THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

Fourth Edition

Editor
MARK F MENDELSOHN

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EDITORS PREFACE

This fourth edition of The Anti-Bribery and Anti-Corruption Review presents the views and observations of leading anti-corruption practitioners in jurisdictions spanning every region of the globe. The worldwide scope of this volume reflects the reality that anti-corruption enforcement has become an increasingly global endeavour.

Over the past year, a growing number of countries enacted or amended significant anti-corruption and anti-bribery legislation and, perhaps more importantly, increased their enforcement of those laws. This volume touches upon a wide range of such legislative developments. A few highlights include: the March 2015 enactment of regulations supplementing Brazil’s Clean Company Act; China’s August 2015 amendments to its Criminal Law that add monetary penalties for corruption-related crimes; the South Korean legislature’s March 2015 approval of a new anti-corruption law expected to enter into force in October 2016; and the Mexican Congress’s March 2015 approval of an anti-corruption law that will create a special court to oversee all corruption-related issues.

In the United States, enforcement authorities continue to vigorously enforce the Foreign Corrupt Practices Act (FCPA) and other anti-corruption laws. In May 2015, US prosecutors announced a 47-count indictment charging nine FIFA officials and five sports marketing firm executives with non-FCPA corruption-related offences including racketeering, wire fraud, money laundering, tax evasion and obstruction of justice. Subsequently, seven of the FIFA officials were prominently arrested in Switzerland and are currently the subject of formal US extradition requests.

The past year’s FCPA cases show both a continued focus on corporate conduct as well as an increase in the number of charges against individuals. As this edition of The Anti-Bribery and Anti-Corruption Review goes to print, the Justice Department has recently issued a memorandum formally addressing the agency’s determination to prioritise investigating and prosecuting individuals for corporate conduct. The FCPA investigation and enforcement focus over the past year has cut across a range of industries including: natural resources and energy, defence contracting, engineering and construction and the automotive industrial sector. In December 2014, the Justice Department announced criminal plea agreements with subsidiaries of French power company Alstom SA that
Editor’s Preface

included a US$772,290,000 criminal fine, the largest resolution, by dollar amount, in Justice Department history in the FCPA context. Meanwhile, the Securities and Exchange Commission (SEC) has settled a steady stream of corporate FCPA enforcement actions. In so doing, the SEC has continued to make use of in-house administrative proceedings – in addition to filing civil complaints in federal district courts – to effectuate its FCPA enforcement mandate.

Self-reporting by companies has continued to be a trend in the US, and, as in previous years, we have continued to see the uncovering of bribery in mergers and acquisitions diligence as well as an increase in private litigation related to FCPA investigations.

The foreign bribery landscape grows increasingly complicated for multinational companies, as the United Kingdom, China, Brazil, Argentina, Norway, Algeria and India, among other countries, have each launched significant investigations and brought a substantial number of anti-corruption actions in the past year related to international business transactions. The growing number of enforcement actions around the world are supported by a significant trend toward greater international cooperation in anti-corruption enforcement efforts. In a 17 June 2013 keynote address, the Justice Department Acting Assistant Attorney General Mythili Raman commented: ‘Through our increased work on prosecutions with our foreign counterparts and our participation in various multilateral fora like the OECD and United Nations, it is safe to say that we are cooperating with foreign law enforcement on foreign bribery cases more closely today than at any time in history’. This sentiment was echoed in a 17 April 2015 keynote address by Assistant Attorney General Leslie R Caldwell, who noted that the Justice Department’s fraud and corruption-related investigations ‘are increasingly global in nature’.

I wish to thank all of the contributors for their support in producing this volume. I appreciate that they have taken time from their practices to prepare chapters that will assist practitioners and their clients in navigating the corruption minefield that exists when conducting foreign and transnational business.

Mark F Mendelsohn
Paul, Weiss, Rifkind, Wharton & Garrison LLP
Washington, DC
November 2015
Chapter 19

TURKEY

Okan Demirkan, Pınar Bülent and Gözde Kabadayı

I INTRODUCTION

In the last two decades, rapid growth and globalisation in business have triggered many challenges, such as the prevention of corruption and bribery, sustainability of fair competition, environmental protection and income justice. As two major global problems, corruption and bribery concern trade and investment regulations, governmental transparency and misconduct. The implementation of anti-corruption and anti-bribery measures is particularly important for sustaining economic and political consistency as well as for developing ethical and transparent business conduct in multinational corporations.

