

Gökçe

Objection!

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BANKING EMBEZZLEMENT



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Today the banks are one of the most reliable institutions for most people and their activities are regulated by the Banking Law No. 5411 (Law) in Turkey. The working principles of the banks are extremely important both in terms of ensuring confidence and stability in financial markets and protecting the rights and interests of account owners. In this context, the Law designates a number of offenses for bank employees. In practice, banking embezzlement is the most common type of offense due to the banks suffer serious losses and public trust in these institutions is greatly shaken.

What is the Banking Embezzlement?

According to Article 160 of the Law, banking embezzlement is defined as: “If any member of board of directors or employee of a bank embezzles any money, valuable document, securities or other assets, which have been entrusted to them in connection with their duties or put under custody and supervision thereof, in his own or others’ favor, he shall be sentenced to imprisonment from six years to twelve years and a judicial fine up to 5.000 days, and shall compensate for the losses incurred by the bank”.

In this sense, subject of banking embezzlement is any money, valuable document, securities or other assets which are transferred to the possession of the offender or left under his protection and supervision in consequence of his duty. Hence, the deposit accounts of the bank customers shall also be within the scope of the offense.

As regards to the material element, the act constituted the banking embezzlement offense is to embezzle money or other assets from the bank to the personnel of the bank or someone else. It should be noted that apart from acquiring goods or ensuring someone else to acquire goods; in-bank transactions remaining in the account of the bank customer shall not constitute the banking embezzlement offense. In this context, for example; breaking a term deposit without a customer’s instruction will not fall within the scope of the banking embezzlement. On the other hand, if a bank employee commits this offense with fraudulent conducts to hide the offence, it shall be deemed qualified and accordingly, the penalty shall increase. When a bank employee transfers certain amount of money from a client’s account to his bank account, the offense of embezzlement will occur. However, a qualified form of the offense will occur if he creates an order to conceal this act.

The offenders can only be “any member of board of directors or employee of a bank”. Therefore, it’s impossible for those other than these persons to be the offenders. Furthermore, this offense can only be committed intentionally. The employee of the bank shall not be held liable if he/she is negligent or mistaken.

Sanctions of the Law on Banking Embezzlement

The offender shall be sentenced to imprisonment from six years to twelve years and a judicial fine up to 5.000 days, and have to compensate for the losses incurred by the bank. Moreover, if the offense has been committed by fraudulent conducts which ensures that the offense will not be discovered the offender of such act shall be sentenced to imprisonment for minimum twelve years and a judicial fine up to 20.000 days. However, the amount of judicial fine cannot be less than three times the loss suffered by the bank.

Does the Compensation of the Damage Have an Effect on the Penalty to Be Imposed?

In terms of banking embezzlement, effective repentance provisions are regulated in the Law. In this context; if any embezzled money, valuable document or security as well as other assets has been fully returned or the loss has been fully compensated prior to the initiation of investigation, the punishment shall be reduced by two thirds. If any embezzled money, valuable document or security as well as other assets has been fully returned or the loss has been fully compensated prior to the initiation of legal proceedings, the punishment shall be reduced by half. Finally, if such case takes place prior to the issue of judgment, the punishment shall be reduced by one third.

Consequently, with regards to this offense imposing serious sanctions, it is significantly important to return the goods or to compensate the damage.

Answers. Not theories.

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Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

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