular employee. That being said the investigation itself could include certain restrictions, such as limited or no access to business computers, cell phones, etc., to run a good investigation; but besides such restrictions, the employer cannot, for instance, force the employee to take a leave of absence or use their vacation days, or keep the employee out of the workplace. Such restrictions could be possible, to the extent that they are reasonable for the investigation, if the regulations and by-laws of the workplace would allow.

If the employer establishes, at the end of an investigation, that the employee had engaged in misconduct, then the repercussions would depend on the severity of the misconduct. The employee could be terminated or given a warning or put under a different sanction according to the regulations and by-laws of the workplace. The foregoing does not differ for officers and directors in the context of labour law.

17 Are there disciplinary or other steps that a company must take in your country when an employee is implicated or suspected of misconduct, such as suspension or in relation to compensation? Can an employee be dismissed for refusing to participate in an internal investigation?

If there is an explicit provision in the employment agreement or in the code of conduct stating that the employee must comply with the lawful requests of the employer during internal investigations, employees might be terminated in regard to the breach of agreement or code of conduct. Then again, this mostly depends on what the employee is asked to comply with, since the action requested from the employee could also be performance of the employee's duty against the employer, thus this depends on what the employee refuses to do. For instance, if the employee refuses to provide the company with a document that belongs to the company, then this is surely non-performance of a duty and would be just cause for termination, but the crucial difference is that the termination here is not for non-compliance with the investigation, but for not fulfilling the employer's request for performance of duty. So ultimately, whether an employee can be dismissed for refusing to participate in an internal investigation depends on what the employee actually refuses to do. If what is refused is also a duty of the employee, then dismissal could be possible.

Commencing an internal investigation

18 Is it common practice in your country to prepare a document setting out terms of reference or investigatory scope before commencing an internal investigation? What issues would it cover?

Preparing such document would help corporations during the internal investigations in general. It is recommended for corporations to specify the documents relevant for the investigation, define the relevant issues, identify the relevant individuals and, if necessary, send those individuals retention notices. Determining these steps will provide a road map, although this may be revised during the course of the investigation.

19 If an issue comes to light prior to the authorities in your country becoming aware or engaged, what internal steps should a company take? Are there internal steps that a company is legally or ethically required to take?

Under Turkish law there is no requirement for self-disclosure or on how to act when an issue that might require an investigation arises. Similarly, under Turkish competition law, there is no requirement for self-reporting to the Competition Authority.

20 At what point must a company in your country publicly disclose the existence of an internal investigation or contact from law enforcement?

There is no mandatory disclosure obligation under Turkish law except for the disclosure obligations under the Capital Market Law No. 6362, according to which, information, events and developments that may affect the value and price of capital market instruments or the investment decision of investors shall be publicly disclosed by issuers or related parties (Article 15). If the internal investigation or contact from law enforcement may affect the value and price of capital market instruments or the investment decisions of investors, such information must be disclosed. Notwithstanding, the companies may disclose that an internal investigation had been conducted in the company, at the request of the administrative authorities.

Under Turkish competition law, there is no mandatory disclosure obligation. Should the Competition Authority choose to launch a full-fledged investigation, the decision to launch the investigation is published on the Competition Authority's website. The full names of the investigated undertakings will be included in this announcement.

21 When would management typically brief the board of a company in your country about an internal investigation or contact from law enforcement officials?

Depending on the severity of the issues under investigation the board could be informed at the beginning of the investigation. Later, when the investigation provides tangible outcomes or when strategic decisions regarding company policies (e.g., data protection issues, review of high-level managers' computers and devices) should be made, the board's participation could be required.

22 What internal steps should a company in your country take if it receives a notice or subpoena from a law enforcement authority seeking the production or preservation of documents or data?

