

**Global Investigations Review**

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# The Practitioner's Guide to Global Investigations

Volume II: Global Investigations  
around the World

Third Edition

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**Editors**

Judith Seddon, Eleanor Davison, Christopher J Morvillo,  
Michael Bowes QC, Luke Tolaini, Ama A Adams, Tara McGrath

2019

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***GIR***

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# 1

## Introduction to Volume II

**Judith Seddon, Eleanor Davison, Christopher J Morvillo,  
Michael Bowes QC, Luke Tolaini, Ama A Adams and Tara McGrath<sup>1</sup>**

Boards and senior executives have never been more concerned that they or their organisation may come under the scrutiny of enforcement authorities. And with good reason. Recent years have seen an upsurge in confidence among enforcement authorities across the globe, which has manifested and led to increased numbers of investigations, fines of unprecedented orders of magnitude and senior executives facing the much more realistic prospect of investigations concerning their own conduct and, in some cases, prosecution, conviction and imprisonment.

In many jurisdictions, the introduction of new offences and changes to the law of corporate criminal liability have provided enforcement authorities with enhanced opportunities to pursue criminal investigations and ultimately to prosecute corporate entities. Coupled to this has been the incentivisation of corporates to co-operate with investigations and provide information to assist authorities in pursuing culpable individuals through negotiated settlements. In some jurisdictions, notably the United States, these are an established feature of the enforcement landscape and are regularly used to bring investigations to a pragmatic conclusion without the commercially destructive consequences prosecution of a corporate entity can bring. In others, such as the United Kingdom and France, legislation enabling corporates to conclude investigations short of prosecution is still comparatively young.

The law relating to criminal and regulatory investigations shows no sign of standing still. Law and practice across the globe has changed, often in response to highly publicised scandals. Relationships between enforcement authorities continue to grow closer, and there is a marked trend in politicians, prosecutors and regulators carefully watching the way other jurisdictions choose to combat corporate crime, to apply the most effective mechanisms in

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their own national contexts. Recent examples of changes to legislation in terms of either extending corporate criminal liability or legislating for its resolution through deferred prosecution agreements (or both) include significant changes being made in Singapore, Japan, Canada, Australia and Ireland at the time of writing. A similar trend may be observed in the regulatory sphere through the implementation of individual accountability regimes modelled on or drawing from the UK Senior Managers and Certification Regime in, for example, Hong Kong, Australia and Singapore.

All these macro factors, together with important changes to technical local legislation such as the implementation of the EU General Data Protection Regulation, present numerous, significant challenges to corporates and individuals around the world. Both can quickly find themselves the targets of fast-moving and far-reaching investigations, whose possible outcomes may vary significantly in different jurisdictions.

In Volume II of this Guide, which in the third edition now covers 21 jurisdictions, local experts from national jurisdictions respond to a common set of questions designed to identify the local – continually evolving – nuances of law and process that practitioners are likely to encounter in responding to the increasing number of cross-border investigations they face.

# 20

## Turkey

**Filiz Toprak Esin and Asena Aytuğ Keser<sup>1</sup>**

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### General context and principles

- 1 Identify the highest-profile corporate investigation under way in your country, describing and commenting on its most noteworthy aspects as it relates to your country.

This year, a Ponzi scheme investigation was initiated against Ciftlik Bank, a digital game platform that collected more than 1 billion Turkish lira from around 132,000 users. The public prosecutor started an investigation into four of its companies, alleging the formation of organised groups with the intention of committing crime, being a member of a criminal group, committing a qualified form of fraud by using IT systems, and money laundering. The investigation is continuing. The chief executive officer of the scheme escaped to Uruguay and Turkey is seeking his extradition.

- 2 Outline the legal framework for corporate liability in your country.

Under Turkish law, corporations cannot be held criminally liable. When a crime is committed for the benefit of a legal person by the participation of its representatives or authorised bodies, the Turkish Criminal Code (CC) provides for security measures to be imposed on that legal person. Those measures are listed as the cancellation of business licences granted by a public authority, and the seizure of goods that are used, allocated for or gained as a result of the commission of crime. In addition, in cases where certain crimes (e.g., fraud, collusive tendering, bribery, money laundering) are committed by representatives or authorised bodies

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or by third persons who perform a task within the framework of its field of activity, administrative fines are also imposed on the legal person, as prescribed by Article 43 of the Law on Misdemeanours.