Turkey’s fight against corruption and bribery was and still is a crucial condition for its accession to the European Union. In the last 20 years, Turkey signed and ratified a number of international conventions and substantively aligned its domestic legislation with these conventions. In July 2012, provisions governing the crimes of corruption and bribery, under the Turkish Penal Code (TPC) were amended with enactment of Law No. 6352.

This amendment redefined the crime of bribery and broadened its scope. The law provides that even if bribery has been committed outside of Turkey, if the crime is connected, in any way, with the state of Turkey or a Turkish public institution, private entity or individual, such a crime will be prosecuted in Turkey. With regard to the crime of corruption, the 2012 amendment enlightened the judiciary about the definition of ‘coercion’, which is the main element that distinguishes corruption from bribery.

1 Okan Demirkan is a partner and Pınar Bülent and Gözde Kabadayı are associates at Kolcuoğlu Demirkan Koçaklı.

2 Published in the Official Gazette dated 12 October 2004 and numbered 25611.
Seemingly, the novelties in the scope and definition of these crimes made prosecution easier. Criminal proceedings that drew vast public attention in recent years increased the public’s awareness of the country’s significant efforts to eradicate bribery.

II DOMESTIC BRIBERY: LEGAL FRAMEWORK

There is no specific anti-corruption and anti-bribery law in Turkey. The legislative instruments in this regard are governed under various pieces of legislation. These are (1) the TPC; (2) Law No. 3628 on the Declaration of Assets and Combating Bribery and Corruption (the Asset Declaration Law); (3) Law No. 657 on Civil Servants (the Civil Servants Law); and (4) the Law Related to the Establishment of the Council of Ethics for Public Services and Amendments to Some Laws (the Ethics Rules Law).

In this section, we will examine the scope of the term ‘public official’ based on various applicable laws. In addition, for the purpose of providing an in-depth description of the legal framework and applicable legislation, we will address aspects of both the criminal law and administrative law of Turkey’s anti-corruption and anti-bribery policies.

i Scope of the term ‘public official’

Turkish law does not provide a uniform definition for the term ‘public official’. The scope of this term varies from one legislative instrument to another. Article 128 of the Constitution of the Turkish Republic (the Constitution) provides that the fundamental and permanent functions required by public services will be carried out by ‘civil servants’ and ‘other public employees’. The breadth of this provision is such that the term ‘public employees’ comprises both civil servants and other public employees, who perform public services based on assignment or their employment relationship with the state, even though they may not necessarily be civil servants.

The Civil Servants Law sets forth four types of employment categories: (1) civil servants; (2) personnel employed on a contractual basis; (3) temporary personnel; and (4) employees. The term ‘civil servant’ is defined under Article 4 as: ‘regardless of the

3 Published in the Official Gazette dated 4 May 1990 and numbered 20508.
4 Published in the Official Gazette dated 20 July 1965 and numbered 12053.
5 Published in the Official Gazette dated 8 June 2004 and numbered 25486.
6 It is possible to consider such personnel, which are regulated separately by special laws, under the following five groups:
   a personnel working on the basis of Article 4/B of the Civil Servants Law;
   b permanent personnel employed on a contractual basis;
   c personnel working in regulatory authorities (independent administrative authorities) employed on a contractual basis (e.g. the Competition Board, Capital Markets Board and Tobacco and Alcoholic Beverages Market Regulatory Authority);
   d personnel working in the Ministry of Health and Ministry of Education, employed on a contractual basis; and
   e personnel working in state economic enterprises in line with Decree No. 399 on the Personnel Regime of State Economic Enterprises employed on a contractual basis.
existing establishment structure of the relevant entity, persons who are assigned the task of performing fundamental and permanent public services, executed in line with the general administrative principles of the State and other public legal entities’. The Civil Servants Law prohibits civil servants from requesting and accepting gifts. According to this Law, the Public Officials Ethics Board (the Ethics Board) is authorised to determine the scope of this prohibition.

