Overview of Anti-corruption Laws in Russia

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1. PRINCIPAL SOURCES OF LAW APPLICABLE TO ANTI-CORRUPTION ISSUES

The Russian authorities recognise that the level of corruption in the country is inadmissibly high and that research polls held over the past years testify to widespread corruption in all public sectors, including the political level and the executive branches at various levels, law-enforcement bodies, judicial system, public procurement agencies, public health services, education system, housing and communal services etc. According to the Corruption Perceptions Index produced by Transparency International, Russia is still one of the most corrupt countries in Europe.

The issue is a serious matter for Russian authorities and the fight against corruption is recognised as an important priority at the highest political level.

Russian authorities have initiated numerous strategies and reforms that include preventive and repressive measures to fight corruption. The initiatives include general reforms among large number of institutions and public administration to specific anti-corruption measures in the law enforcement system.

The main laws and regulations to prevent corruption are:

1.1 International anti-corruption regulations

1.2 Codes
- Criminal Code No. 167-I of the Russian Federation, dated 13 June 1996 (Chapters 22, 30);

1.3 Laws
- Law No. 25 – FZ, On Municipal Service of the Russian Federation, dated 2 March 2007 (as amended on 17 July 2009);
- Law No. 79 – FZ On the Public Civil Service, dated 27 July 2004;

1.6 Court decisions

1.7 Furthermore, there is a number of anti-corruption programmes carried out by various agencies, such as: the Ministry of Internal Affairs, the Prosecutor General’s Office, the Federal Customs Service.

2. PERSONS SUBJECT TO ANTI-CORRUPTION REGULATIONS

2.1 General definitions
Russian legislation on prevention of corruption employs the following principal terms.

Public officials, which include:
(a) Federal State civil servant – a citizen performing his/her professional function at a position of federal civil service and receiving funds (remuneration, monetary allowance) from the federal budget funds.
(b) State civil servant of a subject of the Russian Federation – a citizen performing his/her professional function at a position of State civil service of a subject of the Russian Federation and receiving funds (remuneration) from the budget of the respective subject of the Russian Federation. In cases provided by federal law, the State civil servant of a subject of Russian Federation may also receive funds (remuneration) from the federal budget.
(c) Municipal civil servant is a citizen performing his/her professional function of municipal service prescribed by municipal acts in accordance with federal laws and laws of the a subject of Russian Federation and receiving salary from the funds of the local budget.

State Officials (Officials):
Under the Criminal law of the Russian Federation the term “Officials” applies to:
(a) persons permanently, temporarily, or by special power carrying out the functions of a representative of power and fulfilling organisational-administrative or administrative-economic functions in State agencies, agencies of local self-governed authorities, State and municipal institutions, State corporations, and also in the Armed Forces of the Russian Federation, other forces and military formations of the Russian Federation,
(b) persons occupying posts established by the Constitution of the Russian Federation, federal constitutional laws, federal laws for the direct performance of powers of State agencies,
offences. These laws establish the procedure for prevention and resolution of conflict of interests in State and municipal civil service.

There are also special legislations that aim to govern the performance of State civil service and municipal civil service.

Under the Law of Russian Federation On Preventing Corruption, and the Law On Public Civil Service, the following acts are prohibited:

For a State Civil Servant in Relation to Performance of State Civil Service:

1. participation for remuneration in the managerial body of a commercial organisation, save in cases provided by federal law;

2. occupation of a position of State civil service in case of:
   - being elected to a paid position in a body of a trade union, including an elected body of the primary trade union, created within the State authority;
   - carrying out entrepreneurial activity;
   - acquisition in cases provided by federal law of securities on which income may be received;
   - being an attorney or representative of third parties before the State authority, in which he/she occupies a State civil service position, unless otherwise provided by this federal law or other federal laws;

3. receipt of remuneration from individuals and legal entities (gifts, monetary remuneration, loans, services, payment for entertainment, relaxation, transportation expenses and other forms of remuneration) in connection with performance of State functions;

