



Quick Reference
Guide 4: **Anticorruption
Laws** of Russia

Anticorruption Laws of Russia

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Avoiding Liability Under the Anticorruption Legislation

On 10 January 2009 Federal Law 273-FZ “On Counteracting Corruption” (the Anticorruption Law), Federal Law 274-FZ, Federal Law 280-FZ and amendments to a host of other federal laws (collectively, with the Anticorruption Law, the Anticorruption Legislation) came into force. In May of 2011 the Duma increased the penalties for violating the Anticorruption Law. As a result of Russia’s efforts, its Transparency International corruption ranking is slowly but steadily improving (now 143 of 182). Seeking to improve on this trend and further attract foreign investment following its entry into the WTO, the Russian Federation ratified the OECD Convention on Combating Bribery effective 13 January 2012.

This Quick Reference Guide summarizes some of the key elements of the Anticorruption Legislation.

While requirements imposed by home country legislation mean that many non-Russia-based companies operating in Russia already have robust anticorruption compliance programs that should keep them on the right side of the law in most respects, it should be noted that the Anticorruption Legislation, like the UK Bribery Act, is broader than the Foreign Corrupt Practices Act of 1977 (FCPA) because it prohibits commercial bribery. Accordingly, if you are doing business in the Russian Federation (RF), it is important to have a strong understanding of the Anticorruption Legislation or risk facing the threat of severe civil and criminal penalties.

The Anticorruption Legislation

The Anticorruption Law is intended to establish the legal and organizational framework for preventing and fighting corruption and minimizing or eliminating the consequences of corruption. The Anticorruption Legislation expands upon these basic principles with respect to certain categories of government employees including judges, members of parliament and individuals holding state and municipal offices, as well as amending the Civil, Criminal and Administrative Codes to include various sanctions for violating the laws.

Corruption

The Anticorruption Legislation defines corruption as a detriment to the lawful interests of the state and society arising from:

- An abuse of power or position of authority with respect both to public servants and government officials (Public Officials) and to officers holding a management position in a commercial or other private entity (a Corporate Officer);
- Giving a bribe to, or receiving a bribe by, a Public Official or a foreign official / official of a public international organization (a Foreign Public Officials);
- Engaging in commercial bribery – i.e., the giving a bribe to, or receiving a bribe by, a Corporate Officer; or
- Facilitating a bribe.

An act of corruption is defined as an act (i) for the purpose of receiving a profit in the form of a monetary gain, valuables or other property or services of a proprietary or financial nature (Pecuniary Gain), either for oneself or for third-party beneficiaries, or (ii) the illegal

provision of such Pecuniary Gain, whether by a person for his or her own benefit or on behalf of, or for the benefit of, a third person. While the Civil Code permits “simple gifts” of no more than 3,000 rubles (approximately US\$100) to be made to Public Officials, pursuant to the Criminal Code and Federal Law 79-FZ dated 27 July 2004 “On State Civil Service in the Russian Federation” it is illegal for any Public Official acting in his or her official capacity to accept any gifts of any value, regardless of the parties’ intent. An exception to this rule is gifts made to a Public Official at an official state function, in situations in which such gifts are accepted by the Public Official on behalf of the state and such gifts are considered state property. Best practices would counsel against giving any gift to a Public Official, and care needs to be taken whenever contracting with a Public Official.

Public Officials, Foreign Public Officials and Corporate Officers

A Public Official is a Russian citizen holding a government service post – either federal or municipal, within the civil, military or law enforcement service sectors – that involves any professional activity involving the execution of the powers of federal state bodies including the constituent regions of the RF as established by the Russian Constitution and other such federal laws. The definition includes government notaries, but excludes private notaries and officials of other countries. A comprehensive list of federal Public Officials can be found in the Register of Public Officials. Notably, Public Officials also include employees of commercial enterprises if the state owns 50 percent or more of the total share capital of the company.

A Foreign Public Official is any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected, and any person exercising a public function for a foreign country, including for a public agency or a public expertise. The definition includes public civil officials and any persons authorized to act on behalf of an international organization.

A Corporate Officer is a person performing functions of the CEO, a member of the board of directors or any other executive board, or a person performing on a permanent or temporary basis or by special authority the organizational,

regulatory, administrative and economic functions in any organization.

Conflicts of Interest

A conflict of interest exists when the personal interest of a Public Official (either direct or indirect) may affect the proper performance of his or her official duties, or there is or may be a contradiction between the personal interests of an official and the rights and lawful interests of citizens, entities, organizations, society or the state, by which the rights and interests of the latter may be violated. The personal interest of an official involves the receipt (directly or indirectly) of a Pecuniary Gain in the course of performing his or her official functions.