The Ethics Board was established pursuant to the Ethics Rules Law, which entered into force for adopting rules and monitoring public officials’ implementation of principles related to transparency, impartiality, honesty, accountability and obligation to observe public interest. The Ethics Rules Law is applicable to:

- all personnel employed at departments included in the general state budget, contributed budget administrations, state economic enterprises, working capital establishments, local administrations and unions thereof; all public establishments and institutions founded under the names of committees, upper committees, institutions, institutes, enterprises, organizations, funds and similar possessing public entities, the chairmen and members of management and audit committees, boards and supreme boards.

The Ethics Rules Law is not applicable to the President of the Republic, members of the Grand National Assembly of Turkey, members of the Council of Ministers, Turkish Armed Forces, members of the judiciary and universities.

Another law that provides a different definition for the term ‘public official’, while setting forth rules on provision of gifts and benefits to public officials, is the Asset Declaration Law. Persons falling within this scope are, in summary:

- a. officers appointed through elections as well as externally appointed ministers;
- b. public notaries;
- c. certain higher officials of various public institutions;
- d. officers, civil servants, directors, auditors and other persons who are not employees, that work in general and contributed budget institutions, municipalities, special provincial administrations, state economic enterprises and their subsidiaries and affiliates;
- e. leaders of political parties;
- f. members of administrative bodies of foundations;
- g. chairmen, board members and general managers of cooperatives and unions;
- h. directors and auditors of public interest associations; and
- i. individuals owning newspapers and board members, auditors, responsible managers and columnists of companies that own newspapers.

The broadest definition for the term ‘public official’ is provided under the TPC. Article 6(c) of the TPC defines the term ‘public official’ as: ‘a person who is involved in the operations of public activities, for a definite or indefinite term, either by way of election or nomination or any other way’. Accordingly, the main criterion for regarding a person as a ‘public official’ is the public nature of the services that he or she is rendering. The person’s ‘employment relationship’ with the state (or any public legal entity) is not specifically sought.
ii  Legal framework of anti-bribery and anti-corruption policies of Turkey
Turkey constructed its legislative system on three main divisions: (1) public administration law; (2) civil law; and (3) criminal law, based on the Continental European legal system. Turkey developed a comprehensive legal framework to facilitate a sustainable fight against corruption and bribery, both in the public and the private sectors. Although the definition and elements of the crimes of bribery and corruption and their legal consequences are primarily dealt with under the TPC, there are many other laws concerning public administration, which regulate public officials’ acceptance of gifts and benefits. These laws ultimately aim to ensure transparency, equality and ethical conduct in rendering of public services.

iii  Criminal law perspective
The TPC is the primary legislation governing the crimes of bribery and corruption in a domestic context. The crime of bribery is described as a reciprocal crime (i.e., both the party who provides or promises the bribe and the public official involved in the crime will be subject to criminal penalties). On the other hand, in the crime of corruption, the offender is the public official and the person who is approached for the bribe is the victim.

Article 252 of the TPC states that providing a benefit to a public official or a third party that is designated by a public official, directly or through third parties, for ensuring the performance or omission of the public official’s duties, constitutes the crime of bribery. Article 252 specifies the legal sanction for the crime of bribery as imprisonment for four to 12 years.

Bribery is deemed to have been committed if and when a person (or a legal entity) and a public official reach an agreement on the provision of a benefit, in return for the public official’s performance or omission of his or her duties. Accordingly, performing the ‘provision of the benefit’ is not sought for bribery to be committed. The parties’ intention and their mere agreement are sufficient.

In principle, bribery can be committed with the involvement of both parties (i.e., the person, or the legal entity, and the public official) and both parties will be subject to criminal penalties. However, if a person (or a legal entity) offers to provide a benefit to a public official but the public official refuses to receive the bribe or a public official asks for the bribe but the addressee of the request refuses to provide that benefit, only the party who was involved in the criminal actions will be held liable, yet the duration of imprisonment will be reduced.

