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The International Comparative Legal Guide to:

# Business Crime 2019

**9th Edition**

A practical cross-border insight into business crime

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# The International Comparative Legal Guide to: Business Crime 2019


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## General Chapters:



## Country Question and Answer Chapters:





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Chapter 32

# Turkey


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## 1 General Criminal Law Enforcement

### 1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

Public prosecutors are authorised to prosecute crimes. Prosecution offices work on a territorial basis and have jurisdiction over all crimes that are committed in their territories or districts.

Law enforcement authorities which assist the prosecutors in investigations are the Police Department, Directorate of Customs Enforcement, General Command of Gendarmerie and the Coast Guard Command. They are all established nationwide and – except the coast guard – all have local organisations in almost every city.

### 1.2 If there is more than one set of enforcement agencies, how are decisions made regarding the body which will investigate and prosecute a matter?

The authority to prosecute crimes lies solely with public prosecutors. The law enforcement authorities specified above are at the disposal of the public prosecutors. In addition, several administrative authorities or regulatory bodies are empowered to conduct administrative investigations in matters which fall into their responsibility, or supervisory authority, under their organic laws. In such cases, these regulatory bodies are obliged to inform the public prosecutors if and when they encounter any criminal conduct. The Competition Authority, the Banking Regulation and Supervision Agency, the Financial Crimes Investigation Board, the Capital Market Board and Tax Offices are among such authorities.

### 1.3 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

Civil enforcement may be in question if the particular business crime triggers civil liability under Turkish law. Such civil liabilities often arise from the general provisions governing tort under the Code of Obligations No. 6098 or liabilities of the company executives or board members under the Commercial Code No. 6102.

Administrative authorities cannot prosecute crimes or impose criminal sanctions; however, they can conduct administrative investigations and impose administrative sanctions in cases of business crime. These sanctions vary from administrative fines to the termination of a licence or the suspension of activities.

### 1.4 Have there been any major business crime cases in your jurisdiction in the past year?

There has not been any major business crime case in our jurisdiction in the past year.

## 2 Organisation of the Courts

### 2.1 How are the criminal courts in your jurisdiction structured? Are there specialised criminal courts for particular crimes?

The Turkish criminal court system has three main levels: criminal courts of first instance; regional courts of appeal; and the court of cassation.

There are three types of criminal courts of first instance: criminal peace judgeships; criminal courts of first instance; and high criminal courts. Criminal peace judgeships mainly handle the matters related to ongoing investigations such as issuing or approving search and arrest warrants, confiscation orders or objections filed against the decisions made by prosecutors. High criminal courts try the cases of certain crimes such as forgery of official documents, aggravated form of fraud, fraudulent bankruptcy or crimes which require sentences to life imprisonment or imprisonment for at least 10 years. Crimes falling outside the scope of criminal peace judgeships and heavy criminal courts are handled by criminal courts of first instance.

There are two types of specialised criminal courts: criminal courts for intellectual and industrial property rights which try the cases arising mainly from Industrial Property Code no. 6769; and criminal enforcement courts which hear the complaints arising from special criminal provisions of the Enforcement and Bankruptcy Code No. 2004. It should be noted that these courts are not authorised to conduct criminal investigations in terms of criminal law.

For Regional Courts of Appeal and the Court of Cassation, see section 16.

### 2.2 Is there a right to a jury in business crime trials?

Jury trial is not recognised under Turkish law and there is no right to a jury in business crime trials.

## 3 Particular Statutes and Crimes

**3.1 Please describe any statutes that are commonly used in your jurisdiction to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused:**

As a general rule, the crimes can be punished if the accused had acted with intent and crimes committed with negligence are punished only if it is specifically regulated. The crimes set out below can be prosecuted if they are committed with criminal intent and the exceptions are specified under each crime.

**o Fraud**

Pursuant to the Article 157 of Turkish Penal Code No. 5237 (the Penal Code), acts of deceiving a person through fraudulent behaviour and obtaining benefit for himself or others by causing loss to the victim or another person is defined as fraud. Special forms of this crime is regulated in other pieces of legislation, some of which we will mention below.

**o Securities fraud**

Please see market manipulation in connection with the sale of derivatives below.

