



LEAVING THE CORRUPT AT THE DOOR: FROM DENIAL OF ENTRY TO PASSPORT SALES

For some people national borders constitute an insurmountable barrier. For others, they represent a comfortable way to hide ill-gotten wealth and to escape accountability for their actions.

Now is the time to close the legal loopholes that allow corrupt individuals to elude justice for themselves and their money.

Corruption is a global phenomenon. Corrupt individuals can exploit borders to launder their ill-gotten gains in foreign jurisdictions¹ and there by hide from prosecution.² Diplomatic passports, foreign bank accounts and loopholes in immigration laws can allow the corrupt a comfortable life abroad. Action is needed to stop the corrupt from enjoying the proceeds of their illicit acts in safe havens. There must be a “cost” for being corrupt — both inside and outside a country.

Denial of entry is one new attempt to deter and sanction the corrupt beyond their national borders. It has gained momentum since being included in various regional declarations in Latin America and the Caribbean³ as well as the 2010 action plan of the G20 Anti-Corruption Working Group (ACWG).⁴ According to this group, denial of entry is meant to send “a strong signal to corrupt individuals that corruption and impunity are unacceptable.”⁵ The G20 has adopted shared principles to help advance the use of this tool.

To address these points, Transparency International proposes measures to maximise the benefits of using denial of entry to stop the corrupt from travelling freely while ensuring that their legal rights are respected. First there should be an evaluation of denial of entry measures against existing immigration and anti-corruption policies, as well as applicable standards on human rights. Second, clear anti-corruption considerations should be introduced that are appropriate for a country’s immigration policies, including the issuance of visas, passports and residency permits through investor incentive programmes..

In this manner, denial of entry measures can be effectively used to stop the corrupt.

THE ISSUE

DENYING ENTRY: THE FRONT DOOR

Proceeds of ill-gotten gains are often hidden abroad and outside the country where the illegal acts happened. Taking funds across borders makes tracing the money harder and often provides the corrupt with better financial returns. These assets can be laundered through legitimate businesses, real estate, luxury goods, financial investments and other payments (such as tuition costs).

A new approach to the problem of money laundering has been to restrict the corrupt from traveling to and living in the countries where their assets have been moved. This may be seen both as a punitive and deterrent measure: denial of entry bars the possibility to travel freely and enjoy the wealth amassed abroad and discourages the corrupt from laundering assets abroad. Most importantly, if swiftly adopted it would convey a clear message: people who engage in corruption are not welcome.

As part of the effort to refuse a safe haven to corrupt individuals, the G20 Anti-Corruption Working Group (ACWG) introduced the principle of denial of entry for “corrupt officials and those who corrupt them” in its first action plan. The commitment was endorsed by the G20 leaders in 2010 and renewed in 2012 when the ACWG developed the “Common Principles of Action”, which urge member countries to:⁷

- adopt ad hoc denial of entry policies, legal frameworks and enforcement measures;
- determine the definition of corrupt conduct, drawing on domestic legislation and aligning it with international anti-corruption legal commitments;
- deny entry even absent a prior conviction where there is sufficient information to make a determination;
- consider extending denial of entry to family members and close associates;
- cooperate with each other by sharing points of contact.

The agreement acknowledges that “ultimately all decisions to deny entry reside with the relevant national authorities and are taken at their discretion”.

IMPLEMENTATION PITFALLS AND RISKS

Due to the lack of publicly available information on the number and reasons of visas denied, it is difficult to assess the effectiveness and fairness of using denial of entry on grounds of corruption allegations. In spite of reiterated pleas by G20 leaders, external assessments suggest that the level of compliance with this commitment is among the weakest of those made by the G20.⁸ The legal basis and enforcement of these measures differ greatly across member countries. Coordination between national governments is at present not sufficient⁹ nor has it been channelled through international law enforcement bodies like Interpol. In order to improve international cooperation and information sharing, a “Network of Experts” on denial of entry was established by the G20 in 2013. Unfortunately, their identity and contact information have not been made public to date.

