



TURKEY: PHASE 2

**REPORT ON THE APPLICATION OF THE CONVENTION
ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS
IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE
1997 REVISED RECOMMENDATION ON COMBATING
BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

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EXECUTIVE SUMMARY

The Phase 2 Report on Turkey by the Working Group on Bribery evaluates Turkey's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention). The Report concludes that there are some serious weaknesses in Turkey's implementation of the Convention, and therefore recommends that Turkey undergo a Phase 2bis examination within one year of adoption of the Phase 2 Report.

The Report describes three main areas in which Turkey's implementation of the Convention falls short. The first concerns the liability of legal persons for the offence of bribing a foreign public official. The Turkish government took the unexpected step of repealing the liability of legal persons in 2005, and replaced it with "special security measures", which comprise the revocation of licenses and confiscation. They are limited in scope and do not meet the standards under the Convention.

The second area concerns the dismissal by Turkey of an investigation of a foreign bribery case allegedly involving a Turkish holding company and Turkish nationals in another country that resulted in charges in the other country against the president of the company and several other company officials. The Working Group is not satisfied with the reasons given by the Turkish authorities for the dismissal. In addition, Turkey took two years to request information collected by the Independent Inquiry Committee (IIC) into the United Nations Oil-for-Food Programme regarding allegations in its widely publicised October 2005 Final Report against 139 Turkish companies of illicit payments to the Iraqi government. The Working Group believes that the failure to act promptly in these cases might reflect the perspective of some of the participants at the on-site visit that there is a general attitude that bribery in neighbouring countries where bribe solicitation seems to be common has to be accepted.

The third main area is the inadequacy of public awareness-raising activities on the foreign bribery offence undertaken by the Turkish government, and the resulting low level of awareness and engagement by the Turkish private sector. The lack of engagement on foreign bribery by the private sector and civil society was also demonstrated by their significantly low level of representation during the on-site visit.

Nevertheless, Turkey took an important step by amending its foreign bribery offence in 2005, and through progress on certain supplementary issues. For instance, Türk Eximbank, Turkey's official export credit support agency, MASAK, Turkey's financial intelligence unit, and the Ministry of Finance, have made efforts to publicise the Convention, and Türk Eximbank has undertaken training and informational activities for staff and applicants for export credit support. MASAK has also prepared draft regulations to improve the anti-money laundering system for suspicious transactions reporting. Furthermore, the Working Group welcomes the submission to Parliament of a draft Witness Protection Act that covers foreign bribery, and an initiative to bring Turkish accounting standards in line with International Accounting Standards.

The Phase 2 Report and the Recommendations therein, which reflect findings of experts from Bulgaria and Germany, were adopted by the OECD Working Group in December 2007. The Report is based on responses to questionnaires, laws, regulations and other materials supplied by Turkey, as well as a five-day on-site visit to Ankara and Istanbul in May 2007 by the evaluation team, during which the team mainly met with representatives from the Turkish government. The Phase 2 procedures provide for a Phase 2bis examination in the event of inadequate implementation of the Convention.

A. INTRODUCTION

1. The On-Site Visit

1. From 7 to 11 May 2007, a team of the OECD Working Group on Bribery in International Business Transactions (Working Group) visited Ankara, from 7 to 9 May, and Istanbul, 10 to 11 May, as part of the Phase 2 self- and mutual evaluation of the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) and the 1997 Revised Recommendation (Revised Recommendation). Lead examiners from Bulgaria and Germany, along with representatives of the OECD secretariat¹ conducted an on-site visit to examine the structures in Turkey for enforcing the laws and rules to implement the Convention and the Revised Recommendation, and assess the practical application of these laws and rules, and monitor Turkey's compliance with these OECD instruments.

2. In preparation for the on-site visit, Turkish authorities provided written responses to the Phase 2 Questionnaire and a supplemental questionnaire, and submitted English translations of some relevant legislation and other information. The examining team reviewed these materials and performed independent research on matters relative to combating foreign bribery in Turkey.²

3. The examination team greatly appreciated the efforts of the Turkish authorities throughout the Phase 2 examination process. Following the on-site visit, the Turkish authorities continued to provide important, relevant legislation and regulations to inform the evaluation.

4. The lead examiners noted the high attendance of certain panels by Turkish officials from various ministries and government departments. These officials' presence and their constructive and forthcoming approach to answering the lead examiners' questions were elemental in informing the lead examiners' analysis of Turkey's implementation of the Convention and the Revised Recommendation. The lead examiners were very concerned, however, about the low level of attendance at some panel sessions. Given important events taking place involving the Turkish Parliament, there was no opportunity for the lead examiners to meet with parliamentarians.

5. The lead examiners were also disappointed at the serious inadequacy of the efforts of the Turkish authorities to draw private sector and civil society participants to the on-site visit. Representatives of only one company participated in the on-site visit; and this company is not involved in exporting abroad, nor is it involved in a particularly sensitive sector with respect to foreign bribery (e.g. construction, energy, defence industry). No small- or medium sized enterprises (SMEs) were represented at the on-site visit. However, the Union of Chambers and Commodity Exchanges of Turkey (TOBB), which represents 364 MNEs and SMEs from the private sector, participated in the on-site visit, as well as the Turkish Industrialists and Businessmen's Association (TUSIAD). In addition, one bar association and two

¹ Lead examiners from Bulgaria were Ivan Ivanov, Ivanka Kotorova and Milena Petkova. Lead examiners from Germany were Stephan Husemann, Fernando Sanchez-Hermosilla, and Nils Weith. Christine Uriarte, Helen Green, and Silvio Bonfigli from the OECD Anti-Corruption Division represented the OECD Secretariat at the on-site visit.

² The Working Group on Bribery secretariat is grateful to OECD colleagues, Grant Kirkpatrick and Janet Holmes of the Corporate Affairs Division of the Directorate for Financial and Enterprise Affairs, and Rauf Gonenc of the Country Studies Branch of the Economics Department who provided invaluable insight and expertise that greatly contributed to the Phase 2 examination of Turkey.

members of civil society who formerly represented a NGO participated. Nevertheless, the lead examiners feel that there was not enough participation by the private sector to assess fully Turkish companies' awareness of foreign bribery nor the measures taken by companies to combat foreign bribery. Following the on-site visit, TUSIAD suggested that meetings with the private sector might have been facilitated by holding them privately, due to the sensitivity of the subject-matter to be discussed.

6. Civil society participation in the on-site visit was also very low. Academics and persons formerly active in an international anti-corruption non-governmental organisation (NGO) were present; but no other NGOs and no employees' organisations participated in the on-site visit. Thus, the examining team did not benefit from the perspectives that broad civil society participation would have afforded.

2. General Observations

7. With a current population of 72 064 000, Turkey has the second highest annual average population growth rate of all OECD countries 1.63% (Mexico with the highest rate), compared to an OECD average of 0.75 %.³ The country's capital, Ankara, counts approximately 4 million inhabitants, while population estimates for Turkey's largest city, Istanbul, are around 10 million. Among all OECD countries, Turkey ranks 18th in total GDP, and 30th among OECD countries in GDP per capita, with GDP growth averaging 3.88% between 1992-2005, compared to an average growth rate in OECD countries during the same period of 2.6%.⁴

(a) Economic System

8. According to the 2006 OECD Economic Survey of Turkey, one of the key reasons for Turkey's relatively low GDP per capita is its low level of productivity. However, productivity varies greatly across different parts of the economy. A large number of firms and individuals are pushed into the informal sector, because of a "high burden of regulations," where productivity is low and working conditions are poor.

9. Direct investment outflows increased 5-fold between 2002 and 2005, from USD 0.2 billion to USD 1 billion.⁵ European Union countries receive over half of Turkish exports—Germany, Italy, the United Kingdom and France alone receive about a third of all Turkish exports. Beyond Europe, eight countries imported goods for a value in excess of USD 1 billion from Turkey in 2006: the United States, Russia, Iraq, the United Arab Emirates, Israel, Ukraine, Iran, and Algeria (in order of descending total value).⁶

10. Turkey's main strengths in foreign markets are in technology-intensive, large scale construction (e.g. dams, airports, energy facilities) as well as housing and hotel construction, and retail distribution. A large share of the construction activities involves contracting with foreign public procurement or quasi-public procurement bodies. Contracting in the construction sector takes place mainly in Russia, Central Asia, the Middle-East and North Africa. Turkey's retail distribution sector is growing rapidly, and Turkish retail companies are particularly involved in the Russian economy.

³ OECD Factbook 2007: Economic, Environmental and Social Statistics.

⁴ OECD Factbook 2007: Economic, Environmental and Social Statistics.

⁵ OECD International Investment Perspectives: 2006 Edition.

⁶ Undersecretariat of the Prime Ministry for Foreign Trade
<http://www.dtm.gov.tr/dtmadmin/upload/EAD/IstatistikDb/Eko08-ing.xls>.

11. The corporate governance landscape in Turkey is characterised by concentrated ownership, often in the form of family-controlled, financial and industrial company groups. Free floats are often low, pyramidal structures are common and there is a high degree of cross-ownership within some company groups. Controlling shareholders often play a leading role in the daily management and strategic direction of publicly-held companies.⁷

(b) Political and Legal Systems

12. The Republic of Turkey is a parliamentary republic, founded in 1923, its first constitution adopted in 1924. Legislative authority is vested in the Turkish Grand National Assembly. Composed of 550 deputies, its duties include adopting, amending and abrogating laws; supervising the Council of Ministers and ministers; adopting the budget and final account draft laws; ratifying the printing or minting of currency; making decisions for declaring war, martial law or emergency rule; and approving the signing of international agreements.

13. The executive branch in Turkey is composed of the President of the Republic and the Council of Ministers. The President is the head of state, elected for a seven-year term by a two-thirds majority of the full membership of the National Assembly. The Council of Ministers comprises the Prime Minister, designated by the President of the Republic from members of the National Assembly, and various ministers nominated by the Prime Minister and appointed by the President of the Republic. The Prime Minister supervises implementation of government policy, and is responsible for its implementation together with the Council of Ministers.

14. The Turkish judicial system, a tripartite system adopted by the Constitution, is divided into an administrative judiciary, a legal judiciary and a special judiciary. The Constitutional Court, the Supreme Court of Appeals, the Council of State, the Supreme Military Court of Appeals, the Supreme Military Administrative Court and the Court of Jurisdictional Conflicts are the supreme courts mentioned in the judicial section of the Constitution. The Supreme Council of Judges and Public Prosecutors and the Supreme Council of Public Accounts also have special functions in the judicial section of the Constitution.⁸

(c) Implementation of the Convention and the Revised Recommendation

15. Turkey implemented the Convention by enacting the Amendment to the Law regarding Prevention of Bribery of Foreign Public Officials in International business Transactions No. 4782 of 2 January 2003, which entered into force on 11 January 2003 (Official Gazette No: 24990). In June 2005, a new Penal Code and Criminal Procedure Code came into force in Turkey which completely overhauled the previous criminal law system. The foreign bribery offence in the 2005 Penal Code is contained in Article 252.5.

(d) Cases Involving the Bribery of Foreign Public Officials

16. To date, Turkey has recorded no convictions for the foreign bribery offence. One investigation into the bribery of a foreign public official was dismissed for reasons that are not satisfactory to the lead examiners. This investigation is discussed in detail in C.2.b.(i) Investigation Terminated by Ankara Authorities.

⁷ OECD Corporate Governance in Turkey, a pilot study, 2006.

⁸ Office of The Prime Minister of Turkey, Directorate General of Press and Information <http://www.byegm.gov.tr/REFERENCES/Structure.htm>.

(e) *Independent Inquiry Committee into the UN Oil-For-Food Programme*

17. The Independent Inquiry Committee (IIC) was established in April 2004 through the appointment by the UN Secretary-General in order to conduct an independent, high-level inquiry into the administration and management of the UN Oil-for-food Programme. On 27 October 2005, the IIC published its fifth and final substantive report (“IIC Report”). The IIC Report focused on the transactions between the former Iraqi government and companies and individuals to whom it chose to sell oil and from whom it bought humanitarian goods.

18. The IIC Report documented a complicated and vast network of alleged illicit surcharges paid to the Iraqi government in connection with oil contracts. It also documented the payment of alleged kickbacks in the form of after-sales-service fees and inland transportation fees in relation to contracts for the sale of humanitarian goods to the Iraqi government. Following the publication of the IIC Report, the UN Secretary-General issued a statement calling on national authorities to take steps to prevent the recurrence of the companies’ alleged activities documented in the Report, and take action, where appropriate, against companies falling within their jurisdiction. The IIC Report only describes the alleged activities, and does not presuppose how national laws would apply to them. Companies from many countries are referred to in the IIC Report, although it is not alleged that all the companies mentioned have been involved or implicated in corrupt transactions (See ‘Response to Report of Independent Inquiry Committee into United Nations Oil-for-food Programme’, OECD [DAF/INV/BR/WD (2005) 25], 5 December 2005, p. 4.)

19. The IIC Report lists approximately 139 Turkish companies allegedly involved in illicit payments in the context of the Oil-for-food Programme. The lead examiners were seriously concerned that, with the exception of one representative from the tax administration, none of the Turkish Government officials present at the on-site visit were aware of the IIC Report, nor of any action taken as a result of the conclusions of the IIC Report. This issue is discussed in more detail in C.2.b(ii) “Allegations related to the United Nations Oil-for-Food Programme”. Following the on-site visit, the Turkish authorities pointed out that they were not prepared to address the allegations in the IIC Report during the on-site visit because the topic was not introduced into the agenda for the visit until just a few days before the visit commenced. During the preliminary meeting before the examination in the Working Group, the Turkish authorities added that the IIC Final Report is a very specific topic, which is only known by a couple of Turkish officials. Since the topic was added to the agenda at such a late date, it was not possible to make these officials available at the on-site visit. In any case, the lead examiners do not believe that this explanation justifies the officials’ lack of awareness.

20. One theme that is discussed in this Report is that there might be some sympathy in Turkey for the challenges faced by Turkish companies operating in neighbouring countries where bribe solicitation seems to be common. Some participants expressed the view at the on-site visit that there is no alternative but to bribe in these countries to obtain public contracts and these participants were of the opinion that this has to be accepted.

3. Outline of the Report

21. This report is structured in four parts. Part A provides background information on the Turkish economic, legal, and political system. Part B examines prevention, detection and awareness of foreign bribery in Turkey. Part C develops issues related to the investigation, prosecution and sanctioning of foreign bribery and related offences. Part D sets out the recommendations of the Working Group and identifies issues for follow-up.

B. PREVENTION, DETECTION AND AWARENESS OF FOREIGN BRIBERY

1. General Efforts to Raise Awareness

22. Public awareness of domestic corruption is widespread. Recent surveys indicate that corruption is one of the most important social issues as perceived by Turkish society. A 2001 survey of Turkish households found that in the two years prior to the survey, over half the respondents had given a bribe or would have given a bribe in certain situations, and identified certain public sectors as more or less corrupt. A 2004 follow-up survey found that perceived levels of corruption had dropped, but that the same sectors were perceived as corrupt (traffic police, officials in customs, tax, and land registration services). A 2002 survey found that Turkish businesses ranked “bribery and corruption” as Turkey’s second most pressing problem, behind inflation, with unemployment in third place.

23. While domestic corruption is a subject of much public debate, the lead examiners were of the view that there is a generally a very low level of awareness of bribery of foreign public officials.

(a) Government Initiatives to Raise Awareness

24. The Turkish Government has taken steps in recent years to raise awareness about domestic corruption. The 2002 Action Plan on increasing transparency and enhancing good governance in the public sector and the 2003 Emergency Action Plan provide for some awareness raising activities related to domestic bribery, but do not include any activities specifically related to foreign bribery. Turkish officials reported that in these plans, there is no distinction drawn between domestic and foreign bribery, and that it was generally considered that foreign bribery would not necessitate awareness-raising measures beyond those relative to domestic bribery.

25. The Turkish export credit agency, Türk Eximbank, raises awareness about foreign bribery and the OECD Convention. The Convention and related documents are posted on its website in Turkish and English, and Türk Eximbank undertakes other training and informational activities (See also 3. Officially Supported Export Credits). The Turkish Financial Intelligence Unit (FIU), MASAK, also has posted information about OECD Convention on its website.

26. No other public awareness raising activities on foreign bribery or the Convention were reported in the replies to the questionnaires nor by Turkish officials present at the on-site visit. At the preliminary meeting before the examination in the Working Group, the Turkish authorities brought to the attention of the lead examiners articles about the Convention in three periodicals targeted at entrepreneurs and the accounting profession. One article was written in 2006 by a member of the accounting profession, and the other two were written in 2005 and 2006 by inspectors from the Ministry of Finance. The Turkish authorities also showed the lead examiners a letter sent in 2005 from the Ministry of Finance to the Union of Certified Public Accountants and Sworn-in Certified Public Accountants of Turkey, reminding them of their duty to report foreign bribery offences to the tax authorities and the public prosecutors. At the same meeting, the Turkish authorities announced that the Turkish Export Promotion Centre plans to hold training seminars for exporters and the private sector.

27. The Ministry of Foreign Affairs issued a circular on 10 July 2006 to inform ministry staff entry of force of the Convention and the articles in the penal code relative to the offence of foreign bribery. The ministerial circular also informs staff of their duty to inform relevant authorities about crimes and the consequences of failing to report a crime. (See also 2. Reporting, Whistleblowing and Witness Protection).

Ministry personnel – either those in foreign missions or staff based in Turkey – have received no training nor guidance on foreign bribery, how it could be detected, what steps could be taken in the event of suspicions, advice that could be provided to Turkish companies faced with bribe solicitations who seek support from Turkish diplomatic representations.

28. As concerns other public officials, tax officials are provided with an adapted version of the OECD Bribery Awareness Handbook for Tax Examiners, that is translated into Turkish and includes supplemental information specific to Turkish tax law and practices. (See also 6. Tax authorities) Law enforcement officials specialised in organised crime receive training about corruption, both at the formal university level and on-the-job, which addresses foreign bribery to some extent. (See also C.1.a. Law enforcement authorities) Judges receive training on the Criminal Code and the Criminal Procedure Code, which would cover foreign bribery provisions. However, officials at the on-site visit were of the view that the foreign bribery was considered relatively new and that awareness among judges may still be low. (See also C.1.b. Prosecutors and the Judiciary).

29. There are Turkish government institutions in place to co-operate with the Turkish private sector. For example, the Under Secretariat of Foreign Trade is charged with export promotion activities. One of its main tasks is to arrange “bilateral and multilateral trade and economic relations along with exports, encouragement of exports, imports and contracting services abroad...” According to the website of a subordinate institution of the Under Secretariat, the Export Promotion Center (IGEME), it acts as an intermediary in establishing business contacts between foreign importers and Turkish exporters and fosters links by introducing Turkish businessmen to potential partners. It is also active in training and providing “advice on all aspects of exporting as well as rules, regulations and procedures.” However, despite this well-developed mechanism to raise awareness among the private sector in Turkey, a representative of the Under Secretariat of Foreign Trade who participated in the on-site visit was unaware of any activities to inform Turkish businesses about foreign bribery or the Convention. Following the on-site visit, at the preliminary meeting before the examination in the Working Group, the Turkish authorities announced that the Undersecretariat of Foreign Trade plans to include the Convention in its training programmes for foreign trade experts and commercial counsellors.

30. Likewise, the Ministry of Industry and Commerce conducts no awareness-raising or training for the Turkish private sector on foreign bribery, as it focuses solely on domestic trade.

31. Turkish government officials gave no indication of any government consultations or other contact with business, labour, or non-governmental organisations (NGO) regarding activities that promote awareness of foreign bribery or the Convention.

32. The Turkish authorities state that they are confident that it is widely known in Turkey that bribery, corruption and smuggling are illegal activities. However, they also acknowledge that the concept of foreign bribery is new for almost all public officials in Turkey.

(b) Private Sector Initiatives to Raise Awareness

33. Codes of ethics and codes of conduct for employees have been developed by some Turkish companies, and translations of these documents were provided to the lead examiners. These codes typically cover client relations, employee relations, and health and environment issues. Some codes included guidelines on appropriate gifts for persons or institutions with whom a company has business relations. Some codes refer to acting “according to related law and regulations with official authorities taking into consideration the moral principles in business transactions” and doing business “within the framework of the laws of the Republic of Turkey and international laws.” The Banking Ethics Principles of the Banks Association of Turkey state that members “adopt and accept as an important principle the struggle against

the laundering of money or other proceeds of crime and against corruption and similar other offences...” However, none of the texts submitted by Turkish officials address bribery or bribery of foreign public officials, explicitly.

34. The Turkish private sector was extremely poorly represented at the on-site visit. Representatives from only one company, a media holding company, attended the panel reserved for the private sector, and representatives of two business organisations attended a panel. No major companies involved in Turkey’s most important export sectors (*i.e.* construction, engineering, textiles, retail distribution) attended the on-site visit. No small or medium-sized enterprises (SME), labour organisations or trade unions were represented.

35. Individuals who were formerly associated with a major anti-corruption non-governmental organisation were present at the on-site visit. They gave no indication of any awareness-raising activities related to foreign bribery carried out by Turkish civil society.

36. The absence of representatives of major corporations active in foreign export markets, SMEs, NGOs, and trade unions impaired the lead examiners ability to evaluate awareness levels among the private sector, and any activities carried out by the private sector that would indicate effective implementation of the Convention. The lack of participation may in itself be an indication of low awareness, low priority, or lack of interest in foreign bribery issues on the part of the private sector. Indeed, following the on-site visit the Under Secretariat of Treasury stated in writing that there is a lack of awareness of the foreign bribery issue in Turkey, and it seems that foreign bribery is not a priority for the Turkish authorities. A lack of diligence on the part of the authorities responsible for ensuring attendance of private sector representatives at the on-site visit might also have been a contributing factor.

Commentary

The lead examiners are concerned about the lack of awareness-raising activities on the foreign bribery offence on the part of the Turkish Government and, as far as could be construed, the lack of awareness and engagement on the part of the Turkish private sector. They noted that while there are government activities to raise awareness and conduct training for companies about many aspects of promoting foreign trade, informing companies about the foreign bribery offence and the Convention are not so far part of these activities. The lead examiners realise that this is largely because foreign bribery is a new concept in Turkey. The lead examiners therefore urge the Turkish authorities to create and implement awareness-raising programmes for:

- (a) public officials, particularly those in contact with Turkish companies operating abroad, and***
- (b) major corporations and SMEs, particularly companies active in high-risk sectors or geographic regions.***

2. Reporting, Whistle blowing and Witness Protection

(a) Duty to Report Crimes

37. In Turkey, private individuals are required to report crimes to law enforcement agencies, including domestic and foreign bribery. Article 278 of the Turkish Criminal Code states that “Any person who fails to report, to the relevant authority, an offence which is in progress or fails to notify the relevant

authority of any offence, which has been committed but where it is still possible to limit its consequences is sentenced to a penalty of imprisonment for a term of up to one year". All Turkish public officials have also a general reporting obligation where they become aware of an offence in the course of performing their duties⁹. Finally, the Code of Ethics for Civil Servants provides guidelines to civil servants on reporting of unethical behaviour to competent authorities¹⁰. No statistical information was available on the number of referrals made on the basis of these obligations.

(b) Whistle blowing and Whistleblower Protection

38. Turkey has given little consideration to encouraging whistle blowing in respect of foreign bribery, and developing a comprehensive whistleblower protection, either through legislative measures or encouragement to companies for the development of corporate social responsibility (CSR) policies. An exception is the Banking Regulation and Supervision Agency (BSRA), which requires the development of suitable channels for communicating actions that violate corporate values and ethics in its Regulation on Corporate Governance Principles for Banks. However, discussions with a representative of a major Turkish bank during the on-site visit indicated that whistle blowing could be sensitive in Turkish culture. Thus, it is not surprising that no case of corruption has ever been discovered through whistle blowing.

39. Turkish officials interviewed during the on-site visit indicated that a whistleblower could use the Labour Code to sue an employer for unjust dismissal¹¹. However, Turkey has provided no case law of this provision being used to protect whistleblowers.¹²

40. Although some Turkish companies and business associations have adopted codes of conducts and other ethics rules for their employees, there are no specific measures in place to encourage whistle blowing in the private sector. At the time of the on-site visit, one major Turkish company was planning to adopt an internal system to protect whistleblowers. A panellist referred to Article 10 of the Law 5549/06 (Prevention of Laundering Proceeds of Crime Law) as a provision that could be used for protection of whistleblowers¹³. It is the view of the lead examiners, however, that Article 10 of the Law 5549/06 is

⁹ Article 279 of the Turkish Criminal Code provides that "If a public official fails or neglects to report to his/her superior and/or competent authority the occurrence of an offence pertinent to his/her duty which requires investigation or prosecution on behalf of the public s/he shall be imprisoned from 6 months to 2 years".

¹⁰ Article 12 of the regulation on the Principles of Ethical Behaviour of the Public Officials states that "Public officials, in the case that their acting against the principles of ethical behaviour which are determined in this Regulation or their carrying out illegal transactions or actions is demanded or when they learn or see such actions or transaction while performing their service, should notify the situation to the competent authorities".

¹¹ Labour Code, Article 21 (Consequences of termination without a valid reason).

¹² At the preliminary meeting before the examination in the Working Group, the Turkish authorities added that through the "principle of analogy", provisions in the Criminal Procedure Code regarding for instance the protection of state secrets during court proceedings and rules protecting certain individuals from testifying might be used to protect whistle blowers.