**o Accounting fraud**

Turkish Tax Procedure Law No. 213 (the Tax Procedure Law) specifies the penalties for irregularities and fraudulent acts related to the keeping of books and records. Causing loss of tax, failure to keep the financial records and books in accordance with the rules as set out in this law, not issuing invoices or delivery notes or issuing these documents with false information are all subject to fines.

**o Insider trading**

The acts of giving, changing and cancelling purchase or sale orders of capital market instruments and obtaining benefit for himself or someone else based on information which are not public and may affect their values, prices or investor's decisions are prohibited by Article 106 of the Capital Market Law No. 6362 (the Capital Market Law).

**o Embezzlement**

Pursuant to Article 247 of the Penal Code, public officials who embezzle properties entrusted to them or put under their custody will be sentenced to imprisonment of up to 12 years. The sentence shall be increased by one-half it this crime is committed with deceitful acts to conceal the embezzlement.

**o Bribery of government officials**

Bribe is defined, under Article 252 of the Penal Code, as a benefit illegally secured to a public official, foreign public official or other individuals deemed as public officials regardless of their capacity of a public official (such as a representative of a publicly traded company or an SOE), directly or indirectly, with the aim of prompting him to perform or not to perform a task that is related to his duty. The crime is considered as completed even if the parties agree on the bribe but do not deliver it. Offering a bribe is also subject to criminal sanctions even if the offeree does not accept.

**o Criminal anti-competition**

Law no. 4054 on the Protection of Competition (the Competition Law) regulates anti-competitive conduct and decisions. Restrictive agreements and concerted practices between undertakings and abuse of dominance by dominant entities in goods or services markets in Turkey are unlawful and prohibited under the relevant provisions of the Competition Law. Violations of the Competition Law are not criminal acts and are only subject to administrative monetary fines. The only exception is bid-rigging in public tenders which is a criminal offence under Article 235 of the Penal Code that may lead to imprisonment from one to seven years.

Unfair competition, on the other hand, is regulated under the Commercial Code and will be punished with imprisonment if committed with intent.

**o Cartels and other competition offences**

Cartels, abuse of dominance and other competition offences, which are subject to administrative fines, are specified under Article 4, 6 and 7 of the Competition Law.

**o Tax crimes**

Tax evasion, violation of the secrecy of taxes, causing loss of tax or tax irregularities are considered as tax crimes pursuant to the provisions of the Tax Procedure Law. Acts of accounting manipulations in a manner reducing the tax base, altering, concealing and/or destroying the books are all typical examples of tax evasion. While causing tax loss or having irregularities in books and records are subject to fines, tax evasion and violation of the secrecy of taxes are subject to both imprisonment and a judicial fine.

**o Government-contracting fraud**

Articles 235 and 236 of the Penal Code specifies the acts which qualify as bid-rigging and fraud in fulfilment of an obligation undertaken against government entities. Article 83 of the Public Procurement Law No. 5347 also specifies the prohibited acts and behaviours in the tender process.

**o Environmental crimes**

Pollution of the environment with intent or negligence, causing noise or pollution of construction are defined as environmental crimes under Articles 181 to 184 of the Penal Code. In general, disposal of waste, contrary to technical specifications as set out in relevant laws, or by causing damage to soil, water or air, is considered as acts of pollution to the environment.

**o Campaign-finance/election law**

According to Article 57 of the Law on Basic Provisions on Elections No. 3637, political parties which participate in elections are prohibited from distributing gifts other than the publications specified in the article. Furthermore, under Articles 111-120 of the Political Parties Law No. 2820 different penal sanctions are stipulated for crimes committed by the political parties including obtaining loans, credits or receiving donations illegally.

**o Market manipulation in connection with the sale of derivatives**

Article 107 of the Capital Market Law provides two types of market manipulation: 1) the acts of making purchases and sales, giving, cancelling and changing orders or realising account activities with the purpose of creating a wrong or deceptive impression on the prices of capital market instruments, their price changes, supplies and demands; 2) the acts of giving false, wrong or deceptive information, telling rumours, giving notices, making comments or preparing reports or distributing them in order to affect the prices of capital market instruments, their values or the decisions of investors. Both crimes are subject to imprisonment of between two and five years, with the first being subject to a judicial fine of up to TRY 10,000, and the second which may lead to a judicial fine up to TRY 5,000. The crimes specified under these special provisions can also be referred to as the crimes of securities fraud.

