

COVID-19's Impact on Compliance Issues and Internal & External Investigations

COVID-19 outbreak, which was announced to be a pandemic by the World Health Organization on 11 March 2020¹, had inevitable impacts on corporate compliance processes due to the evolving business and workplace practices. In parallel with the increase in remote working, along with the psychological and financial distress on individuals emerging from the crisis, many companies have come up against a changing landscape for fraud with a rising number of fraud cases, as well as those are yet to be discovered.

As of the writing date of this article, based on the increasing number of COVID-19 cases and the several companies' decisions to postpone physical comeback to workplaces, the impact of COVID-19 pandemic appears likely to extend to the next year. Recent studies show that Turkey CFOs (67%) are concerned about the potential negative impacts of a new wave of infection on implementing return-to-work strategies². International and independent publications also provide data supporting such projection.

Fraud in the Wake of COVID-19: Benchmarking Report³ published by the Association of Certified Fraud Examiners suggests that, as of August 2020, 77% of respondents said they had observed an increase in the overall level of fraud, with one-third noting that this increase has been significant. On the other hand, the findings indicate that this uptick is likely to continue; as 92% of respondents expect to see a further increase in the overall level of fraud during the next year, and nearly half expect that increase to be significant.

The abovementioned study further sets out the top 5 fraud schemes currently observed due to COVID-19 as follows⁴:

- Cyberfraud – Overall Increase: 83%, Significant Increase: 47%

¹ Public statement of the World Health Organization (WHO): <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

² PwC's COVID-19 CFO Pulse, 15 June 2020.

³ Fraud in the Wake of COVID-19: Benchmarking Report, September 2020. All findings in this study is based on 2,096 survey responses that were usable for purposes of the report. Just over half (54%) of the respondents to our survey reside in the United States and Canada; 13% live in Sub-Saharan Africa; 7% each live in the Asia-Pacific region, Southern Asia, and Western Europe; 5% live in the Middle East and North Africa; 4% live in Latin America and the Caribbean; and 3% live in Eastern Europe and Western/Central Asia. Nearly one-quarter of survey respondents work in the banking and financial services industry, 20% are in the government and public administration sector, and 15% work in professional services. The remaining 42% of respondents are distributed across other industries.

⁴ Top 5 Fraud Schemes Currently Observed Due to the Coronavirus, September 2020.

- Unemployment Fraud⁵ – Overall Increase: 73%, Significant Increase: 41%
- Fraud by Vendors and Sellers – Overall Increase: 69%, Significant Increase: 33%
- Payment Fraud – Overall Increase: 68%, Significant Increase: 31%
- Identity Theft – Overall Increase: 67%, Significant Increase: 29%

According to the said study, the primary reasons that fighting fraud has become more difficult are tied predominantly to the physical restrictions currently placed on individuals in many locations. In parallel, when asked about their most prominent challenges in combating fraud in the current environment, respondents noted the inability to travel, issues with conducting remote interviews, and lack of access to evidence as their top difficulties. Indeed, these challenges appear to have caused the compliance and internal investigation procedures to follow an extraordinary path during the pandemic. As a matter of fact, both compliance officers and those who manage the legal aspect of internal investigations are facing newly emerging issues, e.g. the cybersecurity threats welcoming new fraud cases, privacy of remote interviews, conditions of obtaining and sharing the evidence.

Nonetheless, aside from the internal challenges, there have been also several matters to consider regarding the external investigations conducted before public prosecutors or administrative authorities. As per the Presidential Decree No. 2020/4⁶ and the letter issued by the Council of Judges and Prosecutors (“the Council”) on 23 March 2020⁷, all judges and public prosecutors started working from home except for an adequate number of judges and public prosecutors determined from each unit to carry out urgent tasks, handle the proceedings involving arrestee, and fulfil any requests for stay of execution. Later, following the suspension of judiciary terms until 30 April 2020 pursuant to Temporary Article 1 of the Law No. 7226 on Amendment of Certain Laws⁸, the Council decided on 30 March 2020 that judges and public prosecutors shall carry out their tasks in scope of flexible working arrangements such as rotation or remote working; and conduct file examinations, issue decisions and fulfil any other obligations regarding mandatory

⁵ Although Unemployment Fraud is generally defined as collecting unemployment insurance benefits based on false, misreported, or unreported information to the relevant authorities, in Turkey, the term may also cover the frauds arising from deceiving notifications filed by employers regarding the employment status of their employees, such as those served on the relevant authorities for unpaid leaves or short-term working.

⁶ Presidential Decree No. 2020/4 on Additional Measures in Scope of COVID-19 for Public Officers. Repeated Official Gazette (31076) dated 22 March 2020.

⁷ Letter dated 23 March 2020 concerning Additional Measures in Scope of COVID-19 <https://www.hsk.gov.tr/Eklentiler/Dosyalar/f275097a-aef5-4b51-b98d-c7b69ceb3b9f.pdf>

⁸ Repeated Official Gazette (31080) dated 26 March 2020

judiciary services from home, to the possible extent⁹. The Council then decided to sustain such measures until 15 June 2020 with the decision of 30 April 2020¹⁰, and set out a roadmap to determine the action plan for returning to the new normal with the announcement of 29 May 2020¹¹. While public prosecutors switched to remote working in scope of the said measures, the new arrangements inevitably affected the investigation processes during this course of time.

In addition to the above, due to the long-term curfews imposed on specific risk groups and the measures and restrictions implemented by public authorities in time, police forces lived several obstacles during the most critical phases of COVID-19. In this context, there have been certain cases where police units were unable to take suspect or witness statements in practice.

As of the writing date of this article, both public prosecutors and police forces have returned to the usual order, and investigation and trial proceedings currently function as per the regular array. However, since many companies have not returned to their physical workplaces yet, it is still a question mark which route to follow in case of a potential search to be conducted in scope of criminal investigations at the workplaces that are currently inactive. According to the relevant provisions of the Penal Procedure Code and the Regulation on Criminal and Preventive Searches, in the event that the owner of the property to be searched is not present, the search can be conducted in presence of the owner's representative or relatives having mental competence, an individual residing with the owner, or a neighbour. Therefore, concerning the inactive workplaces, police forces are presumed to conduct criminal searches in presence of search witnesses.

Due to the risks that companies may face both internally and during the criminal investigation processes, it is now more crucial than ever for companies to stimulate their fraud detection methods, standards and surveillance systems, trainings and audits, risk assessment processes and recovery mechanisms efficiently. As of the writing date of this article, considering the increasing number of COVID-19 cases and the general corporate approach towards extension of remote and flexible working, the impacts of COVID-19 pandemic seems to extend to the next year as well.

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⁹ <https://www.hsk.gov.tr/Eklentiler/Dosyalar/274da669-ec5d-4994-ad0e-2a30c0868f89.pdf>

¹⁰ <https://www.hsk.gov.tr/Eklentiler/files/GENEL%20KURUL%20KARARI-30-04-2020.pdf>

¹¹ <https://www.hsk.gov.tr/Eklentiler/files/29-05-2020.pdf>