¹³ Article 10(1) of the Law no. 5549/06 (Prevention of Laundering Proceeds of Crime Law) states that" (1) Natural and Legal persons fulfilling their obligation in accordance with this law may not be subject to civil and criminal responsibility".

(2) The information about the persons reporting suspicious transaction may not be given to the third parties, institutions and organisations other than courts even if a provision exists in special laws. Necessary measures shall be taken by Courts in order to keep secret the identities of the persons and ensure their security".

limited in scope as it can be only applied to protect persons reporting suspicious transaction rather than providing general safeguards for whistleblowers. Another panellist stated that Law No. 1905 of 26 December 1931 could be used to encourage whistle blowing. According to this Law, whistleblowers are eligible for “financial reward” in cases where they inform tax inspectors about “offences related to tax law on revenue, assets and other perpetual tax laws, also other offences such failure to submit tax return and double bookkeeping[...]”¹⁴. However, apart from a financial reward to whistleblowers, Law 1902/1931 does not envisage any protection from reprisals or protection programmes for whistleblowers.

41. The lead examiners conclude that there is relatively little whistle blowing and whistleblower protection in Turkey. They also note that the WGB has recommended that Parties that have not enacted specific laws to protect whistleblowers should consider strengthening whistleblower protection¹⁵. The WGB has also made similar recommendations to Parties that report a cultural bias against whistle blowing¹⁶. The Turkish Industrialists and Businessmen’s Association (TUSIAD) supports the conclusion of the lead examiners.

Commentary

The lead examiners recommend that Turkey consider adopting comprehensive measures to protect public and private whistleblowers in order to encourage those employees to report suspected cases of foreign bribery without fear of retaliation.

(c) Witness Protection

42. Pursuant to Article 58(5) of the Turkish Criminal Procedure Code witness protection is available in foreign bribery cases only if the offence is committed as part of organised crime.¹⁷ On the other hand, article 3 of the Draft Witness Protection Act which has been prepared pursuant to article 58 of the Criminal Procedure Code, applies to “offences necessitating a life sentence in solitary confinement without parole, and a life sentence and imprisonment for a maximum term of ten years or longer”.¹⁸ Since the bribery of foreign public officials under article 252 of the Criminal Code is subject to a term of imprisonment of four

¹⁴ See Annex for Law NO. 1902 of 26 December, 1931.

¹⁵ WGB (2003), *Bulgaria: Phase 2*, OECD, Paris, pp. 13 and 41; WGB (2005), *Hungary: Phase 2*, OECD, Paris, paras 49-52 and 208(d).

¹⁶ WGB (2004), *France: Phase 2*, OECD, Paris, § 32 and 159(5); WGB (2004), *Italy: Phase 2*, OECD, Paris, paras. 48-50 and 216; WGB (2005), *Greece: Phase 2*, OECD, Paris, paras. 90 and 213; WGB (2005), *Japan: Phase 2*, OECD, Paris, paras. 43-48 and Recommendation 9(d).

¹⁷ Article 58 of the Turkish Criminal Procedure Code reads as follows:

“[...] (5) The provisions of the second, third and fourth paragraph can only be applied in relation to crimes committed in the frame of the activities of an organization.”

¹⁸ Article 3 of the Witness Protection Bill reads as follows:

“(1) Provisions of this Code may apply in relation to the following offences:

- a) offences necessitating life sentence in solitary confinement without parole, life sentence and imprisonment for maximum level of ten years or longer period, prescribed in the Turkish Penal Code of 26.09.2004, Nr. 5237, and in special Codes including penal provision,
- b) offences committed in the context of activities of a formation established with the purpose to commit acts, characterized as offence by the Law, or of a terrorist formation, for which envisaged minimum four year or longer period of imprisonment, and offences committed in the context of activities of a terrorist formation”.

to twelve years, witness protection should apply to foreign bribery cases. The Draft Witness Protection Act is pending before the Turkish Parliament.

Commentary

The lead examiners welcome the submission to Parliament of a Draft Witness Protection Act, which covers the bribery of foreign public officials under article 252 of the Criminal Code, and encourage passage of the Bill as soon as possible.

3. Officially Supported Export Credits

43. Türk Eximbank is the official export credit agency of Turkey and has been mandated to support foreign trade and Turkish contractors and investors operating overseas. In 2005, Türk Eximbank provided USD 3.5 billion in loans and USD 4.2 billion in insurance/guarantees.

(a) Awareness-Raising Efforts

44. The Convention and OECD Recommendation on Bribery and Officially Supported Export Credits are posted on Türk Eximbank's website, along with the "Anti-Bribery Undertaking" that the Bank requires for each application. The Bank also informs the Turkish companies on the Convention and the Recommendation during information meetings and through its website. In-house training for staff on foreign bribery, the Convention, the Recommendation, and other aspects of combating foreign bribery was carried out in March 2007. Türk Eximbank has also provided information to relevant state institutions (*i.e.* the Ministry of Foreign Affairs, the Under Secretariat of Foreign Trade and the Under Secretariat of Treasury) about recent developments in the OECD Export Credit Group and subsequent revisions to its programmes. Furthermore, Türk Eximbank sent letters to the key institutions for raising anti-bribery consciousness [*i.e.* the Association of Turkish Consulting Engineers and Architects (TMMMB), the Contractor Association of Turkey (TMB), and the Exporters' Association via the Under Secretariat of Foreign Trade].

45. As Turkey is a member of the OECD Export Credits and Credit Guarantees Group, Türk Eximbank has put in place procedures to implement the Recommendation on Bribery and Officially Supported Export Credits. Türk Eximbank informs applicants requesting official export credit support about offence of bribery in international business transactions under relevant Turkish laws. Applicants requesting official export credit support must provide an "anti-bribery undertaking" declaring that neither they, nor anyone acting on their behalf, have been engaged or will engage in bribery in the transaction.

(b) Detection of Foreign Bribery

46. Türk Eximbank's "Directives on Combating Bribery of Foreign Public Officials in International Business Transactions Under the Insurance and the Country Credit/Guarantee Programs" states that if it finds any declarations in the anti-bribery undertaking to be untrue, or if it has a "strong suspicion" that bribery may be involved in the transaction, certain measures can be taken. In the case of insurance, Türk Eximbank can unilaterally deem the insurance agreement null and void; concerning loans, Türk Eximbank can defer or suspend the loan disbursements or cancel the unutilised loan balance. In addition to measures for denying an application or ceasing to provide ongoing support where there is a "strong suspicion", where there has been a conviction of foreign bribery Türk Eximbank may redeem the amount provided as support together with a fine in relation to all its schemes (*i.e.* requesting indemnified amounts under insurance programmes as well as loan proceeds that were disbursed).

47. Representatives of Türk Eximbank indicated that "reasons to believe that bribery was involved in a transaction" would range from press allegations, documents, and informants' reports to pending legal

investigations or final court decisions. However, despite this very wide range of indicators that would theoretically trigger remedial action, there has been no case where a loan or insurance agreement has been cancelled because of suspicions or confirmation of bribery.

48. Türk Eximbank staff have not received specific training or guidelines on foreign bribery as a basis for denying support. However, Türk Eximbank representatives indicated that it is hoped that as experience is gained, further training programmes specifically targeting foreign bribery will be developed in addition to a basic programme given in March 2007.

49. Türk Eximbank's Directives also stipulate that an internal debarment list of applicants having been involved in bribery should be established. To date, this remains a theoretical measure, as there are no companies that have been debarred for foreign bribery.

50. Following the on-site visit Türk Eximbank informed that, in order to ensure that it is aware of foreign bribery cases involving Turkish companies, it sent letters to the state institutions that have access to foreign representations (*i.e.* the Ministry of Foreign Affairs, Under Secretariat of Foreign Trade and Under Secretariat of the Treasury), requesting that they refer any credible evidence of foreign bribery to the Bank

51. As a means of detection of bribery, disclosure of certain details of agents' commissions associated with export credit supported-transactions are systematically required. Türk Eximbank does not cover the costs of agents' commissions as part of official support. To date, no suspicions of bribery have surfaced as a result of disclosure of information related to commissions.

(c) Duty to Report Foreign Bribery

52. As public officials, Türk Eximbank staff are obliged to report crimes pursuant to Article 279 of the Turkish Criminal Code. (See also 2.a. Duty to report crimes). To date, commission or suspicions of foreign bribery has never been reported by official export credits personnel.

Commentary

The lead examiners welcome the awareness-raising effort of Türk Eximbank, targeting both staff and applicants. The lead examiners also take note of the procedures in place to combat foreign bribery. Given that no companies have been excluded and no cases of bribery detected – either through staff reporting or by other means – the lead examiners recommend that the Working Group follow up with regard to the practical application of these procedures.

4. Official Development Assistance

53. Delivery of development aid is decentralised in Turkey. The Ministry of Foreign Affairs performs a guiding function in terms of policy priorities for public agencies engaged in development assistance. However, there is no organisation that centrally manages official development assistance (ODA); and almost all Turkish public agencies deliver aid in their areas of expertise.

54. Turkey has made important steps in gathering data and reporting information on ODA. The Prime Ministry Directive number 2005/11 assigned the Turkish International Development and Co-operation Agency (TIKA) to keep an inventory of development assistance and provide an annual report to the OECD Development Assistance Committee.

55. The informative TIKA 2005 Turkish Development Report shows that levels of Turkish ODA are rising rapidly. In 2005, USD 601 million was granted by Turkey, up from USD 339 million in 2004, and USD 66 million in 2003. Of the USD 601 million delivered in 2005, USD 532.47 million was in the form of bilateral grants to countries.¹⁹ In addition, USD 56.7 million in grants was delivered by Turkish non-governmental organisations in 2005.²⁰ In 2006, USD 714.20 million was granted, of which USD 642.58 million was in the form of bilateral grants. In addition, USD 78.25 million was granted by Turkish non-governmental organisations.

56. In its 2005 report, TIKA's analysis of Turkish ODA indicates that the following six Caucasian and Central Asian countries received USD 10 million or more in 2005: Pakistan (126 million), Kyrgyzstan (57 million), Kazakhstan (46 million), Azerbaijan (29 million), Afghanistan (29 million), and Turkmenistan (15 million) (p.33). Not included in the 2005 total are grants totalling USD 83.54 million in "other countries". The Caucasian and Central Asian countries that received USD 10 million or more in grants in 2006 were: Kyrgyzstan (113.14 million), Afghanistan (57.65 million), Pakistan (56.48 million), Kazakhstan (45.34 million), Azerbaijan (36.87 million), Turkmenistan (17.73 million), and Georgia (10.91 million).

57. In recent years, an important proportion of Turkish ODA has been devoted to emergency disaster relief, notably after earthquakes in South East Asia and the Indian Ocean tsunami. Of the USD 179 million in emergency and humanitarian aid delivered in 2005, USD 91 million was delivered in cash.

(a) Awareness-Raising Efforts

58. Officials at the on-site visit reported that TIKA has not engaged in any awareness-raising activities with regard to foreign bribery for its staff or its clients. No training on the risks of bribery of foreign public officials has been provided to ODA personnel within TIKA or the Ministry of Foreign Affairs. It is not known whether awareness-raising or training activities on foreign bribery are conducted for staff involved in ODA in any other public institution or non-governmental organisation.

59. The replies of the Turkish authorities to the Phase 2 questionnaires indicate that agreements for bilateral development co-operation and aid-funded competitive tenders and employment contracts include anti-corruption clauses. However, participants at the on-site visit were unable to elaborate on the nature of these clauses, and these clauses were not provided to the examination team. After the on-site visit, no further information was provided about anti-corruption clauses, or any other anti-corruption measure taken in the delivery of ODA.

(b) Detection of Foreign Bribery and Reporting

60. No training on the detection of foreign bribery has been provided to ODA personnel within TIKA or the Ministry of Foreign Affairs. As stated in the Turkish authorities' replies to the Phase 2 questionnaires, there is no reporting procedure for ODA officials who detect foreign bribery, and no guidance is provided to ODA personnel on how to report suspicions or indications of foreign bribery. To date, no concerns, indications, or suspicions of foreign bribery have been reported by an official involved in the delivery of ODA.

¹⁹ TIKA 2005 Turkish Development Report, page 28.

²⁰ TIKA 2005 Turkish Development Report, page 30.

Commentary

Given the nearly 10-fold growth of Turkish ODA reported over only two years, and the serious potential for bribery of foreign public officials in the partner countries where Turkish ODA is delivered, the lead examiners are alarmed by the absence of policies and practices to combat foreign bribery. The lead examiners recommend that Turkish authorities promptly establish procedures, or publicise procedures that are already in place to address foreign bribery risks in the delivery of ODA, including the systematic inclusion of anti-corruption clauses in aid-funded contracts, implementation of awareness-raising activities and training for ODA personnel on detecting and reporting suspicions of foreign bribery, and consider introducing a mechanism that would exclude individuals or entities with past involvement in foreign bribery from eligibility for aid-funded contracts.

5. Foreign Diplomatic Representations

61. Diplomatic missions abroad, including trade promotion entities, have an important role to play in enhancing the awareness of businesses that seek advice when considering exporting or investment abroad. Diplomatic representations can also be an important source of advice and support to enterprises faced with solicitation of bribes, when tendering for international contracts, for example.

(a) Awareness-Raising Efforts

62. The Ministry of Foreign Affairs issued a circular, dated 10 July 2006 to its personnel about the Convention, the foreign bribery offence, and public officials' duty to report crimes. During the on-site visit, the Turkish authorities indicated to the lead examiners that, apart from this circular, there are no activities for raising awareness about the foreign bribery offence or the Convention among Turkish diplomatic staff posted in embassies and representations outside Turkey, nor among staff based in Turkey. At the preliminary meeting before the examination in the Working Group, the Turkish authorities announced that the Ministry of Foreign Affairs plans to hold a training programme on the OECD Convention for all diplomatic staff to be posted abroad.

(b) Detection of Foreign Bribery

63. Diplomatic staff receive no training on the detection of foreign bribery, nor on what action to take if indications of bribery arise. There is no guidance issued to personnel by the Ministry of Foreign Affairs on how to counsel companies who might turn to diplomatic staff for advice if bribes are solicited by public officials of a foreign country. Ministry of Foreign Affairs officials present at the on-site visit indicated that, to their knowledge, no Turkish company or businessperson had ever raised concerns about foreign bribery to diplomatic personnel. This should be counterbalanced with indications by a business organisation representative at the on-site visit and from other sources, that bribe solicitation in countries where Turkish companies are most active (including neighbouring Azerbaijan, Kazakhstan, Iraq) may often be considered a "simply a part of doing business".

(c) Duty to Report Foreign Bribery

64. Foreign diplomatic representation staff, as public officials, are bound to the duty to report as specified in Art. 279 of the Turkish Penal Code (See also 2.a. Duty to report crimes). To date, no report of foreign bribery or suspicions of foreign bribery have ever been relayed to relevant authorities by personnel of Turkish foreign diplomatic representations.

Commentary

The Lead examiners were seriously concerned about the lack of awareness-raising and training for personnel in foreign diplomatic representations, particularly given the potential role that they could play both in advising Turkish companies, and detecting foreign bribery. All necessary measures should be taken promptly to provide training for personnel on the foreign bribery offence and the Convention, and ensure that personnel, in turn, establish contacts with Turkish companies abroad to provide advice and assistance on these matters. The lead examiners urge Turkey to do the following:

- (a) raise awareness of the foreign bribery offence among diplomatic personnel, for instance through newsletters, seminars, or training sessions, particularly for those posted in sensitive geographic regions;*
- (b) ensure that foreign diplomatic representations, in their contacts with Turkish businesses operating overseas, (i) disseminate information on the corruption risks in their country of operation and the legal consequences of a foreign bribery offence under Turkish law, and (ii) encourage Turkish businesses and individuals to report suspected instances of foreign bribery to appropriate authorities; and*
- (c) establish procedures to be followed by diplomatic representation personnel for reporting suspicions or indications of foreign bribery offences that they uncover in the course of performing their duties to the law enforcement authorities.*

6. Tax Authorities

(a) Non-Deductibility of Bribes

65. The non-deductibility of bribe payments is not explicitly addressed by Turkish Law. In Phase 1, the Turkish authorities indicated that the deduction of bribes was not allowed because there was no explicit rule permitting them to be deducted, and that in order for an expense to be tax deductible it should be directly related to either earning or maintaining income and it should be documented in accordance with the laws and regulations. The Working Group expressed some concerns over the issue of tax deductibility of bribe payments in Turkey and reverted to this matter in Phase 2 of the evaluation process.

66. Turkish Tax Law has not changed since the Phase 1 review. Officials from the Ministry of Finance have indicated during the on-site visit that they do not feel the necessity to adopt extra legislation on this matter. They have reaffirmed their view that Income Tax Law and Corporate Tax Law do not contain any regulation that permits the deduction of bribe and/or any other illegal payments. They also added that in order for an expense to be tax deductible it should be documented in accordance with the laws and regulations and that it is unlikely that a tax payer would claim a deduction for a bribe payment given that in so doing the bribery offence could be revealed to the law enforcement authorities²¹. No case law was provided in support of these propositions.

²¹

Any persons who claims a deduction has the burden to prove it. Article 3 of the Tax Procedure Code states that: "...in the assertion of a case that does not conform to the economic, commercial or technical requirements; or that is not normal or familiar in relation with the real event, assessor has the burden of proving it...". The real nature of tax raising events and transactions made related to the events can be proved by any evidence other than oath.

67. Tax auditors are guided by the general provisions of the Income Tax Law and Corporate Tax Law in relation to the deductibility of expenses. Article 40 of the Income Tax Law and Article 8 of the Corporate Tax Law allow certain types of deductions. Non-deductible expenses are listed in Article 41 of the Income Tax Law and Article 11 of the Corporate Tax Law²².

68. Although bribe payments may not be deductible *per se*, there remain categories of deductible expenses (e.g. professional services, travel and entertainment expenses) which could conceivably be used to hide bribe payments. The lead examiners are concerned about the possible impact of Article 40 of the Income Tax Law on the deductibility of bribes paid to foreign officials. This provision contains some categories of expenses under which it might be possible to conceal bribe payments (e.g. “bureau expenses”, “general business expenses of all kinds” and “expenses for travel and lodging”). Furthermore, the parenthesis of Article 40(1) of the Income Tax Law allows taxpayers who deal with “exportation, construction, montage, repairing and transportation abroad” to deduct, as a lump sum, and as an addition to the allowable and documented expenses, [undocumented] expenses up to the 0,5% of their foreign exchange earnings which incurred from these operation abroad. The lead examiners are of the view that the deductibility from taxable earnings of “undocumented” expenses incurred abroad can be used to conceal a bribe payment to a foreign official²³. They consider that Article 40 of Income Tax Law is not fully compliant with the 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials, in this respect.

Commentary

The lead examiners believe that an express denial of the tax deductibility of bribes is a significant step in the fight against foreign bribery. The Turkish authorities have observed that the established principles of their national legal system would not permit the introduction of an express denial of deductibility, nor of a definition of a bribe in the tax legislation. The way the tax legislation concerning allowed deductions is drafted is however a concern for the lead examiners in that, some categories of deductible expenses contained under Article 40 of the Income Tax Law might be used to conceal bribe payments. Thus they recommend that Turkey introduce an express denial of deductibility of bribe payments in the tax law or through another appropriate mechanism that is binding and publicly available in order to strengthen the mechanism available for detecting and deterring the offence as well as to raise the awareness of tax officials and businesses on the non-tax deductibility of bribes.

(b) Awareness, Training and Detection

69. The OECD Bribery Awareness Handbook for Tax Examiners was translated into Turkish with the relevant legislation and distributed to the tax examiners. Mandatory training for newly recruited tax employees includes a course on detection and reporting of corruption. A seminar was also held on this subject at the Ankara, OECD Multi-lateral Tax Center in 2004.

70. Since May 2005 (date of establishment of the Presidency of the Tax Administration) three domestic cases have been reported to the branches of the judiciary as bribery. However, there are no reports made by tax authorities concerning bribery offences of foreign public officials to the law

²² See Annex for Articles 40 and 41 of the Income Tax Law.

²³ See also the study “Preventing Bribery in the international transactions regarding Turkish Law” by Prof. M. Umur Tosun and Ibrahim N. Bayar, Hacettepe University, Faculty of Economics and Administrative Sciences, Department of Public Finance, Ankara. The authors believe that the parenthesis of Article 40(1) of the Income Tax Law “implicitly” allows deductions of bribe payments abroad.

enforcement authorities, even though the number of audits is fairly high. In 2006, 110 000 audits were conducted.

71. The failure to detect foreign bribery cases is not due to a lack of investigative powers. Turkish tax examiners have a range of investigative tools at their disposal, including powers to obtain bank information²⁴.

Commentary

The lead examiners recommend that Turkey provide training to tax officials on the detection of bribe payments disguised as legitimate allowable expenses.

(c) Sharing of Information and Duty to Report Foreign Bribery

72. Tax officials are generally required to maintain confidentiality of information gathered in the course of their duties²⁵. However, the duty of confidentiality does not apply when information is communicated to Turkish courts and law enforcement agencies. Tax officials have reporting obligations in addition to those which apply to all Turkish public officials under Article 279 of the Turkish Criminal Code²⁶: According to Article 367 of the Tax Procedure Code, Tax officials are obliged to report to the public prosecutor in cases where they detect fraudulent offences mentioned in Articles 359 and 360 of the Tax Procedure Code²⁷.

73. Turkish tax authorities may also share information with foreign authorities. Relevant provisions on “information exchange” in the bilateral agreements on the avoidance of double taxation regulate the sharing of information with tax authorities of another country. Turkey indicates that in its recent agreements information exchange is foreseen for not only the taxes which form the scope of the specific agreement, but all the taxes. Information obtained from the related parties could only be given to the authorities responsible for the assessment, collection or the tax related penalties of these taxes. Thus, these new agreements on “information exchange” do not contain regulations to realize the information exchange

²⁴ Article 148 of the Tax Procedure Code states that: “...Public Administrations and Institutions, taxpayer or natural persons and legal entities who are involved in transaction with the taxpayers are obliged to provide the information where requested by Ministry of Finance or authorized tax examiners”.

²⁵ Article 5 of the Tax Procedure Code regulates the confidentiality of tax information. According to this article “...Listed professionals, shall not disclose taxpayers and related parties information on business transactions, position of accounts, wealth and the nature of the professions and shall not use them for their own and/or third parties’ hands. Listed professional also grouped into four within the same article as follows;

“...Officers involved in tax treatment and audits,

- 1- Officers working for Tax Courts, Regional Administrative Courts and State Council,
- 2- Who takes part in the commissions formed within the realm of tax laws
- 3- Experts involved in tax treatments.

This rules shall be considered by these professionals even they quit their professions. This information has to be given if it’s demanded by courts or be reported to the courts if a crime is detected”.

²⁶ Pursuant to Article 279 of the Turkish Criminal Code, Turkish tax officials, as any other public official, have statutory obligation of reporting to the judicial authorities. Those who fail to report a crime, which s/he learned in relation with his or her job, would be liable to the sanctions stated in the Criminal Code”.

²⁷ See Annex for Article 367 of the Tax Procedure Code.

with other law enforcement agencies and judicial authorities on certain high priority matters, including corruption.

74. Article 26 of the OECD Model Tax Convention deals with the exchange of information between contracting states. The Commentary to the new Article 26(2) allows contracting states, if they wish to do so, “to allow the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. corruption) when the information exchanged may be used for such high priority matters under the laws of both States and the competent authority of the supplying State authorises such use.”²⁸ Turkey might add this provision to future tax treaties, depending on the country with which the agreement is made.

Commentary

The lead examiners recommend that Turkey consider including the Commentary to the new Article 26(2) of the OECD Model Tax Convention in its existing and future tax treaties.

7. Accountants and Auditors

75. Article 8 of the Convention requires that within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, a Party prohibit the making of falsified or fraudulent accounts, statements and records for the purpose of bribing foreign public officials or of hiding such bribery. The Convention also requires that each Party provide for effective, proportionate and dissuasive penalties in relation to such omissions and falsifications²⁹.

(a) Accounting and Auditing of the Private Sector

76. The Union of Certified Public Accountants and Sworn-in Certified Public Accountants of Turkey (TÜRMOB) is the official association of the profession through the participation of all the Chambers of Independent Accountants, Certified Public Accountants and Sworn-in Certified Public Accountants³⁰.

(i) Awareness and Training

77. TÜRMOB has its own training centres and organises regular training sessions on accounting standards and the detection of corruption, among other issues. The Banking Regulation and Supervision Agency conducts regular training sessions for bank auditors and has issued guidelines on identifying suspicious transactions to help raise bankers’ awareness about money laundering and foreign bribery.

²⁸ For an explanation of Article 26, see OECD, “Article 26 of the OECD Model Tax Convention on Income and Capital”, OECD, Paris (http://www.oecd.org/document/53/0,2340,en_2649_33747_33614197_1_1_1_1,00.html) and OECD (2004), OECD, 2004, “Changes to the Model Tax Convention”, OECD, Paris (<http://www.oecd.org/dataoecd/28/4/33614065.pdf>).

²⁹ In 2006, the OECD’s Steering Group on Corporate Governance evaluated the corporate governance framework in Turkey using a draft assessment Methodology. The assessment, in the form of an experimental Pilot study, evaluates the extent to which the OECD Principles of Corporate Governance (OECD Principles) have been implemented in Turkey. More information on the Pilot study is available at http://www.oecd.org/document/6/0,3343,en_2649_37439_37490374_1_1_1_37439,00.html.

