

The Legal 500 Bribery and Corruption Comparative Guide 2022 – Turkey Chapter

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1. What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?

In Turkey, the main legislation governing bribery and corruption is the Turkish Criminal Code No 5237 ("**TCC**"). Bribery is criminalized under Article 252 of the TCC. That said, corruption is a category of crimes in Turkey, rather than a specific crime itself. Corruption comprises specific crimes such as embezzlement, malversation, bribery, misconduct, bid-rigging and manipulation of tender contracts, money laundering, fraud, fraudulent bankruptcy, insider trading, terrorism financing and forgery. In addition to the legislation above, other relevant domestic regulations with respect to corruption are as follows: Criminal Procedure Code (No 5271). Misdemeanours Code (No 5326). Banking Code (No 5411). Regulation on Asset Declaration (No 90/748). Code on Public Officials (No 657). Code on Public Tenders (No 4734). Code on Establishment of the Public Officials Ethics Board and Amendments to Some Laws (No 5176). Regulation on Ethical Behaviour Principles of Public Officials. Code on the Prevention of Laundering of Crime Revenues (No. 5549), Code on Prevention of Terrorism Financing (No 6415). Regulation on Program of Compliance with Obligations Regarding Prevention of Laundering of Crime Revenues and Terrorism Financing. Code on Capital Markets (No 6362). Anti-Smuggling Law (No 5607). Code on Independent Accountant Financial Advisers and Certified Public Accountants (No 3568).

2. Which authorities have jurisdiction to investigate and prosecute bribery in your jurisdiction?

Public prosecutors' offices are exclusively competent and responsible to conduct criminal investigation and prosecution of bribery. Also, public prosecutors' offices may be supported by the Financial Crimes Investigation Board of the Ministry of Finance ("**MASAK**") in terms of collection of evidence, if needed.

3. How is bribery defined?

As per Article 252 of the TCC, bribery is defined as granting an undue advantage to a public official or to another person indicated by the public official in order to perform or not to perform a task with regard to his duty. The person receiving a bribe and also the person giving a bribe are held criminally responsible. The offence is committed when the parties agree upon a bribe.

4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined? Are there different definitions for bribery of a public official and bribery of a private person?

In principle, the offence of bribery must include at least one public official. According to Article 6 of the TCC, public official has been defined as any person who is elected, appointed or chosen in any other way to carry out a public duty for a temporary, permanent or specifically defined time period. That said, engaging in bribery with persons who are representatives of the below listed legal entities is also criminalised:

- Professional organizations with public institution status.
- Companies established with a partnership with public entities or professional organisations having a public entity status.

- Foundations operating within public entities or professional organisations having a public entity status.
- Public benefit associations.
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- Publicly traded corporations.

By this definition, both respective private persons and public official are subject to the same legal provisions, and there is no distinction between bribery of public official and bribery of a private person in terms of definition.

5. What are the civil consequences of bribery in your jurisdiction?

With respect to civil and criminal proceeding, different courts are competent and have jurisdiction and civil claims are subject to Turkish Code of Obligations, not to the TCC. The act of bribery can be classified as a tort under Turkish civil law. In general, tort liability is stipulated in Article 49 of the Turkish Code of Obligations. The article suggests that any person who damages another person with a faulty and illegal action shall be liable to recover such damage. Within this context, victims/injured persons or companies suffered by the offence of bribery can file civil lawsuits and claim compensation of their damages before the civil courts according to Turkish Code of Obligations. In this regard any person can claim damages in civil courts that is resulted from bribery.

6. What are the criminal consequences of bribery in your jurisdiction?

Those committing bribery, by receiving or offering to receive bribery or giving or offering to give bribery, are sentenced from 4 to 12 years' imprisonment irrespective of being a public official, save for aggravating and mitigating circumstances. Also, third persons shall be punished as accomplice, if they mediate the offer or convey the request to the other party, closing the bribery agreement or providing the bribe or are provided with the benefit, as well as authorised person of a legal person who accepts the benefit irrespective of being a public official. Additionally, where a person who receives or requests a bribe or agrees to such is a person in a judicial capacity, an arbitrator, an expert witness, a public notary or a professional financial auditor, the penalty to be imposed shall be increased by one-third to one-half.

7. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials?

Article 29 of the Code on Public Officials (No 657) stipulates that it is prohibited for civil servants to:

- Request gifts directly or by means of an intermediary,
- Accept gifts with the purpose of taking any advantage even while not exercising their duties or,
- Request or accept a monetary loan from those benefitting from public services.