4. travel outside of the Russian Federation in connection with executing State functions for the funds provided by individuals or legal entities, other than business trips on the basis of international treaties of the Russian Federation or on reciprocal basis of agreement between federal State authorities, State authorities of subjects of the Russian Federation and State authorities of other states, international organisations or foreign organisations;

5. use of the means of material and other support, other State property or transfer the same to other persons for the purposes unrelated to State functions;

6. disclosure or use of the information, classified in accordance with federal law as confidential or State civil service information which became known to him/her in the course of State functions, for purposes unrelated to the State civil service;

7. accepting without written permission of a representative of the employer awards, honorary and special titles (excluding scientific) of foreign states, international organisations, as well as political parties, other community...
unions or religious unions, if his/her functions include interaction with the mentioned organisations and unions;

8. use of the privileges of his/her office for the pre-election campaign and campaign matters of referendum;

9. use of his/her powers in the interests of political parties, other community unions, religious unions, and other organisations, and to publicly express his/her attitude towards such unions and organisations in the capacity of State civil service if this is not part of his/her State functions;

10. discontinuation of exercising State functions for the purpose of settlement of an internal dispute;

11. participation in the managerial, guardian or supervisory boards, other bodies of foreign non-governmental non commercial organisations operating in the Russian Federation or their structural units, unless otherwise provided by an international treaty of the Russian Federation or the laws of the Russian Federation;

12. performance without written consent of a representative of the employer paid activities financed exclusively from the funds of foreign states, international and foreign organisations, foreign citizens and persons without citizenship, unless otherwise provided by an international treaty of the Russian Federation or the laws of the Russian Federation.

After termination of the position in State civil service the person may not:

- without consent of the relevant commission for compliance within two years occupy positions or work on the basis of civil law contract in commercial and non-commercial organisations, if certain functions of State management of those organisations were within the State functions of the State civil servant;

- disclose or use of confidential proprietary information, which became known to him/her in the course of his/her functions, in the interests of organisations or individuals.

The same restrictions apply to the municipal civil servants and officials.

3.2 Gifts and other benefits

Matters related to the acceptance of gifts by governmental officials are regulated by the Civil Code, which stipulates that no gifts can be presented to officials except for “ordinary ones”, the value of which does not exceed 100 USD.

Such gifts can be given in certain situations, i.e. to staff of medical and educational institutions, social protection institutions, and other similar institutions by citizens who use their services, as well as by the spouses and relatives of these citizens. The same applies to governmental and municipal officials in connection with their official status or performance of official duties as well as relations between commercial organisations.

Furthermore, the Law of the Russian Federation On Public Civil Service stipulates that a civil servant, who performs his/her duties, has no right to accept rewards from persons and legal entities in connection with the performance of his/her official duties (in the form of gifts, monetary rewards, loans, services, payment for relaxation, entertainment, transportation costs and other rewards). The gifts received by a civil servant within protocol events, official journeys and other official events shall be regarded as federal property or property of a constituent element and must be handed over to a governmental authority where he/she has been appointed to a civil service position.

Furthermore, a civil servant has no right to travel outside the Russian Federation in connection with his/her official duties at the expense of persons and legal entities, except for official journeys or for purposes unrelated to his official duties.

4. LIABILITY FOR THE VIOLATION OF ANTI-CORRUPTION RULES

Under the Law of the Russian Federation On Prevention Corruption, the persons found guilty of corruption acts incur criminal, administrative, civil-law or disciplinary liability in compliance with the procedure stipulated by legislation.