³⁰ The Union is the unique authority that is empowered to award professional licenses. It also participates directly in the setting of professional standards.

(ii) *Accounting and Auditing Standards*

78. As indicated in Phase 1, several different legal sources provide guidance on Turkish accounting standards. The basic requirement that bookkeeping must be maintained by companies is derived from the Turkish Commercial Code, last revised in 1956. Chapter V of Book One provides for a minimum level for bookkeeping. In 1994 the Ministry of Finance introduced a Uniform Chart of Accounts with the purpose of regulating the basic concepts and principles of accounting and for the preparation of financial statements. The purpose of the Chart of Accounts is to provide for a true and fair reflection of the operations and results for companies. The Turkish Tax Procedure Code is relied on to provide extensive rules and requirements for businesses regarding the recording of financial information including sanctions for the failure to properly record financial information. All companies in Turkey are subject to the Turkish accounting principles provided within the uniform chart of accounts and the laws regarding accounting incorporated into the Tax Procedure Code³¹.

79. In particular, general accounting rules and their implementation are guided by the General Communiqué on the Implementation of the Accountancy System #1, promulgated in the Official Gazette No 21447 of 26 December 1992, which covers basic accounting and accounting policy, financial tables and how to record transactions. Article 172 of the Tax Procedure Code requires companies to keep books and records. Article 221 of the Tax Procedure Code refers to the approval time for books and records. A book of daily records, a book of inventory and the transactions must be recorded within a certain number of days in accordance with articles 215-219 of the Tax Procedure Code.

80. For companies operating within the securities market the Capital Markets Board (CMB) has regulatory and supervisory authority³². The CMB has the authority to issue accounting standards for all entities subject to its authority³³. The banking sector in Turkey is guided by accounting standards which are issued by the Banking Regulation and Supervision Agency (BRSA).

81. The Turkish Accounting Standards Board (TASB) started its activities in the year 2002. The TASB has been given a mandate to translate International Financial Reporting Standards (IFRS) into Turkish and issue these as Turkish Accounting Standards (TAS). It has finalised a complete set of TAS and published all but two of the standards, although these standards have not yet been adopted by any authorities. During the on-site visit Turkish officials referred to a proposal to centralise the process for setting general purpose accounting standards under the TASB. The proposal (in the form of an amendment to the Turkish Commercial Code) envisages that all companies (publicly-held or non-publicly-held) will follow the accounting and financial reporting standards set by the TASB³⁴. At the time of the on-site visit, however, the legislative reform had not been adopted.

³¹ Sole proprietors are only required to comply with the 'Basic Concepts of Accounting', a basic component of the chart of accounts.

³² Under Turkish law joint stock companies with 250 shareholders or more as well as any companies that have offered their securities to the public are considered to be publicly-held and are subject to the Capital Markets Law. In addition, mutual funds, investment funds and capital market intermediaries are subject to the CMB's requirements.

³³ These standards are now set by the "Official Statement on Capital Market Accounting Standards No. "Seri XI, No. 25" issued on 15 November 2003 (which is based on International Financial Reporting Standards) and the "Official Statement on Capital Market Audits Standards No. "Seri X, No. 22" issued on 12 June 2006".

³⁴ The TSAB will be the only responsible body for setting of the general purpose national accounting standards. It is intended that these standards will be compatible with IFRS.

82. For listed entities and private companies, auditing standards are set by the Capital Markets Board of Turkey.³⁵

(iii) *Internal Audit and Company Controls*

83. The Turkish Industrialists and Businessmen's Association (TUSIAD) points out that in the last decades, the issue of business ethics has been gaining importance for Turkish businesses. TUSIAD also explains that Turkish companies are becoming more aware of the risks of corruption, and are adapting to this by, for instance, establishing codes of conduct. TUSIAD has tried to encourage progress in this area through discussions and awareness-raising on business ethics.

84. In Turkey, banks,³⁶ companies operating in the capital markets, and intermediary financial institutions³⁷ are required to adopt internal control systems. In addition, the Banks Association of Turkey informs that pursuant to the Insurance Law No. 5684, insurance companies are required to establish an internal audit system. However, there is no provision in place requiring internal control procedures to be adopted in other financial institutions or companies. Chapter IV of Book Two of the Turkish Commercial Code contains the requirement that joint stock companies appoint at least one auditor, whose task it is to check the transactions and accounts of the company and ensure that it is in compliance with the law and the company's articles of association.³⁸

85. The Turkish Commercial Code also provides for certain duties and requirements for directors of the company, and makes them liable in the event of failures or misrepresentations. The Code requires company directors to exercise due diligence, care, foresight and good faith. Directors are jointly liable if payments for shares are not exact, dividends fictitious, or books are not kept in accordance with the law. Newly appointed board members must inform the auditor of irregularities committed by their predecessors; otherwise they share liability³⁹.

(iv) *Independence of Auditors*

86. Turkey passed the Independent Accountancy Law in 1989 (Law n. 3568/89), which applies to accountants and auditors. There is no formal licensing, qualification, or education requirement to be met to qualify as an auditor, unless an individual wishes to serve as an external auditor of a publicly-held company, bank or insurance company.

87. The CMB requires publicly-held companies, other than banks and insurance companies, and other CMB-regulated capital market participants such as securities dealers and mutual funds to prepare and publish financial statements that have been audited by CMB-authorized external auditors who meet the

³⁵ Related ministries set the auditing standards for Non-For-profit entities; the Cabinet sets the auditing standards for Governmental organizations.

³⁶ Banking Law No. 5411 requires banks to establish and operate adequate and efficient internal control, risk management and internal audit systems that are in harmony with the scope and structure of their activities, that can respond to changing conditions and that cover all their branches and undertakings subject to consolidation in order to monitor and control the risks that they encounter.

³⁷ Pursuant to Communiqué Serial V No. 68 of the Capital Markets Board, intermediary institutions are required to establish an internal audit system.

³⁸ The Board of Directors appoints the statutory auditors of listed entities.

³⁹ There is no mandatory requirement in the Turkish Commercial Code that a company have an audit committee or that the audit committee should have a sufficient number of independent members.

CMB's independence criteria⁴⁰. Independent auditing firms in the capital markets are regulated by the "Official Statements on Standards of Independent Auditing in the Capital Markets" of 12 June 2006 and the number 2196, Seri X, No: 22.

88. The Banking Regulatory and Audit Board (BRSA) issues auditing principles and procedures in respect of auditors' independence and in a more detailed manner for banks. According to these principles, in addition to annual accounts, quarterly accounts of banks and special finance institutions are audited by independent auditing firms.

Commentary

The lead examiners recommend that Turkey continue and strengthen its efforts vis-à-vis enterprises, including small and medium-sized enterprises that do business internationally, and encourage companies to develop and adopt internal control mechanisms, including putting in place ethics committees and warning systems for employees, as well as codes of conduct specifically addressing the issue of transnational bribery.

(v) *External Auditing*

89. Companies listed on the Istanbul Stock Exchange (ISE) must have an external audit performed on an annual and semi-annual basis regardless of their size or business activity, and this information must be submitted to the Capital Markets Board (CMB) and the ISE. Other publicly held companies and capital market institutions are also subject to an external audit. Audits are based on guidance provided by the CMB and financial statements, and they are to be presented based on Turkish Accounting Standards⁴¹.

90. On the other hand, non-listed companies as well as state-owned companies are not required to submit to an external audit, regardless of their size and business activity. The lead examiners are concerned that this rule may exclude from an external audit obligation a number of large privately held companies that do business internationally, including sectors at high risk for bribery solicitation, such as the construction and energy sectors. TUSIAD concurs with the lead examiners on the need to broaden the categories of companies subject to an external audit.

Commentary

Given the important role of accounting and auditing with respect to the detection of foreign bribery offences, and consistent with sections V.B.(i) and (ii) of the 1997 Recommendation on Combating Bribery in International Business Transactions, the lead examiners recommend that Turkey broaden the categories of companies subject to an independent external audit to include certain non-listed companies that do business internationally.

(vi) *Duty to Report Foreign Bribery*

91. Article 43 of the Independent Accountancy Law (N. 3568/89) prohibits accounting professionals and their employees from disclosing information acquired in the course of performing their duties. However, according to the provision, information about offenses should be disclosed to the competent authorities (*i.e.* law enforcement agencies). In addition, the Law provides an exception to the

⁴⁰ Corporate Governance in Turkey: a pilot study, OECD 2006, Annexes, p. 84.

⁴¹ As of April 2007, there were 603 publicly traded companies, 104 intermediary companies, 17 portfolio management companies and 11 private pension companies subject to external audits.

confidentiality requirements regarding investigations or inquiries performed by judicial and tax authorities⁴². At the preliminary meeting before the examination in the Working Group, the Turkish authorities brought to the attention of the lead examiners a letter from the Minister of Finance to the Union of Certified Public Accountants and Sworn-in Certified Public Accountants of Turkey (TÜRMOB), which reminds auditors of their duty to report offences of foreign bribery to the tax authorities and the public prosecutors.

92. Article 33 of the Banking Law states that independent audit institutions shall be responsible for damages that they may cause on third parties as a result of the activities they will perform under this Law. If, during their audits, independent audit institutions detect any matter that may endanger the existence of the bank or an evidence demonstrating that their managers have severely violated the Law or the articles of association, the independent audit institutions shall promptly notify the BRSA, who then reports to the Office of Chief Public Prosecutor⁴³. The notification by the independent audit institution to the BRSA does not mean the violation of the professional confidentiality principles and agreements or the obligations pertaining to confidentiality⁴⁴.

93. Section 7 of “The Communiqué about Standards of Independent Auditing on Capital Markets” regulates auditors’ reporting obligations in the Capital Markets. Intentional and material noncompliance that comes to the auditor’s attention should be reported to senior management “without delay”. If the auditor suspects that members of senior management are involved in noncompliance, the auditor should report the matter to the committee responsible with auditing or board of directors. If the auditor believes that the report may not be acted upon or suspects that the members of the committee responsible with auditing or board of directors are involved in noncompliance, the auditor shall immediately report the noncompliance to Capital Markets Board and -if the company is subject to a special regulation- to related other authority⁴⁵.

(b) Accounting and Auditing of the Public Sector

94. The Turkish Court of Accounts (TCA) audits government budget institutions, supplementary budget institutions (e.g. universities, Overseers of Highways and Public Waterworks Administration), revolving funds institutions (e.g. government forest enterprises and public hospitals) and other budget institutions like State Opera and Ballet. The TCA does not audit the agencies involved in export credit, public procurement, privatisation, official development assistance and state-controlled companies. A draft

⁴² Regulation of 3rd March 1990 provides for additional obligations to report for accounting professionals:

“The members of occupation propose to their customers correct the cheats and errors as they determine during the activity of auditing in professional consciousness. Despite this proposal if cheats and errors are not corrected, the situation is informed competent authority with negative report determined (c) paragraph of the regulation’s article 59. It is compulsory to inform competent authority in judicial court about the culpable crimes which require transition”.

⁴³ Article 162 of the Banking Law n. 5411 states that “The initiation of investigation and prosecution for the offences mentioned in this Law shall be subject to a written application of the Agency (i.e. BRSA) [...] to the Office of the Chief Public Prosecutor. [...]”

⁴⁴ Article 43 of the “Regulation on the Authorization and Activities of Institutions Performing Independent Audit in the Banks of 1 November 2006” also requires auditors to inform the responsible chief auditor (who then reports to the BRSA), if they “obtain information or they are suspicious about a fraud during their performance”.

⁴⁵ According to Article 24(2) of the Capital Markets Law, Capital Markets Board shall convey the noncompliance to law enforcement authorities.

bill envisaging the reorganisation of the TCA is pending before the Parliament. The draft bill, among other things, will provide for state-controlled companies to be included in the audit remit of TCA⁴⁶.

Commentary

In order to enhance the detection of bribe payments in books and records of public or publicly managed entities, the lead examiners recommend that Turkey broaden the list of bodies subject to state audit by the Turkish Court of Accounts. The lead examiners additionally recommend that the Turkish Court of Accounts be provided with the authority to perform audits of state-owned and state-controlled companies, notably where these entities are not subject to an external audit requirement.

8. Money Laundering Reporting⁴⁷

(a) Suspicious Transaction Reporting

95. An effective system designed to detect and deter money laundering may uncover underlying predicate offences like foreign bribery. Money laundering has been an autonomous offence in Turkey since 1996. Article 282 of the Turkish Criminal Code, the new Anti-Money Laundering (AML) offence, came into force on 1 June 2005. This provision replaced the previous listing approach with a minimum threshold approach for defining predicate offences. All crimes which are punishable by a minimum sentence of imprisonment of one year or more now constitute predicate offences for money laundering. Accordingly, domestic and foreign bribery offences are predicate offence for money laundering. The new AML Law 5549 came into force on 18 October 2006. This law provides a legal basis for certain measures that had only been based on regulation, and it also has some new and enhanced provisions intended generally to strengthen the previous AML requirements in Turkey⁴⁸.

96. Paragraph 1 of Article 4 of the Law 5549/06 provides the obligation to report suspicious transactions to MASAK (the Turkish FIU). This provision requires reporting parties to report to MASAK any information, suspicion or reasonable grounds to suspect that the asset, which is subject to the transactions carried out or attempted to be carried out within or through the reporting parties, is acquired through illegal ways or used for illegal purposes.

97. Article 14 of the Regulation Regarding Implementation of the Law 4208 (RRIL 4208) establishes the procedure for reporting suspicious transactions to MASAK. Reporting parties must report to MASAK within 10 days from the date of the suspicious transaction. RRIL 4208 lists 23 types of reporting parties, including banks, money lenders, capital market intermediaries, investment companies, bureaux de change, and notaries. RRIL 4208 does not establish suspicious transaction reporting obligations for accountants and lawyers. However, following the on-site visit, the Turkish authorities indicated that pursuant to Law 5549,

⁴⁶ Turkey indicates that INTOSAI auditing standards will be also employed by the TCA in its future audits.

⁴⁷ In September 2006, the Turkish Anti-money Laundering legislation was evaluated by the OECD Financial Action Task Force (FATF). The Third Mutual Evaluation/Detailed Assessment Report on Turkey was approved by the FATF in February 2007 and is available at: <http://www.fatf-gafi.org/dataoecd/14/7/38341173.pdf>.

⁴⁸ Law 5549/06 covers matters including customer identification; suspicious transaction reporting; disclosures to customs; training, internal control and risk management systems required in obliged parties; MASAK's duties and powers; the role of the Coordination Board; provision of information to MASAK record keeping; inspections of compliance with AML obligations; protection of those who report suspicions; information protection; international information exchange; seizure of documents; and sanctions.

a draft Regulation regarding the Measures relating to the Prevention of Laundering Proceeds of Crime and Financing of Terror has been prepared by MASAK. Pursuant to the draft Regulation, non-bank financial institutions and non-financial businesses and professions including lawyers and accountants are subject to suspicious transaction reporting obligations. At the time of the on-site visit, Turkey was reviewing the draft Regulation according to comments received. Following the on-site visit, on 3 October 2007, the draft Regulation was submitted to the Prime Minister's Office for the issuance of a Council of Ministers' Decree.

Commentary

The lead examiners welcome the announcement that MASAK has submitted a draft Regulation regarding the Measures relating to the Prevention of Laundering Proceeds of Crime and Financing of Terror to the Prime Minister's Office for the issuance of a Council of Ministers' Decree, which establishes suspicious transaction reporting obligations for accountants and lawyers, and recommends that this Regulation be issued at the earliest opportunity.

(b) Typologies, guidelines and feedback

98. MASAK has issued communiqués that function as mandatory regulatory guidance (enforceable means) for reporting parties in the specific areas they cover. Two such communiqués were issued in 1997 and two in 2002⁴⁹. Non-mandatory guidance has been issued since 2003 and includes Guidance for Anti-Money Laundering and Liabilities of Banks, issued by MASAK and the Turkish Bank Association (TBA) in December 2003, Guidance for Importance of Fighting against Laundering Proceeds of Crime and Financing Terrorism and Implementation in Banking System, issued by the TBA in co-operation with MASAK in September 2005, and the Suspicious Transactions Guideline, issued by MASAK in July 2006⁵⁰. None of these typologies specifically refer to foreign bribery.

99. MASAK has also issued two communiqués (General Communiqués 2 and 4), which identify twenty suspicious transactions typologies. The first typology is described as follows: "In the case that there is an attitude showing unwillingness in giving information that is required for everyone normally while a transaction is carried out; in the case that difficulties to acquire information of identity are met with; in the case that insufficient or false information is given; in the case that documents which are suspected of being counterfeit are given; in the case that misleading information concerning financial situation is declared; in the case that the transaction is not in compliance with the purpose declared".⁵¹ MASAK does not indicate that any of its typologies identifies the bribery of a foreign public official as a predicate offence for money laundering.

100. MASAK provides education programmes for businesses and professions subject to AML obligations, especially the financial sector. Special education programmes have been arranged for the Istanbul Gold Exchange (IGE), the Istanbul Stock Exchange (ISE), focussing on their activities as financial

⁴⁹ Two of these communiqués relate to suspicious transaction reporting, one to customer identification and another to customer identification, internal controls and training programmes within reporting entities.

⁵⁰ In September 2006, MASAK issued "*The Guidance for Suspicious Transaction Reports*" with guidelines to the Designated Non-financial Businesses and Professions (DNFBPs) sector. The guidance book provides information on money laundering methods and on liabilities of obliged parties. It also provides indications of suspicious transactions relating to various sectors including for: bureaux de change; money lenders; post offices and cargo companies; and real estate.

⁵¹ Financial Action Task Force, Third Mutual Evaluation Report, Anti-money Laundering and Combating The Financing of Terrorism, Turkey, 23 February 2007, page 62.

institutions and for banks operating in free trade zones. None of these training initiatives had a foreign bribery component.⁵²

101. Following the on-site visit the Turkish authorities explained that MASAK currently provides feedback on STRs made by banks. In addition, the draft Regulation regarding the Measures relating to the Prevention of Laundering Proceeds of Crime and Financing of Terror requires that MASAK provide feedback on STRs made by reporting parties, as well as issue guidance including case studies, typologies and trends in money laundering. Moreover, as a result of the “Project on Strengthening the Capacity of Fighting Laundering” in the course of Turkey’s pre-EU accession programme in 2002, STRs will be received electronically and MASAK will provide regular feedback to reporting parties.

102. MASAK provides general statistics on STRs in its publicly available annual report (in Turkish and English). These statistics include the following information for the relevant year: (i) the number and sources of STRs; (ii) the number and sources of denunciations; (iii) the number of files opened on the basis of STRs and denunciations, and the number of reports in connection with the files opened; (iv) the distribution of money laundering offences in relation to the predicate offences; (v) the amount of the proceeds of crime claimed to have been laundered as a result of evaluations and examinations; and (vi) the number of cases opened in the court of first instance, the outcome of the cases in the court of first instance, and the number and outcome of cases under appeal.

Commentary

The lead examiners welcome the issuance of communiqués by MASAK for the purpose of identifying suspicious transaction typologies, and the preparation of a draft Regulation by MASAK requiring that feedback is provided to parties that make STRs and requiring the issuance of various forms of guidance, and recommend that the Regulation be issued at the earliest opportunity. In addition, the lead examiners believe that Turkey still needs to take steps to increase the effectiveness of Turkey’s money laundering reporting system by providing specific guidance to reporting parties on foreign bribery including through up-to-date typologies on money laundering where the predicate offence is foreign bribery.

(c) Enforcement of reporting obligations⁵³

103. Established in 1997, MASAK, the Turkish Financial Intelligence Unit (FIU), is an administrative agency attached to the Minister of Finance. MASAK collects data, receives suspicious transaction reports, analyzes and evaluates them in the scope of prevention of laundering proceeds of crime and terrorist financing. It conducts and coordinates preliminary investigations of money laundering cases. MASAK also gathers and evaluates statistics and other information related to money laundering and is the primary agency responsible for taking domestic and international measures to prevent money laundering⁵⁴.

104. MASAK has not received any suspicious transaction reports from the reporting parties linked to the offence of bribery of foreign public officials⁵⁵. Statistical information indicates that 2 475 suspicious

⁵² Financial Action Task Force, Third Mutual Evaluation Report, Anti-money Laundering and Combating The Financing of Terrorism, Turkey, 23 February 2007, page 27.

⁵³ Also see discussion on enforcement of the offence of money laundering under C.4.(b)

⁵⁴ In 2006, MASAK had a budget allocation of TRY 3,508,400.000 (approximately 1.971.275,69 Euro) with an establishment of 138 staff.

⁵⁵ From 1997 to 2007 MASAK has received 4 reports linked to the offence of domestic bribery none of which, however, was related to money laundering.

transaction reports (STRs) were received in the nine-year period from 1997 to 2006, and of these 1 140 STRs were received in 2006, which represents a 224% increase from 2005⁵⁶. From February 1997 to September 2006 MASAK also received 900 STRs from public authorities, including the Ministry of Finance, the Under Secretariat of Customs and the General Directorate of Security. Following the on-site visit, the Turkish authorities explained that the increase of STRs in 2006 was due to the “safe harbour” provision in Law 5549,⁵⁷ and awareness raising seminars and training activities for reporting parties. In addition, the number of STRs in the first 10 months of 2007 increased by 186% compared to the same period in 2006. Nevertheless, the general impression of the lead examiners is that there has been a low number of STRs made to MASAK relative to the size and nature of the Turkish financial sector.

Commentary

The lead examiners note that the number of STRs made to MASAK by reporting bodies has increased considerably since 2005, but still consider the number low relative to the size and nature of the Turkish financial sector. They therefore recommend that Turkey analyse the reasons for the low number of STRs reporting to MASAK, with a view to increasing the effectiveness of the money laundering reporting system for the purpose of detecting and preventing the offence of bribing a foreign public official.

(d) Sanctions for Failure to Report

105. Sanctions for not complying with AML obligations are provided in Articles 13 and 14 of the Law 5549/06. According to Article 13, infringements of customer identification obligations and suspicious transaction reporting, training, internal control and risk management systems and other measures and periodic reporting are punishable by an administrative fine of TRY 5 000, (approximately EUR 2 710) and this fine can be doubled where the infringement is by a bank, finance company, factoring company, money lender, financial leasing company, insurance or reinsurance company, pension company, capital market institution or bureaux de change. Article 14 of the Law 5549/06 states that imprisonment from one to three years and to judicial fine up to 5 000 days may be ordered for: tipping off; violation of the requirement to provide information, documents and records requested by MASAK or the inspectors; and violation of recordkeeping requirement⁵⁸.

⁵⁶ During the on-site visit one representative of a major Turkish bank attributed the sharp increase of STRs in 2006 to four main reasons: higher awareness of reporting obligations by obliged parties, the replacement of the previous listing approach with a minimum threshold approach for defining predicate offences, safeguards provided by the new law to persons who report suspicious transactions and the development in software programmes used for processing STRs by obliged parties.

⁵⁷ The “safe harbour” provision was introduced by Law No. 5549, which states in article 10 that “natural and legal persons fulfilling their obligations in accordance with this Law may not be subject to civil and criminal responsibilities. The information about the persons reporting suspicious transactions may not be given to third parties, institutions and organisations other than courts. Necessary measures shall be taken by the courts in order to keep secret the identities of the persons and to ensure their security”.

⁵⁸ Financial Action Task Force, Third Mutual Evaluation Report, Anti-money Laundering and Combating The Financing of Terrorism, Turkey, 23 February 2007, page 102.

106. From November 2005 to September 2006 the BRSA sent 14 reports to MASAK where money laundering violations were detected. From those 14 reports, two cases have been sent to the public prosecutors where customer identification violations were detected. From 2002 to 2005 the CMB conducted 1 266 inspections of supervised bodies. In 2002, 11 of these inspections related to money laundering obligations; in 2003, 14 of the inspections related to money laundering obligations; in 2004, 19 inspections related to money laundering obligations; and in 2005, 9 inspections related to money laundering obligations. As a result of the money laundering inspections eight cases were reported to the public prosecutors⁵⁹.

C. INVESTIGATION, PROSECUTION AND SANCTIONING OF FOREIGN BRIBERY AND RELATED OFFENCES

1. Investigation and Prosecution of Foreign Bribery

(a) Law Enforcement Authorities

107. The General Directorate of Security within the Ministry of Interior is responsible for policing activities for all crimes in urban areas. Two specialised departments investigate bribery and related offences: criminal offences committed by organised criminal groups, including domestic and foreign bribery are dealt with by the Department of Anti-Smuggling and Organised Crime (KOM) and its provincial divisions. Criminal offences un-related to organised crimes are under the remit of the Public Order Department (POD) within the National Police and its provincial divisions. The Gendarmerie has jurisdiction in areas that do not fall under the jurisdiction of the National Police; namely, non-municipal areas and areas where the National Police is not organised.⁶⁰

(i) Awareness, Training and Resources

108. The Department of Anti-Smuggling and Organised Crime (KOM) has 425 officers at its Headquarters and 4 270 officers in its provincial divisions. In total, 4 695 personnel are working within the Department across Turkey. The Public Order Department (POD) employs 80% of the national police personnel working in the provinces. The Department of Anti-Smuggling and Organised Crime within the General Command of the Gendarmerie, and its local divisions has some 800 employees who are specialised in investigating organised crime, including bribery offences.⁶¹

109. Officers employed in the KOM are supported by on-the-job training, primarily from the International Academy against Narcotics and Organised Crime (TADOC). Foreign bribery was part of various training programmes held by TADOC for all law enforcement professionals involved in anti-

⁵⁹ Financial Action Task Force, Third Mutual Evaluation Report, Anti-money Laundering and Combating The Financing of Terrorism, Turkey, 23 February 2007, p.103

⁶⁰ For his law enforcement duties, Gendarmerie reports to the Ministry of Interior and for military-related duties to the General Staff.