Furthermore, a third party who helps the parties to conclude a bribery agreement or a third party to whom a benefit is provided, as requested by the public official, will be deemed an accomplice. Accomplices will also be subject to criminal penalties. In addition, under Article 253 of the TPC, if a legal entity gains benefits through bribery, it can be subject to certain security measures.7 In addition to the applicable security, legal

7 The most commonly implemented security measure in Turkey is cancellation of the legal entity’s license(s) to conduct its operations, if the entity is active in a regulated business.
entities can also be imposed administrative fines in an amount between 15,000 lira to 3 million lira, based on the Law on Misdemeanors. 8

The crime of corruption, on the other hand, is defined under Article 250 of the TPC as: ‘the public official’s forcing of a person in a coercive manner, abusing his/her public authority and powers, to provide him/her or a third party with a benefit or forcing a person to promise to do so, to perform his/her duties’. The main criterion for specifying the public official’s criminal actions as corrupt is their use of coercion towards the person. As expressly described under Article 250, coercion is deemed present where a person provides a benefit to a public official or a third party because of concerns that, without it, the official will not perform his or her duties (at all or on time). The legal sanction for committing corruption is imprisonment for five to 10 years.

However, the TPC also stipulates that if and when coercion does not exist (i.e., if a public official convinces a person in a fraudulent manner, by abusing the trustworthiness of their position, to provide him or her or a third party with a benefit or to promise to do so), the public official will be sentenced to imprisonment for three to five years. Furthermore, if the public official commits this crime by exploiting the person’s misunderstanding, they will be sentenced to imprisonment for one to three years. Article 250 of the TPC also provides that the length of the imprisonment penalty may be reduced, when the value of the benefit and the victim’s economic conditions are considered.

iv Public administration law perspective

A public official’s acceptance of gifts or other benefits can be subject to various laws, and regulations of Turkish public administration law, depending on different factors. These include the characteristics of the benefit in question, status and duties of the public official, and the legal relationship between the relevant official and the provider of the gift or benefit.

For example, the Asset Declaration Law stipulates an asset declaration obligation that public officials must fulfil on a periodical basis. This statutory obligation aims to monitor increases in the public official’s personal assets. The Asset Declaration Law also stipulates that a public official who receives a gift or donation at a value exceeding 10 multiples of his or her monthly salary, from any foreign country, international organisation or any other international legal entity pursuant to any international protocol, must deliver such property to the organisation in which he or she is employed.

The Civil Servants Law prohibits civil servants from requesting or receiving gifts and loans from their subordinates and third parties. As to the definition of the term ‘gift’, the Civil Servants Law refers to the Ethics Board’s authority. The Ethics Board has published the Regulation on the Ethical Conduct Principles of Public Officials (the Ethics Regulation). This regulation provides that:

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8 Published in the Official Gazette dated 31 March 2005 and numbered 25772.
public officials are not allowed to accept gifts or benefits, directly or through an intermediary, from individuals or legal entities with whom they are in a business, service or benefit relationship, within the scope of their duties, either for themselves or for their relatives, any third parties or other institutions.

Under the Ethics Regulation ‘any kind of property or interest, with or without economic value, accepted either directly or indirectly, is regarded as gifts, if they have an effect on or have the possibility to affect the impartiality, performance, decision or duty of a public official’. In this regard, depending on the merits of each case, even the provision of a meal and transportation to a business meeting with a public official may be found impermissible, if it is possible that the meal and transportation affected the public official’s business decision.

Under Turkish public administration law, the main criterion to consider when determining whether the provision of a gift or benefit to a public official is permissible is the effect that such a gift or benefit has on the public official, rather than its size or material value. According to the Public Officials Ethics Guide, which was published by the Ethics Board in 2014, if a public official has doubts on whether a gift or benefit is permissible, then he or she should ask himself or herself the following question: ‘If I were not a public official, and if I were not holding the position that I hold today, would I have still received this gift or benefit?’ According to this guide, if the answer is ‘absolutely yes’, the gift can be taken. However, if the answer is ‘no’ or if there are any reservations, then the gift must be declined.

III ENFORCEMENT: DOMESTIC BRIbery

In Transparency International’s Corruption Perceptions Index 2014, which measures the perceived level of corruption in countries worldwide, Turkey was ranked 64th among 175 countries, with a score of 45. Since 2013, Turkey’s score has dropped by 5 points and its rank has fallen by 11 places. The decrease in Turkey’s score was the most dramatic when compared to decreases in the other countries’ scores. It clearly suggests that the prevalence of corruption in Turkish business practices has become more noticed by the public in recent years. This situation highlights the importance of integrating business culture in Turkey with international ethical standards, in order to re-establish a clean and fair business conduct.