**o Money laundering or wire fraud**

Pursuant to Article 282 of the Penal Code, money laundering is defined as transferring abroad the proceeds that were acquired as a result of specified offences (i.e. requiring a minimum penalty of at least six months' imprisonment) or processing such proceeds with the aim of concealing their illicit source or creating an impression that such proceeds were acquired legitimately.

Pursuant to Article 158 of the Penal Code, commission of fraud by using information systems, banks or credit institutions as tools constitutes aggravated form of fraud.

- **Cybersecurity and data protection law**

Under the provisions of the Penal Code, as referred to by the specific Law No. 6698 on the Protection of Personal Data (DP Law), recording personal data illegally or illegally obtaining, disseminating, giving personal data to another person are defined as crimes. The code also provides that persons who fail to perform their duty of destroying personal data within the prescribed period will be sentenced to imprisonment of between one and two years.

- **Forgery**

Pursuant to Article 204 of the Penal Code, the acts of issuing or using a counterfeit official document or altering a genuine official document to deceive others is defined as forgery. Forgery of private documents with similar actions are also considered as crimes.

**3.2 Is there liability for inchoate crimes in your jurisdiction? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed?**

Yes, there is liability for inchoate crimes in Turkish criminal law. A person who begins to act, with the intention of committing a crime and with the appropriate means but has been unable to complete the crime, shall be liable for the attempt. In such cases, the penalty shall be reduced by one-quarter up to three-quarters depending upon the seriousness of the danger and the damage.

## 4 Corporate Criminal Liability

**4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee's conduct be imputed to the entity?**

Liability of an entity for criminal offences is regulated under two different pieces of legislation.

As per Article 43/A of the Law no. 5326 on Misdemeanours (the Misdemeanours Law), if an organ, representative or employee of an entity commits certain criminal offences for the benefit of the entity such as fraud, manipulation of tenders, bribery, embezzlement or smuggling, an administrative fine from TL 10,000 up to TL 2,000,000 shall be imposed on the entity unless a heavier administrative fine is stipulated in other legislation.

As per various articles of the Penal Code (e.g., articles in relation to smuggling, human trafficking, trading of organs), security measures of confiscation and/or cancellation of permit as set out in Article 60 shall be applied if crimes are committed by employees within the scope of the activity of the entity.

**4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime? Under what circumstances?**

Individuals who committed or participated in a crime are personally liable regardless of commission of the crime for the benefit of the entity. Therefore, managers, officers or directors of a company may be held criminally liable only to the extent they are personally involved in the criminal act.

In case the individual is found guilty, the entity may become liable and be subject to security measures and fines.

**4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both?**

Although entity liability is recognised and practice thereof is developing, the prosecutors mostly pursue personal liability and an entity's criminal liability is still rare.

**4.4. In a merger or acquisition context, can successor liability apply to the successor entity? When does successor liability apply?**

The successor takes over the entity with all benefits and liabilities thereof including criminal liabilities thus, entity liability applies to the successor. However, liability of individuals does not apply to the successor's equivalents in accordance with the principle of personal liability.

## 5 Statutes of Limitations

**5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?**

There are two kinds of statutes of limitations: limitation of action; and limitation of punishment. Article 66 of the Penal Code stipulates that, unless otherwise is provided in the law, public action is dismissed upon lapse of:

- thirty years in offences requiring punishment of heavy life imprisonment;
- twenty-five years in offences requiring punishment of life imprisonment;
- twenty years in offences requiring punishment of imprisonment for at least 20 years;
- fifteen years in offences requiring punishment of imprisonment of at least five years and a maximum of 20 years; or
- eight years in offences requiring punishment of imprisonment of a maximum of five years or a punitive fine,

starting from – in principle – the date when the crime has been committed.

Article 68 of the Penal Code, on the other hand, sets forth the time limitations of punishment. The punishments listed in this article may not be executed upon lapse of the following periods:

- forty years in punishment for heavy life imprisonment;
- thirty years in punishment for life imprisonment;
- twenty-four years in punishment of imprisonment for 20 years or more;
- twenty years in punishment of imprisonment of more than five years; or
- ten years in punishment of imprisonment and punitive fines imposed up to five years;

starting from – in principle – the date when the judgment becomes definitive.

