Anti-corruption and compliance

General approach
Over the past decade, a number of anti-corruption measures have been introduced at the legislative and executive levels in Russia. However, the issue cannot be resolved all at once. And the level of corruption in Russia is widely assumed to be relatively high according to international studies and ratings.

Recent developments and trends
The President’s National Anti-corruption Plan for the period 2018-2020 aims, as previous plans, to improve the legislation and enforcement practice in the following areas:
— prevention and disclosure of conflicts of interest;
— control over state officials’ expenses and forfeiture of non-confirmed incomes to the state;
— counteraction of corruption in the public procurement sector; and
— international collaboration on revealing, arresting and returning assets gained as a result of corruption.

Many efforts in the past two years were directed at counteracting corruption both at the level of the civil service and that of private companies.

A number of initiatives were aimed at increasing transparency in the civil service and generally deterring civil servants from committing corruption offences. For instance:
— In 2019, the General Prosecutor’s Office was granted the right to request information on the foreign bank accounts of civil servants through the Central Bank of Russia.
— A register of civil servants dismissed for corruption offences has been available online at https://gossluzhba.gov.ru/reestr since 2018.

The Ministry of Labour and Social Protection has developed new recommendations regarding anti-corruption measures to be adopted by companies.

Please see the Compliance requirements for companies section below.

However, many organisations still fail to implement anti-corruption measures in spite of the fact that there has been a legal requirement to do so since 1 January 2013. This is largely because no specific sanctions for the relevant violations are in place.

A legal entity will now liable when bribery offences have been committed
not only for its benefit, but also for that of any related legal entities. The maximum fine for such offences was increased to 100 times the amount of the bribe (on top of the seizure of the amount paid as a bribe).

At the same time, some of the initiatives widely discussed in 2018 were put on hold or declined in 2019. For example, a bill protecting whistle-blowers was rejected by the State Duma, and a bill introducing restrictions on the types of gifts that civil servants may receive was postponed for an indefinite period.

Court practice in the sphere of anti-corruption has also been developed:
— At the end of 2019, the Supreme Court of the Russian Federation amended its resolutions of the Plenum on bribery cases and abuse of powers.
— Rulings of lower courts on corruption cases were regularly reviewed by the Supreme Court and summarised in court practice reviews.
— In 2019, the Constitutional Court of the Russian Federation established that non-confirmed incomes or property purchased using such incomes can also be seized from any relatives and even friends of a civil servant.

According to the General Prosecutor’s Office, the number of corruption crimes revealed by investigating authorities for the first nine months of 2019 increased in comparison with 2018 (26,114 in 2019 against 25,004 in 2018)¹.

Similarly, the number of offences committed by legal entities has doubled over the past five years².

As in the previous year, 2019 saw several landmark anti-corruption cases and investigations against high-ranking officials, including the governors of several regions and federal agency officials.

Legal framework
Relevant legislation
Prior to 2008, there was very little anti-corruption legislation in Russia. However, in 2008, the first National Anti-corruption Plan was announced. As part of that Plan, Federal Law No. 273-FZ “On Fighting Corruption” was enacted on 25 December 2008 (the “Anti-corruption Law”) (as amended and supplemented). This law remains the principal legislative act on bribery in Russia. However, the relevant legislation is by no means consolidated and relevant provisions are found in a number of legal acts.

¹ https://www.kommersant.ru/doc/4186717
² https://www.interfax.ru/interview/687205
Russian law in this area is also affected by international treaties.

The current legislation on corruption now includes:

— International legislation:
  - United Nations Convention against Corruption dated 2003 (ratified by Russia in 2006);
  - Criminal Law Convention on Corruption No. 173 by the Council of Europe (ratified by Russia in 2007); and

— Federal legislation directly addressing corruption:
  - the Anti-corruption Law;
  - Federal Law No. 230-FZ “On Monitoring the Correlation of Expenses by State Officials with their Incomes” dated 3 December 2012;
  - Federal Law No. 79-FZ “On the Prohibition for Certain Categories of Individuals to Open and Have Accounts, Keep Moneys and Assets in Foreign Bank Accounts outside the Russian Federation, Own and/or Use Foreign Financial Instruments” dated 7 May 2013;

— Federal legislation indirectly addressing corruption, such as:
  - Federal Law No. 3-FZ “On Police” dated 7 February 2011;
  - tax law; and

Please see the Disclosure rules section below.