According to the Global Corruption Barometer 2013, 55 per cent of Turkish citizens believe that corruption has increased since 2011. The majority of Turkish respondents said that corruption is a significant problem, particularly in public institutions and services. According to 61 per cent of the respondents, personal contacts are essential when dealing with civil servants.

The Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey dated October 2014 (the Phase 3 Report) evaluated and made recommendations

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10 www.transparency.org/gcb2013/country/?country=turkey.
on Turkey’s implementation and enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention), as well as other related instruments. In the Phase 3 Report, the OECD indicated that it has concerns with regard to Turkey’s level of detection and investigation of bribery, in which foreign public officials are involved. The OECD emphasised that only six out of 10 accusations were ultimately prosecuted in 2014.

According to the Ethics Board’s annual report of 2014, 218 applications were made to the Ethics Board regarding violation of ethical principles. 179 of these applications were rejected by the Ethics Board, due to procedural reasons, while 44 applications were subject to investigation. Out of these 44 applications, 10 were suspended as they were conveyed to criminal courts; and only six applications out of 34 were concluded with detection of ethics violations. According to the Ethics Board, it has detected 71 ethics violations in 1,821 applications within the past 10 years.

IV FOREIGN BRIBERY: LEGAL FRAMEWORK

Ratification of the OECD Convention in July 2000 has deeply affected Turkey’s approach towards anti-corruption in an international context. Officers of public international organisations operating in Turkey fall within the scope of ‘foreign public officials’ as defined in the OECD Convention. Under Section 1, Article 4 (a) of the OECD Convention, a foreign public official is defined as ‘any person holding a legislative, administrative, or judicial office of a foreign country, whether appointed or elected, any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official and agent of a public international organisation’.

In line with the international obligations that Turkey undertook by ratifying the OECD Convention, Article 252(9) of the TPC provides that the following persons can be the offender in a crime of bribery:

a public officials who are elected or appointed in a foreign country;
b judges, jurists or other officers that are serving for international or supranational courts or foreign national courts;
c delegates of international or supranational parliaments;
d persons that are carrying out public duties in foreign countries (e.g., in public institutions, public corporations, etc., of foreign countries);
e persons or arbitrators that are appointed for dispute resolution through arbitration; and
f officials or representatives of international or supranational organisations that have been established based on international contracts.

V ASSOCIATED OFFENCES: FINANCIAL RECORD-KEEPING AND MONEY LAUNDERING

The Turkish Tax Procedure Law and the Turkish Commercial Code (TCC) stipulate an obligation to keep company books, financial records and related documentation for five years. According to the TCC, companies must also keep a share ledger, inventory, and a book that records the board of directors’ resolutions. The board of directors is responsible for keeping these books and records properly.
In a possible loss of company books or financial records due to theft or fire, flood, earthquake, tsunami or a similar disaster, the company must apply to a court to obtain a document that confirms the company’s lack of fault or negligence in the loss. Such an application must be made within 15 days following the incident that caused the loss.

The TCC also stipulates an independent auditing obligation and a company website obligation for joint-stock corporations of a certain size. Companies that fail to comply with these statutory obligations are imposed with administrative and judicial fines, as well as tax penalties. In addition, their board members may also be held liable towards the company, for the company’s losses, and the state for tax losses. On the other hand, a company’s failure to perform its obligations related to book and financial records keeping may lead to the suspicion of money laundering and bribery.

The Financial Crimes Investigation Board (FCIB) was established in 1996 to develop policies against money laundering and evaluate suspicious transactions. Law No. 5549 on the Prevention of Laundering Proceeds of Crime11 (Law No. 5549) requires companies and individuals that are operating in certain business areas to keep documents, company books and records for eight years and notify the FCIB of any suspicious transaction. Law No. 5549 provides that transactions that are suspicious because the transferred asset may have been acquired through illegal ways or will be used for illegal purposes or transactions, that are above a certain value to be specified by the Ministry of Finance, will be regarded as ‘suspicious transactions’ and must be disclosed to the FCIB.

