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Anti-Corruption

Turkey

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Law and Practice

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CONTENTS

1. Legal Framework for Offences	p.2	6. Compliance and Disclosure	p.8
1.1 International Conventions	p.2	6.1 National Legislation and Duties to Prevent Corruption	p.8
1.2 National Legislation	p.2	6.2 Disclosure of Violations of Anti-bribery and Anti-corruption Provisions	p.8
1.3 Guidelines for the Interpretation and Enforcement of National Legislation	p.2	6.3 Protection Afforded to Whistle-Blowers	p.8
1.4 Recent Key Amendments to National Legislation	p.3	6.4 Incentives for Whistle-Blowers	p.9
2. Classification and Constituent Elements	p.3	6.5 Location of Relevant Provisions Regarding Whistle-Blowing	p.9
2.1 Bribery	p.3	7. Enforcement	p.9
2.2 Influence-Peddling	p.5	7.1 Enforcement of Anti-bribery and Anti-corruption Laws	p.9
2.3 Financial Record-Keeping	p.5	7.2 Enforcement Body	p.9
2.4 Public Officials	p.5	7.3 Process of Application for Documentation	p.9
2.5 Intermediaries	p.5	7.4 Discretion for Mitigation	p.10
3. Scope	p.5	7.5 Jurisdictional Reach of the Body/Bodies	p.10
3.1 Limitation Period	p.5	7.6 Recent Landmark Investigations or Decisions Involving Bribery or Corruption	p.10
3.2 Geographical Reach of Applicable Legislation	p.6	7.7 Level of Sanctions Imposed	p.10
3.3 Corporate Liability	p.6	8. Review and Trends	p.10
4. Defences and Exceptions	p.6	8.1 Assessment of the Applicable Enforced Legislation	p.10
4.1 Defences	p.6	8.2 Likely Future Changes to the Applicable Legislation of the Enforcement Body	p.10
4.2 Exceptions	p.7		
4.3 De Minimis Exceptions	p.7		
4.4 Exempt Sectors/Industries	p.7		
4.5 Safe Harbour or Amnesty Programme	p.7		
5. Penalties	p.7		
5.1 Penalties on Conviction	p.7		
5.2 Guidelines Applicable to the Assessment of Penalties	p.7		

1. LEGAL FRAMEWORK FOR OFFENCES

1.1 International Conventions

The following list includes the international conventions related to bribery and corruption to which Turkey is a signatory, or that are ratified by Turkey:

- 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 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;
- the 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; and
- the European Agreement on the Transmission of Applications for Legal Aid.

1.2 National Legislation

The main national legislation and related provision on bribery and corruption is provided under the Turkish Criminal Code (No 5237) and Criminal Procedure Code (No 5271). In addition, the following list of legislative instruments includes

the applicable provisions on bribery and corruption matters:

- the Misdemeanours Code (No 5326);
- the Banking Code (No 5411);
- the Code on Asset Declaration and Fighting Against Bribery and Corruption (No 3628);
- the Regulation on Asset Declaration (No 90/748);
- the Code on Public Officials (No 657);
- the Code on Public Tenders (No 4734);
- the Code on the Prevention of Laundering of Crime Revenues (No 5549);
- the Code on Prevention of Terrorism Financing (No 6415);
- the Code on Establishment of the Public Officials Ethics Board and Amendments to Some Laws (No 5176);
- the Code on Capital Markets (No 6362);
- the Anti-Smuggling Law (No 5607);
- the Code on Independent Accountant Financial Advisers and Certified Public Accountants (No 3568);
- the Regulation on Ethical Behaviour Principles of Public Officials; and
- the Regulation on Program of Compliance with Obligations Regarding Prevention of Laundering of Crime Revenues and Terrorism Financing.

1.3 Guidelines for the Interpretation and Enforcement of National Legislation

With respect to anti-money laundering:

- the Savings Financing Companies Guideline;
- the Crypto Asset Service Providers Guideline;
- the Tightened Measures Guideline;
- the Guideline on Risks on Non-Financial Institution Obligated Parties;
- the Guideline on Risks on Financial Institutions;
- the Real Beneficiary Recognition Guideline;
- the Principle to Trusting to Third Party Guideline;

- the Guideline on Obligations and Compliance for Financial Institutions;
- the Data Protection Guideline;
- the Guideline on Banks' Obligations; and
- the Guideline on Preparation of Corporate Governance Policy.