**3 In your country, what law enforcement authorities regulate corporations? How is jurisdiction between the authorities allocated? Do the authorities have policies relating to the prosecution of corporations?**

There are no special authorities relating to the prosecution of corporations. When a crime is committed by a corporation, public prosecutors and criminal courts prosecute representatives or members of authorised bodies of the corporation. In addition, pursuant to Law No. 5549 on Prevention of Laundering Proceeds of Crime, the Financial Crimes Investigation Board (MASAK) is authorised to convey to the Public Prosecutor's Office any case in which there is serious suspicion that a money laundering or terrorist financing offence has been committed.

**4 What grounds must the authorities in your country have to initiate an investigation? Is a certain threshold of suspicion necessary to trigger an investigation?**

Having an impression that a crime has been committed is sufficient for the public prosecutor to trigger an investigation. According to Article 160 of the Criminal Procedure Code (CPC), the public prosecutor would start an investigation as soon as he or she becomes aware of any impression of a crime being committed, by any means (e.g., the reporting of a crime).

**5 Does double jeopardy, or a similar concept, apply to prevent a corporation from facing criminal exposure in your country after it resolves charges on the same core set of facts in another country?**

Notwithstanding the fact that legal persons cannot be held criminally liable under Turkish law, the principle *ne bis in idem* is generally recognised at national level. However, Article 9 CC states that a person who has been sentenced in a foreign country for a crime committed in Turkey shall be tried again in Turkey. Although Article 16 of the CC provides for the deduction of the time spent in custody or detention in a foreign country from the term of sentence to be served in Turkey, parallel investigations and even verdicts can be possible for individuals where Article 9 of the CC applies. In terms of a legal person, in spite of the exemption from criminal liability, that person may face administrative sanctions or civil liability in Turkey for the same conduct that was the subject of resolved charges in another country.

**6 Does criminal law have general extraterritorial effect in your country? To the extent that extraterritorial effect is limited to specific offences, describe those which have extraterritorial effect, the statutory basis and any conditions that must be met for extraterritoriality to apply.**

In principle, the territorial scope of Turkish criminal law is limited by crimes committed within Turkey. However, trial and punishment in Turkey under Turkish laws and procedures

of a crime committed in a foreign country, or by a citizen of a foreign state to the detriment of Turkey, is also possible when specific circumstances are also satisfied (Articles 10 to 12 CC). Other than that, bribery can be charged as a specific crime with an extraterritorial effect in accordance with amendments to Article 252 of the CC on bribery in 2005 and 2012 in line with the process of implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997. Accordingly, this Article applies to:

- public officials who have been appointed or elected in a foreign country;
- officials serving in international, supranational or foreign state courts (such as judges and members of juries);
- members of international and supranational parliaments;
- persons who perform a public duty for a foreign country, including foreign public institutions;
- citizens or foreign arbitrators who are appointed to arbitrate for a dispute resolution; and
- officials or representatives of international or supranational organisations that have been established by international treaties.

**7 Describe the principal challenges in your country that arise in cross-border investigations, and explain whether and how such challenges are dependent on other countries involved.**

One of the main challenges that arise in cross-border investigations is the transfer of personal data pursuant to the new Law No. 6698 on the Protection of Personal Data (DPA). Pursuant to Article 9 of the DPA, personal data may only be transferred abroad with the explicit consent of the data subject. However, if the general exceptions for the processing of personal data under Articles 5/2 and 6/2 exist (such as the existence of legal obligations or the legitimate interests of the data controller), personal data may be transferred abroad without explicit consent, given that the country that will obtain the data provides an adequate level of data protection or that the data controllers in both Turkey and the subject country provide a written undertaking to provide adequate protection and obtain the authorisation of the Data Protection Board. As at August 2018, the Data Protection Board had not published the countries deemed to be providing adequate protection.

**8 What bearing do the decisions of foreign authorities have on an investigation of the same matter in your country?**

There is no specific or direct rule concerning the effect of the decisions of foreign authorities on an investigation to be conducted in Turkey for the same matter. That being said, the CC allows retrial of a person who has committed a crime in Turkey or in a foreign country if that person has undertaken an official duty on behalf of the state, even if this person has been convicted by a foreign state court for the same matter. Naturally, the decisions of foreign authorities do not have any bearing on an investigation to be conducted for such cases. The International Private and Civil Procedure Law No. 5781 enables the recognition and enforcement of criminal court decisions only for verdicts concerning personal rights.