These requirements are applicable to companies and individuals that are involved in banking, insurance, individual pensions, capital markets, other financial services, postal services, transportation, lottery and bets, currency exchange, real estate, jewelry and valuable metals, construction and transportation vehicles, artworks, antiques and notaries, sports clubs and others that are specified by the Council of Ministers. If a company or an individual fails to comply with these obligations, such a company or individual will be imposed administrative or judicial fines.

Moreover, under Article 282 of the TPC, a person who transfers assets abroad that were obtained through a crime (the legal sanction of which is imprisonment for six months or more), or who uses such assets in any process in order to hide the illicit source of such assets or to give the impression that they have been legitimately acquired, will be sentenced to imprisonment for three to seven years, and a judicial fine of up to 20,000 days. In addition, a person who is not directly involved in the crime, but received, used, kept or purchased such assets while he or she was aware of their connection to the crime, will also be sentenced to imprisonment for three to five years. If the offender is a public official, or the crime is committed as part of a criminal organisation’s operations, the punishments will be multiplied by two.

11 Published in the Official Gazette dated 18 October 2006 and numbered 26323.
VI ENFORCEMENT: FOREIGN BRIBERY AND ASSOCIATED OFFENCES

Before the TPC entered into force on 1 June 2005, the crimes of bribery and corruption were governed under the former Penal Code, which had been in force since 1926. This Code was silent on bribery committed outside of Turkey. However, following Turkey’s ratification of the OECD Convention in 2000, the legislature amended the Code in 2003 to align it with international standards and to correspond with Turkish individuals’ and legal entities’ acts of bribery in foreign countries.

Although the legislative instruments for prosecuting foreign bribery in Turkey are present, Turkey’s unwillingness to follow up foreign bribery accusations remain the same as before. According to the Phase 3 Report, 10 allegations of foreign bribery have come to light since 2003 and Turkish authorities have taken limited investigative steps in only six cases. Three out of these six cases ended due to the foreign authorities’ failure in supplying sufficient evidence and one case ended in acquittal of the suspects. The Phase 3 Report criticises Turkey for not detecting and investigating allegations of foreign bribery proactively, by gathering information through more diverse sources. The Report also criticises Turkey for not allocating adequate resources to specialised units in the Public Prosecutor’s Office and improving these specialised units’ cooperation with other public authorities. The Report suggests that Turkey should adopt legislative measures to afford adequate protection to whistle-blowers, both in private and public sectors.

According to Transparency International’s findings in the OECD Progress Report on Exporting Corruption, Turkey rarely enforces domestic and international legal instruments when combating foreign bribery.

VII INTERNATIONAL ORGANISATIONS AND AGREEMENTS

Turkey has signed and ratified several conventions against corruption. According to Article 90 of the Constitution, multinational treaties that have been duly ratified by the Turkish parliament and have entered into force. The primary international conventions are:

a. the OECD Convention;

b. the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

c. the United Nations Convention against Corruption;

d. the United Nations Convention against Transnational Organized Crime;

e. the Council of Europe Civil Law Convention on Corruption;

f. the Council of Europe Criminal Law Convention on Corruption; and

g. the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

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12 Published in the Official Gazette dated 13 March 1926 and numbered 320.
Turkey has also been a member of the Group of States Against Corruption (GRECO) since 2004; the Financial Action Task Force since 1991; and the OECD Working Group on Bribery since 2000.

VIII LEGISLATIVE DEVELOPMENTS

Although there have been several developments in the Turkish anti-corruption and anti-bribery legislation, there are still major problems to be solved. Turkey needs to develop stronger preventive measures. The main reason for Turkey’s apparent weakness when it comes to challenging bribery and corruption is the lack of a central body, which should be in charge of developing and monitoring the implementation of anti-corruption and anti-bribery policies. Even though there are public agencies that are authorised to observe the application of anti-corruption laws, such as the Ethics Board and the FCIB, no coordination exists between these agencies. Turkey needs to improve its efforts against corruption by providing a solid legal ground for implementation of anti-corruption related policies, with a specialised enforcement body.