1.4 Recent Key Amendments to National Legislation

Within the context of significant amendments made to the anti-money laundering legislation, self-employed attorneys are identified as an obliged party to the extent of their professional involvement in (i) real property sales, (ii) establishing or abolishing real property rights, (iii) establishment, merger, acquisition, insolvency administration, sale, restructuring, or liquidation of companies, foundations, or associations, and (iv) management of asset accounts, provided, however, that defences available under other applicable laws are not precluded, and information protected by attorney-client privilege is excluded. In addition, crypto-asset service providers are also identified as obliged parties and a guideline for them has been published by the Financial Crimes Investigation Board.

Furthermore, Article 489 of the Turkish Commercial Code makes the transfer of bearer shares effective upon notice to the Central Registry Agency, absent which, a transfer is ineffective.

Finally, under the 11th Development Plan announced by the presidency, the importance of combating corruption was referred to and the establishment of an automatic tracing system for assets of public officials was envisaged.

2. CLASSIFICATION AND CONSTITUENT ELEMENTS

2.1 Bribery

Bribery that has been regulated under Article 252 of the Turkish Criminal Code (TCC) appears as a crime that can be committed by certain persons.

Accordingly, this crime can only be committed mutually, involving at least one public official and one civilian. Any benefit, advantage, money or gift that is offered and/or rendered to a public official (or another person indicated by the public official) for a favour to be done in relation to the duty of the public official constitutes bribery. Those committing bribery are sentenced to four to twelve years' imprisonment, save for aggravating and mitigating circumstances.

A "public official" is defined in Article 6 of the TCC as a "person who constantly, periodically or temporarily engages in carrying out public oriented activities by being adopted, elected or any other way whatsoever".

Article 252 of the TCC is also extended to the following private bribery actors. Hence, engaging in bribery with persons who are representatives of the below-listed legal entities is also criminalised:

- companies with a public entity 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;
- co-operatives; and
- publicly traded joint-stock companies.

With respect to foreign bribery, engaging in bribery with the below-listed persons is also criminalised under the TCC:

- public officials elected or appointed in a foreign country;
- judges, jury members or other officials acting in international or transnational or foreign state courts;
- members of international or transnational parliaments;
- persons performing public activities for a foreign country, including public institutions or public corporations;
- citizens or foreign arbitrators appointed within the framework of arbitration procedures applied for the solution of legal disputes; and
- officials or representatives of international or supranational organisations established based on an international agreement.

The scope and detailed description of the bribery is not provided within the relevant article of the TCC; therefore, facilitating or grease payments fall, and are accepted, within the scope of bribery, especially taking into consideration Article 29 of the Code on Public Officials (No 657), which stipulates that it is prohibited for civil servants to request or accept a monetary loan from those benefiting from public services.

Public officials cannot receive any gift or derive benefit from natural or legal persons who have work, service or benefit from relationships related to the duty they perform, for themselves, their relatives or third persons or organisations, either directly or through an interceder. 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; and

- accept gifts with the purpose of taking any advantage even while not exercising their duties.

That said, the following shall not be regarded as prohibited, as per Article 15 of the Ethics 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
- credit taken by financial institutions on market conditions.

Moreover, the same article reiterates the gifts that fall within the scope of the prohibition on accepting gifts as follows:

- welcoming, parting or celebration gifts, cheques for scholarships, travel and free accommodation and gift cards received from those that have a business, service or any relationship based on self-interest;
- transactions made with unreasonable prices while purchasing, selling or leasing a movable/immovable good or service;
- any kinds of gifts such as goods, clothing, jewellery or food received from service utilisers; and

- loans or credit taken from those that have a business or service relationship with the related institution.