Given the politically sensitive nature of visa and entry denial decisions against foreign officials, procedural safeguards and clear criteria are crucial in preventing politically-motivated abuses and negligence. For instance, several countries keep lists of individuals who are barred entry which, if not made public, are likely to be subject to abuse. Other potential risks stem from the formal criteria upon which entry can be denied. According to the G20 principles, the absence of a prior conviction should not prevent taking measures against people suspected of being corrupt, as long as credible evidences can be produced. The stipulation attempts to address the problem that corrupt officials often manage to elude justice in their home country.

DENIAL OF ENTRY IN PRACTICE

Denial of entry entails the refusal to issue a visa or, where no visa is needed, the denial of access to a country such as when crossing a border or transferring through a country. In case of an already issued visa, this will be terminated. Denials cannot be applied to people who at the moment of the ban are already present in the national territory.

As a general rule, the legal instrument imposing such restrictions allows for exemptions on humanitarian grounds or in order to comply with international law.⁶ Finally, denials of entry may be issued without being part of formal sanctions against a country.

Clear and publicly available criteria are needed to prevent arbitrary implementation and should include a definition of corrupt behaviour which would trigger denial of entry. For example, in the absence of previous convictions, public authorities would defer to the civil standard of proof when deciding on a denial of entry. Procedural guarantees are essential, such as the possibility to respond to the allegations, the right to access the relevant documents and — if denied entry — to be informed about the reasons of the denial. Equally needed is an effective review mechanism to assess the main safeguards against the risk that denial of entry is politically misused. Finally, a threshold could be set by public authorities for corruption offences that merit denial of entry.

Another challenge to address with denial of entry is that it may actually prevent prosecutions from proceeding against foreign officials. The rationale behind imposing travel restrictions is it would reduce the likelihood that corrupt individuals escape their country and avoid prosecution.¹⁰ However, in some instances, letting corrupt public officials travel to the country where their wealth is kept may be the only way to uncover their otherwise hidden assets (and provide the evidence needed for their prosecution).

One additional obstacle is how to address high-ranking officials accused of corruption. Official state visits, such as by a president or minister, would represent an acceptable exception for granting visas in spite of corruption allegations. However, some limitations for who is considered “high ranking” would need to be internationally-agreed to ensure that such travel by notoriously corrupt figures would not be a signal of impunity by the international community.

FAST-TRACK CITIZENSHIP: THE BACKDOOR

Several countries run “investor programmes” designed to speed up visa, residency and citizenship procedures for wealthy business people investing in the domestic economy (see side bar). Such preferences can be obtained by buying government bonds, purchasing properties, starting new businesses or contributing to a government fund (such as for national development).

While most countries offer these programmes to high-net worth investors, some governments even run citizenship-by-investment schemes. Countries that grant a fast-tracked access to citizenship with zero or reduced residency periods include Austria, Australia, Albania, Antigua and Barbuda, Belgium, Bulgaria, Cyprus, Dominica, Macedonia, Malta, Panama, Romania, Singapore, St. Kitts and Nevis, UK and US. According to recent assessments of these investor programmes, Chinese and Russian nationals are by far the main beneficiaries.¹¹

While investor programmes bring in human and financial capital, they represent a potential threat to the fight against cross-border corruption. If they do not involve sufficient integrity checks, they may constitute an easy backdoor for corrupt individuals. In light of the significant sums involved, there is a need for governments to scrutinise the source of the foreign assets to ensure that they are not linked to money laundering. Also there is a need to ensure impartiality and integrity in the programmes. This is of concern particularly for programmes that have been outsourced to private companies,¹² which may also advise private clients on how to apply to them, presenting a conflict of interest.

The risk of programme abuse has turned into a reality in some cases. For example, the US investor visa programme “EB-5” has recently come under investigation for reported mismanagement and corruption on the part of the companies promoting the scheme.¹³ Canada, amid criticism of the EB-5 in its neighbouring country, has decided to discontinue its “Immigrant Investor Program” as of 2014,¹⁴ citing the poor economic results of the scheme.¹⁵ The citizenship-by-investment scheme run by St Kitts and Nevis has been reportedly

A PRICELIST FOR VISAS AND RESIDENCE PERMITS

In the US, Immigrant Investor Visas are awarded to foreigners who invest at least US\$ 1 million in the economy and create 10 full-time jobs within two years of arrival.