**9 Do your country's law enforcement authorities have regard to corporate culture in assessing a company's liability for misconduct?**

Under Turkish law, there is no rule or guideline that gives regard to corporate culture when assessing a company's liability for misconduct. Corporate practice, therefore, is shaped in line with this silence of regulations, and law enforcement authorities do not deem corporate culture either as an aggravating or a mitigating factor in the assessment of liability.

**10 What are the top priorities for your country's law enforcement authorities?**

During the past two years, the fight against terrorism has been the top priority of law enforcement authorities in Turkey. There have been amendments to several acts related to counter-terrorism and to the rules of the CPC concerning the procedure of investigation and trial for such crimes.

**11 How are internal investigations viewed by local enforcement bodies in your country?**

In practice, the degree of importance a public prosecutor will attribute to an internal investigation very much depends on the specific circumstances of the case, and the quality and content of the findings of an internal investigation. As there is not any legal rule granting internal investigations a role in the official investigation stage, the public prosecutor, and, at the next stage, the criminal court, has full discretion on how to view it.

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**Before an internal investigation**

**12 How do allegations of misconduct most often come to light in companies in your country?**

Allegations of misconduct generally come to light either through internal sources, such as employees of a company, or external sources, such as customers or distributors. Although company employees often have concerns about being identified as a whistleblower, observations show that the higher the level of misconduct, the more likely employees will disclose it to their superiors. In the case of distributors, whistleblowing seems to be mostly dependent on commercial interests, as distributors are more likely to reveal misconduct when commercial relationships have been destroyed. Internal audits are also a way of detecting misconduct.

**13 Does your country have a data protection regime?**

Yes, the DPA was enacted on 7 April 2016. Following a two-year post-adoption grace period, the DPA became fully enforceable in Turkey on 7 April 2018. Moreover, Turkey is a party to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108). Although Turkey has been a party to the Convention since 1981, it was not ratified until 17 March 2016.

**14 How is the data protection regime enforced?**

Pursuant to the DPA, the data protection regime is enforced by the Data Protection Board, and by criminal courts and public prosecutors for crimes regarding data protection offences.

Pursuant to Article 18 of the DPA, the Board is authorised to impose administrative fines on data controllers who breach the DPA by failing to fulfil the obligation of informing the data subject of the full scope of data processing activities, the obligations of data security, the obligation to comply with the Board's decisions and the obligation to be registered with the Data Controllers Registry. Depending on the nature of the breach of the DPA, administrative fines range from 5,000 to 1 million Turkish lira and may be imposed on natural or legal persons who act as data controllers.

Articles 135 to 138 of the CC also regulate criminal liability regarding the data protection regime. Under the CC, the illegal recording, illegal transfer, distribution or receipt and non-destruction of personal data are regulated as criminal offences. The penalty for these offences is imprisonment for between one and four years, depending on the specific offence.

Although there is no corporate criminal liability in Turkey, security measures (see question 2) can be imposed on legal persons who commit crimes under the data protection regime.

**15 Are there any data protection issues that cause particular concern in internal investigations in your country?**

Since employees' emails fall within the scope of the DPA as personal data, seizure of such data within the framework of internal investigations causes a particular data protection concern. Article 5 DPA allows the processing of personal data under certain circumstances as listed in the Article, two of which are the express consent of the data subject and the legitimate interests of the data controller. Thus, if employees did not give their express consent for the investigation of their emails, a data controller's best option would be to argue the grounds of legitimate interest for the data processing activities (i.e., internal investigations). It can be argued that processing personal data on the grounds of legitimate interest does not constitute any harm to the data subject's fundamental rights and freedom but, since this is the most abstract ground yet for data processing, data controllers should be cautious in relying on it without the explicit consent of the data subject.

**16 Are search warrants or dawn raids on companies a feature of law enforcement in your country? Describe any legal limitations on authorities executing search warrants or dawn raids, and what redress the company has if those limits are exceeded.**

Article 119 of the CPC stipulates that search warrants for houses, workplaces or non-public closed areas shall only be issued by a judge or a public prosecutor if a search should be carried out without delay. The warrant shall include the act constituting the grounds for the search, the subject of the search, the address where the search is to be conducted and the period for which the warrant is valid. The CPC expects the law enforcement authorities to comply with the scope and content of a search warrant in a proportionate manner. In the event of non-compliance, the subject of the warrant is entitled to compensation (both monetary and moral) from the state.