**5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?**

As a rule, crimes occurring outside the limitations cannot be prosecuted.

**5.3 Can the limitations period be tolled? If so, how?**

In terms of limitation of action, in cases where the investigation and prosecution is bound to a permission or decision, or the result of a matter is to be solved by another authority, the limitation will be tolled and will continue to run when such permission or decision is obtained or the matter is solved or the decision on the accused being a fugitive is rescinded. The limitations period can be interrupted if any one of the suspects or offenders is brought before the court to take his statement for interrogation purposes, if a decision is rendered for arrest of any one of the suspects or offenders, if an indictment is prepared relating to the committed offence or if a decision for conviction is rendered even though it is related to some of the offenders.

The limitation of punishment is interrupted if service is made to the convict regarding his sentence or if the convict is caught. If the convict commits an offence intentionally which requires a penalty of imprisonment for more than two years, the limitation of punishment will also be interrupted pursuant to Article 71 of the Penal Code.

In case the limitation is interrupted, the limitation period will start over as of the date when it was interrupted.

## 6 Initiation of Investigations

**6.1 Do enforcement agencies have jurisdiction to enforce their authority outside your jurisdiction's territory for certain business crimes? If so, which laws can be enforced extraterritorially and what are the jurisdictional grounds that allow such enforcement? How frequently do enforcement agencies rely on extraterritorial jurisdiction to prosecute business crimes?**

Enforcement agencies do not have jurisdiction to enforce their authority outside our jurisdiction's territory.

**6.2 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? If so, please describe them.**

Public prosecutors are obliged to initiate criminal investigation upon being aware of a crime. Thus, in principle, no complaint is required for the initiation of the criminal investigation and the investigation shall be initiated and conducted *ex officio*. Certain crimes can only be investigated upon complaint.

Governmental authorities are obliged to inform the public prosecutors if and when they encounter any criminal conduct during their investigations, as specified in question 1.2.

**6.3 Do the criminal authorities in your jurisdiction have formal and/or informal mechanisms for cooperating with foreign enforcement authorities? Do they cooperate with foreign enforcement authorities?**

Criminal authorities cooperate with foreign authorities as prescribed in bilateral and international conventions. Turkey has bilateral agreements with a wide range of countries regarding cooperation on criminal matters. Additionally, various multilateral treaties are in place in which Turkey is party to and has duly ratified. Some of them are:

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

## 7 Procedures for Gathering Information from a Company

**7.1 What powers does the government have generally to gather information when investigating business crimes?**

Pursuant to Article 161 of the Criminal Procedure Code No. 5271 (the Criminal Procedure Code), prosecutors carry out investigations directly or through law enforcement in order to gather evidence in favour and against the suspect to determine material facts of the crime. For this purpose, the prosecutors are entitled to: (i) request information, documentation or recordings from all public institutions and organisations; (ii) request search warrants from the criminal peace judicature to search suspects' personal properties, workplaces or bodies; and (iii) summon and interrogate suspects, witnesses, and anyone who are deemed to be related to the crime.

### Document Gathering:

**7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?**

Prosecutors are authorised to request information and documentation from real or legal persons. Pursuant to Article 332 of the Criminal Procedure Code, such requests must be responded to in writing within 10 days following the date of the request. According to Article 32 of the Misdemeanours Law and Court of Cassation's precedents, in case they do not respond to such requests, legal entities will be subject to administrative fines and employees will be subject to criminal sentences.

If there is reasonable doubt that evidence can be obtained or a suspect can be arrested, the prosecutor can request a search warrant from the criminal peace judgeship to search the premises of the company and a seizure decision to take hold of the documents which may constitute evidence. Exceptionally, the public prosecutor or the judicial police can *ex officio* search the premises and seize the documents in cases which a delay will cause inconvenience for the investigation. In such cases, the search warrant should be submitted to the criminal peace judgeship within 24 hours and be approved within 48 hours, otherwise it will become void and the evidence seized during these searches cannot be used.

