

**Bribery & Corruption**

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## CONTENTS

<b>Preface</b>	Anneka Randhawa and Jonah Anderson, <i>White &amp; Case LLP</i>	
<b>Asia-Pacific Overview</b>	Dennis Miralis, Phillip Gibson & Jasmina Ceic, <i>Nyman Gibson Miralis</i>	1
<b>Jurisdiction chapters</b>		
<b>Australia</b>	Tobin Meagher & William Stefanidis, <i>Clayton Utz</i>	16
<b>Brazil</b>	Rogério Fernando Taffarello & Flávia Guimarães Leardini, <i>Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados</i>	34
<b>China</b>	Hui Xu, Sean Wu & Chi Ho Kwan, <i>Latham &amp; Watkins LLP</i>	46
<b>France</b>	Ludovic Malgrain, Grégoire Durand & Jean-Pierre Picca, <i>White &amp; Case LLP</i>	68
<b>Germany</b>	Dr. Thomas Helck, Karl-Jörg Xylander & Dr. Tine Schauenburg, <i>White &amp; Case LLP</i>	80
<b>Greece</b>	Ovvdias S. Namias, Vasileios Petropoulos & Ilias Spyropoulos, <i>Ovvdias S. Namias Law Firm</i>	89
<b>India</b>	Aditya Vikram Bhat & Prerak Ved, <i>AZB &amp; Partners</i>	99
<b>Italy</b>	Roberto Pisano, <i>Studio Legale Pisano</i>	111
<b>Japan</b>	Daiske Yoshida, Takahiro Nonaka & Andrew Meyer, <i>Morrison &amp; Foerster LLP</i>	122
<b>Kenya</b>	Rubin Mukkam-Owuor & Elizabeth Kageni, <i>JMiles &amp; Co.</i>	130
<b>Liechtenstein</b>	Simon Ott & Husmira Jusic, <i>Schurti Partners Attorneys at Law Ltd</i>	139
<b>Mexico</b>	Luis Mancera de Arrigunaga & Juan Carlos Peraza López, <i>Gonzalez Calvillo</i>	149
<b>Netherlands</b>	Jantien Dekkers & Niels van der Laan, <i>De Roos &amp; Pen</i>	160
<b>Romania</b>	Simona Pirtea & Mădălin Enache, <i>ENACHE PIRTEA &amp; Associates S.p.a.r.l.</i>	170
<b>Serbia</b>	Tomislav Šunjka, <i>ŠunjkaLaw</i>	187
<b>Singapore</b>	Chia Boon Teck & Shari Huang, <i>Chia Wong Chambers LLC</i>	196
<b>Sweden</b>	Mia Falk, <i>Advokatfirman Vinge KB</i>	206
<b>Switzerland</b>	Marcel Meinhardt & Fadri Lenggenhager, <i>Lenz &amp; Staehelin</i>	215
<b>Turkey</b>	Burcu Tuzcu Ersin, Dr. Z. Ertunç Şirin & İlayda Güneş, <i>Moroğlu Arseven</i>	225
<b>United Arab Emirates</b>	Rebecca Kelly & Laura Jane Shortall, <i>Morgan, Lewis &amp; Bockius LLP</i>	233
<b>United Kingdom</b>	Anneka Randhawa & Jonah Anderson, <i>White &amp; Case LLP</i>	241
<b>USA</b>	Douglas Jensen & Ashley Williams, <i>White &amp; Case LLP</i>	258

# Turkey

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## **Brief overview of the law and enforcement regime**

Bribery, as regulated under Article 252 of the Turkish Criminal Code (“TCC”), is a crime that can be committed by certain persons. Specifically, bribery 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 12 years’ imprisonment, except where there are aggravating and mitigating circumstances.

Engaging in bribery with persons who are representatives of the following legal entities is also criminalised:

- Companies with public entity status.
- Companies established as a partnership with public entities or professional organisations that have public entity status.
- Foundations operating within public entities or professional organisations that have public entity status.
- Public benefit associations.
- Co-operatives.
- Publicly traded joint-stock companies.

Turkey has ratified the Organisation for Economic Co-operation and Development (“OECD”) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention contains general advisory articles, leaving the details of penal regulations to Member States. Within this context, engaging in bribery with the following 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, 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.
- Officials or representatives of international or supranational organisations established based on an international agreement.

Corruption, on the other hand, cannot be defined as a typical crime, but rather as a category comprising a number of crimes such as embezzlement, malversation, bribery, misconduct,

bid-rigging and manipulation of tender contracts, money laundering, fraud, fraudulent bankruptcy, insider trading, market abuse, financing of terrorism, and forgery.