Penalties

The Anticorruption Legislation establishes criminal liability for acts of corruption, introduces administrative fines assessable on Russia-based and extra-territory on non-Russia-based companies engaged in corrupt activities, and requires dismissal of Public Officials for violations of the Anticorruption Legislation.

The penalties are summarized below:

- Abuse of power or position of authority

For the Public Official the liability is a fine up to 80,000 rubles, an amount equivalent to his income for a period of up to six months, the prohibition to hold certain offices or to engage in certain activities for the term of up to five years, detention for a period of up to six months or imprisonment for up to four years. For the officers holding a management position in a commercial or other private entity, the liability is a fine in an amount of up to 200,000 rubles, an amount equivalent to his income for a period of up to 18 months, compulsory works for the term up to 240 hours (work done without compensation outside principal employment), corrective labor for a term up to two years (work done for compensation to those without principal employment with the compensation then forfeited by the state), detention for a term up to six months, or imprisonment for a term of up to four years.

- Giving a bribe to Public Officials and Foreign Public Officials

The penalty for legal entities who commit, or

cause to be committed, corrupt acts on their behalf or for their benefit is an administrative fine in an amount of up to three times the value of the benefit conferred, but no less than 1 million rubles, along with the seizure of the Pecuniary Gain. Individuals giving a bribe may be punished with a fine up to the amount of 30 times the bribe or imprisonment for up to two years along with a fine of up to 10 times the amount of the bribe.

- Receiving a bribe by Public Officials and Foreign Public Officials

Public Officials and Foreign Public Officials taking a bribe may be punished with a fine up to 50 times the amount of the bribe along with the prohibition to hold certain offices or to engage in certain activities for a term of up to three years or imprisonment for up to three years along with a fine of 20 times the amount of the bribe.

- Engaging in commercial bribery

Russian Anticorruption Legislation also prohibits commercial bribery, which is also punished by law with respect to both to the bribe giver and the bribe taker. The bribe giver is subject to a fine up to 50 times the amount of a bribe along with the prohibition to hold certain offices or to engage in certain activities for a term of up to two years, or detention for up to two years or imprisonment for up to two years. The bribe taker is subject to a fine up to 70 times the amount of the bribe along with the prohibition to hold certain offices or engage in certain activities for a term of up to three years or imprisonment for up to seven years, along with a fine of 40 times the amount of the bribe.

- Facilitating a bribe

A facilitator in bribery is subject to a fine in the amount of 40 times the bribe along with the prohibition to hold certain offices or to engage in certain activities for a term of up to three years or imprisonment for up to five years, along with a fine of 20 times the amount of the bribe.

The penalties indicated above could be more severe depending on the amount of the bribe, the way it was given, the purpose of the bribe and the person (or group of persons) offering the bribe.

Mitigating factors may absolve criminal liability for giving bribes. The first mitigating factor is the giving of a bribe under duress (extortion). The

second mitigating factor comes into play if the bribe giver voluntarily informs the appropriate authorities of the bribe and agrees to provide testimony in criminal proceedings against the bribe taker.

US Foreign Corrupt Practices Act

In addition to the Anticorruption Legislation, the US FCPA continues to apply to individuals, firms, officers, directors, employees, agents and stockholders acting on behalf of a firm outside US territory with a direct connection to the United States who “corruptly [act] in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value” to “any foreign official . . . to assist . . . in obtaining or retaining business.”

US companies or non-US companies registered on the US stock exchange must be diligent in acquiring Russia-based companies because of potential successor liability for corrupt practices, careful about using intermediaries and third-party agents for the distribution of products, and watchful of the actions of their joint venture partners in the RF, considering the broad reach of the FCPA. The FCPA, through its books and records and internal controls provisions, extends liability to US parent companies for accounting oversight of their majority-owned Russian subsidiaries, as knowledge of improper conduct may be imputed to the parent.

UK Bribery Act of 2010

In addition to the Anticorruption Legislation and the FCPA, the UK Bribery Act casts a broad net by asserting jurisdiction to impose liability on an organization that carries on business in the UK (in whole or in part) for failing to prevent bribery anywhere in the world. Carrying on business is broadly interpreted and may include as little as advertising in the UK or exporting products to the UK.

In short, companies need to maintain robust compliance programs that take into account the requirements of multiple foreign and domestic laws to protect themselves from multijurisdictional threats arising from the actions of their agents and associates across the globe.

For More Information

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