4.1 Criminal offences and liability

The following offences are reflected in the Criminal Code of the Russian Federation:

- active bribery in the public sector – defined as a bribe given in person or through a mediator;

- passive bribery – defined as a bribe taken for acts or inaction in the public sector;

- active bribery in a profit-making organisation – defined as illegal transfer of money, securities or other assets to a person who discharges the managerial functions in a profit-making or any other organisation likewise the unlawful rendering of property-related services to him for the commission of acts (inaction) in the interests of the giver, in connection with the official position held by this person;

- passive bribery in the private sector – defined as illegal receipt of money, securities, or any other asset by a person who discharges the managerial functions in a profit-making or any other organisation, and likewise the illegal use of property-related services for the commission of acts (inaction) in the interests of the giver, in connection with the official position held by
this person is bribery in a profit-making organisation would, according to the authorities, apply to private as well as public business (State enterprises).

- An attempt, i.e. deliberate act (inaction) of a person aimed at commission of bribery in a profit-making organisation;
- a promise or a request for a bribe;
- abuse of Authority is the use of authority by a person discharging managerial functions in a profit-making or any other organisation (except State agency, local self-governed authority or a governmental municipal institution) in defiance of the lawful interests;
- abuse of Official Powers is the use by an official of his/her powers contrary to the interests of the civil service, if this deed has been committed out of mercenary or any other personal interests and has involved a substantial violation of the rights and lawful interests of individuals or organisations or the legally-protected interests of the society or the State;
- money laundering;
- evasion of tax or fees by a person;
- evasion of tax and fees by an organisation;
- concealment of pecuniary means or property of an organisation or a private individual;
- forgery or the use of false documents as well as fraud.

The Russian Criminal Code also regulates offences committed in Russia as well as outside Russia. Any person who has committed a crime in the territory of the Russian Federation is to face criminal charges under the Russian Criminal Code. Russian citizens and stateless persons who permanently reside in the Russian Federation and who have committed crimes outside the boundaries of Russia are to face criminal charges under the Criminal Code unless these persons have been convicted in the foreign State. Foreign citizens and stateless persons who do not reside permanently in the Russian Federation and who have committed crimes outside Russia are to face criminal charges under the Criminal Code unless these persons have been convicted in a foreign State. Foreign citizens and stateless persons who do not reside permanently in the Russian Federation and who have committed crimes outside Russia are to face criminal charges in Russia if the crime runs counter to the interests of the Russian Federation or if provided for by an international agreement, unless they have been convicted in a foreign State and are brought to criminal justice on the territory of the Russian Federation. Foreign citizens who commit corruption offences outside Russia may be recognised as the subject of the crime committed by functionaries due to the fact that the crime can be regarded as actions prejudice to the Russian State in accordance with its international obligations.

Types of penalties to be imposed for the above listed crimes depend on gravity and scope of material damage and the type of crime itself. The punishments (penalties) include:

- fine of up to 30,000 USD;
- prohibition to hold certain positions for up to 3 years;
- deprivation of freedom (maximum term for deprivation of freedom is up to 12 years for especially big amounts of bribes).

According to Article 104.1 of the Criminal Code, a confiscation of proceeds of corruption, is possible only in respect of passive bribery in a profit-making organisation, abuse of official powers and bribe-taking. It is therefore excluded in respect of active bribery in the public sector and abuse of authority. The decision to confiscate the proceeds of crime is made by the court taking into consideration all the facts of the case. According to Article 104.1 of the Criminal Code not only funds and valuables acquired through the commission of a crime, but also the instruments of a crime can be confiscated. Confiscation is also possible in respect of an attempt.

According to Article 104.1 Criminal Code, confiscation of criminally acquired money, valuables and other property as well as any proceeds from this property (indirect confiscation) is possible. Moreover, money, valuables and other property, used or dedicated for financing terrorism, organised crime, illegal armed groups, may be confiscated. Weapons, equipment and other instruments of crime belonging to an accused can also be confiscated. This confiscation also applies to the proceeds from crime. If the proceeds of a crime were merged with legally obtained property, only the value of the part of the joint property emanating from the crime can be confiscated.

Proceeds of crime assigned by the accused to another person (organisation) are to be confiscated if the person who received the property knew or should have known that it was acquired illegally.