2.2 Influence-Peddling

Influence-peddling is criminalised under Article 255 of the TCC. In this regard, those who directly or indirectly grant an undue advantage by using real or supposed influence on public officials in order to secure an undue business advantage are sanctioned with imprisonment from two years to five years and a judicial monetary fine up to 5,000 days. If this person is a public officer, then the imprisonment sentence to be imposed shall be increased by one half. The person who secures a benefit in return for the work they have fulfilled or with the expectation that it would be fulfilled shall be sentenced to imprisonment for a term of one year to three years.

Influence-peddling of foreign public officials is also criminalised.

2.3 Financial Record-Keeping

Commercial books, records and accounts must be kept accurately, adequately, completely, correctly and in a timely manner, and in compliance with accepted accounting standards. Commercial books must be kept for ten years.

Accounting fraud is stipulated in Tax Procedural Law No 213. False accounting in commercial books, improper and inaccurate identification of transactions in commercial books, creating repetitive records and incorrect valuations are examples of accounting fraud. Those who commit this crime are sanctioned with imprisonment of between eighteen months and three years.

Further, intentional entrance of false records in commercial books is defined as a criminal offence under Article 562 of the Turkish Commercial Code (No 6102), subject to imprison-

ment for between one and three years and a judicial fine beginning from 300 days.

2.4 Public Officials

According to the TCC, embezzlement can only be committed by a public official by means of transferring the possession of property that is delivered to the official in respect of their duty as they are obliged to protect it. Those committing embezzlement are sentenced to five to twelve years of imprisonment. If the crime is committed by deceitful acts aiming to conceal the embezzlement, the sentence will be raised by 50%.

Furthermore, any public officer who compels another to make a promise or provide a benefit for themselves or another by misusing the influence derived from their office shall be subject to a penalty of a term of imprisonment from five years to ten years due to commitment of extortion.

2.5 Intermediaries

Bribery or influence-peddling through intermediaries or third parties is also criminalised. Intermediaries are subject to the same penalties imposed on actual bribe makers and public officials, regardless of their position as such.

3. SCOPE

3.1 Limitation Period

There are two kinds of enforcement time limitations: one for limitation of action and one for limitation of punishment. In fact, enforcement limitations can be set forth by each specific law that regulates a crime. When there is not any specific regulation for a crime, time limitations are calculated by the TCC. Pursuant to Article 66 of the TCC, unless otherwise is provided in the law, public action is dismissed upon the lapse of:

- 30 years in offences requiring the punishment of heavy life imprisonment;
- 25 years in offences requiring the punishment of life imprisonment;
- 20 years in offences requiring the punishment of imprisonment for not less than 20 years;
- 15 years in offences requiring the punishment of imprisonment for more than five years and less than 20 years; and
- eight years in offences requiring the punishment of imprisonment or a punitive fine for not more than five years.

Article 68 of the TCC specifies the limitations for punishment.

The punishments listed in this article may not be executed upon the lapse of the following periods:

- 40 years for the punishment of heavy life imprisonment;
- 30 years for the punishment of life imprisonment;
- 24 years for the punishment of imprisonment for 20 years or more;
- 20 years for the punishment of imprisonment for more than five years; and
- 10 years for the punishment of imprisonment and punitive fines imposed for up to five years.

3.2 Geographical Reach of Applicable Legislation

Turkish law, in principle, applies only to offences that were committed within Turkey. For these purposes, an offence is deemed to have been committed in Turkey if:

- the act was committed in Turkish territory, airspace, or territorial waters;
- the act is partially committed in Turkey;
- the act's result is obtained in Turkey;

- the act was committed in/by Turkish vessels or aircraft while they are in open seas or the space extending above these waters;
- the act was committed in/by Turkish warships and military aircraft, irrespective of their location; or
- the act was committed in stationary platforms exclusively constructed in Turkey's territorial boundaries or industrial zones.

That said, if foreign bribery is committed for the performance or non-performance of an activity or with respect to a dispute involving Turkey, a public authority in Turkey, a private legal person incorporated as per Turkish laws or a Turkish citizen, an ex officio investigation and prosecution is conducted for the offender(s), as long as the offender(s) is/are present in Turkey.

3.3 Corporate Liability

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.

However, legal entities are still subject to certain safety measures. Safety measures imposed on legal entities include seizure and cancellation of the proceeds of crime as well as appointment of a trustee.

