

**PREVIEW**

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# Anti-Corruption and Preventive Measures: Turkey's Perspective

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Turkey, as an emerging economy, has been responsive to the increasing anti-corruption efforts being made throughout the world. While it has an adequate legal framework in place, recent studies published by the OECD and Transparency International's Corruption Perception Index (CPI) showed that Turkey's ranking dropped during 2014. In the CPI results Turkey lost 5 points<sup>1</sup> (50 points in 2013 and 45 in the 2014 results) and moved from the 53rd least corrupt country to the 64th. On the global front, the OECD's Foreign Bribery Report published recently in December 2014 shows no evidence of Turkey having enforced the foreign anti-bribery legislation and concluded a foreign bribery case.<sup>2</sup> Similarly, the OECD Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey demonstrated that the OECD was concerned about Turkey's level of detection and investigation of foreign bribery offences.<sup>3</sup>

The following article will explore Turkey's current anti-corruption efforts and their outcomes, and will discuss anti-corruption recommendations for foreign investors wishing to conduct business in emerging economies or corruption-prone countries.

## The anti-corruption framework in Turkey

This section will tackle Turkey's efforts in fighting local and foreign corruption, from its legal framework and its evaluation, to administrative and civil society efforts and touching upon Turkey's role in current global anti-corruption agenda.

Very significant changes in Turkey's legal framework have taken place in the last 20 years. Keeping up with the international developments, Turkey has signed and ratified all territorially applicable anti-corruption treaties, namely:

- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention) dated 17 December 1997, which Turkey signed in 1997 and ratified in 2000.
- The Council of Europe Criminal Law Convention on Corruption dated 27 January 1999. Turkey signed this document in 2001 and ratified it in 2004.
- The Council of Europe Civil Law Convention on Corruption dated 4 November 1999, signed this document in 2001 and ratified in 2003.
- The United Nations Convention Against Transnational Organized Crime dated 15 November 2000, signed in 2000 and ratified in 2003.
- The United Nations Convention against Corruption dated 31 October 2003, signed in 2003 and ratified in 2006.

In addition to the foregoing, Turkey has participated in the international anti-corruption structures through its membership to the Group of States against Corruption overseeing the states' compliance with the Council of Europe's anti-corruption standards, since 1 January 2004.

As a result, Turkey's anti-corruption legislation was amended

in line with the international standards in this regard. The OECD Convention's influence has been particularly significant in remodeling the definition and the consequences of the crime of bribery in Turkey, owing to the work of the OECD Convention's monitoring body OECD Working Group on Bribery (WGB).

Although the OECD Convention is predominantly focused on criminalising the bribery of foreign public officials and therefore promotes an extraterritorial application of the anti-bribery laws, the OECD Convention has contributed a lot to changing the legislative landscape in the field of anti-bribery.

Initially (ie, before the ratification of the OECD Convention and before the WGB published their Phase 1 Report on Turkey's status) the simple form of bribery (ie, receiving a bribe or giving a bribe for an act to be fulfilled in conformity with the public official's duty) was not punished with imprisonment and acts of foreign bribery were not criminal. The legislative efforts of Turkey from the ratification of the OECD Convention to now include the following:

- increased sentences for the crime of bribery;
- bribery of foreign public officials became a crime under the Turkish Criminal Code (TCC);
- offering or promising bribes was been criminalised;
- the scope of definition of foreign public officials was broadened;
- the provisions of the TCC granting leniency to perpetrators of the crime of bribing foreign public officials were abrogated; and
- despite the general principles of Turkish law not allowing corporations to be held criminally liable, administrative liability was eventually imposed on corporations whose representatives or persons acting on their behalf commit the offence of bribery.

From the administrative policies perspective, Turkey published two policies. These are (i) the Strategy on Increasing of Transparency and the Strengthening of the Fight Against Corruption (the Strategy) and (ii) the Open Government Partnership Initiative (OGPI), as further explained below.

## The Strategy

The Strategy was accepted by a cabinet decree on 22 February 2010 and was implemented between 2010 and 2014. It recognises that the subject of corruption needs to be tackled from social and economic dimensions alongside the laws.<sup>4</sup> The Strategy aims to eradicate the factors that obstruct transparency and increase corruption and to establish a more accountable and transparent system of governance. The Strategy will be a tool for preventing corruption and enforcing corruption-related sanctions, while raising social awareness of the matter. The cabinet decree accepting the Strategy established a Commission and an Executive Council on the Enhancement of Transparency and the Strengthening of the Fight Against Corruption (the Executive Council) as organs for the Strategy. Members of the Executive Council include the Minister of Justice, the Minister of Internal Affairs and the Minister of Finance.