According to Article 104.2 Criminal Code money can be confiscated instead of property. Thus, if a certain object, listed in Article 104.1 CC, cannot be confiscated at the moment of taking the decision on confiscation because it is in use, has been sold or lost or due to other reasons, the court can confiscate the sum of money corresponding in the value to the said object.

As a rule, confiscation, according to Article 104.1 Criminal Code, is possible only when the offender has been convicted and sentenced for the offence relating to the confiscation request. This follows from Chapter 39 “Passing the sentence” of the Criminal Procedure Code I.

In addition, “procedural confiscation” of instruments and proceeds of crime (direct as well as indirect proceeds) in accordance with Article 81 Criminal Procedure Code for the purpose of being used as evidence is also possible. Article 81 Criminal Procedure Code is wider than Article 104.1 Criminal Code in that it is not limited to the list of offences provided for in the latter Article. According to Article 81 CPC, any object, money, valuables that have been used as the instrument of an offence or retained traces of an offence is to be recognised as physical evidence.
Corruption proceeds can also be confiscated both under Article 169 of the Civil Code, which deals with the invalidity of contracts which would violate fundamental principles of public order and morality, and under Article 170 of the Civil Code which concerns the validity of fictitious and fraudulent deals. When a deal between two parties is based on corruption, the deal could be considered invalid. In such a situation all property emanating from this deal can be subject to confiscation in accordance with Articles 169 and 170 of the Civil Code.

4.2 Administrative offences and liability
The system of administrative liability for corruption offences is governed by the Code of Administrative Offences providing administrative responsibility for actions which could be referred to as corruption. Some regulations on administrative offences are:

- violation of terms of disclosing information about accounts with a bank or any other lending institution;
- violation of the terms of submitting tax returns to a tax authority or an authority of a State off-budget fund;
- failure to submit information necessary to conduct tax control and for violations of the rules of bookkeeping and accounting;
- violations of the law encroaching on the rights of citizens, in particular during preparation for and conduct of elections and referenda;
- misappropriation through embezzlement;
- restriction of the freedom of trade;
- misuse of budgetary means; use of insider information on the market of securities;
- violation of the terms of consideration of applications (requests) for land or water object provision;
- illegal remuneration paid on behalf of a legal entity;
- illegal employment of a State civil servant (former State civil servant).

The principal administrative punishment is a fine.

Article 3.7 of the Code of Administrative Offences provides for confiscation of instruments or objects of an administrative offence. According to Articles 3.2 and 3.3 COA, this can be applied as a penalty to natural and legal persons who have committed administrative offences. The decision on administrative confiscation is also taken by a court according to Chapter 25 of the Arbitrary Procedure Code and Chapter 29 of the Code of Administrative Offences.

4.3 Offences and liability incurred by legal entities
Legal entities can be subject to administrative liability for administrative corruption offences. Administrative liability of legal entities is specified in the Code of Administrative Offences.

The current principles for legal persons’ administrative responsibility are set out in the Code of Administrative Offences or by the laws on administrative offences adopted in various regions of the Federation. According to the Code of Administrative Offences available administrative sanctions which can be imposed on legal persons include: warning, administrative fine, confiscation of the instrument of crime or the subject of the administrative offence, administrative suspension of the activity.

According to the Federal Law On Fighting Legalisation (Laundering) of Proceeds of Crime and Financing of Terrorism of 7 August 2001 (No. 115-FZ), the licence of the organisations which conduct transactions with funds or other assets and operate on the basis of a licence, may be withdrawn. If a legal person violated the legislation on money-laundering, the legal person can be brought to administrative responsibility according to the Code of Administrative Offences.

The size of a fine that may be imposed on legal entities for certain corruption offences may be up to three times the amount of funds paid, three times the price of the securities, other assets or property-related services rendered, but not less than one million rubles, together with confiscation of transferred funds, securities and other assets.