In the absence of overruling reasons such as documents relating to defence rights, the companies should comply with the requests made by public authorities. So, in a nutshell, the company should first assess whether there are any legitimate reasons that supersede the obligation to comply with a notice of subpoena, and if not, take the necessary measures to ensure compliance or, if there are such reasons, duly explain why the company is obliged to not comply.

23 How can the lawfulness or scope of a notice or subpoena from a law enforcement authority be challenged in your country?

If a notice or subpoena can be qualified as an administrative action, it can be challenged in administrative courts. It is also possible to ask a higher authority to withdraw, change or repeal the action, as per Law No. 2577 on Administrative Procedure (Article 11). According to the LCP it is also possible to file an objection lawsuit against the decision of the criminal judge within seven days (Article 268). In addition, filing an objection against the public prosecutors decisions in specific situations (e.g., objection against the non-prosecution decision) are also regulated under the LCP. The general rule is to follow the procedural rules that the judiciary or administrative authority issuing the notice or subpoena is subject to and challenge the notice or subpoena with reasons and before the authority specified in these rules. This could be a simple filing of a complaint or a filing of a lawsuit for annulment of the notice or subpoena.

Attorney–client privilege

24 May attorney–client privilege be claimed over any aspects of internal investigations in your country? What steps should a company take in your country to protect the privilege or confidentiality of an internal investigation?

Attorney–client privilege maybe claimed over any aspects of internal investigations that relate to defence rights. According to the recent *Dow Turkey* decision of the Competition Board, the attorney–client protection covers the correspondence made in relation to the client's right of defence and documents prepared in the scope of independent attorney's legal service. Correspondence that does not directly relate to use of the client's right of defence or that aims to facilitate or conceal a violation are not protected, even when relating to a pre-investigation, investigation or inspection. For example, while an independent attorney's legal opinion on whether an agreement violates Law No. 4054 can be protected under the attorney–client privilege, the correspondence on how Law No. 4054 can be violated between an independent attorney and client do not fall within the scope of this privilege. On a final note, correspondences with an independent attorney (i.e., without an employment relationship with his or her client) fall into the scope of attorney–client privilege and shall be protected.

25 Set out the key principles or elements of the attorney–client privilege in your country as it relates to corporations. Who is the holder of the privilege? Are there any differences when the client is an individual?

According to the LCP, offices of lawyers can only be searched following a court decision and in the presence of a public prosecutor. The President of the Bar, or any lawyer who is a member of the Bar, must also be present. When the authorities decide to seize an item in the office of a lawyer, and the lawyer, President of the Bar or the lawyer's representative objects on the grounds that the item relates to the lawyer's professional relationship, the item will be collected separately in a sealed envelope and the courts will be authorised to decide on the situation of the item. If the court decides that it belongs to the professional relationship between a client and a lawyer, it will be returned immediately (Article 130). In addition, according to Attorney's Act No. 1136 it is prohibited for lawyers to disclose the information they found out in the scope of their work. The Supreme Court and Competition Authority also take the same approach.

Materialising the framework principles mentioned above, the Turkish Competition Board's *Dow Turkey* decision states that documents relating to defence rights between an independent attorney and the client will be protected under attorney–client privilege. However, correspondences that are not directly related to use of the client's right of defence or that aim to facilitate or conceal a violation are not protected, even when they are related to a pre-investigation, investigation or inspection. If the client is an individual, that would not change the scope of the attorney–client privilege.

26 Does the attorney–client privilege apply equally to inside and outside counsel in your country?

There are no specific provisions setting out whether the attorney–client privilege applies equally to internal or outside counsel under Turkish law. Yet, the Turkish Competition Board's *Dow Turkey* decision states that correspondence with an independent attorney falls into the scope of attorney–client privilege and shall be protected. In other words, the attorney client privilege would be applicable for independent attorneys who do not have an employment relation with the client. Accordingly, correspondence with and documentation prepared by the in-house counsel may not be subject to attorney–client privilege even if it relates to defence rights.