— Decrees of the President, the Federal Government and other executive bodies, specifically:
  - establishing the National
Anti-corruption Plan (includes a list of steps and measures to be taken with a view to fighting corruption); and
• regulating the anti-corruption examination of the acts of governmental bodies.

However, the legislation is still quite fragmentary and sometimes confusing.

In addition to Russian law, laws of other states may be applicable to situations in Russia. The United States Foreign Corrupt Practices Act of 1977, the United Kingdom Bribery Act of 2010 and the French Sapin II Law of 2016 have a wide extraterritorial reach.

State agencies
Apart from the general law enforcement authorities (the police, public prosecution, etc.), several state agencies are responsible for enforcing federal anti-corruption measures, such as the President’s Council on Counteracting Corruption (as a supervising body) and the Ministry of Justice (responsible in particular for the anti-corruption screening of draft legal acts).

The General Prosecutor’s Office has a range of authorities to counteract corruption, including:
— initiating administrative proceedings and carrying out administrative investigations;
— participating in court proceedings on corruption crimes;
— coordinating investigation authorities in anti-corruption matters; and
— monitoring enforcement of anti-corruption legislation.

Special parliamentary committees have also been established to monitor the income and assets of the members of parliament.

Compliance requirements for companies
Russian companies, representative offices and branches of foreign companies must develop and implement internal measures aimed at preventing bribery. These include, amongst others, appointing compliance officers, adopting internal codes of ethics and policies for all employees, cooperating with law enforcement authorities.

To help companies implement effective anti-corruption measures, the Ministry of Labour and Social Protection has developed new recommendations on combating corruption in organisations.

These recommendations include adopting measures aimed at minimising corruption risks for companies and, in particular, those related to:
— developing anti-corruption policies and standards;
— settling conflicts of interest;
— interacting with employees;
— building an effective system for obtaining information on corruption offences; and
— interacting with law enforcement agencies.
To date, no sanctions are provided for failure to take anti-corruption compliance measures. However, the General Prosecutor’s Office may file a claim to demand the implementation of anti-corruption measures. Moreover, in the event of checks by the authorities (police, public prosecutor, etc.), an order to remedy the failure can be issued against the delinquent company. In turn, failure to implement this kind of order carries administrative sanctions, namely fines and/or the disqualification of the company’s general director from holding office for up to three years.

Concept of corruption in Russian law

The Anti-corruption Law defines corruption as:
— the abuse of an official rank or powers;
— giving or receiving a bribe;
— commercial bribery;
— other illegal use of official rank by an individual contrary to the lawful interests of the state and society for the purpose of any form of material benefit for oneself or others; or
— the illegal provision of a material benefit to a public official by another individual on their own behalf, or on behalf of or pursuant to the interests of a legal entity.

Material benefit includes money, valuables, other property or pecuniary services, benefits of a “property character” (“immushestvenniy kharakter”, e.g. travel offers), and other property rights.

Bribery is subject to the Criminal Code and consists of two interdependent elements: (i) the giving of a bribe; and (ii) the taking of a bribe. They are committed simultaneously and result in two separate crimes. According to the Anti-corruption Law, a bribe involving money and other assets may be a property-related benefit, service or a favour, and must have a monetary value (renovation, building a house, etc.). Property-related services may include the transfer of property at an undervalue, a reduction of lease payments or loan interest rates.

If these benefits are provided to family members or friends of the official, with the official’s approval or consent, and the official has used his/her official powers to the benefit of the briber, this also constitutes bribery.

Commercial bribery is the illegal transfer of material assets to a legal entity’s manager in connection with his/her position as well as the unlawful rendering of property-related services, or the granting of other property rights to him/her for taking action (or refraining from action) in the interest of the giver.

Possible targets of bribery

Even though the Anti-corruption Law contains a commercial bribery element, public officials constitute the main target of the legislation.
**Definition of public officials for the purpose of anti-corruption legislation**

For the purpose of Russian legislation public officials include any official or functionary with managerial, regulatory, administrative or economic (financial) duties. Specifically, these officials hold state (i.e. federal or regional) or municipal offices established by law and discharge those functions entrusted by law, specific normative acts or on the basis of an order of a respective superior official.

Officials without executive authority may still commit breaches of the Anti-corruption Law when, in their official capacity: (i) they have the opportunity to prompt another official to act (or refrain from acting) and; (ii) they have been bribed for general patronage or connivance. Even if a briber is coerced into offering a bribe by a person presenting himself/herself as an official, the former may still be liable for a bribery offence.