4. DEFENCES AND EXCEPTIONS

4.1 Defences

No information is available in this jurisdiction.

4.2 Exceptions

No information is available in this jurisdiction.

4.3 De Minimis Exceptions

No information is available in this jurisdiction.

4.4 Exempt Sectors/Industries

No information is available in this jurisdiction.

4.5 Safe Harbour or Amnesty Programme

With respect to bribery, Article 254 of the TCC provides for the following safe harbours.

- No punishment is imposed if a person taking a bribe delivers the subject of bribery exactly as it is to the relevant bodies before the commencement of an investigation. No punishment is imposed if a public officer who agrees to receive a bribe notifies the relevant bodies about this fact before the commencement of an 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 an 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 an investigation.

However, these are not applicable with regard to foreign bribery.

With respect to accounting fraud, those who disclose with remorse their accounting fraud-related irregularities to the Turkish Tax Authority are not sanctioned.

Furthermore, with respect to embezzlement, the sentence will be reduced to $\frac{1}{3}$ if the goods are returned or damages are fully mitigated before the investigation or the sentence will be halved

if the goods are returned or damages are fully mitigated during the investigation and prior to trial proceedings.

Finally, with respect to extortion, the sentence to be imposed may be decreased by one half by taking into account the value of the benefit extorted and economic condition of the victim.

5. PENALTIES

5.1 Penalties on Conviction

The penalties are as follows:

- bribery – imprisonment from four years to twelve years;
- influence-peddling – imprisonment from two years to five years and a judicial monetary fine up to 5,000 days;
- accounting fraud – imprisonment from eighteen months to three years;
- embezzlement – imprisonment from five to twelve years; and
- extortion – imprisonment from five to ten years.

As indicated above, legal entities cannot be held criminally liable but are still subject to certain safety measures, such as seizure of proceeds of crime or cancellation of licence.

5.2 Guidelines Applicable to the Assessment of Penalties

No information is available in this jurisdiction.

6. COMPLIANCE AND DISCLOSURE

6.1 National Legislation and Duties to Prevent Corruption

There is no legal obligation set forth in general laws (*lex generalis*) for companies incorporated in Turkey to adopt a compliance programme.

That being said, legislation on anti-money laundering and prevention of terrorism financing obliges certain companies such as banks, intermediary companies operating in capital markets, insurance and pension companies, financing, factoring and leasing companies or electronic money institutions or payment institutions to adopt a compliance programme in this respect.

6.2 Disclosure of Violations of Anti-bribery and Anti-corruption Provisions

According to Article 278 of the TCC, an individual who witnesses an existing and continuing crime should report it to the authorities; failure to do so would give rise to imprisonment for up to one year. That said, self-incrimination is prohibited under Turkish law. Therefore, those involved in the commission of a crime are not obligated to report the crime.

According to the Code on the Prevention of Laundering of Crime Revenues (No 5549), certain companies that are engaged in specific business areas are obligated to identify the counterparty of the transactions, to notify the suspicious transactions and disclose information and documents to the Financial Crimes Investigation Board.

6.3 Protection Afforded to Whistle-Blowers

Turkey does not have any specific legislation regarding whistle-blowing protection. Nonetheless, Turkey is party to all international anti-corruption conventions, including the United

Nations Convention against Corruption and the International Labour Organization's Termination of the Employment Convention No C158. Articles 32 and 33 of the UN Convention Against Corruption (ie, provisions on the protection of witnesses and whistle-blowers) have not been implemented in Turkey yet and there is no specific legislation for the protection of reporting persons. Furthermore, Chapter 23 (Judiciary and Fundamental Rights) for Turkey's accession to the EU requires Turkey to implement a whistle-blower protection harmonised with that of the EU's *acquis communautaire*.

There are, however, several provisions scattered across different laws prescribed under the Turkish legislation.

Within this context, Article 18 of the Labour Law specifically provides that terminating an employment agreement on the basis that the employee has filed a complaint or participated in proceedings against the employer (such as external reporting) seeking the fulfilment of obligations or rights arising from law or the employment agreement will not be considered a valid reason for the employer to terminate the employment agreement. In addition, the Code of Obligations provides a general protection for employees against physiological and physical abuse in the workplace, which applies to possible retaliations by employers against whistle-blowers under Article 417 of the Code of Obligations.