## The OGPI

Turkey became a member of the OGPI in April 2012. The OGPI shares the same principles of accountability and transparency for an improved quality of governance. So far, Turkey's undertakings within the framework of the OGPI included increasing integrity and transparency in the public sector and improving the quality of public services. Within the OGPI framework, Turkey undertook to open a public website where the government will publish the project and strategies used in the fight against corruption, allow public debate on the matter, provide transparency on public expenditure and citizens' participation in the process of development policies. Turkey will also create an electronic public tender platform.<sup>5</sup> Moreover, Turkey will organise 'Recommendation Platform for Transparency and Openness in Public' workshops and conferences for both the public and private sectors and civil society, carry out risk analysis to detect the areas at risk of corruption, and take preventive and deterrent measures afterwards. The plan also includes measuring the efficiency of the mechanisms in place to increase integrity and transparency, and to address the perception of corruption that prevails among citizens and the private sector. The desired and planned transparency in participatory processes is expected to create barriers to corruption.

In addition to the above-mentioned legislative and administrative efforts, the civil society joins forces in the fight against corruption. Civil society organisations publish articles, conduct research and help to raise public awareness against corruption by creating discussion platforms.

The private sector is remarkably active in the fight against corruption, due to the US Foreign Corrupt Practices Act and the UK Bribery Act, both milestones in the extraterritorial reach of foreign legislations. Since multinational enterprises conducting business in Turkey are also bound by the foreign legislation, they observe their businesses' compliance with the foregoing in addition to the local laws in Turkey, thus creating a dual front in the fight against corruption. Consequently, the private sector's efforts may help to create and maintain an anti-corruption culture among companies and raise awareness within the business field.

Despite the above-mentioned efforts on the legislative, administrative and private sector fronts, global and local studies and surveys indicate that Turkey has not yet reached its goals in the field of anti-corruption.

The fall of Turkey's ranking by a decrease of 5 points in the Transparency International CPI is a valuable indicator of Turkey's local anti-corruption outlook. This may be linked to the lack of adequate levels of transparency and accountability in practice, despite legislative and administrative efforts. Recently, due to an amendment in the Court of Accounts regulation, the Court of Accounts may not be able to audit the accounts of public institutions for another three years (including joint stock companies established by virtue of specific laws of which more than 50 per cent of the shares are directly or indirectly held by public, and all kinds of administrations, institutions, organisations, unions, enterprises and companies established by the foregoing provided that the publicly held share exceeds 50 per cent). This amendment, which may reduce the transparency and accountability of the said institutions, may expose public expenditure to the risk of not being supervised and audited. As a result, both local and foreign bribery risks passing unnoticed and it would not be hard to argue that this may slow down the fight against corruption.

The OECD WGB's Phase 3 Report on Turkey repeats its previous criticisms about Turkey's lack of enforcement of foreign bribery cases

and the uncertainty about corporate criminal liability (ie, whether the conviction of a real person is a prerequisite to that of a legal person is not clear). The WGB expresses its concerns about Turkey's lack of proactivity in detecting, investigating and prosecuting acts of foreign bribery and is concerned about the fact that Turkish authorities were unaware of certain foreign bribery allegations that gained massive media coverage in the foreign press. The Phase 3 Report questions whether the prosecution of foreign bribery cases would be improperly influenced by concerns of a political nature.

Turkey is taking on the G20 and B20 presidencies in 2015. The 2015 B20 summit aims to bring the businesses of the G20 economies together and tailor the G20 agenda to their problems and interests. The fight against corruption has been included in the B20 agendas since the B20 Korea summit of 2010. Traditionally, anti-corruption constituted a significant item in the agendas of both the G20, whose aim is to ensure economic cooperation, and the B20. This year's B20 agenda is expected to tackle the issue of anti-corruption among other important agenda items and raise awareness of anti-corruption initiatives in Turkish businesses and draw public attention to the issue of corruption through the potential media coverage of the event. The B20 2015 summit is considered to be an important opportunity for Turkey to also strengthen its position in the global anti-corruption arena and to prove to the international business world that Turkey is willing to eradicate corruption, provide a safer business environment and welcome investors from all around the world.

## Preventive tools for investing in corruption-prone economies

Like all emerging economies, Turkey needs to receive foreign investment, focus on growth and create a level playing field for all business actors in order to allow new businesses and new ideas to flourish. The key to achieving this depends on transparency and accountability on a large scale. On the governmental front, this may be established through adequate control and audit mechanisms and an efficient legal framework for the protection of whistle-blowers.

For investors interested in conducting business in emerging economies, simply relying on that country's legislative framework may not be sufficient. Investors may be put off by a country's corruption rankings, but they are not deprived of the tools that could solidify the ground for their investments and the establishment of a sustainable business. Below are examples of tools that investors or companies may use to prevent corruption when conducting business in corruption-prone economies.

Once entering the business scene in a corruption-prone emerging economy, investors should conduct in-depth third-party due diligence and establish their own compliance programmes to avoid the risks of corruption.