**7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does your jurisdiction recognise any privileges protecting documents prepared by in-house attorneys or external counsel, or corporate communications with in-house attorneys or external counsel?**

Documents prepared by the independent attorney and communications with the independent attorney cannot be seized, unless they concern public or constitutional order of the state.

Privilege does not exist *per se* under Turkish law; however, there are other concepts and terminology that aim at protecting the secrecy of the client. The Attorney Law No. 1136 (the Attorney Law) imposes a secrecy obligation on the attorneys in relation to the information that they are entrusted with by the client, or that they obtain by virtue of their legal profession of attorney.

The protection covers communications between an independent attorney and client provided that the communication is due to the attorney's legal profession and therefore there is a causal link between the communication made and the attorney's legal profession. Communications with or documents prepared by the in-house counsel may not benefit from the privilege, by analogy with the general approach of the anti-trust law.

In accordance with Article 130 of the Criminal Procedure Code, an attorney's office can only be searched under the supervision of public prosecutor in connection with the decision of the court and only in relation to the case referred to in the decision. A representative from the bar association which the attorney is admitted to must be present during the search. If the attorney whose office is being searched or the bar representative objects to the seized documents on the grounds of attorney-client privilege under Attorney Law, this document must be sealed by those present separately and submitted to the criminal peace judgeship during investigation and judge or the court during prosecution for a necessary decision. It is important to point out that this covers only independent lawyers and does not extend to lawyers who work under an employment contract with his client.

**7.4 Are there any labour or privacy laws in your jurisdiction (such as the General Data Protection Regulation in the European Union) which may impact the collection, processing, or transfer of employees' personal data, even if located in company files? Does your jurisdiction have blocking statutes or other domestic laws that may impede cross-border disclosure?**

There is no specific employment-focused piece of legislation on the protection of personal data. In a criminal investigation, if the search order for the workspace is granted, there is not any restriction for the prosecution office to have access to personal documents of employees which are kept in the office.

However, pursuant to the DP Law which governs the collection, processing or transfer of personal data in a broader sense, personal data collected in Turkey can only be transferred to another country if:

(a) the explicit consent of the data subjects is obtained; or

(b) the data is processed on the basis of one of the exceptions provided by the DP Law (such as the performance of a contract, legitimate interest, etc.), and either (i) the destination country is among the countries designated by the Data Protection Authority (DPA) as a country with an adequate level of protection, or (ii) a written undertaking is signed by the transferor and the transferee to ensure adequate protection, and the prior approval of the DPA is obtained; the written undertaking must at least contain the minimum terms published by the DPA.

**7.5 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?**

The prosecutor can request any information from a company and its employees to a degree that it is assumed relevant by the prosecutor to the subject of the criminal investigation. The company is obliged to provide this information and employees' consent is not necessary. In case there is reasonable doubt that the evidence may disappear or be destroyed, search and seizure warrants can be obtained by the prosecutor for the employee's office or home as specified under question 7.2.

**7.6 Under what circumstances can the government demand that a third person or entity produce documents to the government, or raid the home or office of a third person or entity and seize documents?**

Please see question 7.5.

## Questioning of Individuals:

**7.7 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?**

An employee, officer, or director of a company can be demanded to submit to questioning if such persons are considered as suspects or witnesses.

The individual who will be questioned as a suspect must be summoned and should be informed about the reason why he is being summoned and that he will be brought by force in case he does not comply with the invitation. The questioning of a suspect takes place before a judge, a court or a public prosecutor.

If there is sufficient reason to issue arrest or an escape warrant, that individual can be brought by force without being summoned in the first place.

Please refer to question 7.8 for questioning of witnesses.

**7.8 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?**

A third person may be summoned to be questioned as a witness if requested by the judge or the prosecutor.

The witnesses should be informed with the summons in writing that if they fail to appear without notifying, an excuse shall be brought by force. If a witness is related to the suspect as set out in Article 45 of the Criminal Procedure Code such as being engaged or married to the suspect, he may be exempted from being questioned. Witnesses can also assert the privilege against self-incrimination which is explained further in question 7.9.