27 To what extent is waiver of the attorney–client privilege regarded as a co-operative step in your country? Are there any contexts where privilege waiver is mandatory or required?

Currently, there are no regulations or guidance that provides discretionary power to authorities on how they should evaluate waiving attorney–client privilege, or any co-operative step for that matter.

28 Does the concept of limited waiver of privilege exist as a concept in your jurisdiction? What is its scope?

There are no provisions that set out any regulations with regard to waiver of attorney–client privilege. However, a limited waiver would be possible in theory. In practice, this would be subject to the relevant authority's, and ultimately the court's, acceptance of such waiver.

29 If privilege has been waived on a limited basis in another country, can privilege be maintained in your own country?

Currently, there are no rules or regulations under Turkish law that would bar maintaining privilege in case of a waiver of privilege in another country.

30 Do common interest privileges exist as concepts in your country? What are the requirements and scope?

Currently, there are no rules or regulations under Turkish law regulating common interest privileges. Whether such a concept would be acceptable under Turkish law would be determined by precedent and any specific regulations on the matter.

31 Can privilege be claimed over the assistance given by third parties to lawyers?

Currently, the principles of attorney–client privilege suggest that such privilege would be applicable to correspondence between attorney and client. However, in the future, precedent may provide such privilege for assistance by third parties to lawyers.

Witness interviews

32 Does your country permit the interviewing of witnesses as part of an internal investigation?

No specific legislation would prevent companies from interviewing their employee or third parties within the scope of an internal investigation. That said, obtaining employee or third-party consent for such interviews and their disclosure in the future is recommended.

33 Can the attorney–client privilege be claimed over internal witness interviews or attorney reports in your country?

Attorney–client privilege may be asserted over interview notes and reports, as long as these relate to the defence right of the client and are prepared by independent attorneys.

34 When conducting a witness interview of an employee in your country, what legal or ethical requirements or guidance must be adhered to? Are there different requirements when interviewing third parties?

Turkish law does not provide any rule or guidance on how to conduct interviews with employees. That said, general rules of law such as the personality rights and the principles applicable to employment relationships should be adhered to during the interviews.

35 How is an internal interview typically conducted in your country? Are documents put to the witness? May or must employees in your country have their own legal representation at the interview?

Usually internal interviews are conducted in question and answer format. If needed, documents might be shown to the interviewees. It is always an option for the interviewees to have their own legal representation at the interview.

Reporting to the authorities

36 Are there circumstances under which reporting misconduct to law enforcement authorities is mandatory in your country?

There is no obligation to self-disclose under Turkish law. That said, the managers and employees of the company should be wary of the offence of failure to report a crime under the CC (Article 278). Accordingly, those who do not report a crime that is being committed can be punished with imprisonment of up to one year.

37 In what circumstances might you advise a company to self-report to law enforcement even if it has no legal obligation to do so? In what circumstances would that advice to self-report extend to countries beyond your country?

If there is an imminent threat of public investigation, a company could potentially be advised to self-report to law enforcement. However, self-reporting is a delicate concept that should be carefully and strategically assessed in accordance with the specific regulations of each jurisdiction. Accordingly, whether self-reporting should be realised in other jurisdictions should be examined in accordance with the rules of the relevant jurisdictions.

38 What are the practical steps you need to take to self-report to law enforcement in your country?

Since there are no obligations for companies to self-report, there are no rules applicable to self-reporting. However, it is possible for individuals to obtain leniency under certain conditions specified in the CC. Such leniency is possible for bribery under Article 254 of the CC. Accordingly, no punishment will be imposed:

- on the receiver of the bribe if he or she delivers the object of bribery as it is, to competent authorities before the relevant authorities become aware of the bribe;
- on the public officer who agrees to take bribe and informs the competent authority before the issue is learned by the relevant authority;
- if the briber giver or who agrees with the public officer informs the competent authority before the issue is learned by the relevant authority; or
- if the other persons who participate in the crime inform the competent authority before the issue is learned by the relevant authority.