In 2017, the list of persons obliged to take measures to prevent conflicts of interest was clarified. To date, it includes:

— civil servants at federal, regional or municipal level;
— officials of the Central Bank of Russia, state corporations, state funds and other organisations established under federal laws;
— employees of organisations established to accomplish tasks of federal agencies; and
— other persons set out by federal laws.

**Prohibitive measures for public officials**

Under the Public Civil Service Law, public officials are prohibited from:

— engaging in entrepreneurial activities;
— receiving from legal entities or individuals remuneration in cash or non-cash gifts (except for gifts with a value of up to RUB 3,000 (EUR 43) given during official events); RUB 70 = EUR 1
— travelling abroad at the expense of legal entities or individuals;
— purchasing securities in certain cases stipulated in the federal legislation; and
— disclosing confidential or relevant information obtained during civil service in favour of legal entities or individuals after retirement.

The Public Civil Service Law also stipulates a mechanism for regulating conflicts of interest involving public officials.

**Disclosure rules**

Under Russian tax law, public officials and their close relatives (their spouses and minor children) must file compulsory income declarations and disclose expenses that exceed their declared income. The tax authorities and the Council on Counteracting Corruption are authorised to check the income and
expenses of officials and demand an explanation as to the origin of their assets, if these assets do not correlate with the income level of the individual.

Public officials may be dismissed for loss of confidence by their “employer”. Their dismissal may result from a conflict of interest while in public service, or from a failure to disclose income or expenses which should have been disclosed. If it is discovered that an official is involved in entrepreneurial activities or affiliated with legal entities, he/she must be dismissed on these legal grounds.

Liability and penalties for corruption

**Public officials**

Apart from bribery, the Criminal Code holds public officials liable for crimes committed against the state and/or municipal authorities, such as:

— abuse of powers;
— exceeding rank and authority;
— illegal entrepreneurial activities; and
— forgery by an official.

If a public official is prosecuted for several crimes, the court will first consider each of them independently and then as a whole to determine the gravity of the offence and resulting sentence.

Under the Criminal Code, only individuals may be held liable for crimes specified in the Code (including bribery/commercial bribery); however, legal entities may be punished for corrupt activities under the Code on Administrative Offences. The liability of a legal entity does not exempt a culpable individual from liability, and vice versa.

Interestingly, a bill extending the criminal liability of legal entities has been under consideration by the State Duma since 2015, although it is not yet known when the respective law will be enacted.

**Individuals**

Individuals are subject to:

— liability to reimburse losses in full (under the Russian Civil Code);
— disciplinary actions resulting in the termination of employment (under the Russian Labour Code);
— up to ten years’ imprisonment for abuse of authority;
— up to eight years’ imprisonment for commercial bribery (for the bribe giver);
— up to 12 years’ imprisonment for abuse of authority in conjunction with commercial bribery;
— up to 15 years’ imprisonment for a public official who receives a bribe;
— up to 15 years’ imprisonment for bribe giving;
— disqualification of a bribed public official from holding public office for up to 15 years;
— up to seven years’ imprisonment for facilitating bribery in commercial and other organisations; and/or
— up to 12 years’ imprisonment for facilitating bribery of public officials.

---

3 Immovable property, motor vehicles, securities and/or participations in legal entities.
The measures taken in 2019 are mainly intended to reveal and prevent potential corruption offences.

In addition to or instead of the abovementioned sanctions, those giving or receiving bribes (including commercial bribes) may be fined ten to 100 times the amount of the bribe offered/received.

**Legal entities**

Legal entities may be prosecuted for:
- the illegal employment of a current or former public official, carrying a fine of up to RUB 500,000 (EUR 7,150); and
- the illegal payment of a bribe on their behalf or that of any related legal entity, carrying a fine ranging from RUB 1m (EUR 14,300) to 100 times the amount of the bribe plus seizure of the amount paid. Also, the entity’s assets (including bank accounts and immovable property) up to a value equal to the potential fine may be frozen while the matter is being investigated. In that sense, the legal entity may be prohibited from selling or otherwise disposing of the property.

**Example of sector-specific anti-corruption measures**

The Public Procurement Law contains provisions which are designed to counter bribery by:
- requiring the holding of auctions or competitive tenders for the purchase of goods, works and services for federal, regional and municipal needs ("Public Procurement");
- regulating in detail the procedural aspects of Public Procurement (including requirements applying to tender participants);
- prohibiting tender rules that limit the number of participants; and
- requiring Public Procurement decisions to be adopted by more than one public official (i.e. shared responsibility in adopting these decisions).