Witnesses are heard separately meaning that they will not confront the suspect or other witnesses unless specifically required. Statements are taken under oath and witnesses have the right to be represented by an attorney. The questioning will take place at the hearing room should the witness be summoned by the court or in an interrogation room, or a prosecutor's chambers if he is summoned by the prosecutor.

**7.9 What protections can a person assert upon being questioned by the government? Is there a right to be represented by an attorney during questioning? Is there a right or privilege against self-incrimination that may be asserted? If a right to assert the privilege against self-incrimination exists, can the assertion of the right result in an inference of guilt at trial?**

Pursuant to Article 147 of Criminal Procedure Code, the suspects have the right to remain silent and to retain a defence counsel. In case the suspect/accused is not able to retain a defence counsel and requests a counsel, the bar association shall appoint one for herself/himself on his/her behalf. Prior to questioning, the suspect must be informed about the alleged crime and his rights including the ones specified above.

Nobody can be forced to make statements or produce evidence incriminating themselves or his relatives as set out in the law. This freedom is protected under Article 38 of the Turkish Constitution. The assertion of this right shall cannot be considered as an inference of guilt.

Please refer to question 7.8 for questioning of witnesses.

## 8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

**8.1 How are criminal cases initiated?**

In conclusion of an investigation, if the public prosecutor decides that there is sufficient suspicion about the commission of a crime, he shall issue an indictment and deliver it to the competent criminal court. A criminal case is initiated if and when the indictment is accepted by the court. A criminal court shall either accept or reverse the indictment within 15 days and failure to issue a decision within this period will be interpreted as an implicit acceptance. The prosecutor shall issue a judgment of non-prosecution if he deems that there is not sufficient suspicion and, thus, a criminal case will not be initiated.

**8.2 What rules or guidelines govern the government's decision to charge an entity or individual with a crime?**

An entity or individual will be charged with a crime if there is at least sufficient suspicion about the commission of a crime. The power of discretion to decide whether or not there is sufficient suspicion, by examining the evidence collected during the investigation on a case-by-case basis, lies with the prosecutor. In general, it is deemed that there is sufficient suspicion if the chance of penalisation of the suspect is considered as being higher than the chance of acquittal.

**8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution agreements are available to dispose of criminal investigations.**

The defendant and the government are not authorised to resolve a criminal investigation through pre-trial diversion or an agreement to defer prosecution. That being said, some crimes can be resolved through reconciliation which is a form of pre-trial agreement between the suspect and the victim. Reconciliation is available for the crimes that can be prosecuted upon complaint and some certain crimes that are specified in Article 253 of the Criminal Procedure Code such as fraud and the crime of disclosure of documents or information that is qualified as commercial, banking or customer secrets. Judicial police officers, the public prosecutor and the judge are obliged to encourage the parties to reconcile for these crimes. If the prosecutor decides that there is sufficient evidence for initiation of a criminal case, he shall forward the file to the Reconciliation Office which will follow the reconciliation procedure.

Reconciliation negotiations are carried out by a reconciler confidentially. The statements of the parties during these negotiations cannot be referred to as evidence. If the suspect and the victim reach an agreement, the reconciler shall issue a report on the terms and conditions of this and forward it to the prosecutor together with the written agreement – if any. The prosecutor will decide for non-prosecution when the suspect performs his undertakings under the reconciliation agreement. If the parties fail to agree or the suspect fails to perform his undertaking, a criminal case will be initiated.

Furthermore, advance payment is a tool which defers prosecution. Pursuant to Article 75 of the Penal Code, except for offences falling within the scope of reconciliation, no prosecution shall be initiated against the suspect if he agrees to pay the reduced amount of judicial fine, as well as some minor investigation costs as offered by the prosecutor. Crimes which require only a judicial fine or which the statutory upper limit of imprisonment does not exceed three months, are eligible for advance payment.

**8.4 If deferred prosecution or non-prosecution agreements are available to dispose of criminal investigations in your jurisdiction, must any aspects of these agreements be judicially approved? If so, please describe the factors which courts consider when reviewing deferred prosecution or non-prosecution agreements.**

Deferred prosecution or non-prosecution agreements are not available under Turkish law.

**8.5 In addition to, or instead of, any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies may apply.**

Criminal courts do not have the authority to adjudicate civil penalties or remedies. The victim has the liberty to initiate a civil action and claim civil penalties or remedies from the civil court.

