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Attorneys at Law

## Q&A: ANTI-CORRUPTION, CORPORATE COMPLIANCE AND INTERNAL INVESTIGATIONS

**E**LİG, Attorneys-at-Law is a full-service independent Turkish law firm based in Istanbul and it maintains a specialist niche practice in advising on internal investigations and white collar crime matters. ELİG regularly collaborates with international law firms on cross-border projects and assists clients to develop comprehensive work plans for internal investigations on the Turkish operations of US or UK based multinational companies. The firm has extensive expertise on advising on Turkish corporate compliance issues under the FCPA, the UK Bribery Act, and under the mandatory provisions of Turkish law on anti-corruption.

### TO WHAT EXTENT HAVE ANTI-CORRUPTION ISSUES CLIMBED UP THE CORPORATE AGENDA IN RECENT YEARS?

Prior to 2005, the legislative landscape for Turkish anti-corruption matters was limited to the provisions set out in the Prior Criminal Code, with a few regulations and relevant other laws guiding individuals, corporations, the judiciary and law enforcement entities in interpreting and understanding what constituted bribery and how to combat corruption in the Turkish public sphere. After the enactment of the new Turkish Criminal Code in 2005, and through the implementation of anti-corruption measures and by following the observers' recommendations, the Turkish anti-corruption regime started undergoing a rapid increase in legislation regulating bribery and corruption matters.

In April 2005, the Prime Ministry adopted an Ethical Code to raise awareness about corruption among public officials. In 2010, the government published an action plan on the fight against corruption and the new national anti-corruption strategy (2010-2014); it is the Prime Minister's Inspection Board who is authorized to provide organizational and technical support for the implementation of the strategy. Notices and supplementary provisions added to the main domestic and foreign bribery laws are now setting more lucid standards by which the general, grassroots principles and provisions adopted by and stipulated in the Turkish

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Criminal Code are interpreted and enforced by both the judiciary and law enforcement offices.

The legislation is being gradually clarified through regulatory notices and legislative amendments; the most recent amendments were made in early July 2012 and updated the core bribery and whistleblowing provisions stipulated under the Turkish criminal law architecture.

### ARE THERE SIGNIFICANT DIFFERENCES IN THE WAY ANTI-CORRUPTION LAW IS APPLIED IN TURKEY TO THE WAY IT IS APPLIED IN US OR OTHER EUROPEAN MARKETS?

Anti-corruption laws are mainly regulated under the Turkish criminal law, unlike the US and UK, for example, where the field is regulated by specific laws. As Turkish anti-corruption practice falls under the broader framework of Turkish criminal law, the prosecution of corporate or business frauds and money laundering and the application of anti-corruption law ultimately rests with the public prosecutors.

Financial and tax crimes are enforced



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administratively. In particular; the Financial Crimes Investigation Board (MASAK) has general roles of developing policies and improving legislation and collecting specific data to analyse and evaluate suspicious transaction reports in the context of financial crime.

Turkish criminal authorities have formal and/or informal mechanisms for cooperating with foreign prosecutors as Turkey is a party to the European Convention on Mutual Assistance in Criminal Matters and the European Convention on Extradition. Mutual assistance with foreign prosecutors is governed pursuant to the provisions of the former.



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### WHAT COMPLIANCE TIPS DO YOU OFFER CLIENTS CONDUCTING THEIR FIRST DEAL IN THE COUNTRY?

Clients that are conducting their first deal in Turkey should be particularly attentive about FCPA and UK Bribery Act risks, as well compliance with local laws and regulations that are associated with the deal. Conducting appropriate due diligence should constitute an inherent building block of the company's compliance measures and corporate policies.

Furthermore, clients should be careful of criminal law regulations that are specific to Turkey (in that certain acts that may be legal in other countries may be prohibited in Turkey), and should seek assistance from an independent domestic law firm when entering into the market for the first time. Regular books and accounting checks would help the company in keeping their records compliant to laws and avoid risks in this respect.

### HOW IMPORTANT IS IT TO INSTRUCT AN INDEPENDENT DOMESTIC LAW FIRM WHEN IT COMES TO MATTERS RELATING TO CORPORATE COMPLIANCE IN TURKEY?

It is becoming increasingly popular for clients to instruct independent domestic law firms to assist them with their corporate compliance matters in Turkey. This is because corporate compliance is an area that is yet not well known in Turkey and Turkish corporations are not as aware of its importance as most multinational companies. So the role of domestic law firms in assisting these corporations in familiarizing themselves with local regulations and prohibitions is important.

Accounting firms are also playing more substantial roles in compliance matters. They are increasingly being called upon by large corporations to keep their

accounting records compliant to domestic, as well as foreign, regulations.

### IS THERE ANY SIGNIFICANT NEW LEGISLATION IN THIS AREA THAT CLIENTS SHOULD BE MADE AWARE OF?

The legal provision regulating "bribery" in the Turkish Criminal Code No. 5237 was significantly amended in July 2012 in an attempt to more clearly outline the types of actions that constitute bribery under Turkish law, and it also expanded bribery's scope of application to include private commercial bribery as well.

As of July 2012, the Turkish Criminal Code regulates bribery. Accordingly, if a benefit is provided, offered or promised, or if the respective individuals request or accept such a benefit, or if such is mediated, and if a benefit is provided to another individual due to the following relationship, the general provisions regulating domestic bribery (see above, Domestic public officials) are applicable to individuals acting on behalf of the following entities, irrespective of whether or not 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:

- Professional organizations that are public institutions.
- Companies that have been incorporated by the participation of public institutions or entities, or professional organizations that are public institutions.
- Foundations that carry out their activities within a body of public institutions or entities, or professional organizations that are public institutions.
- Associations working for the public interest.
- Co-operatives.
- Publicly traded joint stock companies (Article 252(8), Turkish Criminal Code).

Private persons can additionally be subject to both civil and criminal regulations if they commit bribery or corruption. They can be punished for bribing domestic or foreign public officials (see above) and the penalty of four to 12 years' imprisonment is imposed identically on private persons who give the bribe and public officials who receive it. ■

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