This will not apply in case of bribery of foreign public officials.

The leniency application is only available for cartelists and it is not applicable to other types of competition law violations under Turkish competition law. The applicant must make a leniency application either before the opening of a preliminary investigation or after the preliminary investigation has opened but before the 'investigation report' is officially served (where the Competition Authority has no evidence proving the cartel).

Responding to the authorities

39 In practice, how does a company in your country respond to a notice or subpoena from a law enforcement authority? Is it possible to enter into dialogue with the authorities to address their concerns before or even after charges are brought? How?

In Turkey, law enforcement authorities communicate with private persons in writing. Replies should also be given in writing. There is no plea bargaining mechanism in Turkey. However, it is always a good idea to communicate to the public prosecutor that the company will co-operate with the investigation. That way the company could have a better understanding of what is really sought by the authority, which could accelerate the process.

40 Are ongoing authority investigations subject to challenge before the courts?

See question 23. On top of that, since an ongoing investigation means that the authority in question had made a decision to investigate, that decision could be challenged under the procedural rules that the authority is subject to.

41 In the event that authorities in your country and one or more other countries issue separate notices or subpoenas regarding the same facts or allegations, how should the company approach this?

Investigations with global aspects should be managed from one central unit within the company, which would take decisions in accordance with the jurisdiction-specific information it obtains from local units and outside counsel. Management from a single unit is crucial as information given out for one jurisdiction may quickly reach another jurisdiction's investigation file and the management should be realised taking into account all regions. The consistency of negotiation packages could, of course, be affected by disclosure limitations imposed on companies through blocking statutes or data protection legislation.

42 If a notice or subpoena from the authorities in your country seeks production of material relating to a particular matter that crosses borders, must the company search for and produce material in other countries to satisfy the request? What are the difficulties in that regard?

There are no specific rules under Turkish law regulating the specific matter of discovery of the material in a different jurisdiction. The way to oblige foreign countries to comply with local authorities' requests is to have that request recognised and make it enforceable in the jurisdiction of the foreign company. Turkey has reciprocity agreements between certain countries, which make it relatively easier to have a local authority's decision or request effective in that

foreign country, but other than that, having a local authority's decision or request recognised and making it enforceable are considerably challenging and time-consuming, given the bureaucratic formalities that accompany such legal procedures. Plus, the foreign country may not always be co-operative if its own legislation does not permit execution of the notice, subpoena or decision in question.

43 Does law enforcement in your country routinely share information or investigative materials with law enforcement in other countries? What framework is in place in your country for co-operation with foreign authorities?

Turkey is a party to bilateral and multilateral agreements on mutual legal assistance. Accordingly, sharing of information with foreign authorities is conducted in line with these agreements.

44 How would you advise a company that has received a request from a law enforcement authority in your country seeking documents from another country, where production would violate the laws of that other country?

If compliance with a request made by an enforcement authority would violate the laws of another jurisdiction, the relevant company would be advised to explain the reasons why it cannot provide the requested documentation or information to the requesting authorities.

45 Does your country have data protection statutes or blocking statutes? What related issues are implicated by complying with a notice or subpoena?

Turkey recently enacted Law No. 6698 on 7 April 2016, which is the first dedicated data protection law of Turkey.

The general principle regarding data processing is to obtain the explicit consent of the data subject. However, there are some exceptions. For example, personal data may be processed if it is required by law or mandatory for the data controller to fulfil its legal obligations (Article 5 of Law No. 6698).

Personal data cannot be transferred without the consent of the data subject. However, the exceptions explained under question 6 apply to data transfers, both to foreign countries and within Turkey (Articles 8 and 9 of Law No. 6698).