## 9 Burden of Proof

**9.1 For each element of the business crimes identified above in Section 3, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?**

One shall be presumed innocent until proven guilty in accordance with the principle of presumption of innocence that is protected by Article 38 of the Turkish Constitution. In line with this principle, the concept of the burden of proof in criminal law is different compared to civil law.

The prosecutor is obliged to collect all evidence either in favour or against the suspect and the court should determine whether or not the evidence undoubtedly proves that the crime was committed by the suspect. Otherwise, doubt benefits the suspect and the suspect will be acquitted.

Although there is no strict rule on burden of proof in criminal procedure, each party should bring the evidence in favour of its benefit, or public benefit from the perspective of the prosecutor. Therefore, the burden of proof lies with the prosecutor as he represents the criminal case against the suspect and the burden of proof with respect to affirmative defences lie with the suspect.

**9.2 What is the standard of proof that the party with the burden must satisfy?**

Commission of a crime can be proven with any evidence that is obtained legally. Pursuant to Article 206 of the Criminal Procedure Code, the evidence to be produced by the prosecutor will be dismissed: i) if the evidence is obtained illegally; ii) the matter related to which the evidence was produced has no impact on the verdict; and iii) if the request for examination of the evidence is put forward to prolong the trial. Any evidence that passes this test can be relied upon by the judge in the verdict.

**9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof?**

The judge is the arbiter of fact and has the power of appreciation to decide whether or not it is proven that the crime was committed by the suspect.

## 10 Conspiracy / Aiding and Abetting

**10.1 Can a person who conspires with or assists another to commit a business crime be liable? If so, what is the nature of the liability and what are the elements of the offence?**

A person who conspires with or assists another to commit a business crime can be liable. The punishment will be determined depending on the nature of involvement of this person in the typical criminal act. Such a person will be liable as if he committed the crime or if he performed the criminal act together with the suspect. If he only provided aid for commission of the crime, he will be sentenced to a reduced punishment. If he solicited the person who actually performed the criminal act, he may even receive a punishment heavier than this person.

## 11 Common Defences

**11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?**

As a rule, crimes can only be committed with criminal intent and the crimes that can exceptionally be committed by negligence are specified in the Penal Code. Most business crimes can only be committed with criminal intent. Not having criminal intent, therefore, is a defence for the crimes which can only be committed with criminal intent. The burden of proof with respect to criminal intent of the suspect lies with the prosecutor.

**11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law, i.e., that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the law?**

Pursuant to Article 4 of the Penal Code, ignorance of the criminal law is not an excuse or a valid defence. However, pursuant to Article 30/4 of the Penal Code, the person who makes an unavoidable mistake about the act being unfair will not be punished. In this context, it will be examined by the court whether or not the mistake was subjectively unavoidable for the suspect. Although there is no strict burden of proof as explained in question 9.1, the suspect can be deemed to be under the burden of proof in this respect.

**11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts, i.e., that he did not know that he had engaged in conduct that he knew was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the facts?**

This defence can be put forward if an unavoidable mistake about the illegality and consequences of the criminal actions is at stake. In practice, however, the distinction between ignorance of law and facts is difficult to prove. This defence may be considered as ignorance of law which does not constitute an excuse as explained in question 11.2.

## 12 Voluntary Disclosure Obligations

**12.1 If a person or entity becomes aware that a crime has been committed, must the person or entity report the crime to the government? Can the person or entity be liable for failing to report the crime to the government? Can the person or entity receive leniency or "credit" for voluntary disclosure?**

Yes, in fact, failure to report an ongoing crime or a completed crime, the consequences of which can be prevented, is a crime in itself and it gives rise to imprisonment for a term up to one year or, if the suspect is a public official, up to two years. This criminal sanction is not applicable to legal entities.

Leniency corresponds to some extent to the concept of effective repentance under Turkish criminal law. The crimes which are eligible for effective repentance are specified in the Penal Code and in the Tax Procedure Law for some certain tax crimes (see section 13 below).

In principle, there is no credit for voluntary disclosure. However, if a person assists the authorities for capturing a criminal convicted of the anti-terror crimes, that person is given monetary award as per the Anti-Terror Law No. 3713. Likewise, a person who reports tax evasion or loss will be awarded in proportion to the amount at stake provided that the report meets all conditions set out in the Law no. 1905.

