
ÇELEN LAW FIRM

Anti-Corruption in Turkey: Gifts and Inducements to Public Officials

The tradition of giving gifts to public officials while conducting business in Turkey dates back to the Ottoman era and Turkey is still considered by many as a high risk jurisdiction. In 2011 Turkey's rank in Transparency International's Corruption Perceptions Index is 61 amongst 183 countries.

The battle against corruption continues and Turkey is a party to numerous international conventions as well as one of the 38 parties to the OECD Convention on Anti-Bribery. Numerous investigations and criminal proceedings continue as evidence of the public's concern regarding the matter.

In addition to the public efforts, in particular international companies bound by the FCPA and the UK Bribery Act, periodically tailor and implement FCPA compliance policies and trainings to employees, agents and distributors in Turkey. An effective FCPA compliance program takes into consideration the applicable Turkish legislation relevant to the specific industry for tailoring its trainings and due diligence procedures. The summary provided below aims to provide the Turkish law perspective to providing gifts and inducements to public officials.

Who is a Public Official?

Under Turkish law, a "Public Official" is defined as any officer, employee or other party on behalf of any government, including physicians, hospital administrators, researchers and other professionals employed by public healthcare bodies. Government officials, public personnel, or a person working in a company affiliated to a governmental institution, foundation or association who works for the public interest, co-ops or public companies are also accepted to be public officials in relation to their criminal liability.

The Turkish Court of Appeals considers health professionals that only work part time in public hospitals also as public officials even if they obtain a bribe/benefit outside the hospital (i.e. for their practice in their personal clinic).

The General Principle:

As a rule, it is prohibited for public officials to request and accept gifts and/or loans for their benefit from persons who have an interest in the duty of the personnel. (Article 29 of the Public Officials Act)

Gifts are defined as; all materials and benefits with or without economical value, accepted directly or indirectly, that does or may affect the decision, the performance, the impartiality or the realization of the administrative function of the public official.

Public officials are bound by the Regulation regarding the Ethical Principles of Conduct and Application Procedure and Provisions for Public Officials (“Public Official Ethical Conduct Regulation”) which provides the exceptions to the above prohibition.

Accordingly, materials given to the institution of employment which do not deem the realization of the institution services against the law, which are provided to public use, on the condition that they are registered in the institution’s fixed assets and explained to the public, (cars and materials allocated to the use of a particular personnel are excluded), and donations to institutions are outside the scope of gifts. (Article 15/1/a) Books are also outside the scope of gifts and can be given. However, scholarships are specifically listed under the materials which are accepted as gifts (Article 15/2/a).

The private sector donations are accepted to be very important in many sectors where grants and donations are particularly beneficial to public health and public education. Nevertheless the rules of admissibility and the procedure of giving the donation are strict.

Donation Procedure:

A “donation/grant” must be made to the institution for the purpose of public services and must be recorded in the legal books and declared to the public. Such donations/grants generally need to be recorded as an income to the “working capital” and need to be accepted by the Board of Directors of the relevant institution. Accordingly in order to avoid any risks, the acceptance of the employer

(BoD of the institution) should be obtained prior to the realization of the donation/benefit and the payment should be made to the institution, not the public official.

Sanctions:

In the event a person acts in breach of the above mentioned legislation, the public prosecutor investigates the matter and decides whether or not to initiate a public case. The Criminal Code articles to apply are within the discretion of the public prosecutor and the criminal court. In practice, the crimes most commonly applied are bribery (article 252 of the Criminal Code), extortion (article 250 of the Criminal Code) and establishing an organization for committing crimes, when corrupt practices are realized by more than 3 people and several crimes are committed.

Administrative sanctions such as the suspension, rescinding of licenses, can also be applied in line with the relevant legislation when applicable.

The information contained herein constitutes only the general framework regarding the referenced subject. Please contact legal counsel for advice regarding specific matters.