The Witness Protection Law provides certain protections to persons reporting a crime. However, the Witness Protection Code only applies to persons reporting crimes that are subject to an aggravated life sentence, a life sentence and crimes that are punished with a minimum of ten years or more, as well as terrorism-related crimes.

6.4 Incentives for Whistle-Blowers

No information is available in this jurisdiction.

6.5 Location of Relevant Provisions Regarding Whistle-Blowing

No specific whistle-blowing legislation exists in Turkey. That said, there are certain legislative protections provided under different laws, as explained in **6.3 Protection Afforded to Whistle-Blowers**.

7. ENFORCEMENT

7.1 Enforcement of Anti-bribery and Anti-corruption Laws

Criminal and administrative enforcement of anti-bribery and anti-corruption exists in Turkish law. Criminal or administrative enforcement bodies or authorities cannot impose civil penalties or remedies. Criminal prosecution is always initiated by public prosecutors. No specific central regulatory authority exists in Turkey to combat all types of corruption. Turkey has several administrative authorities that can carry out administrative investigations within their area of operation (eg, the Financial Crimes Investigation Board, the Public Procurement Agency or tax authorities). These administrative authorities can issue fines following their investigation if they find non-compliance, but they cannot prosecute any criminal conduct. If they encounter criminal conduct under the TCC or other Turkish laws, they must inform the prosecution office.

However, injured persons/companies can initiate a civil damages lawsuit in parallel to criminal/administrative proceedings, regarding the same subject.

7.2 Enforcement Body

Turkey has several administrative authorities that can conduct administrative investigations and

impose administrative penalties within their area of operation. For example:

- the Capital Market Board;
- the Financial Crimes Investigation Board;
- the Public Procurement Agency; and
- various tax authorities.

These authorities can issue fines following their investigation if they find non-compliance, but they cannot prosecute any criminal conduct. If they encounter criminal conduct under the TCC or other Turkish laws, they must inform the prosecution office.

As to criminal enforcement bodies, there is only one agency that conducts criminal investigations: public prosecutors. The prosecution office where the crime is committed will have jurisdiction over the criminal matter in principle. Upon finalisation of the investigation, if the prosecutor reaches a conclusion that gathered evidence constitutes sufficient suspicion as to the commitment of a crime, the public prosecutor issues an indictment and requests a public lawsuit be filed before criminal courts.

However, in respect of certain crimes, the investigation of which requires a formal complaint, the prosecutor cannot conduct a criminal investigation ex officio (eg, initiation of a criminal investigation for crimes of market abuse or insider trading criminalised under the Code on Capital Markets (No 6362) is subject to Capital Markets Board complaint).

7.3 Process of Application for Documentation

During an investigation, the public prosecutor can demand any document from real or legal persons for the sake of investigation and revealing the material truth. If the public prosecutor, judge or court requests information, the holder must respond within ten days (Article 332, Crimi-

nal Procedural Code). Otherwise, an investigation can be initiated against them based on professional misconduct (Article 257, Criminal Code).

With respect to administrative proceedings, real persons or legal entities who are invited in writing by administrative enforcement authorities such as the tax office or the Financial Crimes Investigation Board to submit information or documentation must provide these to the relevant authorities. Failure to fulfil this obligation might lead to imprisonment and imposition of an administrative and/or a judicial monetary fine.

7.4 Discretion for Mitigation

Please see **4.5 Safe Harbour or Amnesty Programme**.

7.5 Jurisdictional Reach of the Body/Bodies

Please see **3.2 Geographical Reach of Applicable Legislation**.

7.6 Recent Landmark Investigations or Decisions Involving Bribery or Corruption

Recently, the investigation of corruption in administrative and judicial bodies has been of the utmost importance for Turkey. Numerous official and confidential investigations are carried out across the country.

In the first quarter of 2021, there has been a significant number of bribery-related investigations initiated and conducted in Turkey, especially with respect to public officials in charge of the national defence industry, and enforcement and title deed offices.