In this regard, the relevant legislation can be listed as follows:

- Turkish Criminal Code (No. 5237).
- Criminal Procedure Code (No. 5271).
- Misdemeanours Code (No. 5326).
- Banking Code (No. 5411).
- Code on Asset Declaration and the Fight Against Bribery and Corruption (No. 3628).
- Regulation on Asset Declaration (No. 90/748).
- Code on Public Officials (No. 657).
- Code on Public Tenders (No. 4734).
- Code on the Prevention of Laundering of Crime Revenues (No. 5549).
- Code on Prevention of Terrorism Financing (No. 6415).
- Code on Establishment of the Public Officials' Ethics Board and Amendments to Some Laws (No. 5176).
- Code on Capital Markets (No. 6362).
- Anti-Smuggling Law (No. 5607).
- Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (No. 6493).
- Law on Independent Accountant Financial Advisers and Certified Public Accountants (No. 3568).
- Regulation on Ethical Behaviour Principles of Public Officials.
- Regulation on Program of Compliance with Obligations Regarding Prevention of Laundering of Crime Revenues and Terrorism Financing.
- Regulation on Measures Regarding the Prevention of Laundering of Crime Revenues and Terrorist Financing.

As to enforcement bodies, there is only one agency which 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, in the case that the public prosecutor reaches a conclusion that the evidence gathered constitutes sufficient grounds to suspect the commission of a crime, he/she issues an indictment and requests that a public lawsuit be filed with the 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* (for example, the initiation of a criminal investigation for crimes of market abuse or insider trading, criminalised under the Code on Capital Markets (No. 6362), requires a Capital Markets Board complaint).

The Turkish criminal court system has a three-tier judicial system, which comprises the Criminal Courts of First Instance, the Regional Appeal Courts and the Turkish Court of Cassation.

In the first tier, there are three types of courts: criminal peace judgeships; criminal courts of general jurisdiction; and serious crimes courts.

In respect of bribery and corruption, the court with jurisdiction shall vary on the grounds of the imprisonment term set forth for the crime in question. In that regard, if a crime subject to an imprisonment term of more than 10 years is committed, a serious crimes court would hear the case. Trials of other crimes that do not fall within the aforementioned definition will be heard by a criminal court of general jurisdiction, which has the power to judge all cases that are outside the competence of serious crimes courts.

## Overview of enforcement activity and policy during the last year

Currently, the investigation of corruption in administrative and judicial bodies of the government is of the utmost importance for Turkey. Numerous official and confidential investigations are being carried out across the country, leading to the replacement of several public officials. This trend seems to be continuing for a while, and newly appointed public officials will be careful to avoid corruption now more than ever. Nevertheless, due to the effects of the COVID-19 pandemic, there was a downturn in the number of investigations that were held. The number of files for crimes against the trustworthiness and operation of public administration in 2019 was 173,157, and 54,087 of those lawsuits were filed by the prosecution office,<sup>1</sup> whereas the number of such files in 2020 was 139,059, and 46,826 of those lawsuits were filed by the prosecution office.<sup>2</sup>

In addition, COVID-19 brought a new concept to court hearings: in the past year, e-hearings have commenced. Although efforts to establish a remote court hearing system had been started earlier, the COVID-19 pandemic rendered e-hearings compulsory. The legal framework has also been prepared and the Regulation on Execution of Hearings Via Transmission of Voice and Image has been published in Official Gazette No. 31527 of 30 June 2021.

## Law and policy relating to issues such as facilitation payments and hospitality

With the aspiration to provide a wide range of prevention measures, Turkey has regulated issues such as facilitation payments and hospitality under the Code on Public Officials (No. 657). 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 the Public Officials' Ethics Board ("Ethics Board") and entitled the Ethics Board to determine the scope of the "prohibition on accepting gifts".

In 2004, the establishment of the Ethics Board was published through the Law on Establishment of the Public Officials' Ethics Board, and the Amendments to Some Laws and Secondary Legislation – "Regulation on Ethical Behaviour Principles of Public Officials" ("Ethics Regulation") has followed, setting out the gifts and benefits falling outside the prohibition on accepting gifts. Accordingly, 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 on 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.
- Credits taken by financial institutions on market conditions.

However, the same Article states that the following gifts do fall within the scope of the prohibition on accepting gifts:

- Welcoming, parting or celebration gifts, cheques for scholarships, travel and free accommodation and gift cards received from those who have a business, service or any relationship based on self-interest.
- Transactions made at unreasonable prices while purchasing, selling or leasing movable/immovable goods or services.
- Any kind of gift such as goods, clothing, jewellery or food received from service utilisers.
- Loans or credits taken from those who have a business or service relationship with the institution concerned.