Transfer of personal data abroad is also possible with the consent of the data subject. The exceptions where personal data can be transferred abroad without explicit consent of the data subject are: if the country to which the personal data will be transferred provides an adequate level of protection; or, if the protection is not adequate in such country, then the data controllers in Turkey and in such country may provide a written undertaking guaranteeing an adequate level of protection, which should be authorised by the Board (Article 9 of Law No. 6698).

The provisions of Law No. 6698 are not applicable when data processing is used to prevent a crime and is crucial for criminal investigation (Article 28/2-a of Law No. 6698).

Companies established under Turkish laws must provide the requested information to law enforcement authorities with respect to an investigation. Article 161 of the Law on Criminal Procedure designates the powers of a public prosecutor and stipulates that a public prosecutor, directly or with the help of subordinate law enforcement authorities, may conduct any

kind of investigation. On the other hand, the procedures for requesting information from a foreign company would not be the same as for a local company. Mainly international rogatory procedures (such as procedures set under mutual legal assistance treaties) should be followed by the judicial authorities to obtain information (evidence) from a foreign company.

46 What are the risks in voluntary production versus compelled production of material to authorities in your country? Is this material discoverable by third parties? Is there any confidentiality attached to productions to law enforcement in your country?

A request may be made that any material presented to authorities, either voluntarily or not, be kept confidential, with legitimate reason. Such legitimate reason is usually existence of confidential information that is protected by law. Production of material voluntarily does not make the authority more, or less, inclined to keep it confidential. The authority merely assesses whether there is legitimate and reasonable cause to ask for it to be kept confidential.

Global settlements

47 Prior to any settlement with a law enforcement authority in your country, what considerations should companies be aware of?

Under Turkish law, there is no system of settlement with law enforcement authorities. Disputes are resolved in courts of competent jurisdictions.

48 What types of penalties may companies or their directors, officers or employees face for misconduct in your country?

In case of misconduct, legal persons and individuals may be held administratively and civilly liable. If misconduct is detected during procurement, legal persons and individuals might be debarred from the procurement process.

In the context of the CC, individuals might be subject to judicial fines and imprisonment. That said, there is no corporate criminal liability under Turkish law. According to the CC, security measures may be imposed on companies (Article 60). These measures are invalidation of the licence granted by a public authority; seizure of the goods that are used in the commission of, or the result of, a crime by the representatives of a legal entity; or seizure of pecuniary benefits arising from or provided for the commission of a crime.

49 What do the authorities in your country take into account when fixing penalties?

When determining penalties, criminal judges will be bound by the threshold amounts set out in the laws for imprisonment and judicial fine limits, as well as the mitigating and aggravating circumstances specified in the CC.

50 Are non-prosecution agreements or deferred prosecution agreements available in your jurisdiction for corporations?

Non-prosecution agreements or deferred prosecution agreements are not available in Turkey. Disputes are resolved in courts of competent jurisdictions.

51 Is there a regime for suspension and debarment from government contracts in your country? Where there is a risk of suspension or debarment or other restrictions on continuing business in your country, what are the options available to a corporate wanting to settle in another country?

Public Procurement Law No. 4734 states that those discovered to have been involved in prohibited conduct set out in the same law (e.g., participating in the public procurement process even though there is a court decision against the bidder stating that the bidder bribed a public official) shall be debarred from participation in any public procurement for one to two years (Article 58). The period of debarment will depend on the nature of the prohibited conduct. If the debarred entity is an equity company, the debarment shall apply to the shareholders who own more than half of the capital of the debarred company. If the debarred company owns more than half of the capital of another company, the debarment decision will also apply to such company (Article 58).

52 Are 'global' settlements common in your country? What are the practical considerations?

Since there is no plea bargaining mechanism in Turkey, companies cannot settle with the authorities. Disputes are resolved in courts of competent jurisdictions.

53 Are parallel private actions allowed? May private plaintiffs gain access to the authorities' files?

Gaining access to authorities' files is possible to the extent that there is no confidentiality ruling on the files. If not, then the files are accepted to be in the public domain.

