

Turkey Aligns Its Laws with the EU: Reformed legislation introduces business-related crimes in Turkish Criminal Law

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I. INTRODUCTION

The new Turkish Criminal Law No. 5237 (the “New Law”) entered into force on 1 June 2005 mainly as a result of Turkey’s efforts toward harmonizing its legislation with European Union law. The New Law replaced the Turkish Criminal Law of 1 March 1926 (the “Repealed Law”). This article focuses on how the New Law regulates some of the business related crimes.

II. BASIC FEATURES OF THE NEW LAW

A. Security Measures

The most interesting feature of the New Law with respect to companies is the applicability of security measures (*güvenlik tedbirleri*) to legal entities. Criminal liability of legal entities is a new concept to Turkish law. Pursuant to the New Law, security measures apply not only to individuals, but also to legal entities, the representatives of which committed a crime, or which benefited from the commitment of a crime.

There are three security measures in the New Law which are applicable to legal entities: (i) invalidation of the license of a legal entity issued by a public entity due to abuse of the rights and authorities granted by such license; (ii) the seizure of the goods, which are utilized in a crime committed by the representatives of a legal entity, or which are the result of such a crime; and (iii) the seizure of monetary benefits resulting, or provided for, the commitment of a crime.

B. Intriguing the Tender

Pursuant to the New Law, actions that may be considered as intriguing a tender are limited by enumerated events and subject to imprisonment from 5 to 12 years. Accordingly, fraudulently providing misinformation in relation to the qualifications of the bidders and goods which are the subject of the tender, impelling bidders to withdraw from a tender or violating or preventing competition by means of violence or threat, signing agreement to change tender specifications, especially the tender price, or disclosure of any confidential information are considered grounds for intriguing a tender.

C. Misinformation Regarding the Company

This is a new crime introduced by the New Law. In case that the shareholders, executive managers, board members, auditors, general managers and representatives of a company, or

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its liquidation officers, provide misinformation regarding the company to the public or the general assembly causing damages to the relevant entity, such act shall be subject to imprisonment from 6 months to 1 year as well as a monetary penalty of up to YTL 100,000 (approximately US\$ 70,000 as of the date hereof). In the case of committing this crime against companies which are listed on a stock exchange, the applicable penalty is increased to 2 to 5 years imprisonment and a monetary penalty of up to YTL 125,000 (approximately US\$ 93,000 as of the date hereof).

D. Data Privacy of the Companies

The New Law provides a number of provisions which deal directly with the protection of personal data. Pursuant to the New Law, those who unlawfully record, transmit or obtain personal data shall be punished by imprisonment from 6 months to three years. In the case that such crime is committed by government officials or to facilitate performance of a profession, the punishment shall be increased by half. Furthermore, those who do not delete or destroy personal data in spite of the expiry of the time period stipulated in the relevant laws for the maintenance of such data shall be punished by imprisonment from 6 months to 1 year.

E. Information Technology Crimes

In addition to the crime of unauthorized access to systems which automatically process data and the utilization of such data, which was also regulated by the Repealed Law, the New Law further stipulates that those who obtain and use bank or credit cards of others without their consent shall be punished by imprisonment from 3 years to 6 years. Moreover, those who produce false credit cards shall be punished by imprisonment from 3 years to 7 years, and those who use such cards shall be punished by imprisonment from 4 years to 8 years. In the case that information technology crimes cause an unlawful benefit to a legal entity, such legal entity shall be subject to certain security measures.

III. CONCLUSION

The New Law, which has been enacted mainly as a result of Turkey's efforts towards harmonizing its legislation with European Union law, provides certain new types of crimes, such as the provisions concerning the data protection and the use of false credit cards. On the other hand, certain actions which were considered criminal under the Repealed Law, are no longer a crime or they are now subject to more precise conditions.

Though the New Law, in general, is a positive step towards making the criminal law more respectful of fundamental rights and creating more transparent corporate governance rules, certain difficulties may be faced in its implementation as there are no precedents or legal literature to benefit from during the implementation of the New Law.