It is worth mentioning the scope of the term “public official” while explaining the Ethical Rules determined for them. “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 appointed, elected or any other way whatsoever*”.

### **Key issues relating to investigation, decision-making and enforcement procedures**

The legislature has imposed many duties on companies, certain individuals and public and private institutions, and their officials and/or employees, in order to be able to track suspicious or illegal conduct before the commission of any crime. These can be regarded as precautionary measures and are regulated under separate legislation.

According to the Code on the Prevention of Laundering of Crime Revenues (No. 5549), the Financial Crimes Investigation Board (“FCIB”) has a duty to develop policies with respect to money laundering, and to assess any suspicious transaction. Law No. 5549 also imposes obligations on companies and individuals that are engaged in specific business areas to: identify the counterparty of the transaction; notify the FCIB of the suspicious transaction and disclose to it the relevant information and documents; and keep documents, company books and records for eight years. In the case that the FCIB determines any findings as to the commission of any crime, it shall inform the public prosecutor with jurisdiction, in line with the Turkish Criminal Procedure Law.

In order to combat money laundering and the financing of terrorism, the scope of the definition of “obliged parties”, which are under the supervision of the FCIB, is broadened by taking into consideration evolving technology and economic realities. Under the amendments published in Official Gazette No. 31405 of 24 February 2021, attorneys-at-law are included in the definition of obliged parties, and under the amendments published in Official Gazette No. 31471 of 1 May 2021, crypto-asset service providers and savings financing companies are also included in such definition. Turkey has made several amendments to the relevant legislation in the last few years, to comply with recommendations of the Financial Action Task Force (“FATF”). According to the 2019 FATF Mutual Evaluation Report, Turkey has put in place most elements of a legal framework to identify basic and beneficial ownership information of legal persons. Moreover, as the FCIB is a member of the Egmont Group, the work of the Group is reflected and applied in Turkey.

The Code on Asset Declaration and the Fight Against Bribery and Corruption (No. 3628) and the Regulation on Asset Declaration aim to determine unjustified benefits gained illegally or immorally, or expenditure that is disproportionate to the relevant person’s social life. Persons whose expenditure falls within the scope of the abovementioned definition are obliged to notify the relevant authority of their immovables, money and other negotiable instruments, gold and jewellery, rights, receivables and revenue. In the case that an unjustified benefit is determined, the public prosecutor with jurisdiction shall be notified thereof in line with the Turkish Criminal Procedure Law.

As to general investigation and enforcement procedure, please refer to the first section above.

### **Overview of cross-border issues**

The following are the international agreements to which Turkey is a signatory or which have been ratified by Turkey:

- United Nations Convention against Corruption.
- United Nations Convention against Transnational Organized Crime.
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- European Convention on Mutual Assistance in Criminal Matters.
- Convention on the Transfer of Sentenced Persons.
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.
- Criminal Law Convention on Corruption.
- European Convention on the International Validity of Criminal Judgments.
- European Convention on the Suppression of Terrorism.
- European Convention on the Transfer of Proceedings in Criminal Matters.
- European Agreement on the Transmission of Applications for Legal Aid.

In addition to the above list, Turkey has signed bilateral agreements with several jurisdictions, with a view to co-operation regarding criminal matters. These include: Albania; Algeria; Belarus; Bosnia and Herzegovina; Brazil; China; Egypt; Georgia; India; Iran; Iraq; Italy; Jordan; Kazakhstan; Kosovo; Kuwait; Kyrgyzstan; Macedonia; Moldova; Mongolia; Morocco; Oman; Pakistan; Poland; Romania; Serbia; Syria; Tajikistan; Tunisia; Turkish Republic of Northern Cyprus; Turkmenistan; USA; and Uzbekistan. The FCIB, on the other hand, has entered into co-operation agreements with several financial intelligence units in other jurisdictions for the exchange of financial intelligence on money laundering, related predicate crimes and financing of terrorism. The most recent co-operation agreements entered into are with the financial intelligence units of Iraq, Libya, and Malta.

Moreover, thanks to extraterritorial applications of the US Foreign Corrupt Practices Act and the UK Bribery Act 2011, multinational companies prefer to establish anti-bribery compliance systems based on such foreign legislation. Although Turkey has the Regulation on Program of Compliance with Obligations Regarding Prevention of Laundering of Crime Revenues and Terrorism Financing, this only applies to banks, insurance and pension companies, and capital market brokerage firms. For this reason, multinational companies and subsidiaries of US and UK companies operating in Turkey give priority to US- and UK-based legislation, alongside local requirements.

