

The B20 2017 Responsible Business Conduct & Anti-Corruption Policy Paper

Authors: Gönenç Gürkaynak, Esq., Ç. Olgu Kama and Burcu Ergün, ELIG, Attorneys-at-Law

B20 Cross-Thematic Working Group on RBC and Anti-Corruption published the B20 Responsible Business Conduct & Anti-Corruption Policy Paper Promoting Integrity by Creating Opportunities for Responsible Businesses (“Policy Paper”). The Policy Paper focuses on 3 issues, which all relate to attempting to provide a level playing field for companies which wish to do business responsibly. The Policy Paper recognizes that the method to reach the holistic goal of achieving responsible business conduct should also be holistic: *i.e.* private and public sectors should work together to fight corruption. After all, as much as corruption is detrimental for the private sector, it also damages the public sector, through inefficient allocation of its resources. Accordingly, this year’s Policy Paper recommendations are (I) establishing beneficial ownership transparency, (II) recognition of compliance efforts and (III) enhancing responsible business conduct in infrastructure projects.

(I) Establishing Beneficial Ownership Transparency

Under the first recommendation, the businesses of G20 countries underlined the importance for organizations to know who they are dealing with. It has been getting increasingly difficult in today’s world to lift the corporate veil. This is especially important terms of offences such as money laundering, financing of terrorism or corruption, as all these offences burden companies with know-your-customer or otherwise third party due diligence obligations. In that regard, beneficial ownership refers to the situations where the real owner or controller of a company is veiled through complex shareholding structures and legal personalities. Cross-Thematic Group (“CTG”) points out that the G20 governments should create accessible and meaningful databases, in order to help companies, especially small and medium sized enterprises (“SMEs”), to be able to discharge their third party due diligence obligations.

Below are the policy actions under the first recommendation.

(1) Implementing beneficial ownership action plans: CTG recommended the harmonization of beneficial ownership systems of G20 countries in line with Financial Action Task Force (“FATF”) and recommendations made within the scope of G20. Suggesting a global approach towards beneficial ownership systems, CTG suggested that local registrars should contain high quality, linked data.

(2) Ensuring availability of information: The gist of this action plan has been identified as access to information. There's no debate as to whether law enforcement authorities should have access to beneficial ownership information. However the policy recommends that any person who has a legitimate interest with regard to or obligation to conduct third party due diligence, should have easy access to such information. This should be accomplished by introducing clear rules and guidelines with regard to access to information. CTG further argues that the availability of such information before any other government makes it available, could act as a competitive advantage for the relevant market in terms of investment environment.

(3) Improving Exchange of Information: CTG recommended the G20 governments to identify and agree on the rules regarding informational data exchange between the countries. CTG argues that if there was an international standard of sharing such information, the process of exchange would be that much swifter and easier. The governments should also publish their rules regarding the legal landscape with regard to beneficial ownership (information requirements, access rights *etc.*) and promote the importance of adequate company registers in developing countries.

(II) Recognition of Compliance Efforts

Under the second recommendation, the theme is once again cooperation between public and private sectors. The CTG recognizes that compliance is first and foremost an advantage for the company itself, but argues that the official encouragement of compliance efforts by the government would further the cause of fighting corruption. Under this recommendation, the CTG hints the private sector expectation that compliance efforts by the private sector should have the same legal consequences over the member countries, where applicable. CTG further emphasizes the importance of educating both the public and private sectors with regard to the legal compliance requirements and good practices.

Below are the policy actions under the second recommendation.

(1) Acknowledging adequate measures: According to the CTG, there are several ways compliance efforts could be recognized by the public sector. First, compliance programs can be initiated as a pre-condition for being awarded public contracts, subsidies or permits etc. Second, compliance programs could be mitigating factors during sentencing or could be taken as a defense during a case.

(2) Encouraging self-disclosure and self-cleaning: If acknowledging compliance efforts is an incentive, non-alignment of legal consequences of post-incident mechanisms (such as self-disclosure or self-cleaning) across jurisdictions and their ambiguity are a disincentives.

Recognizing this idea, the CTG recommends that regulations and their enforcement with regard to self-reporting and self-cleaning should be clear, unambiguous, consistent and harmonized. This way, private sector will be more willing to engage in compliance efforts.

(3) Promoting a culture of integrity: The Policy Paper refers to various international documents with regard to compliance (*e.g.* OECD Anti-Bribery Convention and UN Global Compact's Ten Principles on human rights, labor, environment and anti-corruption) and underline the importance of implementing and promoting them. CTG took special note of SMEs with regard to promoting a culture of integrity. Accordingly, SMEs face as much risk of corruption as large companies, however they lack sufficient resources to combat these risks or even become more aware of them. Recognizing that SMEs especially need guidance with regard to anti-corruption, CTG invited governments to offer training and guidance to such businesses.

(III) Enhancing Responsible Business Conduct in Infrastructure Projects

Under the third recommendation, CTG highlights both the need for infrastructure and the inherent compliance risks present in the infrastructure projects. According to the CTG, in order to ensure funding for infrastructure projects from the private sector, anti-corruption risks created by working closely with public officials and the existence of a plethora of stakeholders, should be mitigated.

Below are the policy actions under the third recommendation.

(1) Promoting responsible government conduct and transparency: CTG recommends that G20 governments tackle the demand side of corruption as well. This could be done through promoting transparency and accountability through the processes of infrastructure projects such as providing adequate information to stakeholders during the course of a project or through the digitization of tender processes.

(2) Ensuring recognition of responsible businesses: CTG proposes that G20 members consider that various means of combatting corruption such as sharing beneficial ownership information or having an effective compliance program should be entrance requirements for public tenders.

(3) Supporting collective action: Just like previous years, this year too CTG emphasizes the importance of collective actions, *i.e.* the coordinated efforts of private sector, public sector or civil society organizations, in combatting corruption. Thus, the G20 governments are expected to promote collective action forms such as integrity pacts or high level reporting mechanisms.

Conclusion

This year, just like the previous years, the anti-corruption policy paper recognizes that it takes two to tango when it comes to corruption. The sanctions or the solutions should not be just aimed at one side *i.e.*, the demand or supply side. Instead, the only way to tackle corruption is through joint efforts from both public and private sectors. For example, combatting corruption through private sector compliance efforts would be most effective, if the government revised their legal systems to incentivize such efforts. In the same vein, anti-corruption collective action efforts should be supported by the public sector.

Article contact: Gönenç Gürkaynak, Esq.

Email: gonenc.gurkaynak@elig.com

(First published in Mondaq on September 12, 2017)