⁶¹ Supplemental Questionnaire page 14.

organised crime operations. In 2005, the National Police also organised numerous training activities to raise the awareness level of the police on the provisions of the Turkish Criminal Code and Criminal Procedure Code.

110. Furthermore, the Police Academy at the General Directorate of Security has the status of a University. A class on corruption and financial crimes has been taught since 2004 in the fourth year of study at the Faculty of Security Sciences in the Police Academy. Classes on corruption are also taught in masters (MA) and doctorate (PhD) programmes. All these training activities have a foreign bribery component. The Gendarmerie Training Centre in Ankara provides formal training, and organises ad hoc seminars and courses in criminal law and procedure for Gendarmerie officers.

Commentary

The lead examiners recommend that Turkey ensure the provision of an adequate level of regular training on foreign bribery to all law enforcement officers and recruits who could detect cases of the bribery of foreign public officials, and not only those involved in anti-organised crime operations.

(ii) Co-ordination among Investigative Bodies

111. Pursuant to the relevant Ministerial regulations,⁶² foreign bribery investigations fall within the competence of different law enforcement agencies (*i.e.* KOM and POD), depending on whether the offence is committed by an organised criminal group. Nevertheless, an officer of the National Police stated during the on-site visit that KOM in Ankara would investigate complex foreign bribery cases as well as any other cases with an “international element” regardless of their relation to organised crimes. Due to this comment, the lead examiners were concerned that any uncertainty as to the assignment of responsibility between KOM and POD might result in concurrent investigations by the two agencies, or the failure of one agency to investigate a foreign bribery case due to an incorrect assumption that the other agency would take responsibility. The concerns of the lead examiners were somewhat alleviated by the explanation of the Turkish authorities that information between the KOM and POD should be effectively exchanged since both agencies are sub-units of the General Directorate of Security, which is affiliated with the Ministry of Interior, and that they share the same information bank.

112. In addition, at the preliminary meeting before the examination in the Working Group, the Turkish authorities stated that concurrent investigations cannot occur because the police have no authority to perform investigations, except under the supervision of the public prosecutors or in response to an immediate and urgent situation. The police are obligated to turn over to the prosecutors any information that they receive concerning an allegation. Since it is the public prosecutors who decide if they need police support, including which police agency they will use, there is no chance of overlapping responsibilities. The lead examiners welcomed this information, but were concerned that it was not completely consistent with what they had been told at the on-site visit.

113. Officials interviewed during the on-site visit reported good co-operation between Turkish law enforcement agencies. KOM co-operates with other authorities, particularly MASAK, POD and Customs. Meetings between KOM and the Gendarmerie are held on a bi-monthly basis to discuss general co-operation and, if necessary, also specific problems in relation to serious crimes.

⁶² Ministry of Interior Regulations of 3/01/2007 (Article 19) and 27/05/2002 (Article 4) discipline duties and competence of KOM and POD respectively.

Commentary

The lead examiners recommend follow-up of the investigation of foreign bribery cases in Turkey, including with regard to: (i) the sharing of competence between the Department of Anti-Smuggling and Organised Crime (KOM) and the Public Order Department (POD); and (ii) the absence of police authority to undertake an investigation except upon request of the public prosecutors and under their supervision (other than in response to an immediate and urgent situation).

(b) Prosecutors and the Judiciary

(i) General Structure of the Courts and the Prosecution Office

114. The court system in Turkey is comprised of the Constitutional Court, the Court of Jurisdictional Disputes, the General Courts (which include the High Court of Appeals as a court of last instance and various specialised and general courts of first instance, both criminal and civil), the Administrative Courts (which include the Council of State as a court of last instance, Regional Administrative Courts as a second instance and first instance Administrative Courts and Tax Courts) and Military Courts (which include a Military High Court of Appeals, Military courts of first instance and a High Military Administrative Court of Appeals).

115. In Turkey, every province or sub-province having court organization has a chief public prosecution office. Every court of appeals has a public prosecution office. In addition, Court of Cassation has a public prosecution office. Specialised prosecution offices have been established in accordance with the Article 250 of the Criminal Procedure Code for investigation and prosecution of organized crimes. The Ankara Prosecution Office has a specialised section staffed with 6 prosecutors dealing with the investigation and prosecution of domestic and foreign bribery as well as other major economic cases⁶³.

(ii) Awareness, Training and Resources

116. Established in 2003, the Justice Academy provides for in-service training for judges and prosecutors. During the period 2005 -2006, several training activities were provided to all prosecutors and judges on the new Criminal Code and a new Criminal Procedure Code. These activities also covered provisions on the offence of bribing a foreign public official. The Academy also provides regular training to newly recruited judges on the investigation techniques and provisions of Turkish Criminal Code and Criminal Procedure Code about bribery and money laundering offences. Seminars and activities about the Convention will be included to the annual training programme of Ministry of Justice for 2007. Seminars and courses on the Convention were also held in OECD Multilateral Tax Center in Ankara.

Commentary

The lead examiners recommend that Turkey ensure the continuation of provision of intensified training to prosecutors and judges on foreign bribery.

⁶³

The Supreme Council of Judges and Public Prosecutors (Article 159 of the Constitution) is responsible for all appointments of judges and prosecutors. This body is chaired by the Minister of Justice and the Under-Secretary of the Ministry of Justice is also a member as well as five senior judges (three from the Court of Cassation and two from the Council of State and their substitutes) appointed by the President of the Republic. The Secretariat is provided by the Ministry of Justice. See the Functioning of the Judicial System in the Republic of Turkey – “Report of an advisory visit- 28 September – 10 October 2003 by Kjell Bjonberg and Paul Richmond-European Commission Brussels, 003”, page 97.

(c) *The Conduct of Investigations*

117. In principle, Turkish Criminal system is based on mandatory prosecution⁶⁴. However, public prosecutors have the discretion not initiate the public case if there are conditions requiring the implementation of effective regret provisions which lift the punishment.⁶⁵ Public prosecutors oversee the investigation, indictment and prosecution of any case. Coordination between Police and Prosecutors is provided for in the Criminal Procedure Code. The Code gives prosecutors far-reaching authority to both collect and present evidence and safeguard the rights of defendants, including those detained for pre-trial interrogation⁶⁶. They are expressly empowered to conduct the preparatory investigation, determine the jurisdiction for the case and supervise the judicial police during the pre-trial investigation period⁶⁷.

118. The system of preliminary investigation operates as follows: The public prosecutor, upon being informed of the occurrence of an alleged offence, makes a preparatory investigation in order to ascertain the identity of the offender and to decide whether it is necessary to institute a public prosecution⁶⁸. If the investigation reveals sufficient evidence against an identifiable individual, then a public action, to a wide extent, is deemed necessary and an indictment will be instituted before a competent court⁶⁹.

119. As already noted above, the public prosecutor may, for the purpose of his enquiry, demand any information from any public employee⁷⁰. He is authorized to make his investigation either directly or through judicial police officers. The police are obliged to inform the public prosecutor “immediately” of events, detainees, and measures taken, and to execute orders of the prosecutor concerning legal procedures⁷¹. If he considers that there is an investigative act which can only be carried out by a judge he notifies his requests to the district judge of which these acts will be done⁷².

⁶⁴ Criminal Procedure Code, Art. 160.

⁶⁵ The defence of effective remorse is dealt with under Section C.2.c.(ii) of this report.

⁶⁶ Criminal Procedure Code, Art. 160/2.

⁶⁷ Criminal Procedure Code , Art. 161.

⁶⁸ Criminal Procedure Code, Art. 160.

⁶⁹ Criminal Procedure Code, Art. 170.

⁷⁰ Criminal Procedure Code, Art. 161/4.

⁷¹ Criminal Procedure Code, Art. 161/2.

⁷² Criminal Procedure Code, Art. 162.

120. Once a preliminary investigation has been completed, a public prosecutor must decide whether it is necessary to institute a public prosecution. If he concludes that a public action is necessary, he institutes a case by an indictment before the competent court. The final investigation has two stages: the preparation for trial and the trial itself. Its object is to examine all the evidence before the court, and to reach a judgement with respect to the guilt of the accused. During this process the public prosecutor presents the case on behalf of the Republic. If the public prosecutor considers that a public action is not necessary then he will decide not to file an indictment before a court⁷³.

(i) *Priorities in Prosecution*

121. On 1st January 2006, the Minister of Justice issued Circular n. 7 on “Investigations and criminal proceedings with regard to corruptions”⁷⁴. The Circular, which also includes reference to relevant provisions relating to bribery and related offences, is addressed to public prosecutors and sets priorities in prosecuting “bribery and corruption of all types” which “[...] appear to be a subject of enormous economic values, forming a great part of social sources”. The Circular requires prosecutors to take immediate action in cases where corruption is involved “[...] irrespective of titles and positions of person(s), who commit criminal acts [...] and only on the ground of laws and in unbiased and focused manner [...]”. The Circular makes no explicit reference to either the Convention or the foreign bribery offence under Article 252(5) of the Turkish Criminal Code.

122. In Turkey, investigations and prosecutions of civil servants other public officials for alleged offences are subject, except in cases prescribed by law, to the permission of the administrative authority designated by law⁷⁵. Similarly, investigations and prosecutions concerning Turkish judges and prosecutors for offences committed in connection with, or in the course of their duties “shall be made by judiciary inspectors with the permission of the Ministry of Justice”⁷⁶.

123. Articles 3 and 5 of the Law No 4483/99 on the prosecution of civil servants and other public officials provide that “the authority to which the civil servant belongs carries out a preliminary inquiry and then gives an opinion on prosecuting within 30 days of the date which the case came to its attention. The regional administrative court which has jurisdiction or, in some cases, Council of State, normally decides at last instance on objections by the persons concerned to opinions recommending prosecution or by the public prosecutor to opinions recommending that no proceedings be brought. Any proceedings are brought in the criminal courts”.

124. Civil servants cannot benefit from privileges brought by Law No 4483/99 in corruption cases. Indeed, Law No 3628/90 establishes that where civil servants and other persons are guilty of corruption or fraud they will be subjected to direct prosecution by the public prosecutor. Law 3628/90, does not apply to

⁷³ In cases where a private complaint is submitted to the public prosecutor, and the prosecutor finds no reason for prosecution or decides not to prosecute after a preparatory investigation, he informs the petitioner of his decision. If the petitioner is, at the same time, the aggrieved party the petitioner may, within 15 days of notice, object to the Chief Justice of the nearest court that hears aggravated felony cases. If the court is convinced that the petition is well founded and rightful, it will order a public prosecution; the prosecutor in charge of the case executes this decision. Otherwise, the court refuses the petition, and after such action a public prosecution may be opened only upon production of newly discovered evidence.

⁷⁴ See Annex for the Circular n. 7 of 1/1/2006. Reference to Circular No. 7 is made also under footnote 77 of this report.

⁷⁵ Article 129 of the Constitution.

⁷⁶ Article 144 of the Turkish Constitution and Article 82 of the Law No. 2802 (Judges and Public Prosecutors Law).

judges and prosecutors who will continue to be tried upon the permission of the Minister of Justice. Turkey explains that this requirement is aimed at guaranteeing the independence of the judges and prosecutors during the exercise of their duties. The Turkish authorities have also clarified during the on-site visit that the MOJ's permission is not required for investigations and prosecutions of judges and prosecutors for bribery offences not committed in the course of their official duties.

(ii) *Co-ordination and Conflicts of Competence among Prosecutors*

125. Competence *ratione loci* among the various prosecutors' offices is divided according to territory and the level of court at which proceedings are held. A public prosecutor located in the province in which the offence occurred would commence proceedings in the first instance⁷⁷. In cases where it cannot be established the place where the offence was committed, Article 13 of the Criminal Procedure Code lists other factors to be considered for determining the competent court⁷⁸. The Criminal Procedure Code also regulates jurisdiction *ratione loci* in the case of offences committed in a foreign country which are to be investigated and prosecuted in Turkey. Article 14(3) of the Criminal Procedure Code states that in cases where the accused is not in the Turkish territory the Chief Public Prosecutor at the Supreme Court shall, at the request of the Minister of Justice, file an application with the Supreme Court, which then determines the competent court. Prosecutors at the on-site visit explained that the Economic Crime Division of the Ankara Public Prosecutors Office would commence proceedings involving economic crimes of a "complex" nature and crimes committed abroad. Positive and negative conflicts of competence between courts are resolved by their common higher court⁷⁹. The Turkish law does not regulate negative disputes concerning competence between prosecutors: in such a case, the prosecutor who receives the file from another prosecutor has to carry out the investigation.

(d) *Investigative Techniques and Bank Secrecy*

126. Special investigative techniques are established in Articles 135 to 140 of the Criminal Procedure Code. These Articles provide that technical surveillance, undercover investigations and telecommunication monitoring and recording may be conducted to progress corruption and money laundering prosecutions. All of these special investigative techniques are applied through a decision given by a Judge, or, when it is necessary to avoid delay, by a public prosecutor, and may only be applied when there is strong suspicion that an offence has been committed and there is no other way to obtain evidence. All public and private institutions are obliged to provide information and document requested by judicial authorities. Investigative authorities have the power to compel production of documents and the power to search persons and premises and seize and obtain documents.

⁷⁷ Criminal Procedure Code, Article 12(1).

⁷⁸ Article 13 of the Criminal Procedure Code states as follows:

"(1) If it cannot be established where the crime was committed, the court of the place where the suspect or the accused was apprehended is deemed to be authorized. (2) If the suspect or the accused has no domicile in Turkey, the court of the place where his latest address was found is the competent court. (3) If it is not possible to determine the competent court in this way either, the court of the place where the first act of procedure was undertaken is the competent court".

⁷⁹ Criminal Procedure Code, Article 17(1).

(e) ***Mutual Legal Assistance and Extradition***

(i) ***Mutual Legal Assistance***

127. Under Article 90 of the Constitution, International agreements duly put into effect bear the force of law. These agreements are put into effect by Decrees of the Council of Ministers. Such Decrees have binding force once they are published in the Official Gazette. Harmonization with the provisions of the agreements is ensured through enacting special laws. Where no bilateral or multilateral convention is in place between Turkey and a foreign country, mutual legal assistance in criminal matters is governed by international customs and reciprocity.⁸⁰

128. Turkey carries out mutual legal assistance in criminal matters within the framework of the European Convention on Mutual Assistance in Criminal Matters. The principle of dual criminality is not specified among the reasons for rejection of the legal assistance requests in this convention. Thus, Turkey does not reject the legal assistance requests on the ground that the principle of dual criminality is not met⁸¹. Mutual legal assistance may also be provided in accordance with the OECD Convention. The central authority coordinating mutual legal assistance in Turkey is the Ministry of Justice.

129. At the time of writing, there was no incoming or outgoing MLA request regarding the bribery of a foreign public official. Similarly, there was no MLA request regarding the offence of money laundering where the predicate offence is the bribery of a foreign public official. In 2005, 22 522 documents came into Turkey and 22 522 documents were sent by Turkey's Ministry of Justice's General Directorate of International Law and Foreign Affairs relating to mutual legal assistance. From 1 January to 31 December 2006, the number of incoming documents was 29 739 and outgoing was 27 851, and from 1 January 2007 to 16 November 2007, the number of incoming documents was 30 112 and outgoing was 28 694. Most mutual legal assistance requests are made and received on the basis of the predicate offence involved, with the request seeking detection, seizure and confiscation of proceeds derived from the offence⁸².

⁸⁰ The only Party to the Convention with which Turkey has concluded a bilateral MLA agreement is the United States. In addition, Turkey has concluded multilateral MLA agreements with the following Parties to the Convention: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

⁸¹ There are three specific exceptions to this rule. Firstly, Turkey has established a reservation in accordance with Article 5 of the *European Convention on Mutual Assistance in Criminal Matters*. Under this reservation, the principle of dual criminality is required in order to meet those requests of legal assistance which involve search and seizure. Secondly, in accordance with Article 18(f) of the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, dual criminality is required for seizure and confiscation requiring coercive measures. And finally, dual criminality is required for extradition of criminals in accordance with Article 2(1) of the *European Convention on Extradition*. Under that convention the act which is the subject of the extradition must be an offence penalized by a minimum of one year imprisonment in both requesting and requested parties.

⁸² Financial Action Task Force, Third Mutual Evaluation Report, Anti-money Laundering and Combating The Financing of Terrorism, Turkey, 23 February 2007, page 134.

(ii) *Extradition*⁸³

130. It is not possible to extradite a Turkish citizen to a foreign country for any offence s/he committed, in accordance with Article 38 of the Constitution and Article 18/2 of the Turkish Criminal Code. The only exception to this rule is where the extradition relates to Turkey's obligations as a party to the International Criminal Court. In cases where extradition requests are rejected due to Turkish citizenship, Turkish authorities state that, in line with Article 6 of European Convention on Extradition and upon request of the country, cases are often conveyed to Turkish judicial authorities for prosecution. In addition, under Article 11 of the Turkish Criminal Code, if a Turkish citizen commits an offence overseas which would be subject to punishment of a minimum of 1 year imprisonment if committed in Turkey, then the Turkish citizen can be subject to trial in Turkey. In cases where the punishment would be less than a year, the Turkish citizen could be subject to trial in Turkey if the injured party makes a complaint within 6 months of the offence. Article 13(1) of the Turkish Criminal Code provides that if a Turkish citizen (or a foreign citizen) commits any of a set of listed offences (bribery is in the list) while overseas, then s/he will be subject to Turkish law relating to these offences⁸⁴.

(f) *Jurisdiction*

(i) *Territorial jurisdiction*

131. Territorial jurisdiction is provided in Article 8 of Turkish Criminal Code. This provision states that Turkish law shall apply to all criminal offences committed in Turkey. Where a criminal act is partially, or fully, committed in Turkey or the result of a criminal act occurs in Turkey the offence shall be presumed to have been committed in Turkey. Territorial jurisdiction can be established "if any element of the bribery offence (e.g. the offer, promise, etc) is committed in the Turkish territory"⁸⁵.

⁸³ Turkey has concluded bilateral extradition agreements with the following Parties to the Convention: Australia and the United States. In addition, Turkey has concluded multilateral extradition agreements with the following Parties to the Convention: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

⁸⁴ The procedure on evaluation of extradition requests involves the Council of Ministers, the Ministry of Justice, the public prosecutor's office and the Courts as competent authorities. The central authority in respect of requests is the Ministry of Justice. The court of the place where the person is located decides on the extradition request and this decision may be appealed before the Court of Cassation. If the court finds the extradition request admissible, execution of this decision is on the discretion of the Council of Ministers.

⁸⁵ Supplemental Questionnaire page 11.

(ii) *Nationality Jurisdiction*

132. Article 13 of the Turkish Criminal Code establishes “universal jurisdiction” (*i.e.* jurisdiction over Turkish nationals and foreign nationals who commit an offence abroad and are found in Turkey) over certain offences including the bribery of a foreign public official. This provision states that, except for certain offences listed therein, universal jurisdiction may be applied upon “request of the Minister of Justice”.⁸⁶ The offence of bribing a foreign public official is not exempted from this requirement. However, the Turkish authorities stress that article 13 is only used when they cannot apply article 8 on territorial jurisdiction, which they state is very broad and applies to any element of the foreign bribery offence that takes place in Turkey. In addition, the lead examiners recognise that “universal jurisdiction” is very broad as it is not restricted in application to nationals and residents of Turkey. The lead examiners note that it is not necessary to obtain the permission of the Minister of Justice to establish nationality jurisdiction under article 11. However, this provision does not apply to the foreign bribery offence.

133. During the on-site visit, the Turkish authorities elaborated on the use of MOJ’s permission to prosecute criminal offences committed abroad. In particular, representatives of the Istanbul Prosecution Office told the lead examiners that no rules or guidelines were in place to govern the use of this provision, but that in practice, in exercising his discretion under Article 13 of the Criminal Code, the Minister of Justice would take into consideration the prosecutor’s report and recommendation on the case. The Istanbul prosecutors also added that the MOJ’s decision is purely administrative in nature and, as such, it can be challenged before the Council of State by either prosecutors or victims of the offence. In addition, a representative of the Ministry of Justice stated that the decision to prosecute under Article 13 of the Criminal Code is usually based on the evidence of the case. He indicated, however, that the MOJ “might” take into consideration “political factors” in deciding whether to grant permission to prosecute under Article 13 of the Criminal Code⁸⁷. Following the on-site visit, the Turkish authorities clarified that the purpose of the requirement that the Minister of Justice request the application of “universal jurisdiction” is

⁸⁶ Article 13 of the Turkish Criminal Code reads as follows:

- (1) The Turkish laws are applied in case of commitment of following offences by the citizens or foreigners in a foreign country;
 - a) Offences listed under Second Chapter of Second Volume.
 - b) Offences listed under Third, Fourth, Fifth, Sixth, Seventh and Eighth Sections in the Fourth Chapter of Second Volume.
 - c) Torture (Articles 94,95)
 - d) Intentional environmental pollution (Article 181)
 - e) Production and trading of habit-forming drugs or excitant substances (Article 188), encouragement of use of habit-forming drugs or excitant substances (Article 190).
 - f) Counterfeiting money (Article 197), manufacturing and trading of instruments used in production of money and valuable seals/stamps.
 - g) Whoredom (Article 227)
 - h) Bribery (Article 252)
 - i) Confiscation or hijacking of aircraft, vehicles or vessels (Article 223, subparagraphs 2 and 3), or offences committed with the intention to give damage to these properties (Article 152).
- (2) Except for the offences falling under Third, Fourth, Fifth, Sixth and Seventh Sections of the Fourth Chapter of Second Volume; Prosecution for the offences mentioned in first paragraph is subject to the request of the Minister of Justice.
- (3) A trial can be filed in Turkey upon request of the Ministry of Justice even if the offender is convicted or acquitted of an offense defined in paragraphs (a) and (b) of the first subparagraphs.

⁸⁷ See discussion under C.2(b)(ii) on “Investigation Terminated by Ankara Authorities”, in which the issue arises regarding the establishment of nationality jurisdiction by the prosecution authorities over a case of bribing a foreign public official in which the investigation was terminated.

to prevent its application to cases that do not have any relation to Turkish interests (*i.e.* neither the offender nor the victim are Turkish and the offence does not take place in Turkish territory).

134. The lead examiners note that Article 5 of the Convention prohibits considerations of the following political interests in investigations and prosecutions of foreign bribery: “national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved”. In addition, Commentary 27 on the Convention states that prosecutorial discretion “is to be exercised on the basis of professional motives and is not to be subject to improper influence by concerns of a political nature”. No case law or examples concerning the use of Article 13 of the Criminal Code were provided to the examining team by the Turkish authorities.

Commentary

The lead examiners recommend that Turkey reconsider the requirement under Article 13(2) of the Turkish Criminal Code that the Minister of Justice request the application of “universal jurisdiction” in the specific case where such permission would be needed to establish jurisdiction over the bribery of a foreign public official committed abroad by a Turkish national or company. In the alternative, the lead examiners recommend that Turkey take appropriate steps to clarify that the Minister of Justice’s discretion for requesting the application of “universal jurisdiction” to cases of the bribery of foreign public officials allegedly committed by Turkish nationals abroad shall not be influenced by political interests including “the national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved”.

2. The Offence of Foreign Bribery

(a) Repeal and Replacement of Phase 1 Implementing Legislation

135. In June 2005, a new Penal Code and Criminal Procedure Code came into force in Turkey which completely overhauled the previous criminal law system. This overhaul included major changes to the previous offences of bribing a foreign public official (*i.e.* “qualified” bribery of a foreign public official under article 213.1 and “simple” bribery of a foreign public official under article 213.2). According to the *travaux préparatoires* on the new foreign bribery offence under article 252.5 of the 2005 Penal Code, the amendments to the offence were “proposed for the harmonisation of article 252 with the OECD Convention”. During the on-site visit, the Ministry of Justice explained that the amendments were intended to clarify and broaden the scope of the foreign bribery offence, by for instance extending the definition of a foreign public official to cover officials of international public organisations. The new offence is also intended to address the following two main problems identified in Phase 1 concerning the previous offences. (See the Annex for the text of the provision.)

136. First, the new offence attempts to abolish the ambiguous division between “qualified” bribery (*i.e.* bribery to ensure that the foreign public official “refrains from doing anything he or she is obliged to do or takes any action he or she has been prohibited from doing”) and “simple” bribery (*i.e.* bribery to ensure that “any legal action is taken”). In Phase 1, the Working Group was concerned about whether either form of foreign bribery covered (i) an abuse of discretion in decision-making by a foreign public official, and (ii) the use of a foreign public official’s position outside his or her authorised competence. As will be shown in the discussion to follow on weaknesses in the new foreign bribery offence, the Turkish authorities may not have entirely succeeded in abolishing the dichotomy between “qualified” and “simple” bribery, at least in practice.