## Know the culture

At the initial stage of investment, investors should first conduct the necessary research. Familiarising themselves with the culture of the local company they intend to invest in should not be neglected, for instance in Turkey an investor should know that gift giving is a cultural concept and the perception of corruption may differ among individuals. This familiarisation will also be useful to ensure compliance with the anti-corruption programme and the training stage that will be explained below.

## Due diligence

It is common for a foreign investor to merge with or acquire a successful or promising local company and enter the market through

that channel. Prior due diligence and risk analysis are crucial before any transaction. Conducting adequate merger and acquisition due diligence may suppress, or at least decrease the risks of merging with or acquiring a corrupt company and suffer the consequences in both the local and foreign arena. The due diligence investigation should include the review and assessment of the target company's credentials and most importantly its public procurement history, if applicable. The background check of its shareholders, managers and employees to detect any proximity with persons carrying out public duties or to assess their ability to adapt to corporate compliance is a significant stage and a good indicator of the target company's business manners.

Due diligence investigations and background checks are not specific to the initial stage of merging or acquiring. They are of use at the subsequent stages of conducting business with third-party business counterparts, for instance in specific projects or joint ventures, to identify the risks that may be associated with a particular third party. Moreover, obtaining anti-corruption undertakings from third-party business counterparts may provide a safety net against corruption. Especially in case of public procurement contracts, running a check for conflicts of interest between the third-party business counterpart and the relevant public official could constitute a prudent act.

### Anti-corruption compliance programmes

Foreign investors should issue their own anti-corruption compliance programmes and guidelines to strengthen their position and ensure better anti-corruption protection. The programmes and guidelines should be tailored to meet the needs of the local culture in order to make sure that no act falls through the cracks (ie, the guidelines should be prepared in the local language and respond to every question an employee may have regarding a certain type of conduct). Programmes and guidelines should be adapted and compatible with the geography of the country, the size, sector, industry and type of the company. The managers and employees who will represent the company in the field and act on the company's behalf should gain an in-depth understanding of the company policies as well as risks and consequences of corrupt acts. The implementation of the compliance policies should be the responsibility of all levels of the company. The tone adopted from the top should be enforced, internalised and encouraged by the mid-level officers who work closely with the employees in the field. The managers and mid-level officers will thereby contribute to the introduction of a corporate culture of anti-corruption.

### Training

Another step towards securing a corruption-free business is the training of the employees of the target company or those of the third-party business counterparts. For the sake of efficiency, training should include a thorough presentation of the definition, risks and consequences of corrupt acts and real-life examples to discourage employees against corrupt acts embedded in everyday business transactions that may be wrongfully considered standard practices. Face-to-face training with the employees' input is always more effective than online training, which may be preferred due to cost efficiency. Training should inform employees of the requests that could be made by third parties that they should ignore.

### Controls and monitoring

Investors should also set up robust control and monitoring mechanisms to supervise the implementation of the corporate anti-corruption policies in place. Companies should carry out thorough and periodic audits to check that the risks have not materialised. Using technology as a preventive control mechanism may be time-efficient: having automated systems that reject transactions unless controlled and approved by an upper level officer may reduce the risk of corruption. Implementing whistle-blower protection is another method of control: employees may disclose what they consider to be against the company's anti-corruption policies without fearing retaliation or disciplinary action by the company. The corporate guidelines should clearly indicate how and whom to approach in case of a suspected act of corruption. Establishing an anonymous hotline where the employees and third parties can report corrupt acts of company employees could constitute a useful control and warning mechanism.

It is important to have the above-mentioned mechanisms in place to reduce the consequences of potential risks that foreign investors may face while doing business in any emerging or corruption-prone country.

### Notes

- 1 [www.transparency.org/cpi2014/results](http://www.transparency.org/cpi2014/results).
- 2 [www.oecd.org/daf/oecd-foreign-bribery-report-9789264226616-en.htm](http://www.oecd.org/daf/oecd-foreign-bribery-report-9789264226616-en.htm).
- 3 [www.oecd.org/turkey/oecd-seriously-concerned-about-turkey-s-level-of-detection-and-investigation-of-foreign-bribery.htm](http://www.oecd.org/turkey/oecd-seriously-concerned-about-turkey-s-level-of-detection-and-investigation-of-foreign-bribery.htm).
- 4 [www.teftis.gov.tr/ShowBroadNews.aspx?id=308b097f-b709-4f6a-ad75-f057e532562f](http://www.teftis.gov.tr/ShowBroadNews.aspx?id=308b097f-b709-4f6a-ad75-f057e532562f).
- 5 [www.opengovpartnership.org/country/turkey](http://www.opengovpartnership.org/country/turkey).



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ELIG, Attorneys-at-Law has conducted numerous internal investigations, advised its clients on the matter and authored many articles on the subjects of compliance, white-collar crime and investigations.

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