A foreigner who invests £1 million in a UK company can apply for permanent residency within five years. Investments over £5 million reduce the waiting time to three years; over £10 million, this number is cut to two.

Greece and Cyprus offer fast-track resident permits to foreigners who purchase properties whose value is at least € 300,000 and € 250,000, respectively. In Spain and Portugal the minimum purchase required to gain residency is € 500,000 and one must wait five to six years before becoming a resident.

Until February 2014, when the programme was halted, Malta, an EU member, offered citizenship in return for a combination of cash, property purchases and investment worth €1.15 million. Bulgaria only demands a € 180,000 investment in exchange for citizenship.

used by illicit actors from Iran to hide their nationality for the purpose of evading international sanctions and engaging in financial crime.¹⁶ In the case of China, it is estimated that more than 18,000 public officials fled the country between 1995 and 2008 through such investor programmes, smuggling out stolen assets worth nearly 800 billion Yuan (US\$ 145 billion).¹⁷ The US, Canada, Australia and UK are thought to have been the primary destination for these individuals.¹⁸

RECOMMENDATIONS

ON DENIAL OF ENTRY

Governments must:

- Establish clear and publicly available criteria for denying an individual entry.
 - Criteria could include the conviction or the presence of credible evidence that an individual was involved in corruption offences.
 - Civil standard of proof shall apply when evaluating the evidence that individuals have been involved in corruption.
 - An objective assessment of individual cases would consider the rule of law in the country of origin and nature of corruption offence.
- Establish a common set of guarantees to prevent abuse
 - Measures would include procedural guarantees (e.g. the possibility to respond to the allegations) and a fair and accessible review system.
 - Immigration rules implementing the principle of denial of entry for corrupt officials should be consistent with international humanitarian law.
- Promote effective communication between countries, such as through Interpol, to enable timely information sharing about corrupt public officials.
- Designate and make public the contact points for relevant authorities and working methods used by governments for denying entry.
- Provide opportunities for the public to receive and provide information to denial of entry contact points about allegedly corrupt visa applicants.
- Publish specific statistics on visas and entries refused on the basis of corruption.

Civil Society must:

- Work with law enforcement and government officials to develop criteria and appropriate thresholds for denying entry to the corrupt.
- Demand information about implementation of denial of entry programmes to ensure their effectiveness and prevent their abuse.
- Publicise lapses in protocol, such as when corrupt officials are issued visas.

ON INVESTOR PROGRAMMES:

Governments must:

- Align denial of entry procedures with “investor programmes” of countries to ensure policy coherence and to prevent them from becoming a backdoor for the corrupt.
- Revise thresholds and time periods upwards for securing residency through payment schemes while ensuring coherence among programmes.

THE EU: ONE VISA TO OPEN BORDERS

Where borders between countries have been eased, like in the EU, the integrity of investor programmes is essential, particularly when it comes to ensuring these schemes are not used to launder illicit flows.

In light of difficult economic situations, several South European countries have set up house-for-visa schemes, enabling wealthy foreigners to gain a long-term visa (and eventually a residency permit) in exchange for the purchase of a residential property.

Such programmes, known as “golden visas”, must be complemented with thorough and independent checks on the origin of the invested funds. Otherwise, they represent an excellent opportunity for money launderers to both make their funds legitimate and acquire the right to freely move across EU member states.

Cases of abuses have been already uncovered in Portugal, where in March 2014 a “golden visa” beneficiary was arrested after an international warrant was issued. The man was wanted for fraud offences committed in China.¹⁹ In June 2014 several state officials have been put under investigation for allegedly receiving kickbacks in order to grant “golden visas” to non-EU citizens.²⁰

- Avoid fast-tracking the granting of citizenship through higher investment amounts.
- Ensure “investor programmes” develop a commonly agreed “integrity” criteria and due diligence process to issue residency permits.
 - This is crucial for EU member states and others countries that use single visa programmes.
 - Criteria would draw on “know your customer” principles used by financial and other institutions.
- Provide for sufficient oversight and whistleblowing channels to prevent and flag wrong-doing or other abuses in programmes.