**17 How can privileged material be lawfully protected from seizure during a dawn raid or in response to a search warrant in your country?**

Privileged material can be lawfully protected from seizure during a dawn raid based on attorney–client privilege. The correspondence between attorneys and their clients is deemed to be a significant part of the right of defence. However, to benefit from the privilege, the correspondence must be made between an independent attorney and his or her client. Therefore, correspondence between a company and its in-house attorney cannot benefit from attorney–client privilege. To ensure the protection of privileged materials during a dawn raid, it is recommended that they be marked as confidential beforehand and that the attorney is contacted as soon as possible so that he or she can be present at the raid. This will facilitate the raising of any necessary objections while the dawn raid is being carried out. On the other hand, pursuant to the Competition Board’s decision No. 15-42/690-259, dated 12 December 2015, in addition to the foregoing (i.e., the requirement for external counsel), the Board concludes that correspondence that does not fall within the scope of the right to defence and that aims to aid the subject’s violation, or that is intended to conceal a possible violation, shall not benefit from attorney–client privilege.

**18 Are there any privileges in your country that would prevent an individual or company from providing testimony? Under what circumstances may an individual’s testimony be compelled in your country? What consequences flow in your country from such compelled testimony?**

Pursuant to Article 48 of the CPC, an individual may refrain from providing testimony that would lead to him or her, or his or her specified relatives, being prosecuted within the scope of the right against self-incrimination. Moreover, the specified relatives of the accused also have the right to refrain from providing testimony against the accused. Besides, Article 46 of the CPC entitles individuals in certain professions (such as attorneys, healthcare professionals and financial advisers) to refrain from providing testimony regarding information relating to their profession. However, while attorneys may use their right to refrain from providing testimony under any conditions, healthcare professionals and financial advisers cannot enjoy this right if the accused waives the privilege. Pursuant to Article 44 of the CPC, if a witness who has been duly notified and summoned does not appear before the court without providing any excuse, he or she may be compelled to provide testimony before the court. Moreover, a witness who has been introduced before the court by force would also be fined for the expenses raised from his or her absence. The right against self-incrimination and the right to refrain from providing testimony are similarly regulated under Law No. 6100 on Civil Procedure.

**19 What legal protections are in place for whistleblowers in your country?**

There is no legislation granting legal protection to whistleblowers. Although there is an Act on Witness Protection, it only applies to people who have provided testimonies during criminal proceedings and certain of their relatives.

- 20 What rights do employees possess under local employment law that determines how they are treated within a company if their conduct is within the scope of an investigation? What employment rights would attach if they are deemed to have engaged in misconduct? Does it differ for officers and directors of the company?**

There are not any specific rules under the local employment law that set forth the rights of an employee under an investigation of any kind. Labour Act No. 4857 (LA) lists valid reasons and just causes by analogy, and being under an investigation does not constitute a reason for termination on its own. As the LA is silent on the interim period within which the investigation is conducted, most companies regulate the circumstances that apply during this period by internal policies and disciplinary regulations. As long as they are proportionate with the suspected act of the employee and his or her position regarding the misconduct, the employer may take some measures for the sake of the investigation within its right of management.

If the employee is deemed to have engaged in misconduct following an internal investigation, the employer may proceed with terminating the employment agreement either for valid reasons or just causes, depending on the severity of the employee's conduct. However, if there are internal company policies or regulations that foresee a different sanction than termination for the specific conduct at hand, the employer is required to follow that procedure to prevent a claim for invalid termination.

If an employee is taken into custody or arrested for a period longer than notice periods within the scope of an external investigation, this constitutes a just cause for termination.

- 21 Are there disciplinary or other steps that a company must take in your country when an employee is implicated or suspected of misconduct, such as suspension or in relation to compensation? Can an employee be dismissed for refusing to participate in an internal investigation?**

The LA only regulates termination of employment and is silent on disciplinary sanctions that could be taken during a current employment relationship. However, a company may determine disciplinary sanctions in its internal policies and regulations. From a labour law standpoint, it is especially important in drawing up internal company rules to set out the framework in a specific manner, as a sanction imposed without a clear ground may entitle an employee to several claims against the employer.

Whether refusal by an employee to participate in an internal investigation could be a reason for termination of the employment agreement depends on the specific circumstances of the case. If the refusal is of a nature that could be construed as a breach of the employment agreement or the employee's obligation of due care and loyalty, then it may result in dismissal.