7.7 Level of Sanctions Imposed

Please see **5.1 Penalties on Conviction**.

8. REVIEW AND TRENDS

8.1 Assessment of the Applicable Enforced Legislation

According to the Turkey 2019 Report of the European Commission, the European Commission criticised that there are several independent enforcement bodies in Turkey and underlined that a centralised anti-corruption authority should be incorporated in order to remove current uncoordinated enforcement practices in Turkey. In addition, the European Commission recommends the establishment of specialised prosecution offices.

In addition, according to Turkey's Additional Follow-up Report to Phase 3 Evaluation published by the OECD on 19 October 2019, the level of sanctions applicable to legal persons and investigation and prosecution of foreign bribery should be increased.

8.2 Likely Future Changes to the Applicable Legislation of the Enforcement Body

Further new developments and amendments are awaited, especially in anti-money laundering legislation.

The EU's 2019 adoption of the Whistleblowing Directive (EU/2019/1937) may lead Turkey to adopt specific whistle-blowing legislation in the coming years for the purposes of compliance with the EU's *acquis communautaire*.

In addition, under the 11th Development Plan announced by the presidency, the importance of combating corruption was referred to and the establishment of an automatic tracing system for assets of public officials was envisaged.

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Moroğlu Arseven is a full-service law firm with broad expertise and experience in all aspects of business law. The firm assists corporations, C-suites and individuals that face claims or suspicions about criminal acts or professional misconduct, supporting in preventative as well as reactive contexts. The firm provides clear and pragmatic guidance, supporting with every phase of investigating and defending business crime allegations, dealing with questions or investigation by the Financial Crimes Investigation Board, as well as all stages of court proceedings or regulatory investigations, ranging from

preparation and strategy development, through to oral submissions and appeals. The firm's primary purpose in representing and advising clients is to provide and implement clear, applicable and pragmatic solutions, focusing on the specific needs of the clients' transactions, legal questions or disputes. This includes attorneys adopting a holistic approach to the wider legal and commercial situation, integrating individual expertise and collaboration between corporate advisory, intellectual property, tax and dispute resolution teams, among other practice areas.

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Burcu Tuzcu Ersin advises on many aspects of business law, specialising in mergers and acquisitions, corporate transactions, foreign investments and compliance, as

well as all types of day-to-day commercial and employment issues that face companies operating in Turkey. She supports clients navigating a full spectrum of compliance matters, including anti-corruption, business crimes, anti-money laundering, anti-terrorism, employee misconduct, corporate governance, and directors' and officers' liabilities, as well as privacy and data protection, in both contentious and non-contentious circumstances. Burcu has broad experience with compliance projects, offering multi-faceted capabilities that stretch from reviewing existing compliance approaches, to localising, structuring and implementing compliance programmes from the ground up. She has significant experience managing high-stakes internal investigations, as well as conducting compliance and anti-bribery reviews during M&A transactions or third-party engagement procedures.



Benan Arseven provides corporate counselling for major local, foreign and multinational clients. The nature of this work means Benan advises on a wide range of regulatory compliance

and related risk mitigation, as these issues arise for clients. He specialises in supporting in-house legal teams around the world, taking the role of an external general counsel. Many of Benan's clients are Fortune 500 companies that are household names and have been advised by Benan for many years. Benan maintains a particular focus on providing corporate counselling in a holistic manner, meaning that he gives specific advice against a background of experience in related practice areas, as well as an in-depth knowledge of how each client operates. For example, HR compliance implications of corporate restructuring, or competition compliance considerations that govern distribution agreements.

Z Ertunç Şirin is a specialist in tax, fiscal and administrative matters, as well as sanctions and international trade. He regularly supports clients involved in compliance issues related to tax and administrative processes, as well as financial regulations. He has a strong reputation for tax and administrative procedures, and litigation that has a rich technical content and requires in-depth specialisation. He has significant knowledge of corporate tax planning and tax litigation, having published an academic work on the taxation of mergers. Accordingly, he advises clients in the structuring of transactions and on any tax and administrative issues that come up at the post-transaction phase, or during the daily activities of the invested entity in Turkey. He is often involved in the firm's due diligence exercises for clients.

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