Furthermore, as per the Asset Declaration Law, appointed public officials and political figures must declare their assets. However, the Global Corruption Barometer 2013 data indicates that political parties, parliament and media are perceived as the most corrupt fields in Turkey. The main reason for this is the wide scope of immunities of parliamentary members. In this respect, adopting measures against this strong immunity system and corruption in the public sector is very significant for Turkey’s fight against corruption.

Turkey became a member of the Open Government Partnership in 2012 and it is planning to increase integrity and transparency in the public sector by performing its undertakings. In this context, Turkey decided to set up an official public website where the government’s projects and strategies concerning anti-bribery and anti-corruption will be published. Turkey also made the decision to organise recommendation platforms, workshops and conferences on transparency and openness in public, for both the private and public sectors.

IX OTHER LAWS AFFECTING THE RESPONSE TO CORRUPTION

The TPC is the primary legislation concerning corruption and bribery. Issues concerning corruption are generally governed under separate pieces of legislation, such as the Asset Declaration Law, the Civil Servants Law and the Ethics Rules Law.

The TCC, the Customs Law, the Smuggling Law, the Public Tender Law and the Law on Independent Accountant Financial Advisors and Certified Public Accountants also provide legal instruments for anti-corruption and anti-bribery.

X COMPLIANCE

In Turkey, there is no specific law or guidance applicable to elements of compliance programmes. Having said that, there is the Ethics Regulation on Program of Compliance with Obligations of Anti-Money Laundering and Combating the Financing of Terrorism. However, this regulation is solely binding for banks, capital markets, brokerage firms and insurance companies.
Companies issue their own anti-corruption compliance programmes and guidelines, to ensure better protection against anti-corruption. Any corporate compliance programme implemented by entities conducting their activities in Turkey must adhere to Turkish laws. These programmes should be tailored by considering the necessities of the respective companies’ local cultures. Also, they should be prepared in the local language of the respective company so that they can be followed in a clear and concise way by all employees. Senior management’s strong commitment to compliance programmes encourages other employees from all levels. For this reason, it is important for the senior managers and employees to have an in-depth understanding of the compliance policies. Furthermore, an effective programme should involve monitoring and supervision circumstances.

Multinational companies tend to implement anti-bribery compliance systems based on the rules of the US Foreign Corrupt Practices Act and the UK Bribery Act 2011, due to their extraterritorial application. In addition, the OECD’s Good Practice Guidance on Internal Controls, Ethics and Compliance (2010) is one of the most comprehensive guidelines publicly available for compliance programmes.

XI OUTLOOK AND CONCLUSIONS

Turkey, with its growing economy, has been experiencing ‘growing pains’ since the 1980s. Legislative improvements, as well as the state’s and the private sector’s cooperation with global anti-corruption communities are likely to help Turkey to move faster in this cause. Although the country’s score with regard to levels of corruption has dropped in international evaluations, it would be helpful for Turkey to acknowledge its weak points in this matter and take decisive legislative action against bribery and corruption.
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Mr Okan Demirkan spent 10 years working in the Istanbul, Ankara and London offices of a major Turkish law firm. He joined Kolcuoğlu Demirkan Koçaklı in 2010 as a named partner. He has significant experience in energy and infrastructure, arbitration and litigation. He currently leads Kolcuoğlu Demirkan Koçaklı’s dispute resolution and energy practices and has significant know-how and extensive experience in both the consultancy and dispute resolution aspects of anti-corruption. Over the course of his career of more than 15 years, Mr Demirkan dealt with almost all ministries and regulatory authorities, including the Ministry of Energy, Ministry of Transport, Ministry of Labour, Ministry of Environment, Civil Aviation Authority, Competition Authority, Banking Authority, Public Tender Authority and Energy Market Regulatory Authority. He has also provided advice in the fields of anti-corruption, anti-bribery and compliance for clients operating in the private sector. Kolcuoğlu Demirkan Koçaklı is a corporate member of the Turkish Ethics and Reputation Society (TEİD) (www.teid.org), which is Turkey’s leading civil society institution in the area of anti-corruption and ethics. Mr Demirkan has been a member of TEİD’s board of directors since early 2015.

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