### **Corporate liability for bribery and corruption offences**

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 or cancellation of the proceeds of crime.



According to Article 43/A of the Turkish Misdemeanour Law, in the case that a person who is an organ or representative or acts within the operation of the legal entity commits one of the following crimes for the benefit of the legal entity, a fine of up to TRY 54,555,000 will be imposed by the court on the legal entity for each crime:

- Fraud as defined in Articles 157 and 158 of the TCC.
- Manipulating tenders as defined in Article 235 of the TCC.
- Manipulating the performance of a deed as defined in Article 236 of the TCC.
- Bribery as defined in Article 252 of the TCC.
- Money laundering as defined in Article 282 of the TCC.
- Embezzlement as defined in Article 160 of the Law on Banking.
- Smuggling as defined in the Anti-Smuggling Law.
- Financing terrorism as defined in Article 8 of the Anti-Terrorism Law.

### **Proposed reforms / The year ahead**

On 17 July 2021, Turkey announced its Strategy Document on Increasing Efficiency of Combating Laundering Proceeds of Crime and the Financing of Terrorism, and Confiscation Practices, with a view to increasing efficiency in this area by taking into consideration the FATF Mutual Evaluation Report of 2019. Accordingly, Turkey aims to form different working groups, consisting of the representatives of certain government institutions, for the purposes of assessing the threats and vulnerabilities related to money laundering and financing of terrorism, and monitoring the sanctions applied. The government also instructs the relevant public institutions to circulate risk mitigation reports to these working groups on a regular basis. It is expected that government investigations and prosecutions in this respect will increase in the future.

As outlined above, on 30 September 2021, the FCIB entered into a co-operation agreement with Malta's financial intelligence unit for the exchange of financial intelligence on money laundering, related predicate crimes and financing of terrorism. Similar agreements were reached with the financial intelligence units in Iraq and Libya on 2 October 2021. It is expected that government investigations and prosecutions for cross-border crimes in this respect will increase in the future.

Besides the foregoing, Turkey's concern over the use of cryptocurrencies for illegitimate activities such as money laundering, the financing of terrorism, and tax evasion is expected to increase. For the first time, a regulation directly stipulating matters relating to crypto-assets was introduced in Turkey on 16 April 2021 and entered into force on 30 April 2021: the Regulation on Prohibition of the Use of Crypto-Assets in Payments. Its main purpose is to ban the use of crypto-assets in payments for goods and services either directly or indirectly. Accordingly, payment and electronic money institutions are prohibited from acting as intermediaries for platforms providing purchase, sale, custody, transfer, or issuance services for crypto-assets or fund transfers to be made thereon. Yet, the users may still transfer funds to/from crypto-exchange platforms through the method of bank transfers. Given that there are still many areas that need to be regulated in combating corruption and crime, including bribery, laundering, and the financing of terrorism, more specific regulations in this respect regarding crypto-assets are awaited.

However, the European Union's adoption in 2019 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. The main concern regarding whistleblowing is the processing of personal data during whistleblowing activities. The Personal Data Protection Board has announced that it will issue a public statement regarding this matter in the future.



In addition, under the 11<sup>th</sup> 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. Furthermore, the Human Rights Action Plan sets out a strategy for increasing transparency and fighting corruption. A special chapter is reserved for legal foreseeability and transparency.

\* \* \*

### Endnotes

1. <https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22420211427211062020170359HizmeteOzel-2019-bask%C4%B1-%C4%B0SA.pdf>, p. 21.
2. <https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22420211449082020H%C4%B0ZMETE%C3%96ZELK%C4%B0TAP.pdf>, p. 21.



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Burcu supports clients navigating a full spectrum of compliance issues, including anti-corruption, business crime, anti-money laundering, anti-terrorism, employee misconduct, corporate governance, directors' and officers' liabilities, as well as privacy and data protection, in both contentious and non-contentious circumstances. She is the firm's UN Global Compact representative and attended the Summer Academy of the International Anti-Corruption Academy in 2015.



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On the antitrust front, she represents clients before the Turkish Competition Authority in merger control clearance and individual exemption filings, remedy proposals, as well as immunity and leniency applications, whistleblower claims, and settlement negotiations. As a lecturer at Baħçeşehir University and researcher at the University of Chicago, İlayda speaks and publishes on ethics, public policy and good government reforms.

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