137. The division between “qualified” and “simple” foreign bribery also previously affected the level of sanctions, with “qualified” bribery being sanctioned by imprisonment from 4 to 12 years and “simple” bribery by a fine “equal to 10 times the amount of money or the benefit given or provided”. Under the new foreign bribery offence, the fine sanction has been abolished, and the previous sanction of imprisonment has been maintained. However, the sanction of imprisonment for bribery in general has been increased by between one-third and one-half for the bribery of a person in a judicial capacity, an arbitrator, an expert witness, a public notary or a professional financial auditor. With respect to foreign bribery, the increase in sanctions would appear to pertain to the bribery of judges of foreign and international courts.

138. Second, the previous framework for the foreign bribery offences, which was based on complicated and confusing linkages with the domestic bribery offences, has been replaced with a more straight-forward approach, and now the only linkages between the two kinds of offences relate to the sanctions. This is an altogether positive development, making the new foreign bribery offence more autonomous and understandable. However, although attempts to simplify the foreign bribery framework solved some of the previous problems, such as some inconsistencies in language,⁸⁸ as will be seen in the discussion to follow on weaknesses in the new foreign bribery offence, the new offence continues to raise certain problems which could represent serious obstacles to the effective enforcement of Article 1 of the Convention.

(b) Cases of Bribery in International Business Transactions

(i) Investigation Terminated by Ankara Authorities

139. In Turkey’s responses to the Phase 2 Questionnaire, it is explained that there have not been any concrete cases that fall under the scope of the Convention, but that one investigation into the bribery of a foreign public official was dismissed by the Ankara Public Prosecutors Office. The examination team made continuous efforts to obtain full disclosure concerning this case by questioning various Turkish authorities during the on-site visit, submitting further questions following the on-site visit and consulting media reviews.

140. Early on during the on-site visit the Ministry of Justice was able to confirm that the case was investigated by the Ankara Public Prosecutors Office without the involvement of the police. Discussions with the Ankara Public Prosecutors Office further disclosed that the case came to the attention of the Turkish authorities through the foreign authorities in the country in which the bribery offence was alleged to have occurred, and that the Prosecutors Office was not able to establish any connection between the relevant Turkish holding company and the alleged foreign bribery transaction. The Ankara Public Prosecutors Office also explained that the relevance of this case has been exaggerated in the responses to the Phase 2 Questionnaire, because the bribery by a Turkish citizen took place in a foreign country. During the on-site visit, the examination team learned that the following authorities did not know about the investigation and that the Ankara Public Prosecutors Office did not ask them whether they had any information regarding the allegations: the Turkish National Police, MASAK (Turkey’s Financial Intelligence Unit) and the Tax Revenue Administration.

141. During the last day of the on-site visit, the Ministry of Justice provided written answers to questions submitted earlier in the week by the examination team concerning the termination of the investigation. These responses indicated that the alleged bribery acts began in August 2003 and continued

⁸⁸ The “qualified” bribery offence covered promising and offering, the “simple” bribery offence “giving” and the foreign bribery offence which was linked to the “qualified” and “simple” offences applied to offering, promising and giving. In addition, the “qualified” offence applied to a “bribe”, the simple bribery offence a “bribe” or “other benefits”, and the foreign bribery offence to “benefits”.

until December 2005, and that they came to the attention of the Turkish authorities through a request for mutual legal assistance (MLA) from the authorities in the foreign public official's country – a neighbouring country. The General Directorate of International Law and International Relations of the Ministry of Justice received the request for MLA from the foreign authorities on 5 May 2006, communicated the request to the Ankara Public Prosecutors Office on 15 May 2006, and executed the request on 7 August 2006. The case was reported in parallel on 18 October 2006 by the Turkish authorities who attend the Working Group on Bribery meetings to the Ankara Public Prosecutors Office. On the final day of the on-site visit the Ministry of Justice further disclosed that no investigation was performed by the Ankara Public Prosecutors Office, which decided on the basis of the MLA request documents to dismiss the investigation on grounds that the crimes were committed by directors of the relevant Turkish company who were not Turkish citizens. Apparently, the MLA documents contained witness statements and bank records that assisted in this determination.

142. Following the on-site visit, the Ministry of Justice provided further disclosure in response to additional questions from the examination team, according to which the Ankara Public Prosecutors Office was not able to establish jurisdiction over the case because the company in question was established under the law of the foreign country, and no Turkish nationals were involved in the alleged offence. However, this aspect of the disclosure is at odds with media information about the company in question, which widely describes it as a private “Turkish” holding company that was granted a license to run a foreign energy concession for a number of years. Moreover, the Ministry of Justice did not disclose taking steps to verify whether territorial jurisdiction could have been established over the offence, due to acts of complicity such as incitement or authorisation to bribe by senior company management in Turkey.

143. The examination team was particularly attentive about determining whether, in violation of Article 5 of the Convention, the investigation might have been terminated due to political or economic considerations, due to the following two factors: (i) Article 13.2 of the Penal Code restricts the application of nationality jurisdiction to cases of bribing a foreign public official for which the Ministry of Justice requests proceedings, and during the on-site visit a Ministry of Justice official stated that political factors “might” be considered by the Minister in deciding whether to make such a request, although this statement was withdrawn and clarified following the on-site visit;⁸⁹ and (ii) the media published information that the foreign contract in question was of significant economic and national interest to Turkey. Nevertheless, the Ministry of Justice confirmed following the on-site visit that the Minister of Justice had not been consulted about establishing nationality jurisdiction over the alleged offence, and that public prosecutors do not have the obligation or authority to consider political factors or the national economic interest in determining whether to investigate or prosecute a case.

144. In summary, the examination team was disappointed about the Turkish authorities' overall lack of pro-activeness in investigating this case. In addition, the Turkish authorities demonstrated a lack of interest about developments in the foreign country concerning relevant law enforcement proceedings, reporting after the on-site visit that they did not have information about how the foreign investigation had progressed. This was surprising given that one week before the on-site visit the media disclosed the names of several persons who had been charged in the case, including the president of the Turkish holding company and six other company officials.

⁸⁹ See further discussion on the application of Article 13 under C.1.f.(i) on “Nationality Jurisdiction”.

(ii) *Allegations related to the United Nations Oil-for-Food Programme*

145. The Final Report of the Independent Inquiry Committee (IIC) into the United Nations Oil-for-Food Programme (IIC Report),⁹⁰ published in October 2005, contains allegations against companies from several Parties to the Convention, including approximately 138 Turkish companies, for the provision of illicit payments on contracts with the Iraqi government for humanitarian goods (e.g. electrical material, pipes and fittings, food products, generator spare parts, copper wire) and one Turkish company for the provision of illegal surcharge payments regarding an oil contract with the Iraqi government.⁹¹ The Turkish authorities pointed out after the on-site visit that other countries in the region obtained almost 90% of the humanitarian contracts, and the majority of oil contracts were made with companies in other countries, with Turkish companies only signing three such contracts. Following the publication of the Final Report, the Chief Legal Counsel for the IIC invited the members of the Working Group on Bribery to establish national contact points for the purpose of requesting and receiving information from the IIC regarding the allegations in the Report. Pursuant to this request, a list was forwarded to the IIC in February 2006, which included a person nominated by the Turkish government from the Ministry of Justice to act as the Turkish contact point. At the time that the list of contact points was provided to the IIC, it was expected that the IIC would remain in operation for only a few months in order to receive and execute requests for information from national authorities. Since then the mandate was extended further, and the Office of the IIC closed at the end of December 2006. Requests must now be sent to the UN Office of Legal Affairs.

146. During the course of the on-site visit, the examination team systematically asked representatives of every relevant ministry, agency and law enforcement agency, including the Ministry of Justice, National Police, Ankara Public Prosecutors Office, Türk Eximbank,⁹² MASAK and the Tax Revenue Administration, whether they were familiar with the findings in the IIC Report regarding the Turkish companies, and whether steps had been taken by their offices to obtain the relevant information collected by the IIC. Except for the Tax Revenue Administration, no part of the Turkish government claimed to have knowledge about the allegations in the IIC Report, and not even the Ministry of Justice representatives who met with the examination team were aware that a national contact point for obtaining the information had been nominated by the Turkish government. The Tax Revenue Administration became aware of the need to consult the IIC Report when representatives attended the examination of another Party to the Convention by the Working Group on Bribery in March 2007, and was still in the preliminary stages of reviewing the information in the IIC Report. A representative of the Tax Revenue Administration informed the examination team that there had not yet been a need to contact the Office of the IIC, but that this would be done later if deemed necessary.

147. When the examination team pursued this issue throughout the on-site visit, it did not presuppose that the transactions described in the IIC Final Report amounted to the bribery of foreign public officials as prohibited under Article 1 of the Convention. However, the lead examiners felt that, given that the IIC

⁹⁰ The IIC was established in April 2004 to investigate and report on the administration and management of the UN Oil-for-Food Program. It was chaired by Paul Volcker, the former Chairman of the United States Federal Reserve, and Committee members were Dr. Mark Pieth, the Chair of the OECD Working Group on Bribery in International Business Transactions, and Richard Goldstone of South Africa, a former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda. The final report of the IIC documents the payment of alleged kickbacks in the form of after-sales-service fees and inland transportation fees in relation to the contracts of 2 253 companies for the sale of humanitarian goods to the Iraqi government, as well as a complicated and vast network of alleged surcharge payments to the Iraqi government in connection with the oil contracts of 139 companies.

⁹¹ See allegations against Turkish companies in Table 8 and Table 5 of the Final Report of the IIC into the UN Oil-For-Food Program regarding humanitarian and oil contracts respectively (www.iic-offp.org).

⁹² Following the on-site visit Türk Eximbank explained that “humanitarian aid” is not in its field of activity.

Report addresses corruption in relation to international business transactions, how the Turkish government had addressed the allegations in the Report concerning the Turkish companies was an important indicator of its stance on the bribery of foreign public officials. The lead examiners were therefore disappointed and surprised by the apparent lack of knowledge about these allegations almost across the board in the Turkish government during the on-site visit. Indeed, the largest daily newspaper, “Milliyet”, reported on the findings of the IIC in October 2005,⁹³ and the Istanbul Bar Association learned about the allegations against the Turkish companies in the Turkish press. Following the on-site visit and during the preliminary meeting before the examination in the Working Group, the Turkish authorities stressed that they were not prepared to address the IIC Report at the on-site visit because the topic did not appear in the agenda until just a few days before the visit. They stated that because the IIC Report is a very specific topic, it is known by only a couple of Turkish officials, who were not able to attend the on-site visit with such late notice. Nevertheless, the lead examiners do not believe that this explanation justifies the officials’ lack of awareness.

148. Moreover, the lead examiners have not been able to determine what steps were taken by the person nominated by the Turkish government (an official of the Ministry of Justice) in February 2006 to act as the national contact point for obtaining information from the IIC.⁹⁴ However, the Ministry of Justice indicated following the on-site visit that “it is understood that the IIC Report was evaluated by the relevant public institutions in Turkey” and that “studies on the mentioned Report are still going on with the relevant institutions”.

149. Then in October 2007, the Turkish authorities provided further information about how the Turkish government addressed the allegations in the IIC Report. They stated that since the payments documented by the IIC are illegal according to Turkish laws, the Board of Foreign Trade Controllers (BFTC), which is the authorised body in Turkey to examine any allegation related to illegal foreign trade activities, launched an inspection on the allegations in the IIC Report in relation to the 139 Turkish companies. They also stated that the Under Secretariat for Foreign Trade (UFT) has underlined on several occasions that neither the IIC nor any other national or international organisation has produced evidence about the payment of illegal surcharges or kickbacks by Turkish companies in the OFFP. The Turkish authorities stated that they would appreciate any information in this regard from “any United Nations organisation, inspection companies assigned by the UNSC under the OFFP, oil overseers of the OFFP or by the banks that were involved in the payments” to assist BFTC in its inspection. However, the Turkish authorities did not provide information on when the BFTC began its inspection, and whether proactive steps had been taken to obtain evidence, including whether the BFTC contacted the UN Office of Legal Affairs in order to obtain the information that the UN has regarding the allegations in the IIC report concerning the Turkish companies.

150. Then at the preliminary meeting before the examination in the Working Group, the Turkish authorities announced that on 21 November 2007, they requested information from the UN Office of Legal Affairs concerning the allegations in the IIC Final Report against the Turkish companies. During the examination in the Working Group, the Turkish authorities announced that the examination of the allegations in the IIC Report were officially launched on 15 August 2007, due to the coverage of this issue in the draft version of this Phase 2 Report, which was provided to Turkey in August. The lead examiners

⁹³ For instance see article found at: <http://www.milliet.com.tr/2005/10/28/son/sondun13.html>.

⁹⁴ On 10 May 2007, the examination team sent a request in writing to the Turkish national contact point to respond to the following three questions: (i) Whether he or someone else requested disclosure from the IIC of the evidence collected by it regarding the Turkish companies listed in Table 5 and Table 8 of the IIC Final Report; (ii) If disclosure was not requested, the reasons for this; and (iii) If disclosure was requested, when this was done and how the Turkish government had used this information.

welcome this announcement, but have serious concerns about the two-year delay in acting on the allegations (i.e., October 2005 to November 2007).

(iii) *How the Turkish Authorities and Turkish Society View Foreign Bribery Cases involving Turkish Companies*

151. The lack of pro-activeness in pursuing the allegation of the bribery of a foreign public official by a Turkish energy company, and two year delay in responding to the allegations against 139 Turkish companies in the Final Report of the IIC into the Oil-for-Food Programme, are perhaps not so surprising when viewed together with the overall perspective in Turkey of the bribery of foreign public officials in certain neighbouring countries. For instance, a representative of one of the Turkish ministries stated that if a company does not bribe in countries in the region, it will lose business, and that he did not know whether a Turkish company would refuse to give bribes in these foreign markets. The Undersecretary of Foreign Trade is not looking at the issue of foreign bribery at all, and a Ministry of Justice Circular on Corruption, released in January 2006, discusses bribery and corruption in general, but does not specifically refer to the offence of bribing a foreign public official.⁹⁵

152. The civil society participants were very candid about their views on the implementation of the Convention. The representative of one professional organisation stated that Turkish society accepts the bribery of foreign public officials as a norm. He explained that the Turkish construction sector is particularly at risk, as it is not possible to run a construction operation in certain countries in the region without bribery. He believed that the Turkish authorities might not act against such a transaction. Concerning the lack of action by the Turkish authorities regarding the allegations against Turkish companies in the IIC Final Report, he felt that since the Turkish companies were “playing the game by the rules”, it was not surprising that law enforcement actions had not been taken.

153. The representative of a private sector association largely echoed the representative of the professional organisation, stating that nothing can be done to respond to allegations such as those in the IIC Report, because the Turkish companies had no choice but to fulfil the demands of the Iraqi government since the framework in Iraq for the Oil-for-Food Programme was itself corrupt. He also stated that it would be unfair to act against these companies for their conduct in Iraq in view that they are good tax payers in Turkey. A media representative also felt that since the Oil-for-Food Programme was corrupt itself it would not be appropriate to institute criminal proceedings against the Turkish companies allegedly involved. One civil society organisation stated that the bribery of foreign public official is not currently a priority for the Turkish public, and that all the resources for fighting corruption are dedicated to eradicating domestic corruption in Turkey. An employer’s association for the construction industry shed light on one of the reasons why the bribery of foreign public officials in countries in the region might not be seen as a priority. According to him, Turkish companies are plagued by many serious challenges when doing business in these countries, such as very dramatic financial risks, kidnappings and murder, which may make corruption seem relatively less of a priority.

154. The lead examiners understand that Turkish companies face significant challenges when doing business in certain neighbouring countries, and that the bribery of foreign public officials may not relatively-speaking seem to be a priority. However, the lead examiners believe that this point of view is short-sighted, since the corruption which puts Turkish companies at risk for bribery is an integral feature of weak governance zones. Thus by ignoring the bribery of foreign public officials in neighbouring countries, Turkey not only fails to enforce its foreign bribery offence, but it also fails to address the role that its

⁹⁵ The Ministry of Justice Circular (“Circular No. 7”) discusses *inter alia* the need for immediate and complete investigations, as well as unbiased investigations irrespective of the titles and positions of suspects. See also under Section C.1.c.(i) of this report.

companies play in contributing to the weak state governance in these countries, which in turn sustains the high risk of foreign bribery along with the host of other serious problems that this causes, including risks to personal security. In addition, by signing up to the Convention, Turkey recognised the role that the supply-side of bribery plays in undermining good governance and economic development.

Commentary

The lead examiners are not satisfied that Turkey's decision to terminate the investigation of the bribery of a foreign public official in a neighbouring country was warranted, based on the rationale provided to them by the Ministry of Justice.

Regarding the allegations against 139 Turkish companies in the Final Report of the Independent Inquiry Committee (IIC) into the United Nations Oil-for-Food Programme, the lead examiners welcome the announcement that Turkey requested information from the UN Office of Legal Affairs. However, they believe that two year delay in responding to the allegations demonstrates a reluctance to address the behaviour of Turkish companies in foreign countries.

The lead examiners therefore recommend that the Turkish government urgently assess the reasons why the above allegations were not promptly investigated and that the assessment consider the need for all the relevant Turkish authorities, such as the Ministry of Justice, prosecutors, and police to proactively respond to relevant MLA requests and publicly available information regarding alleged corrupt activities by Turkish companies abroad.

(c) Weaknesses in the New Foreign Bribery Offence

(i) Qualified versus Simple Bribery

155. The Turkish authorities explain that the differentiation between “qualified” and “simple” bribery was removed from the bribery offences by the 2005 amendments to the Penal Code. As a result, the active and passive offences of bribing a domestic public official under article 252.1 now cover what was previously called “qualified” bribery. The bribery of a domestic public official that was previously considered “simple” bribery is now covered by the offence of “securing a benefit for a task outside the scope of authority” under article 255 and the offence of a “misuse of public duty” under article 257, but only for the passive side of the bribery transaction. Thus, the passive offences are broader in scope than the active offence.

156. On the other hand, the Turkish authorities confirm that the new offence of bribing a foreign public official under article 252.5 of the Penal Code does not abolish the differentiation between “simple” and “qualified” bribery, as it covers the following two situations: (i) bribery to ensure the performance or non-performance of a task; and (ii) bribery to obtain or maintain an undue benefit. The former would appear to apply to the situations previously characterised as “simple” bribery (*i.e.* bribes to ensure that any legal action is taken), and the latter would appear to apply to the situations previously characterised as “qualified” bribery (*i.e.* bribes to ensure that the foreign public official refrains from doing anything he or she is obliged to do or takes any action he or she is prohibited from doing). Whereas previously a sanction of imprisonment (four to twelve years) applied to “qualified” foreign bribery and a fine (“a heavy fine equal to ten times the amount of the money or the benefit”) applied to “simple” foreign bribery, the sanction of imprisonment applies to all forms of bribery under article 252.5.

157. In Phase 1, the differentiation between “qualified” and “simple” foreign bribery raised concerns in the Working Group, because it was not clear whether the following two situations were covered by either type of bribery: (i) bribery to obtain an abuse of discretion in decision-making by a foreign public

official; and (ii) bribery to obtain the use of a foreign public official's position outside his or her authorised competence. Although these situations appear to be covered by the passive offences for domestic officials of "securing a benefit for a task outside the scope of authority" and a "misuse of public duty", concerns remain about whether they are covered in relation to the bribery of a foreign public official. During the on-site visit, the Ministry of Justice was not able to give unequivocal answers regarding the impact of the new formulation of the foreign bribery offence in this regard. In addition, statistical information was not available on the application of "simple" versus "qualified" bribery.

158. During the on-site visit, another area of ambiguity emerged regarding the differentiation between "qualified" and "simple" foreign bribery. A legal academic and a representative of the Istanbul Public Prosecutors Office agreed that the differentiation between the two types of bribery in the new foreign bribery offence remains unclear. They also felt that the ambiguity could result in a judicial interpretation of the foreign bribery offence that parallels the formulation of the new active domestic bribery offences – *i.e.* that the foreign bribery offence could be interpreted as only covering "qualified" bribery. This opinion was echoed following the on-site visit by the Under Secretariat of Treasury, which stated that article 252.5 creates "some ambiguities in terms of the definition and the scope of the offence" and that it makes sense that a holistic approach to interpreting article 252.5 would not cover the case where benefits are provided to a foreign public official in order to ensure that any legal action is taken.

(ii) *No Punishment for Effective Remorse*

159. Pursuant to the previous Penal Code, a briber was not "responsible" for the offence of bribing a foreign public official or the offence of bribing a domestic public official where he or she had reported the offence to the competent authorities before the *quid pro quo* had been fulfilled. In such a case the bribe would be confiscated from the public official and returned to the briber.

160. Despite concerns voiced by the Working Group in Phase 1 that "effective remorse" might represent a loophole in the implementation of the Convention, it has been maintained in article 254 of the new Penal Code. The overall effect of the new provision is more nuanced as it releases the briber from liability for a "penalty", whereas the previous provision released the briber from "responsibility" for the offence. In any case, despite this new approach, the scope of the new provision is broader because unlike the previous Penal Code provision, which restricted the application of "effective remorse" to cases where the briber informed the competent authorities before his or her "unjust request" was "fulfilled" (*i.e.* before the briber receives the proceeds of bribing a foreign public official), the new provision applies regardless if the briber has obtained the proceeds of bribing the foreign public official. The Ministry of Justice confirmed this interpretation and added that the legislators felt that widening the scope of the provision would put more emphasis on the reporting of bribery. In addition, the new Penal Code retains the requirement that the bribe be confiscated from the public official and returned to the briber, which appears to conflict with the confiscation provisions under the Penal Code. Thus the lead examiners' concerns have been heightened about the overall effect of the application of "effective remorse" on the implementation of the Convention by Turkey.

161. In addition, to these substantive concerns, the lead examiners found the descriptions unclear at the on-site visit about the procedure for applying "effective remorse". The Ministry of Justice explained that the trial of the briber is merged with the one for the public official. The Ankara Public Prosecutors Office explained that prosecutors have the discretion to apply the provision themselves, and thus the case might not necessarily go to trial. On the other hand, a representative of the Court of Cassation stated that the case must be tried where "effective remorse" is invoked, and if invoked successfully no penalty would be ordered. The Ankara Public Prosecutors Office agreed that it is more appropriate for the court to decide if "effective remorse" should apply, and that a decision of the Court of Cassation on the process is needed to clarify matters.

162. The overwhelming rationale from the majority of the participants at the on-site visit, including from the government, private sector and civil society, for maintaining the application of “effective remorse” to the offence of bribing a foreign public official was that it contributes to effective bribery investigations by encouraging bribers to report and provide information about the public official who was bribed. The Ministry of Justice stated that “effective remorse” has a “deterrent and chilling effect” on bribery. The Turkish National Police explained that the provision has succeeded in disclosing a large number of suspects and huge amounts of financial gain. The Istanbul Bar Association did not believe that the provision had been abused. In fact, “effective remorse” also applies to some other offences, including certain drug-related crimes, trafficking in counterfeit money or valuable stamps, and certain organised crime-related offences.

163. Nevertheless, the lead examiners believe that although “effective remorse” may play an important role in the detection and deterrence of the bribery of domestic public officials in Turkey, the rationale for its application to domestic bribery cannot be legitimately extended to the bribery of foreign public officials. This is mainly because there is no possibility of proceeding against the foreign public official since there is no offence of the passive bribery of a foreign public official under Turkish law. The Ministry of Justice believes that application of “effective remorse” could in any case lead to the reporting of the passive bribery offence to the foreign public official’s country. However, there is no guarantee that the foreign public official’s country would act on the report. Moreover, the Working Group chose to target the supply-side of foreign bribery through the Convention and thus the emphasis by Turkey needs to be on addressing the actions of the briber.

(iii) Coverage of Offers and Gifts not received by the Foreign Public Official

164. Turkey’s responses to the Phase 2 Questionnaire included somewhat conflicting information about when the offence of bribing a foreign public official is considered completed. One part of the responses stated that an agreement is required between the briber and the foreign public official and that the offence is deemed concluded where the benefit is obtained by the public official. In another part it states that where there is an agreement between the parties, the offence shall be considered completed even if the public official has not received any benefit. Two other statements in the Phase 2 responses add to the confusion. The first provides that where the offer comes from a third party (*i.e.* an offer is made through an intermediary), an attempt may have occurred. The second provides that the “bargaining and communication phase” of bribing amounts to an attempt.

165. During the on-site visit, the Ministry of Justice explained that the act of “offering” a bribe to a foreign public official is considered a completed offence if the foreign public official is aware of the offer (the same rationale applies to the giving of the bribe). Where the foreign public official does not become aware of the offer or gift, the case is covered as an attempt pursuant to article 35 of the Penal Code. The Bar Association agreed with the Ministry of Justice that the offer or bribe must be received by the foreign public official in order for the offence to be completed, but also stated that the offence is not committed where a briber retains an agent to offer or provide a gift to a foreign public official, and the agent “voluntarily retreats” from carrying out the offer or providing the gift. Since the agent retreats voluntarily, he or she has not committed an offence, and therefore the “person behind him or her” also cannot be punished. The lead examiners believe that if there is a loophole in the coverage of the foreign bribery offence where the agent or intermediary “voluntarily retreats” from carrying out the offer or providing the gift, it is essentially a theoretical loophole and in practice would occur so rarely that it does not warrant follow-up by the Working Group.

(iv) *Bribes that Benefit Third Parties*

166. As was the case with the offence of bribing a foreign public official under the previous Penal Code, the new foreign bribery offence under article 252.5 of the Penal Code does not expressly cover the situation where a bribe is for the benefit of a third party beneficiary. The lead examiners therefore questioned various participants during the on-site visit about whether in their opinion the case is covered where an agreement is reached between the briber and the foreign public official to transmit the bribe directly to a third party, such as a family member, political party or charity.