Paragraph 2 of the same article further represented a legal basis for Public Officials Ethic Board ("**Ethic Board**") and entitled the Ethic Board to determine the scope of "prohibition to accept gifts". In 2004, Ethic Board was established through the Law on Establishment of the Public Officials Ethic Board and Amendments to Some Laws and secondary legislation "Regulation on Ethical Behaviour Principles of Public Officials" ("**Ethic Regulation**") has followed, setting out the gifts and benefits falling outside the prohibition to accept gifts. Accordingly, the following is not regarded to be prohibited as per Article 15 of the Ethic Regulation; 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, which shall not affect the legal conduct of the transactions; Books, journals, 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 craft products distributed to everyone for promotion and having symbolic value; and Credits taken by financial institutions on market conditions. Moreover, same article reiterates the gifts fall in the scope of prohibition to accept gifts as follows: Welcoming, parting or celebration gifts, cheques for scholarships, travel and free accommodation and gift cards received from those have business, service or any relationship based on self-interest; Transactions made with unreasonable prices while purchasing, selling or leasing a moveable/immovable good or service; Any kind of gifts

such as good, clothing, jewellery or food received from service utilizers; Loans or credits taken from those have business or service relationship with related institution.

8. Are political contributions regulated?

Donations to be made to political parties are strictly regulated in Turkey under the Political Parties Law. Political parties cannot receive aid or donations in kind or in cash from foreign states, international organizations, real and legal persons who are not Turkish nationals. As per Article 116, those who violate those rules stipulated under the mentioned law are sentenced to imprisonment from 6 months to one year. A political party official or candidate who accepts a donation from foreign states, international organisations or foreign real or legal persons is sentenced to imprisonment for one to three years.

9. Are facilitation payments regulated? If not, what is the general approach to such payments?

There is not any specific regulation for facilitation payments. As it is not explicitly allowed in Turkish law, it constitutes bribery if essential elements of the offence are established.

10. Are there any defences available?

Although there is no defence specific to the offence of bribery, within the framework of the TCC, reasons for setting aside or reducing criminal liability are applicable to the bribery as well. These reasons are: Provisions of a statute and legitimate orders from a superior Legitimate defence and necessity Being exposed to force, violence, menace and threat Being minor Having mental disorder That said, Article 254 of the TCC provides for the following safe harbours and exemptions (not applicable with regards to foreign bribery): No punishment is imposed if a person taking bribe delivers the subject of bribery exactly as it is to the relevant bodies before the commencement of investigation. No punishment is imposed if the public officer who agrees to receive a bribe notifies the relevant bodies about this fact before the commencement of investigation. No punishment is imposed if a person offering a bribe to a public officer notifies the relevant authorities about this fact before the commencement of investigation. No punishment is imposed on a person complicit in bribery if the person notifies the relevant bodies and shows sincere repentance about this fact before the commencement of investigation.

11. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?

There is no legal obligation set forth for companies incorporated in Turkey to adopt a compliance program for fighting bribery. Since bribery is a criminal offence which can be committed by intention, existence of a compliance program is not accepted as mitigating factor to reduce/eliminate liability for bribery. In addition, the concept of plea bargaining does not exist under Turkish criminal law for bribery offences.

12. Who may be held liable for bribery? Only individuals, or also corporate entities?

Criminal liability is personal, meaning that, as a matter of principle, nobody can be held criminally liable for the actions of another person (Article 38 of the Turkish Constitution; Article 20 of the TCC). Only real persons can commit crimes and receive criminal sanctions. Unlike some other jurisdictions, legal entities in Turkey cannot be held criminally liable. Under Turkish law, if a real person commits a crime on behalf or in favour of a legal entity, the real person will be held personally liable. That said, legal entities are still subject to the specific security measures, e.g., cancellation of licenses and permits, confiscation. The representatives and managers can be held liable in the context of their actions while performing their duties on behalf of the legal entity.

13. Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective corporate compliance program?

In Turkey, there is no specific public guidance. However, corporate entities are generally implementing the guidelines published by the international organisations such as ICC, UN, OECD along with FCPA and UKBA provisions.

14. Does the law provide protection to whistle-blowers?

There are no specific laws for the protection of whistleblowers under Turkish law, although certain rights and protections are attributed under general laws and regulations. Moreover, the Witness Protection Code (No 5726) provides certain protections to persons reporting a crime to public prosecutor. The Witness Protection Code only applies to persons reporting crimes which are subject to aggravated life sentence, life sentence and crimes which are punished with a minimum of ten years or more, as well as terrorism-related crimes. Therefore, this Code is not applicable for bribery. Supreme Court of Turkey has an established practice of protecting the right of employees to file complaints. It has ruled in most cases that provided the employee's reporting of an employer's fraudulent act is based on the reasonable belief that its employer was involved in a criminal act; the employer cannot use this as the basis of termination for just cause or valid reason. To give further details, in accordance with Article 18/3-c of the Employment Code, if an employee submits a complaint against his/her employer to administrative or legal authorities concerning his/her legal or contractual obligations, the employer cannot terminate the employment agreement of such employee. Even though this provision provides a protection for whistleblowers solely against their employers; employers must also provide protection for the whistleblowers against any kind of retaliation which may come from other employees and/or relevant parties.

Other laws and sub-legislation which include provisions regarding whistleblower protection, other than the Witness Protection Code and the Employment Code, are as follows:

- Constitution of the Republic of Turkey
- Turkish Civil Code numbered 4721
- Turkish Penal Code numbered 5237
- Turkish Code of Obligations numbered 6098
- Personal Data Protection Law numbered 6698
- Regulation on Deletion, Destruction and Anonymisation of Personal Data
- Criminal Procedure Code numbered 5271

15. How common are government authority investigations into allegations of bribery?

Numerous official and confidential investigations are carried out across the country. According to official statistics of Turkish Ministry of Justice for 2020, 4,877 criminal case was filed with respect to bribery.