Publicity and reputational issues

54 Outline the law in your country surrounding publicity of criminal cases at the investigatory stage and once a case is before a court.

According to the LCP, a lawyer's right to review the case file and make a copy might be limited upon request of the public prosecutor and the decision of the judge, in case such access may jeopardise the investigation (Article 153). Other than that, procedures in an investigation are confidential (Article 157). In principle, trials are open to the public. However, in some circumstances (e.g., if it is necessary for public morality and security) the judge may request a closed trial (Article 182). All trials for the individuals under 18 are closed to the public (Article 184).

55 What steps do you take to manage corporate communications in your country? Is it common for companies to use a public relations firm to manage a corporate crisis in your country?

Corporate communications are managed through third-party companies and where necessary through lobbying companies, in cases of a crisis. From time to time, lawyers can supplement the services provided by these third-party companies.

56 How is publicity managed when there are ongoing, related proceedings?

In most cases company representatives issue a press statement and inform the public about the process, if so decided by the company.

Duty to the market

57 Is disclosure to the market in circumstances where a settlement has been agreed but not yet made public mandatory?

According to Capital Market Law No. 6362, information, events and developments that may affect the value and price of capital market instruments or the investment decision of investors shall be disclosed to public by issuers or related parties (Article 15). Therefore, if the settlement affects any of the factors stipulated in the provision, disclosure is mandatory.

Appendix 1

About the Authors

Gönenç Gürkaynak
ELIG, Attorneys-at-Law

Gönenç Gürkaynak is a founding partner and the managing partner of ELIG, Attorneys-at-Law, a leading law firm of 70 lawyers based in Istanbul, Turkey. Mr Gürkaynak graduated from Ankara University Faculty of Law in 1997 and was called to the Istanbul Bar in 1998. Mr Gürkaynak received his LLM degree from Harvard Law School and is qualified to practise law in Istanbul, New York, Brussels, and England and Wales (currently as a non-practising solicitor). Before founding ELIG, Attorneys-at-Law in 2005, Mr Gürkaynak worked as an attorney at the Istanbul, New York and Brussels offices of a global law firm for more than eight years.

Mr Gürkaynak heads the regulatory and compliance department of ELIG, Attorneys-at-Law with a significant practice in Turkey focusing on internal investigations and white-collar criminal matters advising clients in connection with Turkish corporate compliance issues under the relevant OECD Convention, FCPA, the UK Bribery Act and the Turkish anti-corruption laws.

Mr Gürkaynak frequently speaks at international and national conferences on anti-corruption matters. He has written more than 100 articles in English and Turkish published by various international and local publishers. Mr Gürkaynak also holds teaching positions at undergraduate and graduate levels at two universities, and gives lectures in other universities in Turkey.

Ç Olgu Kama
ELIG, Attorneys-at-Law

Ms Ç Olgu Kama graduated from Istanbul Bilgi University Faculty of Law in 2002, and was called to the Istanbul Bar in 2003. She obtained her first LLM degree from Galatasaray University Faculty of Law in 2006 on the Law of Economics and her second LLM degree from Fordham Law School, New York, in 2008 on Banking, Corporate and Finance Law. Ms Kama has been working in the regulatory and compliance department of ELIG, Attorneys-at-Law for more than seven years, following her years of practice at reputable law firms, and has been a

partner in the department since January 2014. She has extensive experience in corporate compliance matters and white-collar irregularity projects, contracts law, commercial law, general corporate law and real estate law. Ms Kama has also authored and co-authored many articles and essays in relation to corporate compliance and white-collar irregularities matters.

ELIG, Attorneys-at-Law
Citlenbik Sok. No. 12
Yildiz Mah
Besiktas, 34349 Istanbul
Turkey
Tel: +90 212 327 17 24
Fax: +90 212 327 17 25
gonenc.gurkaynak@elig.com
olgu.kama@elig.com
www.elig.com