

Projects & Procurement - Turkey

Fighting corruption in the project and procurement context

Contributed by [Şahbaz Attorney Partnership](#)

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Corruption can undermine democracy and the rule of law, violate human rights, hamper fair competition, lower investment levels, erode quality of life and lead to organised crime. Accordingly, corporations in societies where corruption is rife find themselves at a considerable disadvantage in international transactions.

Turkey still ranks low on almost all global corruption indicators, based on periodical analyses performed by reputable financial institutions and organisations such as the World Bank and Transparency International. The Turkish legal system has material inadequacies when it comes to addressing, preventing and punishing corruption. Although some initiatives have attempted to overcome such inadequacies – especially in the most corruption-prone areas, such as public procurement – their implementation has been questionable. For instance, the Public Procurement Law (4734) sets out principles and requirements to ensure a transparent and fair tendering process (eg, transparency, equal treatment, secrecy and reliability), and mechanisms to ensure anti-corruption and probity. However, enforcement of these rules has proven to be deficient.

While Turkey remains oblivious to these inadequacies, global awareness of them is increasing. This in turn is affecting the credibility and competitiveness of Turkish corporations seeking to participate in international projects. The pressure on domestic companies comes from various angles. First, foreign investors, joint venture partners and lenders will scrutinise Turkish companies' anti-corruption compliance practices very carefully from a transactional perspective before accepting them as partners. Foreign investors often require potential Turkish partners to comply with international anti-corruption and bribery laws such as the US Foreign Corrupt Practices Act, both before accepting them as a partner and as an ongoing obligation throughout the life of the project.

Second, in today's more integrated international market, lenders extend loans only to those borrowers which are in good shape in terms of globally accepted corporate governance principles. Accordingly, compliance with international anti-corruption, anti-sanctions and bribery laws has become a major prerequisite for project financing. For instance, companies may be required to prove that their directors, senior management or direct and indirect shareholders are not included on the Specially Designated Nationals and Blocked Persons List published by the Office of Foreign Assets Control of the US Department of the Treasury. Such prerequisites present major obstacles to obtaining project financing, as multinational financing institutions impose strict requirements which can prevent Turkish corporations from participating in projects on either a procurer or vendor basis.

However, the risks associated with corruption can be mitigated in a proactive manner. Turkish corporations should thus consider adapting their operations, relationships and corporate governance to international anti-corruption laws and, in particular, the US Foreign Corrupt Practices Act. Simply proving compliance with international standards through anti-corruption policies may suffice to satisfy foreign investors, partners and lenders and enable Turkish companies to participate in international projects.

However, this is no easy task, as corruption is a serious threat that must be tackled systematically with a strong will and commitment at management level. Adapting to international standards usually consists of two major stages:

- adoption of an anti-corruption policy, considering issues such as the company's line of business, operations, size and exposure to foreign anti-corruption laws; and
- implementation, which will involve tailoring the anti-corruption policy to the company's specific circumstances. For instance, clear and extensive definitions of certain corruption-specific terms – such as 'gifts' and 'public officials' – which are sensitive to the corporation must be considered.

The policy must further take account of the corporation's business and activities in foreign countries. Turkish companies have been involved in major infrastructure and energy projects in the Middle East and Africa, which traditionally rank low in the Corruption Perception Index. Although certain practices are viewed as common in these regions (eg, facilitation payments to overcome red tape), they are not tolerated under international anti-corruption rules. Turkish companies must thus pay close attention

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to their dealings with, and payments to, third-party service providers in these regions (eg, intermediaries, contractors, agents), and monitor them diligently regarding their dealings with government officials.

Performing corruption-focused due diligence before drafting an anti-corruption policy is the most logical starting point. Once the anti-corruption policy is drafted, management must take all necessary steps to implement the policy throughout the whole organisation. Adequate training is essential, because unless staff fully understand corruption and its consequences, the policy is likely to fail.

Under the Turkish legal system, corruption is considered a criminal matter only if the relevant act is defined in the Turkish Criminal Code as 'corrupt'. Thus, any act which is not listed in the code is not subject to criminal liability. The anti-corruption provisions under the Turkish Criminal Code further cover corrupt actions of individuals only; corporations have no criminal capacity under the Turkish legal system. Thus, while corporations cannot be convicted of corruption-related crimes in Turkey, their actions may be punishable under the US Foreign Corrupt Practices Act. Further, the Turkish Criminal Code is designed to combat corruption only by local public officials, and has limited rules relating to foreign officials. By contrast, the Foreign Corrupt Practices Act is designed to focus on foreign officials and also applies to parties acting on their behalf. Therefore, an anti-corruption policy must address these discrepancies between local and foreign laws.

As Transparency International has advised in its Country Enforcement of the Organisation for Economic Cooperation and Development (OECD) Anti-bribery Convention Progress Report 2012, training for the private sector "must be provided in Turkey since the awareness of the OECD Convention is extremely low". And compliance with the OECD Convention is not the only way to fight corruption: there are many other approaches that can be taken. Ultimately, however, Transparency International has identified that corruption is the Turkish private sector's biggest weakness. All players in the Turkish private sector should take this into consideration and start fighting corruption as soon as possible to ensure they can participate in international projects.

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