167. During the on-site visit all the participants indicated that in practice the situation is covered where a bribe benefits a third party. An academic felt that the term “benefit” would be interpreted broadly enough to encompass not only a monetary or pecuniary benefit, but also a “moral” benefit such as the benefit that is derived from directing the bribe payment to a charity. On the other hand, the majority of participants (*e.g.* Ministry of Justice, MASAK, Istanbul Public Prosecutors Office, Istanbul Criminal Court) believed that the case described above is covered by the foreign bribery offence because it applies to the offering, promising or giving of benefits “directly or indirectly” to a foreign public official. It was pointed out to the participants that where Parties to the Convention use the term “indirectly” in their implementing legislation, it is normally used to denote the act of bribing through an intermediary. The Istanbul Public Prosecutors Office responded that the term “indirectly” does not refer to the act of bribing through an intermediary, which thus raises the issue of whether article 252.5 covers bribing through intermediaries. In any case, the rationale given by the Turkish authorities for the application of the term “indirectly” to the third party beneficiary situation is that even where the bribe goes directly to a third party the foreign public official receives some “indirect” benefit (*e.g.* a moral benefit).

168. The Turkish authorities were not able to support their interpretation of the term “indirectly” with jurisprudence, but following the on-site visit they submitted a memorandum on this issue, which focuses on the scope of the concept of a “benefit” under article 252.5. First the memorandum emphasises that a “benefit” includes pecuniary and non-pecuniary benefits as well as tangible and intangible benefits. Then, with respect to bribes that benefit third party beneficiaries, the memorandum states that “the benefit may have been provided in favour of a third party with whom the (public) servant is in a relationship. Suffice it to prove the relationship of the (public) servant in question with that party”. Thus, the follow-up information provided by the Turkish authorities does not clarify whether the case is covered where the benefit is provided directly to the third party with the agreement of the foreign public official. In addition, since there must be a “relationship” between the third party and the foreign public official, it appears that they must have some kind of personal relationship, such as familial, spousal or perhaps a business relationship. Nevertheless, it does not sound as if the case is covered where the third party is, for instance, a charity or political party with which the foreign public official does not have a “relationship”.

(v) *Definition of “Foreign Public Official”*

169. Through amendments, the new offence of bribing a foreign public official under article 252.5 of the Penal Code attempts to address the following two weaknesses identified in Phase 1 regarding the definition of “foreign public official”: (i) the absence of a functional definition of foreign public official (*i.e.* to correspond to “any person exercising a public function for a foreign country” pursuant to Article 1.4.a of the Convention);⁹⁶ and (ii) the absence of coverage of “any official or agent of a public international organisation” as required by Article 1.4.a of the Convention.

⁹⁶ The previous Penal Code referred to the bribery of “officials whether appointed or elected and carrying out a legislative, administrative or judicial function in a foreign country or exercising a public function in international business transactions”.

170. The Turkish authorities explain that a functional definition is now included in the foreign bribery offence due to the insertion of the language “of a public agency or public institution”. Thus, officials of a public agency or public institution “whether appointed or elected” and “charged with a legislative, executive or judicial function” are now covered, and according to the Turkish authorities, this language is broad enough to include all persons “exercising a public function for a foreign country”. During the on-site visit, the lead examiners voiced some doubts about the scope of the coverage in this respect, but were assured of the following two points: (i) in Turkey all public officials are considered either “elected or appointed”, as these terms do not necessarily have the same connotation as under the Convention, but in any case, article 6 of the Penal Code defines a domestic public official as someone who performs a public function by appointment, election or other method; and (ii) all public functions in Turkey are performed by either the legislative, executive or judicial power. Despite the broad conception of a public official in Turkey, the lead examiners were nonetheless concerned that there could be limitations to applying the functional definition effectively to the bribery of foreign public officials from countries in which the definition of public official is interpreted more narrowly, in particular with respect to the notions of “appointed” and “elected”, as well as the scope of legislative, executive and judicial functions.

171. With respect to the second weakness identified in Phase 1, Turkey has attempted to cover the bribery of “any official or agent of a public international organisation” with the insertion of the language “of an international organisation established by states, governments or other public international organisations, regardless of its structure and functions”. Thus officials “of an international organisation”, “whether appointed or elected”, are now covered. The lead examiners welcome this important amendment, but are concerned that the term “appointed or elected” might restrict its application unduly, in particular with respect to persons performing public functions for international organisations pursuant to temporary or consultancy contacts.

Commentary

Regarding the offence of bribing a foreign public official under article 252.5 of the new Turkish Penal Code, the lead examiners welcome that it removes the previous complicated cross-links between domestic and foreign bribery and contains certain clarifications. However, overall, the new foreign bribery offence continues to be problematic in several important areas.

In summary, the lead examiners recommend that Turkey repeal the application of “effective remorse” to the foreign bribery offence under article 252.5. The lead examiners also recommend follow-up of the following unclear aspects of the foreign bribery offence under article 252.5 of the Penal Code as practice develops:

- (a) Whether the following two situations are covered: (i) bribery to obtain an abuse of discretion in decision-making by a foreign public official; and (b) bribery to obtain the use of a foreign public official’s position outside his or her authorised competence;***
- (b) whether the courts interpret the foreign bribery offence as covering “qualified” bribery (bribery to obtain or maintain an undue benefit) and “simplified” bribery (bribery to ensure the performance or non-performance of a task), or they choose to apply the formulation for the offence of bribing a domestic public official, which is restricted to “qualified” bribery;***
- (c) whether the case is covered when an agreement is reached between the briber and the foreign public official to transmit the bribe directly to a third party, such as a family member, political party or charity, including cases where the third party and foreign public official do not have a personal relationship; and***

- (d) *whether the foreign bribery offence can be applied effectively to cases where the person bribed is exercising a public function for a foreign country, but according to the law of the foreign public official's country, he or she has not been appointed or elected or is not holding a legislative, administrative or judicial office; as well as the case where the person is an official or agent of a public international organisation, but according to the rules or regulations of that organisation, he or she has not been appointed or elected.*

3. Liability of Legal Persons

(a) *Repeal of Liability of Legal Persons for Foreign Bribery Offence*

172. Article 220 of the previous Penal Code provided the liability of legal persons for the bribery offences, including the offence of bribing a foreign public official.⁹⁷ In Phase 1 the Turkish authorities affirmed that the Turkish Constitution, which states that criminal responsibility “shall be personal”, does not preclude the criminal responsibility of legal persons. They also explained that the “Turkish Constitutional Court has recognised the principle of criminal liability of legal persons and its compatibility with article 38 of the Turkish Constitution”.

173. The lead examiners hoped to see progress on certain weaknesses identified in Phase 1 by the Working Group concerning the liability of legal persons for the foreign bribery offence under the previous Penal Code.⁹⁸ They were therefore very surprised to discover that the 2005 Penal Code repealed the liability of legal persons for the foreign bribery offence. The lead examiners were informed following the on-site visit that the Turkish Industrialists and Businessmen’s Association (TUSIAD) feels that it is an absolute necessity that Turkey re-establish the liability of legal persons for the foreign bribery offence. Indeed, the Turkish authorities defended the repeal on two main grounds: (i) the provision under the previous Penal Code was unconstitutional; and (ii) the repeal of the liability of legal persons has no negative impact on the implementation of the Convention because new “special security measures” for legal persons have been established in article 60 of the new Penal Code.

Constitutional Argument

174. Since in Phase 1 the Turkish authorities emphasised the constitutionality of the liability of legal persons under article 220 of the previous Penal Code, they needed to explain at the on-site visit why their position in this regard had changed. The Ministry of Justice explained that the Parliamentary Commission that drafted the new Penal Code formed the opinion that such liability was unconstitutional. The authorities from the Ministry of Justice also explained that they had informed the Parliamentary Commission that the new Penal Code would not be in line with Article 2 of the Convention.

⁹⁷ Article 220 stated: “If the bribery offences in this section are committed by authorised representatives of corporate bodies besides they are punished, the corporate body shall also be punished by a heavy fine from two to three times of the benefit derived from the crime”.

⁹⁸ In Phase 1 the Working Group identified certain weaknesses in the liability of legal persons under article 220 of the Penal Code for the foreign bribery offence, including the following: (i) the offence must be committed by an “authorised representative of the corporate body”; (ii) it was not clear whether it might be necessary to proceed against the natural perpetrator in order to proceed against the legal person; (iii) the provision did not appear to apply where a legal person provided a bribe on behalf of a related legal person such as a foreign subsidiary; (iv) it was not clear whether state-owned and state-owned controlled enterprises were covered by the provision; and (v) since the fine for legal persons was based on the “benefit derived” from bribing a foreign public official, it was unclear how such a benefit would have been quantified.

175. Following the on-site visit, the Ministry of Justice informed the examination team that in fact according to the minutes of the Parliamentary Commission and the General Assembly sessions concerning the enactment of the new Penal Code, there had been no specific debate on the impact of the repeal of the liability of legal persons for the foreign bribery offence on Turkey's obligations under the Convention. In the justification for the repeal of the liability of legal persons and the establishment of "special security measures" in article 60 of the Penal Code, the minutes of the sessions state that the new measures are in line with article 38 of the Constitution since only natural persons can be sentenced to criminal sanctions. They also state that legal persons can only be sentenced to "administrative fines", because there are differences between "judicial fines" and "administrative fines" regarding their purpose and results.

176. Pursuant to the information in the minutes of the Parliamentary Commission and the General Assembly sessions it seems clear that even if criminal liability is no longer considered available due to article 38 of the Constitution, administrative liability involving fine sanctions is still available. It is therefore not clear why this option was not chosen when the liability of legal persons for the foreign bribery offence was repealed, in particular given that various Turkish statutes provide for the liability of legal persons for various forms of offences, and indeed in some cases these statutes establish extremely heavy sanctions for legal persons.

177. In fact the Turkish authorities acknowledge that there are many examples of administrative sanctions for legal persons under Turkish laws. For instance, currently the Capital Markets Law establishes "administrative" fines of between Turkish New Lira (TRY) 11 836 (about EUR 6 900 or USD 9 950)⁹⁹ and TRY 59 182 (about EUR 34 700 or USD 49 600) for legal persons that commit offences related to the trading of capital market instruments.¹⁰⁰ The 2005 Code of Misdemeanours provides administrative fines and confiscation for legal persons where their bodies, representatives or any staff member acting within the framework of their activities commits a misdemeanour. Furthermore, the Law on the Protection of the Value of Turkish Currency provides for "heavy fines" for legal persons from TRY 2 000 (about EUR 1 160 or USD 1 650) and TRY 25 000 (about EUR 13 500 or USD 20 600) and these fines are adjusted every year to take into account inflation. If the offence involves the transfer out of or into Turkey without permission of valuables specified in Law 1567, offenders shall be subject to a heavy fine up to the market value of such valuables, or fifty percent thereof in the case of an attempt. In addition, the Law on the Regulation of Payments by Check and the Protection of the Bearer of the Check establishes the criminal liability of legal persons.

178. The Ministry of Justice points out that a Bill is currently before Parliament for the amendment of these kinds of sanctions, since they are "in contradiction of the new system". However, the lead examiners note that the Code of Misdemeanours and the new Penal Code were adopted contemporaneously in 2005, and thus it would appear that the "new system" continues to contemplate at least the administrative liability of legal persons.

(b) Adequacy of "Special Security Measures" for Legal Persons

179. In view of the repeal of the liability of legal persons for the bribery of foreign public officials, the Turkish authorities need to show, as required by Article 3.2 of the Convention, that legal persons are "subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for the bribery of foreign public officials". The position of the Turkish authorities is that article 60 of the new Penal Code, which establishes "special security measures" for legal persons, adequately compensates for the repeal of the liability of legal persons. Article 60 establishes the following two relevant measures:

⁹⁹ The currency conversions in this paragraph reflect the exchange rate on 22 October 2007.

¹⁰⁰ The fines for legal persons under the Capital Markets Law are imposed by the Board of Directors of the Association of the Capital Market Intermediary Institutions of Turkey.

(i) the revocation of a legal entity's operating license granted by a public institution, if the legal person misuses the permission conferred by such license and through the participation of the organs or representatives of the legal entity;¹⁰¹ and (ii) confiscation in relation to offences committed for the benefit of such entities¹⁰². Before even assessing the impact of the measures available under article 60, it is noted that the "special security measures" under article 60 of the Penal Code do not comply overall with Article 3.2 of the Convention, because they do not include monetary sanctions.

(i) *Revocation of Operating Licenses*

180. During the on-site visit, the lead examiners sought clarification regarding the impact of both these measures to determine whether they compensated for the repeal of the liability of legal persons. Regarding the revocation of a legal entity's operating license, the lead examiners were able to determine that in Turkey operating licenses are not required for all businesses. The Ministry of Justice indicates that such licenses are required under various laws, including the Law on Banks for establishing or opening bank branches, and pursuant to the Law on Licenses for Agricultural Products. The Department of Business Administration of the Technology University (TOBB) indicated that a license is also needed to set up an insurance company. Construction companies operating in foreign countries do not require a license, regardless of their size, and moreover it is the opinion of the representative of TOBB that the Turkish companies that are at the greatest risk for foreign bribery are those in the construction and textile sectors. Indeed the requirement of an operating license depends on the sector of activity, not the size of the company. The representative of TOBB also explained that it is not difficult to start up a new business in Turkey once a license has been revoked. Following the on-site visit, at the preliminary meeting before the examination in the Working Group, the Turkish authorities provided somewhat different information, stating that all Turkish companies doing business in Turkey and abroad are required to hold an operating license regardless of their sector of activity.

181. It appears that the revocation of a legal entity's operating license could only be applied in limited circumstances. According to article 60.1 of the Penal Code, this measure is applicable where the legal entity has "misused the permission conferred by such license". According to the Ministry of Justice, the articles of association of a company contain provisions on the purpose of the company as prescribed by law; thus if a company were to act in a way that is not in line with its stated purpose under its articles of association, it would have misused the permission conferred by its operating license. The lead examiners raised the point that bribing a foreign public official to obtain or retain business might appear consistent with the stated purpose of a company under its articles of association (*i.e.* to engage in a certain form of business). The Turkish authorities replied that a public institution cannot grant an operating license which will allow an entity to commit an offence.

(ii) *Confiscation*

182. Regarding the "special security measure" of confiscation in relation to offences committed for the benefit of legal entities, since this measure has not yet been applied, the lead examiners cannot assess its effectiveness. Moreover, this "special security measure" does not apply directly to legal persons, but only in relation to offences committed for their benefit. In other words, the natural person must have been convicted of an offence committed in favour of a legal person in order for it to apply. This does not meet

¹⁰¹ Article 60.1 of the Penal Code states: "Where there has been a conviction in relation to an intentional offence committed for the benefit of a legal entity, which is subject to civil law and operating under the license granted by a public institution, by misusing the permission conferred by such license and through the participation of the organs or representatives of the legal entity it shall cancel this license."

¹⁰² Article 60.2 of the Penal Code states: "The provision relating to confiscation shall also be applicable to civil legal entities in relation to offences committed for the benefit of such entities".

the standard under Article 2 of the Convention, which requires that legal persons be held directly liable for the foreign bribery offence, and Article 3.2, which requires that they be subject to monetary sanctions.

183. In addition, the lead examiners note that the general provisions on confiscation in the Criminal Code have been applied to domestic bribery cases by the Court of Cassation, but the Turkish authorities have not provided authority supporting their application to legal persons. (The application of these articles is discussed under 6(b) on Confiscation.)

(c) ***Procedural Considerations***

184. Another issue that the lead examiners sought to clarify at the on-site visit was whether it is possible to investigate legal persons in Turkey for the offence of bribing a foreign public official, given that they are not subject to liability for the offence. The Turkish National Police stated that despite the repeal of the liability of legal persons in the 2005 Penal Code, it should still be possible to investigate legal persons for bribery. They indicated that although there are no examples of such steps being taken since the new Penal Code came into force, there is no provision in the law that prohibits such actions. MASAK indicated that there is no provision under the law that authorises the investigation of legal persons, but felt that article 123 of the Criminal Procedure Code, which provides for the seizure of property that was used as the instrument of crime or for evidentiary purposes, could be applied to legal persons.

185. Following the on-site visit, the Ministry of Justice provided that investigative measures governed by the Criminal Procedure Code (CPC) “might” be applied to both natural and legal persons, and that pursuant to certain articles under the CPC, including article 123 on the seizure of property and article 127 on the authorisation for seizure, prosecutors and the police are “to some extent” competent to apply investigative measures to legal persons.

186. A further concern is whether the “special security measures” can be applied to legal persons without proceeding against or convicting a natural person. In view that there is not an offence for which the legal person can be indicted under the Penal Code, it does not seem possible to proceed against a legal person in isolation from a natural person. The Ministry of Justice confirmed at the on-site visit that in principle a conviction of the natural person is needed to be able to apply the “special security measures”, but that since these measures have not yet been applied, it is difficult to know for certain what the practice will be.

Commentary

The lead examiners are of the opinion that since repealing the liability of legal persons for the offence of bribing a foreign public official in 2005 with the enactment of the new Penal Code, Turkey ceased to be in compliance with Article 2 of the Convention. Moreover, the lead examiners believe that the “special security measures” for legal persons under the new Penal Code do not compensate for the repeal of the liability of legal persons, due to their limited scope and because they do not include monetary sanctions. The lead examiners therefore recommend that Turkey urgently establish the liability of legal persons for the offence of bribing a foreign public official.

4. The Offence of Money Laundering¹⁰³

(a) *Scope of the Offence of Money Laundering*

187. Article 7 of the Convention states that a Party “which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred.”

188. Article 282(1) of the Turkish Criminal Code describes the current elements of the offence. A person is guilty of a money laundering offence if he or she either transfers the proceeds of any predicate offence abroad, or subjects the proceeds of predicate offences to any transaction for the purposes of disguising their illicit source and disguises them so that they seem to be derived from legitimate sources¹⁰⁴.

189. Article 282 of the Turkish Criminal Code makes no reference to laundering proceeds of offences that are committed outside Turkey. During the on-site visit, the Turkish authorities have stated that in cases where the predicate offence is committed in a foreign country, Turkey has jurisdiction to prosecute the laundering offence committed in Turkey. Thus committing the laundering offence in Turkey is sufficient to initiate proceedings. Dual criminality concerning the predicate offence is however required. Turkey has also stated that Article 282 of the Turkish Criminal Code covers both the acts of laundering one’s own proceeds (“self-laundering”) as well as a third person’s proceeds. While proving the money laundering offence requires that the proceeds are derived from a predicate offence, it is not necessary that a person be convicted of the predicate offence in order to secure a conviction for money laundering. Proceedings for the predicate offence and the money laundering offence can be carried out separately.

(b) *Enforcement of the Offence of Money Laundering*¹⁰⁵

190. The lead examiners are concerned about the low number of files that have been referred to the public prosecutor since the enactment of the Law 4208 in 1996¹⁰⁶, a concern which is shared by the

¹⁰³ In September 2006, the Turkish Anti-money Laundering legislation was evaluated by the OECD Financial Action Task Force (FATF). The Third Mutual Evaluation/Detailed Assessment Report on Turkey was approved by the FATF in February 2007 and is available at: <http://www.fatf-gafi.org/dataoecd/14/7/38341173.pdf>

¹⁰⁴ Article 282 of the TCC reads as follows:

- (1) Whoever transfers abroad the proceeds derived from an offence requiring a minimum of one year or more imprisonment or subjects the proceeds to any transaction for the purposes of disguising illicit sources of them and misleading as if they were derived from legitimate sources, is sentenced to imprisonment from 2 years up to 5 years and to judicial fine up to twenty thousand days.
- (2) In case this offence is committed by public servants or particular professionals, during the execution of their professions, the sentence to imprisonment shall be increased by half of it.
- (3) In case this offence is committed in the context of the activities of a criminal organization designed for the purpose of committing offences, the sentence shall be increased by one fold of it.
- (4) With regard to legal persons involved in this offence, security measures pertinent to them are taken.
- (5) Before initiating the prosecution procedure, whoever enables the competent authorities to seize the proceeds subject of the offence or facilitates seizing the proceeds by informing competent authorities about where the proceeds are concealed shall not be sentenced under this Article.

¹⁰⁵ Also see discussion on suspicious transaction reporting under B.8.(c)

Turkish Industrialists and Businessmen's Association (TUSIAD). In particular, MASAK made 269 referrals related to the money laundering offence to public prosecutors between 17 February 1997 and 31 December 2006, 209 of which resulted in the opening of cases in the court of first instance. The lead examiners also note that of the 209 cases opened in the court of first instance, 48 prosecutions resulted, with 43 acquittals and only 5 convictions. One hundred and sixty-one of these cases continue in the court of first instance. Forty-one of the cases have been appealed, with six ratifications of acquittals and 35 appeals continuing.¹⁰⁷ The Turkish authorities explain that the low number of investigations and prosecutions is due to the complex and organised nature of money laundering, including its frequent international dimension, with the result that investigations and proceedings take a long time.

(c) Sanctions for Money Laundering

191. Pursuant to Article 282(1) of the Turkish Criminal Code a person convicted of an offence of money laundering is liable to imprisonment from 2 to 5 years and a judicial fine of between TRY 100 (about EUR 58 or USD 83) and TRY 2 000 000 (about EUR 1.16 million or USD 1.65 million).¹⁰⁸ Limited penalties are also available for legal persons under Article 282(4) of the Turkish Criminal Code and the sanctions do not include fines. Criminal courts may impose security measures against legal persons in cases where the money laundering offence is committed for the benefit of a legal person with the participation of its management or through its representatives abusing the power given to them¹⁰⁹. Article 282(5) of the Turkish Criminal Code also provides for a defence of “effective regret” in cases where the offender “before initiating the prosecution procedure” enables the competent authorities to seize the proceeds subject of the offence or facilitates seizing the proceeds by informing competent authorities about where the proceeds are concealed¹¹⁰. Article 13 of Law 5549/06 also stipulates administrative fines for violations of reporting obligations for natural and legal persons¹¹¹.

Commentary

The lead examiners note that the number of investigations and prosecutions of money laundering cases in Turkey is relatively low, and that Turkey faces the same challenges in investigating and prosecuting such cases as other Parties to the Convention. The lead examiners therefore recommend that Turkey analyse the reasons for the low number of investigations and prosecutions for the offence of money laundering, with a view to increasing the effectiveness of the offence of money laundering in connection with foreign bribery cases. The lead examiners also recommend that the Working Group monitor the sanctions for money laundering in Turkey as cases develop.

¹⁰⁶ The RRIL regulates procedures on the reporting by MASAK to public prosecutors. In particular, Article 26 of RRIL states that MASAK provides the Public Prosecutor's Office with “all information and documents concerning the commission of money laundering offence”.

¹⁰⁷ MASAK also made 69 referrals to Revenue Administration related to tax offences between 2003 and 2006.

¹⁰⁸ The currency conversions in this paragraph reflect the exchange rate on 22 October 2007.

¹⁰⁹ Articles 60 and 282(4) of the Turkish Criminal Code provide for cancellation of the license of a legal person and confiscation.

¹¹⁰ The “effective remorse” defence is further dealt with under Section C.2. c(ii) of this report.

¹¹¹ See also Section B.8.d of this report.

5. The Offence of False Accounting

(a) Scope of the False Accounting Offence

192. The Turkish authorities refer to the rules and authority of the Tax Procedure Code to support the prohibition of off-the-books or improperly identified transactions. Failure to maintain registered books within a certain time frame was subject to a fine in accordance with articles 352 (Degrees of Irregularity)¹¹² and 353 (Special Irregularities-coercive fines)¹¹³ of the Tax Procedure Code. If the books are incorrect or misleading, if they are counterfeited, hidden or falsified, there is the potential for imprisonment pursuant to article 359 of the Tax Procedure Code¹¹⁴. A false document is defined as a document certifying an action or operation which does not exist or is misleading. The Tax Procedure Code also provides for fines for violations of the accounting standards, the uniform account plan, and the rules and procedures concerning the preparation of financial tables. Pursuant to the foregoing, fines are available for producing unrecorded accounts, making unrecorded transactions, recording non-existent expenses, entering incorrect liabilities, or using false documents. Furthermore, Banking Law Nr. 5411 provides for imprisonment from one to three years and a judicial fine for failure to comply with bookkeeping obligations specified under Article 42 of the Banking Law¹¹⁵ and non-recorded or non-accounted transactions¹¹⁶.

(b) Sanctions for False Accounting

(i) Criminal Sanctions

193. Turkey has provided the lead examiners with statistical information relating to prosecutions for Article 359 of the Tax Procedure Code. In particular, of the 6 221 prosecutions in 2005, 4 156 (45%) resulted in convictions, 1 493 (16,4%) resulted in acquittals, 1 224 (13,4%) were discontinued and 2 242 (24,6%) resulted in other judgments¹¹⁷. The data on this point is not entirely clear because Turkey was unable to provide complete statistics, including the size of fines imposed under Article 359 of the Tax Code, and the number of cases that concern activities described in Article 8(1) of the Convention. In the absence of practice and more detailed statistics, the lead examiners are unable to conclude whether the sanctions for false accounting in Turkey are sufficient.

¹¹² See Annex for Art 352 of the Tax Procedure Code.

¹¹³ See Annex for Art 353 of the Tax Procedure Code.