16. What are the recent and emerging trends in investigations and enforcement in your jurisdiction? Has the Covid-19 pandemic had any impact and, if so, what?

In 2021, there has been significant number of bribery related investigations initiated and conducted in Turkey, especially with respect to public officials in charge of national defence industry and enforcement and title deed offices. Even though there are serious negative impacts of Covid-19 pandemic on Turkey, it did not affect bribery related investigations initiated or conducted by public authorities.

17. Is there a process of judicial review for challenging government authority action and decisions?

Government authority's action and decisions are subject to judicial review before administrative courts and the Constitutional Court. However, administrative courts are only competent on legal matters and they cannot make review of expediency, in other words, they cannot take executive decisions instead of government authority. Constitutional Court reviews compatibility of government authority action and decisions with the Constitution of Republic of Turkey. Decisions of criminal courts with respect to bribery cases can be reviewed and appealed by

District Courts of Justice, the Court of Cassation and Constitutional Court respectively.

18. Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?

Under 11th Development Plan announced by the Presidency in July 2019, importance of combatting with corruption was referred and establishment of an automatic tracing system for assets of public official was envisaged. According to the recent Human Rights Action Plan announced by the President of Turkey in March 2021, the Strategy Document, which aims to increase transparency and fight against corruption, will be updated and implemented accordingly. This effort mainly aims to eliminate corruption in the public sector. In addition, the legal framework on whistle-blower protection still needs to be improved. EU's 2019 adoption of the Whistleblowing Directive (EU/2019/1937) may lead Turkey to adopt specific whistleblowing legislation in the coming years for the purposes of compliance with EU law.

19. To which international anti-corruption conventions is your country party?

The United Nations Convention against Corruption, The United Nations Convention against Transnational Organized Crime, The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The European Convention on Mutual Assistance in Criminal Matters. The Convention on the Transfer of Sentenced Persons. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. The Council of Europe Criminal Law Convention on Corruption. the European Convention on the International Validity of Criminal Judgments. The European Convention on the Suppression of Terrorism. The European Convention on the Transfer of Proceedings in Criminal Matters. The European Agreement on the Transmission of Applications for Legal Aid. Turkey is a member of the following groups: Group of States against Corruption (GRECO), member since 2004. Financial Action Task Force (FATF), member since 1991.

20. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection.

In Turkey, criminal investigations are solely conducting by public prosecutors, therefore the concept of lawyer led investigations do not exist. That said, Attorneys Law of Turkey provides general confidentiality and attorney-client privilege to lawyers regarding documents and information obtained during practising their profession.

21. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and corruption compares on an international scale?

Turkey is party to many international organisations and conventions as explained Answer 19; therefore, government authorities give a high importance to tackle bribery corruption as a result of international duties as well as determination to build transparent environment both in public and private sector. Fight against bribery and corruption is one of the most important issues in the government's agenda.

22. Generally how serious are organisations in your country about preventing bribery and corruption?

Fighting with bribery and corruption became a top priority. Corporate entities are aware of legal and financial risks arising from bribery and corruption, especially taking the extra-territorial reach of FCPA, UKPA, Sapin II into consideration; therefore, they are more eager now to prevent bribery and corruption by implementing compliance programs within their organisations.

23. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?

There are several and independent enforcement bodies in Turkey and lack of a centralized anti-corruption authority causes uncoordinated enforcement practices in Turkey. In addition, technical knowledge and industry information are essential during investigation phase; however, agencies do not often possess such knowledge and information. Therefore, establishment of specialized prosecution offices may be considered.

24. What are the biggest challenges businesses face when investigating bribery and corruption issues?

Lack of explicit legislation and legal provisions, especially under Labour Law, regarding how an internal investigation should be conducted and guidelines prepared by enforcement authorities on this matter and thin difference between crime of not reporting the crime and slander in the TCC constitute the biggest challenge for companies and employers. In addition, strict interpretation of Turkish Data Protection legislation and recent decisions of Turkish Constitutional Court in compliance with jurisprudence of European Court of Justice make difficult surveillance and e-mail monitoring in internal investigation process on employer's side.

25. What do you consider will be the most significant corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?

As part of the Human Rights Action Plan and Judicial Reform Plan initiated by the Presidency, there may be new obligations to be imposed on businesses for fighting with corruption, such as establishment of a comprehensive and detailed compliance program and/or appointment/recruitment of compliance officers.

26. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?

For corporate entities to adopt and implement effective compliance programs, it would be important for government authorities to issue guidelines. Adoption of specific whistleblowing legislation may also encourage business community to cooperate with public authorities in fight against corruption. Finally, establishment of centralized public agency for anti-corruption, regular public meetings and trainings and introduction of criminal liability concept with respect to corporate entities might be a good step and essential for improving and increasing awareness in Turkey regarding benefits, necessity and importance of fighting with corruption.

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