Civil Society must:

- Request governments to provide detailed information on investor programmes and their overall use by foreign nationals.
- Demand that governments put in place proper safeguards to thoroughly screen applicants, such as for past corruption convictions or family connections with high-level public officials

Notes

¹ ADB/OECD. “Denying Safe Haven to the Corrupt and the Proceeds of Corruption”. Manila, 2006.

² G20 Monitoring Report 2013.

³ See: www.oas.org/juridico/english/ministry_of_justice_v.htm#CONCL%20AND%20RECOM and <http://www.summit-americas.org/SpecialSummit/Declarations/Declaration%20of%20Nuevo%20Leon%20-%20final.pdf> and <http://culturadelalegalidad.org.mx/blog/page/3/>.

⁴ See: http://www.oecd.org/daf/anti-bribery/G20_Anti-Corruption_Action_Plan.pdf.

⁵ G20 Common Principles for Action: Denial of Safe Haven, available at:

<http://en.g20russia.ru/load/781360536>.

⁶ See for instance the EU Council’s Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy (15114/05).

⁷ G20 Common Principles for Action: Denial of Safe Haven.

⁸ G20-B20 Dialogue Efficiency Task Force. “From Toronto to Saint Petersburg: Assessing G20-B20 Engagement Effectiveness”. Draft Report. June 2013.

⁹ First monitoring report of the G20 anti-corruption working group to G20 leaders, 2011. Available at: www.mofa.go.jp/policy/economy/g20_summit/2011/pdfs/annex08.pdf.

¹⁰ Kathleen M Hamann, Remarks at the “Meeting of Experts on Cooperation with Respect to the Denial of Safe Haven to Corrupt Officials and Those Who Corrupt Them, Their Extradition, and the Denial of Entry and Recovery of the Proceeds of Corruption and Their Return to Their Legitimate Owners” March 28-29, 2005.

¹¹ Tom Meltzer, “Want to buy citizenship? It helps if you’re one of the super-rich”. *The Guardian*, 10 December 2013; “No country for poor men.” *The Economist*. 1 March 2014; “Cash for passports”, *Financial Times*, December 10, 2013.

¹² For instance the scheme in Antigua and Barbuda, St. Kitts and Nevis and Malta is managed by a Jersey-based company, Henley and Partners.

¹³ David Sherfinski, “Issues of corruption, fraud in investor-visa program date back two decades”, *The Washington Times*, 18 February 2014. Also see: www.nytimes.com/2012/04/16/opinion/reform-the-eb-5-program.html?_r=0.

¹⁴ Jennifer Graham, “Loss of Immigrant Investor Program for all provinces except Quebec angers Wall”, *The Canadian Press*, 12 February 2014. Note: the investor programme will continue in Quebec.

¹⁵ Sophia Yan, “Canada kills investor visa popular with Chinese”, *CNN*, 25 March 2014.

¹⁶ US department of the Treasury, Financial Crimes Enforcement Network. “Passports Obtained Through St. Kitts and Nevis Citizenship-by-Investment Program Used to Facilitate Financial Crime.” 20 May, 2014.

¹⁷ Philip Wen, “Corrupt Chinese officials flee overseas, some bound for Australia”, *The Sydney Morning Herald*, 25 February 2014.

¹⁸ Philip Wen, “Corrupt Chinese officials flee overseas, some bound for Australia”, *The Sydney Morning Herald*, 25 February 2014; Heather Timmons, “Beijing goes hunting for overseas real estate bought with dirty money”, *Quartz*, 5 November 2013.

¹⁹ “Golden Visa’ Chinese man arrested for fraud (UPDATE)”, *Portugal Resident*. 25 March 2014.

²⁰ Cristina Sambado, “Suspeitas de milhões em luvas nos vistos dourados”, *RTP*, 5 June 2014.

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