¹¹⁴ Article 359 of the Tax Procedure Code n. 213 reads as follows:

“(1) Those who make accounting deceits, open accounts in the name of unreal persons or in the name of a person who has nothing relevant with the specific transaction, who erode the tax base by keeping their record in other books, documents or any other record medium, who involved in omissions of documents or who issues or uses false documents within the books and records obliged to be kept or sight by current tax legislation, shall be liable to six months to three years of imprisonment.

(2) Those who involved in the omissions and falsification of the books, records and documents obliged to be kept or sight by current tax legislation or who replace the leafs of the book or who issues false records and documents without replacing them, or who print these documents without the authorization of Ministry of Finance or who use these fraudulent documents, shall be liable to eight months to three years of imprisonment with hard labour.”

¹¹⁵ Banking Law Nr. 5411, Article 154.

¹¹⁶ Banking Law Nr. 5411, Article 156.

¹¹⁷ In 2006, tax inspectors made 3,409 referrals to the public prosecutors relating to offences under Article 359 of the Tax Procedure Code. See Supplemental Questionnaire, page 29.

(ii) *Administrative Sanctions*

194. As of the end of 2006, TÜRMOB 27 professionals were disqualified and 76 professional temporarily dissociated from their positions as the result of the administrative sanctions imposed by TÜRMOB under Article 50 of the Independent Accountancy Law (N. 3568/89)¹¹⁸.

Commentary

The lead examiners recommend that Turkey (1) ensure that the penalties for false accounting in practice are effective, proportionate and dissuasive and (2) compile more detailed statistics on the criminal, civil and administrative sanctions that are imposed for false accounting, particularly those under Article 359 of the Tax Procedure Code. They also recommend that the Working Group monitor whether the sanctions for false accounting in Turkey are effective, proportionate and dissuasive.

6. Sanctions for Foreign Bribery

(a) *Criminal Sanctions*

195. According to Article 252 of the Turkish Criminal Code a public official (domestic or foreign) who accepts a bribe shall be sentenced to imprisonment for a term of four to twelve years, and the person furnishing the bribe shall be sentenced as if he or she were a public official. Article 252 of the Turkish Criminal Code provides for no pecuniary sanctions. Offenders of bribery are also sanctioned in accordance with the provisions in Article 53 of the Turkish Criminal Code regulating deprivation of exercising certain rights¹¹⁹. Under the previous Criminal Code, fine sanctions were only applicable to “simple” bribery and imprisonment only to “qualified” bribery.

196. As already mentioned, Turkey has not had any cases of bribery of foreign public officials as of the time of this review, and is therefore not able to provide examples of sentences handed down by the courts in this regard. Examples of sentences handed down in domestic bribery cases refer to bribery offences under Articles 211-219 of the former Turkish Criminal Code: from 2003 to 2005 there have been 2 174 prosecutions and during the same period Turkish Courts decisions resulted in 1 293 acquittals and 1 874 convictions¹²⁰. However, Turkey was unable to provide complete statistics (for instance, data does not differentiate between active and passive bribery offences), including the size of fines imposed under Articles 211-219 of the former Turkish Criminal Code. In the absence of practice and more detailed statistics, the lead examiners are unable to conclude whether the sanctions for domestic bribery offences are effective, proportionate and dissuasive.

(b) *Confiscation*

197. A potentially stronger deterrent to the bribery of foreign public officials is the availability of confiscation under various legal provisions. Confiscation is applicable to the bribery offences and is available as a security measure upon conviction pursuant to Articles 54 and 55 of the Turkish Criminal

¹¹⁸ Supplemental Questionnaire, page 29.

¹¹⁹ See Annex for Article 53 of the Criminal Code.

¹²⁰ Appendix 13 of Annex b of the Supplemental Questionnaire.

Code. Furthermore, the provisions of confiscation under the Turkish Criminal Code apply to offences committed in favour of legal persons¹²¹.

198. Article 54 of the Turkish Criminal Code provides for confiscation of property used in or allocated for commission of a deliberate offence or derived from a crime. In addition, goods whose production, disposition, usage, transportation, purchase and sale constitute a crime are to be confiscated. Goods prepared for use in commission of an offence may be confiscated where there is danger to public security, public health or public morality. If these goods have been removed, transferred or consumed, or if confiscation of them is for some other reason impossible, an equivalent value of the goods will be confiscated. However, if the Court considers that the confiscation would be disproportionate to the offence committed, the confiscation may not be ordered. With regard to goods belonging to joint owners, only the share of the person participating in the crime will be subject to confiscation. Further, when a partial confiscation of any Article is required, confiscation will occur as long as this value can be separated without harm to the whole of the good involved¹²².

199. Article 55 of the Turkish Criminal Code states that the material benefits derived from committing a crime, constituting the subject of the crime or provided for committing the crime, along with the economic proceeds obtained by the holding or conversion of them, will be confiscated. The Article states that confiscation of the economic proceeds obtained directly or indirectly through committing crime is possible. In the cases where materials or earnings are not confiscated, the corresponding value is subject to confiscation. Thus, in respect of the economic proceeds constituting the subject of confiscation, all potential material benefits and values are covered¹²³.

200. Articles 116 to 134 of the Criminal Procedure Code provide for searches to be conducted to collect criminal evidence and seize assets which are material evidence, or which are the subject of confiscation. Law enforcement agencies can seize assets by means of judicial decision or decision of a public prosecutor in cases where it is necessary to avoid delay or decisions of the chief of the law enforcement agency in cases where the public prosecutor is not contactable.

Commentary

The lead examiners recommend that the Turkey ensure sanctions for foreign bribery are effective, proportionate and dissuasive in practice. In particular, they recommend that Turkey (1) raise awareness among prosecutors of the importance of forfeiture and confiscation, and encourage prosecutors to seek these sanctions in corruption cases whenever possible, (2) ensure that the provisions concerning confiscation are applied when appropriate, and (3) maintain more detailed statistics on sanctions in domestic and foreign bribery cases. The lead examiners also recommend that the Working Group monitor the application of sanctions in foreign bribery cases as cases develop.

¹²¹ Criminal Code, Article 60/2. See also discussion on “special security measures” for legal persons under C.3.b(ii).

¹²² Article 54 (1) of the Criminal Code also states that the confiscation does not apply to property used in, or reserved for use in, commission of a serious offence if the property belongs to *bona fide* third parties.

¹²³ In its 2007 evaluation of Turkey, the Financial Action Task Force (FATF) has reported that the effectiveness of Turkey’s confiscation system to date is questionable as the number of confiscation proceedings is very limited (only 3), and no final confiscation action has occurred up to now. Financial Action Task Force, Third Mutual Evaluation Report, Anti-money Laundering and Combating The Financing of Terrorism, Turkey, 23 February 2007, page 50.

(c) *Administrative Sanctions*

201. Article 3(4) of the Convention requires parties to “consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official”. Paragraph 24 of the Commentary indicates that “among the civil or administrative sanctions, other than non-criminal fines, which might be imposed ...for an act of bribery of a foreign public official are: exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from participation in public procurement ...” The sanctions that can be imposed by courts have been addressed above; this section examines the approach taken by agencies involved in export credits, public procurement, ODA, and privatisation.

202. Concerning the exclusion of legal persons from an entitlement to public subsidies, licenses, government procurement contracts and other public advantages, the Turkish officials involved in the provision of official export credit support, public procurement contracting, aid-funded procurement, and privatisation, who were present at the on-site visit, were unaware of how the repeal of liability of legal persons for the foreign bribery offence would impact efforts to deny eligibility for publicly-funded contracts or support to companies involved in foreign bribery.

(i) *Official Export Credit Support*

203. Türk Eximbank, Turkey’s official export credit support agency, has provisions in place to deny an application for support or cease ongoing support if it has a “strong suspicion” that bribery was involved in the transaction. In the case of insurance, Türk Eximbank can unilaterally deem the insurance agreement null and void; concerning loans, Türk Eximbank can defer or suspend the loan disbursements or cancel the unutilised loan balance. In addition, upon convictions for foreign bribery, there are many actions available to Türk Eximbank to redeem the amount of support provided. To date, there have been no cases of denial or cessation of support on the grounds of involvement in foreign bribery. (See also B.3. Officially supported export credits)

(ii) *Public Procurement*

204. Public procurement in Turkey is primarily regulated by the Public Procurement Law 4734 (PPL). In accordance with the PPL, the Public Procurement Authority was established as an administratively and financially autonomous entity at the central governmental level to regulate and monitor whether public procurements are conducted in accordance with relevant laws through an administrative review mechanism.

205. The PPL provides for the exclusion of tenderers in certain circumstances. It excludes any tenderer who has been convicted of “an offence concerning professional conduct by a judgement of a competent court within the five years preceding the date of the procurement proceedings” [Article 10, paragraph (e)]. It also excludes tenderers convicted of organised crime from participation in any tender. [Article 11, paragraph (a)].

206. Representatives of Turkey’s Public Procurement Authority stated that in addition to technical and financial capacity criteria, they also have to consider whether an organised crime listed in the PPL has been committed or the tenderer has engaged in certain prohibited acts (*i.e.* rigging or attempting to rig a competitive bidding process through various means including bribery). They did not indicate whether foreign bribery would constitute grounds for exclusion for a public procurement tender where it is not committed in relation to bid rigging.

207. According to the Public Procurement Authority (PPA), the PPL requires public prosecutors to inform the PPA of court decisions that exclude parties from participating in the public procurement tendering process, in order that this information is recorded by the PPA and also provided to relevant professional bodies. In addition, a list of all excluded companies is maintained and updated daily by the Department of Statistics and Monitoring Records of the PPA. Officials representing the PPA confirmed following the on-site visit that it is compulsory under the law to verify whether a potential contractor has been banned from participating in government tenders.

(iii) *Official Development Assistance*

208. The examination team was not provided with any information about laws, regulations, or practices that provide for the exclusion of legal persons or individuals convicted of foreign bribery from participating in official development assistance (ODA)-funded procurement contracting. (See also B.4. Official development assistance).

(iv) *Privatisation*

209. The Privatisation Administration, established in 1984, is the sole body in Turkey responsible for the privatisation of state-owned enterprises, governed by Law 4046. The Privatisation High Council, the final decision-making body concerning privatisation, is composed of four ministers (Treasury, Finance, Transportation, and Industry and Technology) and is chaired by the Prime Minister. Since Turkey began the privatisation process in 1984, a total of 244 companies have been submitted to the privatisation portfolio; 229 of these companies have been totally privatised.

210. The Turkish authorities indicated that tenderers' qualifications are evaluated in terms of technical and financial aspects. Further investigation can be carried out by the Privatisation Administration in conjunction with the Treasury, Turkish Competition Authority, Turkish Capital Market Board and other regulatory bodies, depending on the sector of operation of the company being privatised (e.g. the Telecommunications Regulatory Body, Energy Marketing Regulatory Board, Tobacco Products and Alcoholic Beverages Board, Turkish Sugar Authority and Banking Regulatory and Supervisory Board).

211. Representatives of the Privatisation Administration emphasised that only "sound" bidders would be considered for privatisation tenders. Following the on-site visit, they indicated that several investigations of bidders are carried out at the pre-qualification stage. These include financial audits, verification of bidders' debt situation including any unpaid taxes, and security clearances. With respect to possible past involvement in the bribery of foreign public officials, the Privatisation Administration stated that information about past financial activities, including foreign bribery, is obtained through the Turkish Financial Intelligence Unit (MASAK). However, there is no indication that the Privatisation Administration systematically requires bidders to disclose whether they have been convicted of foreign bribery, or that a mechanism has been established to obtain such information from the courts. In addition, it has not been clarified whether a foreign bribery conviction would constitute a basis for exclusion from the bidding process.

Commentary

The lead examiners recommend that Turkish authorities take appropriate measures to provide for exclusion of legal and natural persons with involvement in foreign bribery from eligibility to participate in privatisations and public procurement, and exclude such persons from benefiting from ODA-funded contracts. The lead examiners note the mechanisms in place to exclude individuals and companies with past involvement in foreign bribery from official

export credits and recommend following up on the effectiveness of these mechanisms as practical experience is gained.

D. RECOMMENDATIONS OF THE WORKING GROUP AND FOLLOW-UP

1. The Working Group on Bribery appreciates the preparations made by the Turkish authorities for the Phase 2 on-site visit in May 2007, and the Turkish authorities' dedicated efforts to provide feedback and follow-up materials up to the date of the examination in the Working Group. The Working Group also appreciates the openness and professionalism of the Turkish authorities throughout the examination process in responding to questions from the lead examiners, and presenting the Turkish government's position regarding the implementation of the Convention.
2. However, the Working Group recommends a Phase 2bis examination of Turkey within one year of adoption of the Turkish Phase 2 Report for the following main reasons:
 - a. Inadequate efforts of the Turkish authorities to secure the attendance of private sector and civil society representatives, depriving the Working Group of the perspectives that broad private sector and civil society participation would have afforded.
 - b. Serious inadequacy of public awareness-raising activities on the foreign bribery offence by the Turkish government, which likely explains the lack of awareness and engagement on the part of the Turkish private sector concerning foreign bribery issues.
 - c. Overall lack of priority in addressing the bribery of foreign public officials by Turkish companies, which, based on discussions at the on-site visit, appears to result from the general attitude articulated by some participants at the on-site visit that bribery in neighbouring countries where bribe solicitation seems to be common has to be accepted.
 - d. Repeal of the liability of legal persons for the foreign bribery offence in 2005 with the enactment of the new Criminal Code, and its replacement with "special security measures" that are limited in scope and do not include monetary sanctions.
 - e. The early dismissal of a foreign bribery investigation regarding allegations against a Turkish holding company, on grounds that raise substantive concerns in the Working Group.
 - f. Two-year delay in responding to the allegations of illicit payments to the Iraqi government against 139 Turkish companies in the 2005 Final Report of the Independent Inquiry Committee into the United Nations Oil-for-Food Programme.
3. The Working Group recommends a Phase 2bis on-site visit to give the Turkish authorities an opportunity to demonstrate progress on the above-mentioned issues. The Phase 2bis visit should include panels with a broad spectrum of relevant private sector and civil society representatives. Regarding substance, the visit should specifically focus on progress by the Turkish authorities in the following three areas: (i) raising public awareness of the Convention and the foreign bribery offence; (ii) the investigation and prosecution of foreign bribery cases, including an assessment of the reasons for terminating the investigation of one foreign bribery case that took place in a foreign country and the two-year delay in acting on the allegations against Turkish companies in the Independent Inquiry Committee's Final Report on the UN Oil-for-Food Programme; and (iii) the re-establishment of the liability of legal persons in compliance with Article 2 of the Convention.

4. In addition, based on the findings of the Working Group regarding the application of the Convention and the Revised Recommendation by Turkey, the Working Group (i) makes further recommendations to Turkey under Part 1, and (ii) will follow-up the issues under Part 2 where there has been sufficient practice in Turkey.

1. Recommendations

Recommendations for ensuring effective prevention and detection of the bribery of foreign public officials

5. With respect to general awareness raising and training activities to promote the effective implementation of the Convention and the 1997 Revised Recommendation, the Working Group recommends that Turkey:

- a. Urgently establish and implement awareness-raising programmes for (i) public officials, particularly those in contact with Turkish companies operating in foreign markets, including staff involved in official development assistance (ODA)-funded procurement contracting; and (ii) companies, including SMEs, that are active in sectors or geographic locations prone to corruption [Revised Recommendation, paragraphs I, II v) and VI iii)] ;
- b. Promptly raise awareness among its foreign representations, including embassy personnel, and ensure that foreign representations disseminate information to Turkish companies and individuals regarding the risks of foreign bribery [Revised Recommendation, paragraph I]; and
- c. Make further efforts to raise awareness of the non-tax deductibility of bribes to foreign public officials among tax officials, tax professionals and the private sector, as well as provide training to tax officials on the detection of such payments [Convention, Article 13; Revised Recommendation, paragraph IV; and 1996 Recommendation].

6. With respect to the general detection of foreign bribery and related offences, the Working Group recommends that Turkey:

- a. Issue specific instructions to its foreign representations, including embassy personnel, on the steps to take when credible allegations arise that a Turkish company or individual has bribed or taken steps to bribe a foreign public official, including the reporting of such allegations to the competent authorities in Turkey [Revised Recommendation, paragraph I];
- b. Provide training for staff involved in ODA-funded procurement contracting on detecting and reporting suspicions of foreign bribery [Revised Recommendation, paragraphs I, II v) and VI iii)];
- c. Strengthen measures to protect whistleblowers in the public and private sectors from retaliation and retribution by their employers [Revised Recommendation, paragraph I]; and
- d. Adopt as soon as possible the Draft Witness Protection Act currently before Parliament [Revised Recommendation, paragraph I].

7. Regarding the prevention of foreign bribery in relation to ODA-funded procurement contracting, the Working Group recommends that Turkey: (i) systematically include anti-corruption clauses in ODA-funded contracts; and (ii) consider establishing a mechanism for excluding individuals and companies

previously involved in foreign bribery from participating in such contracting opportunities [Revised Recommendation, paragraphs I, II v) and VI iii)].

8. With respect to the prevention and detection of foreign bribery through the tax system, the Working Group recommends that Turkey: (i) introduce an express denial of deductibility of bribe payments in the tax law or through another appropriate mechanism that is binding and publicly available; (ii) provide training to tax officials on the detection of bribe payments disguised as legitimate allowable expenses; and (iii) continue to include in existing and future tax treaties the Commentary to article 26(2) of the OECD Model Tax Convention, allowing for the reciprocal sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities in relation to corruption offences [Convention, Article 13; Revised Recommendation, paragraph IV; and 1996 Recommendation].

9. Concerning the prevention and detection of foreign bribery through systems for accounting and auditing and internal controls, the Working Group recommends that Turkey:

- a. Strengthen efforts to encourage companies including SMEs operating in foreign markets to adopt internal company controls, including codes of conduct and where appropriate ethics committees, specifically addressing foreign bribery [Revised Recommendation, paragraph V C]; and
- b. Broaden the scope of private companies subject to an external audit to include certain non-listed companies that operate in foreign markets, and broaden the scope of public entities subject to a state audit to include state-owned and controlled companies not subject to an external audit, and agencies involved in official export credit support, public procurement, privatisation, and ODA-funded procurement contracting [Revised Recommendation, paragraphs I and V B].

10. Regarding the prevention and detection of foreign bribery through the anti-money laundering system, the Working Group recommends that Turkey [Convention, Article 7]:

- a. Promptly issue the regulation submitted to the Prime Minister's Office for Issuance of a Council of Ministers' Decree establishing suspicious transactions reporting (STR) obligations for accountants and lawyers;
- b. Promptly issue the regulation drafted by MASAK requiring the provision of feedback to parties that make STRs, and provide improved guidance to reporting parties in the form of up-to-date money laundering typologies where the predicated offence is the bribery of foreign public officials;
- c. Assess the reasons for the low number of STRs made to MASAK.

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery and related offences

11. Concerning the investigation and prosecution of foreign bribery offences, the Working Group recommends that Turkey [Convention, Article 5] intensify and ensure regular training on foreign bribery for the investigative authorities, prosecutors and members of the judiciary.

12. Concerning the requirement under article 13(2) of the Criminal Code that the Minister of Justice request the application of "universal jurisdiction" in the specific case where bribery of a foreign public official is committed by a Turkish national or company abroad, the Working Group recommends that Turkey either: (i) eliminate this requirement; or (ii) ensure that the Minister's discretion for requesting such application shall not be influenced by political interests including "the national economic interest, the

political effect upon relations with another State or the identity of the natural or legal persons involved” [Convention, Articles 4.2 and 5].

13. Regarding the implementation of the offence of bribing a foreign public official under article 252.5 of the new Turkish Criminal Code, the Working Group recommends that Turkey repeal the application of “effective remorse”, which has the effect of releasing an offender from liability for a penalty, to the foreign bribery offence [Convention, Article 1].

14. With respect to Turkey’s repeal of the liability of legal persons for the foreign bribery offence, the Working Group recommends that Turkey urgently re-establish such liability in compliance with Article 2 of the Convention [Convention, Articles 2 and 3.2].

15. Regarding sanctions for the foreign bribery offence, the Working Group recommends that Turkey:

- a. Encourage prosecutors to seek confiscation upon conviction in foreign bribery cases whenever appropriate [Convention, Article 3.3];
- b. Maintain more detailed statistics on sanctions applied in domestic and foreign bribery cases [Convention, Article 3]; and
- c. Consider taking appropriate measures to exclude companies and natural persons convicted of foreign bribery from participating in privatisations, public procurement and ODA-funded public procurement contracting [Convention, Article 3.4; Revised Recommendation, paragraph II v)].

16. Regarding fraudulent accounting offences, the Working Group recommends that Turkey: (i) ensure that the penalties imposed for such offences are effective, proportionate and dissuasive; and (ii) compile more detailed statistics on the sanctions imposed for such offences, particularly those under article 359 of the Tax Procedure Code [Convention, Article 8; Revised Recommendation, paragraph V A iii)].

2. Follow-Up by the Working Group

17. The Working Group will follow-up the issues below, as practice develops:

- a. Procedures for combating foreign bribery by Türk Eximbank, including mechanisms for excluding individuals and companies with prior involvement in foreign bribery from participating in official export credit support contracting [Revised Recommendation, paragraphs I and II v)].
- b. The investigation of foreign bribery cases, including with regard to: (i) the sharing of competence between the Department of Anti-Smuggling and Organised Crime and the Public Order Department; and (ii) the absence of police authority to undertake an investigation except upon request of the public prosecutors;
- c. The number of investigations and prosecutions of the offence of money laundering;
- d. Developments regarding whether the following situations are effectively covered by the foreign bribery offence:

- i. Bribery to obtain an abuse of discretion, and bribery to obtain an act or omission that goes beyond the foreign public official's authority;
 - ii. "Simplified" bribery (i.e. bribery to ensure the performance or non-performance of a task);
 - iii. Bribery where an agreement is reached between the briber and the foreign public official to transmit the bribe directly to a third party, such as a family member, political party or charity; and
 - iv. The person bribed exercises a public function for a foreign country or a public international organisation, but has not been appointed or elected or is not holding a legislative, executive or judicial office (e.g. an employee involved in awarding public procurement contracts); and
- e. Sanctions imposed in foreign bribery and money laundering cases [Convention, Articles 3 and 7].

ANNEX

EXCERPTS FROM RELEVANT LEGISLATION

Bribery

Article 252 of the Criminal Code

- (1) Any public officer who receives a bribe shall be sentenced to a penalty of imprisonment for a term of four years to twelve years. The person furnishing the bribe shall be sentenced as if he were a public officer. Where the parties agree upon a bribe, they shall be sentenced as if the offence were completed.
- (2) Where a person who receives a bribe, or agrees to such, is a person in a judicial capacity, an arbitrator, an expert witness, a public notary or a professional financial auditor, the penalty to be imposed according to section one shall be increased by between one third and one half.
- (3) A bribe is defined as the securing of a benefit by a public officer by his agreeing with another to perform, or not to perform, a task in breach of the requirements of his duty.
- (4) Section one shall also apply where, through a breach of duty, a benefit has been conferred upon a person acting on behalf of a professional institution (presumed in law, to be public institution), a company (incorporated by the aforementioned professional institution, or a public institution or a public corporations or a foundation operating within the framework of such institutions or corporation), an association acting in the public interest, a co-operative, or a public joint stock corporation, in order to establish a legal relationship with such entities or in order to continue an existing legal relationship with such.
- (5) The promise, offering or giving, of benefits, directly or indirectly, to the officials, whether appointed or elected, of a public agency or public institution charged with a legislative, executive or judicial function in a foreign country or of an international organization established by states, governments or other public international organizations, regardless of its structure and functions, or to those exercising an international function at the same country, in international business transactions for the purpose of ensuring the performance or non-performance of a task or obtaining or maintaining an undue benefit is also deemed as bribery.

Effective Remorse

Article 254 of the Criminal Code

- (1) Where, prior to the commencement of an investigation, the person in receipt of the bribe presents the consideration of such, in its original state, to the authorities, no penalty shall be imposed for the offence of bribery. Where, prior to the commencement of an investigation, a public officer who, after having agreed to receive a bribe, informs the authorities of such, no penalty shall be imposed.

- (2) Where, prior to the commencement of an investigation, a person who offered and gave a bribe to a public officer informs the authorities responsible for investigation of such, no penalty shall be imposed and the bribe he gave to the public officer shall taken from the public officer and handed back to him.
- (3) Where, prior to any investigation, any other person who participates in the offence of bribery demonstrates remorse by informing the authorities responsible for investigation of such, no penalty shall be imposed upon such person.

Laundering of Assets Acquired from an Offence

Article 282 of the Criminal Code

- (1) Where a person conducts any act in relation to an asset, which has been acquired as a result of an offence which carries a minimum penalty of one year imprisonment, in order to transfer such asset abroad or to give the impression that such asset has been legitimately acquired and conceal the illegitimate source of such, shall be subject to a penalty of imprisonment for a term of two to five years and a judicial fine of up to twenty thousand days.
- (2) Where this offence is committed by a public officer or professional person in the course of his duty then the penalty to be imposed shall be increased one half.
- (3) Where this offence is conducted in the course of the activities of an organization established for the purpose of committing an offence, the penalty to be imposed shall be doubled.
- (4) Where a legal entity is involved in the commission of this offence it shall be subject to security measures.
- (5) In relation to the offences defined in this article, no penalty shall be imposed upon a person who directly enables the securing of financial assets, or who facilitates the securing of such assets, by informing the relevant authorities of the location of such before the commencement of a prosecution.