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## **Commencing an internal investigation**

- 22 Is it common practice in your country to prepare a document setting out terms of reference or investigatory scope before commencing an internal investigation? What issues would it cover?**

The methods for conducting internal investigations are still a growing area for Turkish corporations. Therefore, drawing up a document that sets out the scope of an investigation is not common. That is why it is highly recommended to have a document that can also serve as



a road map of the investigation both to have an organised and complete investigation and to keep the whole process under control. To achieve this, the document should include the purpose and scope of the investigation, the procedure to be followed and the actions to be taken (interviews with employees, examination of corporate documents or emails, etc.), the units or individuals to be involved and the means of communication with the relevant parties.

**23 If an issue comes to light prior to the authorities in your country becoming aware or engaged, what internal steps should a company take? Are there internal steps that a company is legally or ethically required to take?**

Although its application in practice is quite rare, failure to report a crime at the very instant it has been committed, or when it is still possible to limit its consequences, constitutes a crime that is punishable by imprisonment for up to one year under the CC. Other than that, there are no mandatory reporting obligations.

**24 At what point must a company in your country publicly disclose the existence of an internal investigation or contact from law enforcement?**

Only Law No. 6362 on Capital Markets sets out a disclosure obligation for information, events and developments that may affect the value and price of capital market instruments or investment decisions by investors. Article 15 of Law No. 6362 defines such cases as material events and, according to the Capital Market Board's Guidebook on Material Events, material events include administrative and judicial proceedings that directly concern the issuer or court actions and sanctions against those having a material duty and responsibility for the issuer.

**25 When would management typically brief the board of a company in your country about an internal investigation or contact from law enforcement officials?**

There are no specific guidelines providing or recommending the timing for a company's management to brief the board on such matters. In general terms, practice shows that a board is made aware of a potential internal investigation before its commencement and mostly its approval is sought unless there is any specific circumstance that requires otherwise. If there is contact by law enforcement authorities, the management first conducts its own studies on the matter, its potential outcomes and planned actions, and then presents its brief to the board.

**26 What internal steps should a company in your country take if it receives a notice or subpoena from a law enforcement authority seeking the production or preservation of documents or data?**

If a company receives a notice from a law enforcement authority seeking production of documents, it should comply with the notice in an appropriate way. Thus, pursuant to Article 332 of the CPC, it is obligatory to reply within 10 days to an information request raised by the public prosecutor, judge or court during the investigation and prosecution phase. If it is not possible to provide this information in due time, addressed parties must inform why they cannot provide such information and when they will be providing it within the same period of time (i.e., 10 days). Those who do not comply with this requirement will be subject to the consequences of Article 257 of the CC, which is misconduct in office.

**27 How can the lawfulness or scope of a notice or subpoena from a law enforcement authority be challenged in your country?**

Whereas Law No. 2577 on Administrative Procedure provides application to a superior administrative body or the filing of a cancellation action as legal remedies to challenge the lawfulness or scope of an administrative action, the CPC provides an objection procedure before the issuing authority or its superior. The procedure to be followed when filing these applications and the time limits within which they should be made are set out clearly by these laws. Similar procedures are also set out by various special laws, such as the Law on Capital Markets and the Law on Misdemeanours.

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**Attorney–client privilege**

**28 May attorney–client privilege be claimed over any aspects of internal investigations in your country? What steps should a company take in your country to protect the privilege or confidentiality of an internal investigation?**

There are insufficient sources on specific guidance for attorney–client privilege in respect of internal investigations. Therefore, the extent to which attorney–client privilege will apply to the relationship and communications between in-house or external counsel and the perpetrators of white-collar crime remains unclear. In that respect, decisions by the Turkish Competition Board are helpful for guidance. The Board concluded that attorney–client protection covers any correspondence in relation to a client’s right of defence and documents prepared within the scope of an independent attorney’s legal service.

**29 Set out the key principles or elements of the attorney–client privilege in your country as it relates to corporations. Who is the holder of the privilege? Are there any differences when the client is an individual?**

In addition to the information in question 28, the Advocate Law of 19 March 1969 (1136) and the CPC set out the key principles of attorney–client privilege. Accordingly, the Advocate Law regulates attorney–client privilege for attorneys. According to Article 36 (Right to Keep Secrets), attorneys cannot disclose any document or information obtained while practising their profession. Similarly, Article 130/2 of the CPC sets out that any material seized as a part of a search conducted in an attorney’s office must be returned immediately to the attorney if the material is understood to relate to the professional relationship between a client and that attorney. There are not any differences between an individual client and a corporation in that respect.