5. ANTI-CORRUPTION PRACTICES
In order to ensure correct and uniform application of the legislation, the Presidium of Supreme Court of the Russian Federation in its Decision No. 6 dated 10 February 2000 (amended 2007) On Court Practice in Bribery and Commercial Bribery Cases (Plenum) noted that receiving the payment by the following persons may not be treated as bribery: employees of the State authorities or municipal authorities, State and municipal establishments, performing professional or technical functions that are not organisational and managerial or administrative and business. The Plenum has also explained which functions should be treated as organisational and managerial or administrative and business.

The Plenum further noted that the bribe and commercial bribe may be given not only by money, securities or other property, but also by pecuniary benefits which are provided gratuitously, but are normally required to be paid for (tourist vouchers, refurbishment of apartment, construction of country house). Pecuniary benefits further include reduction of lease payments, interest rates on bank credits.

The Plenum noted that extortion of a bribe is a request by an official or person exercising managerial functions in a commercial or other organisation, to give a bribe or transfer illegal remuneration in the form of money, securities or other property and in case of commercial bribery subject to threat of taking action which may cause damage to legitimate interests of the person or put the latter in a position, where he is forced to give a bribe or to commit commercial bribery for the purpose of prevention of damaging consequences for his interests protected by law.

On 2 April 2010 Russian division of car manufacturer Daimler AG, CJSC Mercedes Benz Rus following the parent company pleaded guilty to bribery charges raised by the US Department of Justice and Securities and Exchange Commission against Daimler AG.
Kick-backs from Daimler amounting to EUR 5 million at the minimum were, according to DOJ information, received by the employees of the special purposes garages of the Federal Protection Service, Ministry of Interior, Ministry of Defence and Mayor’s offices of Moscow, Ufa and Novy Urengoi. According to the indictment, in Russia the manufacturer’s representative paid bribes to civil servants in order to ensure that when the cars were imported the customs’ officials treated them with less vigour.

The Financial Times “FT” reported that the US Federal District Court allowed Daimler to pay a US $185 million fine as part of the deal to settle the charges of paying bribes to high-ranking officials in 22 countries over the world to secure lucrative public contracts. In the absence of such a deal, the car manufacturer would have faced a fine of up to US $2 million, disgorgement of illegally received profit, revocation of licences, a ban on participation in public procurement in the US and possibly introduction of external monitoring of the compliance of its contracts.

In addition to the Russian division, the German division has also pleaded guilty in the case. US Department of Justice agreed not to investigate this case in China subject to compliance with certain conditions. FT notes, citing documents from the investigation file, that the growth of corruption in the company was caused by excessive independence of foreign divisions, bribery-tolerant environment and corruption of high-ranking managers occupying certain key positions.

6. RECOMMENDATIONS ON COMPANIES’ COMPLIANCE POLICIES

We recommend:

- inclusion of the procedure envisaging that at the time a former State or municipal civil servant is employed, it is verified whether a permission for such employment should be sought (in case it creates a conflict of interest) and that, if required, such permission is obtained;
- procedures aimed to verify before the event, whether any benefit provided for such servant in relation to the event may be prohibited by the Russian legislation and that if such benefit is permitted it is appropriately documented, are put in place for events involving State civil servants;
- introduce internal anti-corruption standards taking into account the provisions of Russian anti-corruption legislation, namely:
  - the price of gifts to State civil servants shall not exceed the limits provided by law;
  - gratuitous provision of paid-for services may be treated as giving a bribe;
  - ensure systematic education of the employees on anti-corruption legislation provisions, including that any person may be held responsible for some violations of anti-corruption laws such as giving a bribe.
- advise the employees of the obligations imposed on State civil servants. For example, of the obligation of the State and municipal civil servants to notify the prosecutor’s office and other State authorities of all instances when such servants are approached by any persons for the purpose of encouraging the servant to commit a corruption-related offence.