Territorial Jurisdiction

Article 8 of the Criminal Code

- (1) Turkish law shall apply to all criminal offences committed in Turkey. Where a criminal act is partially, or fully, committed in Turkey, or the result of a criminal act occurs in Turkey the offence shall be presumed to have been committed in Turkey.
- (2) If the criminal offence is committed:
 - a) within Turkish territory, airspace or in Turkish territorial waters;
 - b) on the open sea or in the space extending directly above these waters and in, or by using, Turkish sea and air vessels;
 - c) in, or by using, Turkish military sea or air vehicles;
 - d) on or against a fixed platforms erected on the continental shelf or in the economic zone of Turkey then this offence is presumed to have been committed in Turkey.

Offences Committed During the Performance of a Duty

Article 10 of the Criminal Code

- (1) Any person who is employed as a public officer or is charged with a particular duty by the Turkish State and who, in the course of that employment or duty, commits a criminal offence shall be tried in Turkey, despite having been convicted in a foreign country in respect of his acts.

Offences Committed by Citizens

Article 11 of the Criminal Code

- (1) If a Turkish citizen commits an offence in a foreign country that would amount to an offence under Turkish law and that offence is subject to a penalty of imprisonment where the minimum limit is greater than one year, and he is present in Turkey, and upon satisfying the conditions that he has not been convicted for the same offence in a foreign country and a prosecution is possible in Turkey, he shall be subject to a penalty under Turkish law, except in regard as to the offences defined in Article 13.
- (2) Where the aforementioned offence is subject to a penalty of imprisonment, the minimum limit of which is less than one year, then criminal proceedings shall only be initiated upon the making of a complaint by a victim or a foreign government. In such a case the complaint must be made within six months of the date the citizen entered Turkey.

Offences Committed by Non-Citizens

Article 12 of the Criminal Code

- (1) Where a non-citizen commits an offence (other than one defined in Article 13), to the detriment of Turkey, in a foreign country, that would amount to an offence under Turkish law and that offence is subject to a penalty of imprisonment where the minimum limit is greater than 1 year, and he is present in Turkey, he shall be subject to penalty under Turkish law. Criminal proceedings shall only be brought upon request by the Minister of Justice.
- (2) Where the aforementioned offence is committed to the detriment of a Turkish citizen or to the detriment of a legal personality established under Turkish civil law and the offender is present in Turkey and there has been no conviction in a foreign country for the same offence then, upon the making of a complaint by the victim, he shall be subject to penalty under Turkish law.
- (3) If the victim is a non-citizen the offender shall be subject to criminal proceedings, upon the request of the Minister of Justice, provided the following conditions are fulfilled:
 - a) the offence is subject to a penalty of imprisonment under Turkish law where the minimum limit of imprisonment is not less than 3 years; and
 - b) there is no extradition agreement; or the government of the country in which the crime has been committed, or the State of which the offender is a national, has refused to grant extradition.
- (4) In relation to offences to which section one is applicable, if a non-citizen is convicted or acquitted in a foreign Court or has any criminal proceedings or penalty against him stayed or set aside respectively by such Court or the offence becomes one which cannot be the subject of a prosecution

in a foreign Court then, upon the request of the Minister of Justice, criminal proceedings shall be brought in Turkey.

Article 13 of the Criminal Code

- (1) Turkish law shall apply to the following offences committed in a foreign country whether or not committed by a citizen or non-citizen of Turkey:
 - a) [...]
 - b) Bribery (Article 252); and
- (2) Except for offences defined in parts 3, 5, 6 and 7 of Chapter IV, Volume II, conducting criminal proceedings in Turkey for crimes within the scope of section one shall be subject to a request of the Ministry of Justice.
- (3) Even where a conviction or acquittal pursuant to the offences listed in section one subsections (a) and (b) have occurred in a foreign country, criminal proceedings in Turkey shall be conducted upon the request of the Ministry of Justice.

Article 53 of the Criminal Code

- (1) Where a person is sentenced to a penalty of imprisonment for an intentional offence the legal consequence of such shall be his prohibition from:
 - a) becoming a member of the Turkish Grand National Assembly or undertaking employment as, or in the service of, an appointed or elected public officer (permanently, temporarily or for a fixed period of time) within the administration of the state, a province, municipality or village, or institution or entity under their control or supervision ;
 - b) voting or being elected and exercising other political rights;
 - c) acting as a guardian or being appointed in the role of guardianship and trustee;
 - d) being the administrator or inspector of a legal entity namely, foundation, association, labor union, company, co-operative or political party;
 - e) conducting any profession or trade, which is subject to the permission of a professional organization (which is in the nature of a public institution or organization), under his own responsibility as a professional or a tradesman.
- (2) A person shall not exercise these rights until the completion of the term of his penalty of imprisonment.
- (3) The provisions in the above section shall not be applicable to an offender whose sentence of imprisonment has been suspended, or who has been conditionally released, in respect of acting as a guardian or being appointed in the role of guardianship and trustee. Where an offender has been subject to a suspended prison sentence the prohibition defined in section 1(e) may not apply.
- (4) The provision of section one shall not be applicable to persons whose short term sentence of imprisonment have been suspended or to persons who were under eighteen years old at the time when they committed the offence.
- (5) Where a sentence of imprisonment has been imposed for an offence related to the of abuse one of the rights or authority defined in section one, the offender shall be prohibited from exercising such right for a period of one half to two times the length of imprisonment imposed, such to come into effect after the prison term is served. Where only a judicial fine has been imposed for an offence

related to the abuse of one of these rights or authority the exercise of this right shall be prohibited for a period of one half to double the number of days stated in the judgment. The relevant time relating to the start of the prohibition (once the judgment is finalized) is that when the judicial fine has been completely executed.

- (6) Where an offender is convicted of a reckless offence on the grounds of failing to discharge a duty of care and attention while performing a certain profession or trade, or while observing the necessities of traffic safety, it may be determined that the offender shall be prohibited from performing such profession, or trade, or that his driver's license be suspended for a period of not less than three months and not more three years. The prohibition or the suspension shall be enforced once the judgment is finalized and such period starts once any sentence is completely served.

Confiscation of Property

Article 54 of the Criminal Code

- (1) On the condition that the property does not belong to any third party acting in good faith, property that is used for committing an intentional offence or is allocated for the purpose of committing an offence, or property that has emerged as a result of an offence shall be confiscated. Property that is prepared for the purpose of committing a crime shall be confiscated, if it presents a danger to public security, public health or public morality.
- (2) Where the property defined in section one cannot be confiscated because it has been destroyed, given to another, consumed, or, for any other reason, an amount of money equal to the value of this particular property shall be confiscated.
- (3) Where the confiscation of property used in an offence would lead to more serious consequences than the offence itself, and would be unfair, confiscation may not be ordered.
- (4) Any property where, the production, possession, usage, transportation, buying and selling of which has constituted an offence, shall be confiscated.
- (5) When only a certain part of a property needs to be confiscated, then only that part shall be confiscated, if it is possible to do so without harming the whole, or if it is possible to separate that part of it.
- (6) Where property is shared by more than one person, only the share of the person who has taken part in the crime, shall be confiscated.

Confiscation of Gains

Article 55 of the Criminal Code

- (1) Material gain obtained through the commission of an offence, or forming the subject of an offence or obtained for the commission of an offence and the economic earnings obtained as a result of its investment or conversion, shall be confiscated. Confiscation under this section should only be ordered where it is impossible to return the material gain to the victim of the offence.
- (2) Where property and material gain which is subject to confiscation cannot be seized or provided to the authorities then value corresponding to such property and gains shall be confiscated.

Security Measures Specific to Legal Entities

Article 60 of the Criminal Code

- (1) Where there has been a conviction in relation to an intentional offence committed for the benefit of a legal entity, which is subject to civil law and operating under the license granted by a public institution, by misusing the permission conferred by such license and through the participation of the organs or representatives of the legal entity it shall cancel this license.
- (2) The provisions relating to confiscation shall also be applicable to civil legal entities in relation to offences committed for the benefit of such entities.
- (3) Where the application of the provisions in the above sections would lead to more serious consequences than the offence itself, the judge may not impose of such measures.
- (4) The provisions of this article shall only apply where specifically stated in the law.

Failure to Report an Offence

Article 278 of the Criminal Code

- (1) Any person who fails to report, to the relevant authority, an offence which is in progress shall be sentenced to a penalty of imprisonment for a term of up to one year.
- (2) Any person who fails to notify the relevant authority of any offence, which has been committed but where it is still possible to limit its consequences, shall be sentenced according to the provisions of the aforementioned section.
- (3) Where the victim is a child (not having yet attained his fifteenth year) a person physically or mentally impaired or a pregnant woman who cannot defend herself as a result of her pregnancy, the penalty to be imposed according to aforementioned sections shall be increased by one half.

Tax Procedure Code

Art 148 of Tax Procedure Code

Public Administrations and Institutions, taxpayer or natural persons and legal entities who involved in transaction with the taxpayers obliged to provide the information where requested by Ministry of Finance or authorized tax examiners.

Information was demanded verbally or in written form. Information was demanded again in written form to those who fails to inform verbally, with an adequate time granted to them.

Art 352 of Tax Procedure Code (Degrees of Irregularity)

Irregularities were sanctioned according to the degrees mentioned below and to the table organised according to this law. If the irregularities necessitates ex-officio valuation, twice of the coercive-fines is exercised on the value of related table.

1st Degree Irregularities

1. Failure to submit tax return on time;;
2. Failure to keep book obliged in this law;
3. Keeping records and books which are so incomplete, irregular or impure to run a proper audit;
4. Abolished by the 81/1-a article of Law No. 4369;
5. Farmers' failure to accede to bid of village-headmen and elder-council on time, made according to the provision of 245th article of this Law;
6. Failure to fulfill the provisions of this law on book keeping order.(all the offences made within the tax year counted only once) ;
7. Failure to submit declaration of set to work on time;
8. Failure to ratify the books that shall be ratified according to the provisions of this Law within one month after its due;
9. Failure to calculate tax on other incomes at the time of calculation;
10. Abolished by the 4th article of Law No. 2995;
11. Failure to submit succession duties and inheritance tax return within the period determined by the 342nd article of this Law;

2nd Degrees Irregularities

1. Submission of the succession duties and inheritance tax return within the period determined by first clause of the 342nd article of this Law;
2. Failure to submit declaration for sowing and counting on time or with the information determined with the provision of the law.
3. Abolished by the 4th article of Law No. 2995;
4. Failure to submit the declarations mentioned within the provisions of tax laws(except the declaration of set to work) on time;
5. Failure to handle tax card within the 15 day after its due;
6. Ratification of the books that shall be ratified according to the provisions of this Law within one month after its due;
7. Failure to submit tax returns, declarations, documents and paper in their legally determined forms, contents and necessary attachments, or failure to comply with the provisions of related regulations.
8. Lack of the documents and papers or failure to submit them, given that these are not contradicts with the correctness and clarity of the records and transactions.

Art 353 of Tax Procedure Code (Special Irregularities Coercive Fines)

1. Failure to forge and receive invoice, note of expenses, and receipt of independent profession obliged by the regulations or the issuance of these documents other amounts than real one subject to coercive fine which is the 10% of the undeclared amount, this amount shall not be lower than 139 YTL.

Within the one calendar year the amount of coercive fines for each coercive fine shall not exceed 64.000 YTL.

2. Failure to submit or receive ticket of retail sales, point of sale slips, passenger and entrance ticket, bill of carriage, passenger list and other documents obliged by Ministry of Finance or the issuance of these documents other amounts than real one subject to coercive fine at the amount of 139 YTL for each documents.

Within the one calendar year the amount of coercive fines for each coercive fine shall not exceed 64.000 YTL.

3. Failure to receive ticket of retail sales, point of sale slips, passenger and entrance ticket, bill of carriage, passenger list from the persons mentioned 1-5 clause of the 232nd article of the Law subject to 1/5 of the coercive fine mentioned in the second clause of this article, given that these are determined by officer authorized tax examiners. Ministry of Finance has the power to determine these cases by someone other than authorized tax examiners.
4. Failure to maintain records daily cash book, book of retail sales, yield book and other books obliged by Ministry of Finance required day to day recording or failure to submit these when asked by inspection officer or tax examiners or failure to maintain obliged tax chart in work place subject to coercive fine at the amount of 139 YTL for each these determination.
5. Abolished.
6. Those who fail to comply with the accounting standard of the Law, uniform chart of account and procedure and rules concerning financial tables and accounting software subject to coercive fine at the amount of 3.000 YTL.
7. Those who involved in transactions without the obligation mentioned in the 8th article of the Law subject to coercive fine at the amount of 160YTL
8. Press House Entrepreneurs' who fail to accomplish their duties fully or partially are subject to coercive fine at the amount of 490 YTL.
9. Institutions and foundations obliged to use tax identification number according to the Law No. 4358 are subject to coercive fine at the amount of 640 YTL, if they fail to fulfill their duties about the standards, means (script, magnetic environments, disk, micro film, and etc.) and time.
10. Those who do not stop his or her vehicle despite the warning of special signed Ministry of Finance officer (d) clause of the 127th article of this law are subject to coercive fine at the amount of 490 YTL.

In case of the coexistence of tax losses with these irregularities fines concerning tax losses and coercive fines shall be applied to gather and those the provision of the 336th shall not be applied on them.

Ministry of Finance is responsible for the determination of rules of procedures on the implementation of this article.

Art 360 of Tax Procedure Code

Those who commit the offences mentioned in the 359th of this Law in complicity or who directly involve in the crime are subject to the same sanction specified for the crime, given that they gain material benefit from offence. Those who abet other to the offences are also subject to same sanction.

Those who commit these offences in complicity and without material benefit are subject ¼ of the sanction specified for the offence.

Art 367 of Tax Procedure Code

Fiscal inspector, tax inspectors and their assistant, revenue controller and trainee revenue controller and other officer responsible for tax examination and other public servant who evidenced fraudulent tax

evasion and complicity offences mentioned 359th and 360th article of the Law shall inform the Office of the Director of Public Prosecutions with the deliberation of the tax office presidency or revenue office.

By all means, public prosecutor who evidenced the offences mentioned above shall inform the tax office and demand for audit.

The opening of the criminal case as the result of audit shall be adjourned to the Office of the Director of Public Prosecutions.

Income Tax Law

Art 40 of Income Tax Law

The costs below can be reduced to reach the pure revenue:

1. The general costs for obtaining and maintenance of commercial revenue; (The taxpayers about export, constructive, repairment, montage and carrying in abroad can reduce the bulk costs earned as foreign exchange about these activities on condition that not exceed 5/1000 of total revenue).
2. Feeding and lodging costs, treatment and medicine costs, insurance premium and retirement dues of servants and employees at business or the annex of business (on condition that these premium and dues are paid to insurance company or retired or helping funds with not taking back and are established in Turkey and have a judicial personality), clothing costs written in the article 27.
3. On condition that about to be business paying for damage, loss and compensations based on agreement, sentence or law order.
4. Journey and residence costs about business and proportional to importance and width of business. (On condition that restriction of time with the purpose of the Journey)
5. Costs of vehicles used in business by the way of renting or included to business.
6. On condition that about to be business; real tax, due and fees like building, land, expense, consumption, stamp, municipality taxes, fees and registering,
7. Allocating amortization according to rules of the Tax Procedure Law,
8. According to rules of Union Law contribution costs to unions by employers. (the monthly contribution can't exceed the total pure salary in a day)
9. The contribution shares paid by employers to individual retirement system on behalf of salaries.
10. In the presence of the procedure and principles determined by Ministry of Finance the cost price of making a donation about nourishment, cleaning, clothing and burning substances to association, foundations build for nourishment banking to help poor.

Art 41 Income Tax Law

The costs not permitted to reduce for fix the pure revenue are in order below:

1. Withdrawing moneys and the other non-cash assets by business owner and his/her wife/husband and children. (non-cash assets are added to moneys withdrawn by owner after to be asset with precedent value)
2. Salaries, bonus, commissions and compensations paid to owner, his/her wife/husband, and little children from business.
3. The interests on capital put by owner.
4. The interests on credits from currency account or from the other ways for owner, his/her wife/husband, and little children.
5. All kinds of money and tax fines and the compensations stem from owner's faults. (penal clauses in contracting are not regarded as penal compensation)
6. The costs and amortizations not relating in the principle activity of motorized sea vehicles like yacht, cutter, boat, speed boat and air vehicles like plane and helicopter which are used in business by the way of renting or included to business.
7. The costs of compensations from the faults in the press or material-moral damages in the way of radio and television programmes.

Law No. 1902, 26 December, 1931 (Reward for the whistleblower)

Whistleblowers, who inform about the offences related to tax law on revenue, assets and other perpetual tax laws, also other offences such as failure to submit tax return and double bookkeeping, veiling the exact income, shall be eligible to a reward calculated as the amount described below on the proceeding assessed tax and fines:

To 500 lira 15%

To 5 000 lira, over the amount above 500 30%

To 15 000 lira, over the amount above 5000 20%

Amount over 15 000 10%

1/3 of the reward shall be paid after the assessment of the tax and 2/3 of reward shall be paid after the payment of the tax.

The informing made before the issuance of this Law, given that the tax has not already assessed, whistleblower shall also be eligible for reward.

The officer responsible for tax related issues shall not be eligible for reward.

Regulation 3/3/1990 Art. 57 of Law No. 3568 (Obligation to report of accounting professionals.)

The members of occupation propose to their customers correct the cheats and errors as they determine during the activity of auditing in professional consciousness. Despite this proposal if cheats and errors are not corrected, the situation is informed competent authority with negative report determined (c) paragraph of the regulation's article 59. It is compulsory to inform competent authority in judicial court about the culpable crimes which require transition.

CIRCULAR NR. 7

Republic of Turkey
Ministry of Justice
Directorate General for Criminal Matters
Ref. Nr. B.03.0.CİG.0.00.00.05/010.06.02/6
Concerning: Investigations and criminal proceedings with regard to corruptions
01.01.2006

With regard to such offences as breach of duty or malpractice, bribery, defalcation, forgery in official document, which have turned for years out to be a social trauma and committed by some public officials, immediate finalization of investigations and criminal proceedings against authors of these criminal acts, timely and effective execution of punishments envisaged by laws for those, whose offences were proven, will strengthen respect of our society towards laws and sense of security towards the justice.

As it is known that the Constitution of the Republic of Turkey says the following:

“Section 2:

Characteristics of the Republic

The Republic of Turkey is a democratic, secular and social State governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the preamble.

Section 10:

Equality before Law

All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.

Women and men shall have equal rights. The State shall be obliged to practice this equality in life.

No privilege shall be granted to any individual, family, group or class.

State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.”

On the other hand, Section 160 of the Criminal Procedure Code Nr. 5271 says the following:

“(1) After having just learned the fact through denunciation or any other way, giving impression that there was committed a criminal act, Public Prosecutor shall investigate the truth of the matter immediately in order to decide whether there is need to commence a public lawsuit file or not.

(2) In order to investigate the material truth and make available a just trial, public prosecutor shall, through judicial police officials, collect evidence in favor and to disadvantage of the suspect, take under conservation, and protect rights of the suspect.”

Code Nr. 3628 on Declaration of Property, Struggle Against Bribery and Corruption says following:

Section 4

“Goods not proven to have been gained according to laws or general ethics or accruals, observed in expenditures that could not be characterized as available by taking into consideration social lifestyle of the related person, shall be deemed as unjust acquisition of property.”

Session 17:

“Code Nr. 4483 of 02.12.1999 on Trial of Servants and Other Public Officials shall not apply to those persons accused for committing offences prescribed in this Code and Code on Banks Nr. 4389 of 18.06.1999 and corruption, bribery, simple and qualified misappropriation, contraband in course of his

duty or in relation to his duty, rigging in official competitive bidding process, and also in purchases and sales, disclosure of State secrets or causing disclosure thereof, or complicity in such offences. Provisions of above Session shall not apply to undersecretaries, governors and district's chief officials (kaymakam).

Provisions of laws relating to accused persons subject to special investigation and criminal proceedings due to their functions or titles shall be reserved.”

Session 19:

“After having just been acquainted with the fact that there were committed offences prescribed in the Session 17, Public Prosecutor shall simultaneously undertake directly and personally investigation as to accused persons and inform the fact to the higher instance authorized to make appointment and to those instances listed in the Session 8.

After having undertaken investigation, if there occur signs approving the denunciation, Public Prosecutor shall request the accused, if there was gained evidence and sign of the fact that the unjustly acquired property was smuggled, to make his relatives by blood and marriage, and daughter-in-law and son-in-law to give declaration of property. In course of seven days following the service of such a request to the accused and other concerned parties it shall be compulsory for them to submit declaration of property to the Public Prosecutor. Where investigation is being undertaken by inspector or an ad-hoc person examining the fact, inspector or ad-hoc person also shall request the accused or above cited parties to submit declaration of property accordingly. In course of seven days following the acceptance of such a request by the accused and concerned parties, it shall be compulsory to submit declaration of property to the inspector or ad-hoc person.

Public Prosecutor may request the authorized Court to take measure for money or property, for which there were gained prior to commencement of public lawsuit file evidence or signs that they were acquired unjustly, or the civil Court of that allocation unit, where money or property has been.”

In addition, there exist provisions with regard to struggle directly or indirectly with corruption in such legislation as, namely Turkish Penal Code Nr. 5237, Code Nr. 3628 on Declaration of Property, Struggle against Bribery and Corruption, Code Nr. 1156 on Payment of Premium to Persons Denunciating Illegal Accrual and Acquittance, Code Nr. 2531 on Affairs that Persons leaving Public Services shall not get involved in, Code Nr. 3069 on Affairs not Compatible with Membership of Grand National Assembly of Turkey, Code Nr. 237 on Vehicles, Code Nr. 4483 on Trial of Public Servants and Other Public Officials, Code Nr. 3071 on Application of the Right for Petition, Code Nr. 4982 on the Right of Acquisition of Information, Code Nr. 2499 on Capital Market, Code Nr. 4734 on Public Tenders, Code Nr. 4735 on Contract for Public Tenders, Code Nr. 4926 on Struggle against Contraband, Code Nr. 5411 on Banking, Code Nr. 213 on Taxation Procedure and Code Nr. 4208 on Prevention of Money Laundering, Code Nr. 2313 on Control over Drug Substances, Code Nr. 657 on State Servants, Code Nr. 178 on Modification in Decree Law Regarding Organization and Functions of the Ministry of Finance.

In case of bribery and corruption of all types, which endanger the superiority of laws and attenuate justice and meanwhile ethical values together with institutions and values of democracy, which threaten political stability, hinder social development, which cause destruction of social peace and security, and which appear to be a subject of enormous economic values, forming a great part of social sources; immediately undertaking investigation pertaining to related laws, disregarding strictly applications made under mediatorship of any sources and immediate enforcement of legal necessities in case of criminal acts, and also in course of determination of person(s), who commit criminal acts, irrespective of titles and positions of such persons, enforcement only on the ground of laws and in unbiased and focused manner, follow-up of all information, submitted by media and press with regard to such acts and enforcement of necessary

laws, will eliminate the cited disadvantages, together with numerous adverse consequences and will increase assurance of our people in laws and justice so much.

Consequently;

You are requested to demonstrate necessary attention and take care in matters of

1. immediate control of events and undertaking of the necessary investigation in the context of procedures and laws by Public Prosecutors, in case of occurrence of bribery and corruption of all types and forming criminal act, and administration of investigations for such offences personally by Public Prosecutors, providing of contribution in speedy and appropriate way for finalizing trials to be commenced against author(s) of criminal act by collecting evidence of infringements in a healthy and complete manner;
2. getting decision/order from the competent Court with regard to taking necessary measures in relation to money or property, for which there were gained evidence or signs that they were acquired unjustly, or from the Civil Court of the allocation unit, where money or property has been, especially in course of application of provisions of the Code Nr. 3628, and prior to commencement of a public lawsuit file;
3. finalization rapidly and sensitively of investigations, either undertaken ex-officio or submitted by justice inspectors with regard to all claims of corruption such as breach of duty or malpractice, bribery, misappropriation and forgery in official document, by taking into account, in addition, the fact that Public Prosecutors have responsibility, besides the mentioned procedures of investigations, for continuous monitoring and control of bailiff's offices and bankruptcy offices and other units, having money and fees accounts, and for efficient usage of that competency.

Cemil ÇIÇEK
Minister
Signed

Article 21 of the Labour Code (Consequences of termination without a valid reason).

If the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation to be not less than the employee's four months' wages and not more than his eight months' wages shall be paid to him by the employer.

In its verdict ruling the termination invalid, the court shall also designate the amount of compensation to be paid to the employee in case he is not re-engaged in work.

The employee shall be paid up to four months' total of his wages and other entitlements for the time he is not re-engaged in work until the finalization of the court's verdict. If advance notice pay or severance pay has already been paid to the reinstated employee, it shall be deducted from the compensation computed in accordance with the above-stated subsections. If term of notice has not been given nor advance notice pay paid, the wages corresponding to term of notice shall also be paid to the employee not re-engaged in work.

For re-engagement in work, the employee must make an application to the employer within ten working days of the date on which the finalized court verdict was communicated to him. If the employee does not apply within the said period of time, termination shall be deemed valid, in which case the employer shall be held liable only for the legal consequences of that termination.

The provisions of subsections 1,2 and 3 of this Article shall not be altered by any agreement whatsoever; any agreement provisions to the contrary shall be deemed null and void.