**30 Does the attorney–client privilege apply equally to in-house and external counsel in your country?**

There are no specific provisions that define the application of attorney–client privilege to in-house and external counsel in Turkey. However, the Turkish Competition Board stated in its *Dow* decision that correspondence with an independent attorney falls within the scope of attorney–client privilege and shall be protected. In other words, in-house counsel employed by a corporation that is the subject of an investigation cannot enjoy attorney–client privilege.

- 31 To what extent is waiver of the attorney–client privilege regarded as a co-operative step in your country? Are there any contexts where privilege waiver is mandatory or required?**

There are no regulations that could guide us as to whether waiver of attorney–client privilege would be regarded as a co-operative step.

- 32 Does the concept of limited waiver of privilege exist as a concept in your jurisdiction? What is its scope?**

No, we do not have such a concept.

- 33 If privilege has been waived on a limited basis in another country, can privilege be maintained in your own country?**

There are no rules or regulations in this respect.

- 34 Do common interest privileges exist as concepts in your country? What are the requirements and scope?**

There are no rules or regulations under Turkish law regulating common interest privileges.

- 35 Can privilege be claimed over the assistance given by third parties to lawyers?**

The application described in this section relates to the correspondence between attorney and client and not to assistance from third parties to lawyers.

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## **Witness interviews**

- 36 Does your country permit the interviewing of witnesses as part of an internal investigation?**

There are no rules preventing companies from interviewing witnesses as part of an internal investigation. However, obtaining consent from a witness would prevent any subsequent complaint from a criminal law or data privacy law perspective.

- 37 Can the attorney–client privilege be claimed over internal witness interviews or attorney reports in your country?**

There are no court cases or regulations about claiming privilege over attorney reports that are based on internal witness interviews. Therefore, good practice would be to assume privilege only when external counsel is taking notes during witness interviews or preparing attorney reports to establish a legal defence.

- 38 When conducting a witness interview of an employee in your country, what legal or ethical requirements or guidance must be adhered to? Are there different requirements when interviewing third parties?**

There are no legal or ethical requirements or guidance under Turkish law to consider when conducting a witness interview of an employee. The general principles and provisions about

data privacy law, employment law and criminal law (the latter can be an issue when, for instance, a witness claims that his or her interview took place by force and his or her freedom was restricted, or that the interview was recorded without his or her consent) should be adhered to during interviews.

- 39      How is an internal interview typically conducted in your country? Are documents put to the witness? May or must employees in your country have their own legal representation at the interview?**

There is no specific format or guidance for conducting an interview. Internal interviews are usually conducted in a Q&A format. In practice, documents might be shown to the interviewees as well. Witnesses may choose to attend the interviews with their counsels.

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### **Reporting to the authorities**

- 40      Are there circumstances under which reporting misconduct to law enforcement authorities is mandatory in your country?**

As stated in question 23, although its application in practice is quite rare, failure to report a crime at the very instant it is committed or when it is still possible to limit its consequences, constitutes a crime that is punishable by imprisonment for up to one year under the CC. Other than that, there are no mandatory reporting obligations.

- 41      In what circumstances might you advise a company to self-report to law enforcement even if it has no legal obligation to do so? In what circumstances would that advice to self-report extend to countries beyond your country?**

Self-reporting should be assessed in each case by taking into account the real risks and strategy in the matter. It would be advisable to self-report if there is an imminent threat of external investigation.

- 42      What are the practical steps you need to take to self-report to law enforcement in your country?**

There is no guidance about any practical steps regarding self-reporting. When a corporation or individual decides to self-report, it would be advisable also to correctly determine the relevant law enforcement body.

On the other hand, note that effective remorse (leniency-type mechanism) is available for certain crimes (e.g., bribery under the CC).

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## Responding to the authorities

- 43 In practice, how does a company in your country respond to a notice or subpoena from a law enforcement authority? Is it possible to enter into dialogue with the authorities to address their concerns before or even after charges are brought? How?**

Every communication between a law enforcement authority and a company is made in writing. However, in practice, it is advisable to have good communications with a public prosecutor in order to better understand the claims and status of the investigation. Other than this method, there is no plea bargaining mechanism in Turkey.

- 44 Are ongoing authority investigations subject to challenge before the courts?**

The decision to initiate an investigation can be challenged under the procedural rules to which the authority is subject. For example, if a ministry initiates an investigation against a company, this administrative action can be challenged as per Law No. 2577 on Administrative Procedure.