## 13 Cooperation Provisions / Leniency

**13.1 If a person or entity voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person or entity, can the person or entity request leniency or "credit" from the government? If so, what rules or guidelines govern the government's ability to offer leniency or "credit" in exchange for voluntary disclosures or cooperation?**

The concept of leniency can be considered as similar to the Turkish criminal law concept of effective repentance. A person or suspect which reports the crime he committed may benefit from effective repentance provisions for crimes against property which includes robbery, abuse of trust, damage to property, fraud, certain forms of forgery, fraudulent and reckless bankruptcy. This provision is also applicable in cases of embezzlement and bribery.

For crimes against property in general, if the suspect returns the object or benefits to the relevant person or compensates the damages prior to the prosecution, that person may receive remission up to 2/3 of the prescribed term.

In embezzlement, return of the embezzled goods or a complete compensation of damages caused by the embezzlement before the initiation of the criminal investigation may lead to remission up to 2/3 of the prescribed term.

In bribery, if i) the person who accepted the bribe delivers it to the authorities, ii) the public official who agreed to take the bribe reports the crime to the authorities, iii) the person who gave or agreed to give the bribe or was involved in the crime reports the crime before commission of the crime is learned by the authorities, these persons will not be penalised.

**13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in your jurisdiction, and describe the favourable treatment generally received.**

There is not a cooperation system under Turkish law. As far as leniency is concerned, the provisions governing the relevant concept of effective repentance does not adopt a distinction between real and legal persons. There is no clarity as to how this concept may be practiced with respect to entities.

## 14 Plea Bargaining

**14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed-upon sentence?**

Plea bargaining is not recognised under Turkish law. If, however, the actions of the person who pleads guilty is considered as being within the context of effective repentance, he shall either not be sentenced or sentenced to a reduced punishment provided that the specific conditions are met.

**14.2 Please describe any rules or guidelines governing the government's ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?**

Please refer to question 14.1.

## 15 Elements of a Corporate Sentence

**15.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court's imposition of a sentence on the defendant? Please describe the sentencing process.**

Once the decision becomes definitive, the court sends the decision to the public prosecutor's office and the execution of this sentence will be monitored and supervised by the public prosecutor as per Articles 4 and 5 of the Law No. 5275on the Execution of Sentences and Security Measures.

**15.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.**

A corporation may be sentenced to security measures such as confiscation of cancellation of permit and the court should examine in general whether i) the corporation which benefitted from the crime is a private law legal entity, or ii) provisions regarding the particular crime provides a sentence applicable to the corporation. In case the sentence satisfies these elements, the court will examine specific conditions of confiscation or cancellation of permit.

For sentence of confiscation, it is sufficient if the crime is committed for the benefit of the corporation. For cancellation of permit, however, the crime should have been committed by a company representative or official with criminal intent for benefit of the corporation by exploiting a licence or permit that was granted by a public entity and the individual involved in this crime should be found guilty as well.

## 16 Appeals

**16.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?**

Both the defendant and the government can appeal, provided that conditions for filing an appeal against the particular verdict are met.

**16.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?**

Yes, either the prosecutor or the defendant may appeal the guilty verdict. If the defendant is sentenced to imprisonment for 15 years or more, Regional Appeal Courts shall examine the judgment *ex officio*.

**16.3 What is the appellate court's standard of review?**

As specified in question 2.1, there are two levels of appellate courts. Regional Courts of Appeal conduct an examination on whether the court of first instance processed facts and legal matters in accordance with the law and may even gather further evidence as if trying the case again like the court of first instance. The extent of the Court of Cassation's examination does not go beyond a legal review of the judgment.

**16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?**

If the Regional Court of Appeal upholds the appeal, it may rectify the verdict of the trial court or refer the file to the trial court

depending on the reason based on which the appeal was upheld. In the first scenario, the Regional Courts of Appeal are authorised to make a new trial and thus to remedy any injustice by the trial court. Should the Court of Cassation uphold an appeal, its power is limited with referring the file back to the trial court of the Regional Court of Appeal.

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