- 45 In the event that authorities in your country and one or more other countries issue separate notices or subpoenas regarding the same facts or allegations, how should the company approach this?**

It would be advisable to have a central supervision mechanism for cross-border investigations. The consistency of negotiation packages can be affected by disclosure limitations imposed on companies through legal requirements (e.g., data protection or blocking statutes).

- 46 If a notice or subpoena from the authorities in your country seeks production of material relating to a particular matter that crosses borders, must the company search for and produce material in other countries to satisfy the request? What are the difficulties in that regard?**

There is no specific regulation regarding production of material in a different jurisdiction. The authorities co-operate with each other, and there are some reciprocity agreements between countries that enable a request to be recognised and enforced in another jurisdiction. However, note that, in practice, it is not always quick and easy to have an effective co-operation for bureaucratic reasons.

- 47 Does law enforcement in your country routinely share information or investigative materials with law enforcement in other countries? What framework is in place in your country for co-operation with foreign authorities?**

Turkish authorities share information with foreign authorities through the bilateral and multilateral agreements on mutual legal assistance.

- 48 Do law enforcement authorities in your country have any confidentiality obligations in relation to information received during an investigation or onward disclosure and use of that information by third parties?**

As explained in question 51, any documents produced for a court file are open to third parties unless the court grants a confidentiality decision on the file.

- 49 How would you advise a company that has received a request from a law enforcement authority in your country seeking documents from another country, where production would violate the laws of that other country?**

If compliance with a request made by an enforcement authority would violate the laws of another country, it would be advisable for that company to explain the reasons why it cannot provide the requested documentation or information to the local law enforcement authority.

- 50 Does your country have blocking statutes? What related issues are implicated by complying with a notice or subpoena?**

Please see question 7 for our explanation regarding data protection rules as blocking statutes in Turkey.

- 51 What are the risks in voluntary production versus compelled production of material to authorities in your country? Is this material discoverable by third parties? Is there any confidentiality attached to productions to law enforcement in your country?**

In principle, any documents produced for a court file are open to third parties. If the relevant party submits its request for confidentiality about the material presented, it must give a legitimate reason for that request. In such a case, the court will assess whether there is legitimate and reasonable cause to ask for the material in question to be kept confidential.

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## **Global settlements**

- 52 Prior to any settlement with a law enforcement authority in your country, what considerations should companies be aware of?**

In Turkish law, settlement with law enforcement authorities is subject to certain requirements and limitations in terms of scope. To exemplify, penalties arising from the offence of smuggling are left out of the scope of settlement tax penalties or administrative fines. In terms of settlement for criminal liability, the possibility to settle is provided for offences, subject to a complaint by the victim, with some exceptions, such as the offence of fraud or the disclosure of business secrets, banking secrets or information relating to customers.

**53 What types of penalties may companies or their directors, officers or employees face for misconduct in your country?**

As there is no criminal corporate liability, the directors, board members or representatives of a corporation may face judicial fines or imprisonment for misconduct, but the corporation itself cannot be sanctioned. Other than this, administrative or civil liability may arise for both the corporation and any individuals concerned, in connection with misconduct.

**54 What do the authorities in your country take into account when fixing penalties?**

Article 61 of the CC lists the factors that a criminal judge shall consider when fixing a penalty between the lower and upper limits for the offence at hand. Those factors are the way in which the offence was committed, how the damage occurred, the severity of the perpetrator's fault, and so on. Following that, Article 62 of the CC provides the grounds for discretionary mitigation of the judge as the background, and social relations of the perpetrator, the perpetrator's conduct after the act and during the proceedings, and the possible effects of the punishment on the perpetrator's future.

**55 Are non-prosecution agreements or deferred prosecution agreements available in your jurisdiction for corporations?**

Neither non-prosecution agreements nor deferred prosecution agreements are available in Turkey. Although it does not have the same scope, one may note the following.

Pursuant to Article 171 of the CPC, offences prosecuted on complaint that are subject to a penalty of imprisonment for less than one year can be deferred by the prosecutor for five years. However, certain conditions must be met before the prosecutor can make this decision. Those conditions are that the accused should not have previously been sentenced to imprisonment based on an intentional crime; the investigation should indicate that the accused will not commit any crimes after a possible deferral decision; the deferral must be more beneficial to the accused and society than prosecution; and the damage suffered by the victim and the general public must be fully compensated. If the accused does not intentionally commit a crime during the deferral period, the prosecution will be dropped.

On the other hand, Article 253 of the CPC regulates reconciliation by mediation for certain offences. In this regard, the outcomes of the offence can be compensated between the accused and the private person or entity without proceeding with a prosecution. If the offence is subject to reconciliation, the prosecutor will initiate the procedure *ex officio* and present the file to the reconciliation bureau. If all the parties agree to proceed with reconciliation, the court will defer announcement of the verdict until the conditions agreed under reconciliation are met by the accused. If the accused violates the reconciliation agreement within this period, the court will announce the verdict.

- 56 Is there a regime for suspension and debarment from government contracts in your country? Where there is a risk of suspension or debarment or other restrictions on continuing business in your country, what are the options available to a corporate wanting to settle in another country?**

Article 58 of Law No. 4734 on Public Procurement sets forth a suspension regime of one to two years for those who have been involved in, among other offences, collusive tendering or document forging. Moreover, Law No. 4734 sets forth that those who refrain from entering into a contract after procuring a tender will be suspended for between six months and a year. If the suspended company is an equity company, any shareholders owning more than half of its capital would also be affected by the suspension. If the suspended company owns more than half the capital of another company, that company would also be suspended accordingly.

- 57 Are ‘global’ settlements common in your country? What are the practical considerations?**

Global settlements are not common practice in Turkey.

- 58 Are parallel private actions allowed? May private plaintiffs gain access to the authorities’ files?**

Under Turkish law, the authorities’ files are considered to be in the public domain and this allows access to such files by private plaintiffs. However, similar access to confidential files may be restricted.

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## **Publicity and reputational issues**

- 59 Outline the law in your country surrounding publicity of criminal cases at the investigatory stage and once a case is before a court.**

Article 157 of the CPC provides for the confidentiality of an investigation and Article 285 of the CC deems a breach of the confidentiality of an investigation to be an offence subject to imprisonment for between one and three years. Only the victim, the complainant and the lawyers of the parties are allowed to review the investigation file and take copies to the extent that confidentiality is maintained. After the criminal case is filed, the trials are open to the general public in principle. However, where public morality and security so requires, the court may opt for confidential conduct of the trials. Confidentiality of trials when the accused is less than 18 years old is mandatory.

- 60 What steps do you take to manage corporate communications in your country? Is it common for companies to use a public relations firm to manage a corporate crisis in your country?**

Generally, lawyers and public relation firms work together in managing corporate communications. In sensitive cases that require communication with government bodies, in particular, lobbying firms may also take a role.



**61 How is publicity managed when there are ongoing, related proceedings?**

When such publicity is deemed necessary by the corporation, it is mostly managed by press statements.

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**Duty to the market**

**62 Is disclosure to the market in circumstances where a settlement has been agreed but not yet made public mandatory?**

Mandatory disclosure in these circumstances may be required under the Law on Capital Markets, as described in question 24.

# Appendix 1

## About the Authors

### **Filiz Toprak Esin**

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Filiz Toprak Esin is a managing associate at Gün + Partners and has been working for the firm since 2006. Her practice is focused on corporate and M&A, competition and business crimes and anti-corruption.

Filiz has been involved in various M&A deals and has assisted several clients with investments in Turkey. Filiz is providing services to clients on daily transactions, from establishment to liquidation.

Filiz has broad experience in compliance matters, including competition and white-collar crimes. She has assisted various major multinational clients in their fight against corruption and provides preventive advice about their compliance process. At the same time, she represents executives of clients before relevant authorities and courts regarding white-collar crime-related investigations and court actions.

### **Asena Aytuğ Keser**

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Asena Aytuğ Keser has been with the firm since 2011 and is a senior associate. Her practice focuses on dispute resolution, employment, business crime and anti-corruption.

Asena's main area of practice is commercial dispute resolution. She has a specific focus on business crimes and handles various disputes that require the application of both civil and criminal law principles. She advises and represents various multinational companies and their executives with regard to investigations and criminal actions arising from white-collar crimes.

Asena is also experienced in employment law. She provides consultancy and represents clients in relation to a wide range of employment law issues, including preparation and negotiation of employment contracts, personnel management, re-employment and unjust competition actions.

Combining her experience in business crimes and employment law, Asena actively takes part in internal investigation processes of major multinational companies from the beginning and advises clients on the planning and conduct of the investigation.

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