



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

Anti-bribery & corruption: the fight goes global

Commercial Fraud Commission

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National Report of Russia

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1. THE LEGAL FRAMEWORK

1.1 What criminal and/or civil/administrative law(s) exist in your jurisdiction which are specifically targeted at bribery & corruption? Please provide:

a. a brief summary of the offences;

Anti-corruption matters in Russia are regulated by the Federal Law of December 25, 2008 No 273-FZ "On Combating Corruption" (hereinafter – “the Anti-corruption law”) as amended from time to time. This is the basic law on bribery in Russia and it provides the main provisions for fighting against corruption.

Penalties for taking or giving bribes are set forth in the Russian Criminal Code adopted on June 12, 1996 N 63-FZ and the Russian Code of Administrative Offences adopted on December 30, 2001 N 195-FZ.

Russian criminal legislation provides for offences of taking and accepting bribes by public officials, commercial bribes, intermediation in bribery and a promise or proposal to intermedate in bribery.

b. any affirmative defences that are available;

Generally Russian Criminal Code provides for the similar affirmative defences as legislation of other countries. It may include expiry of statue of limitations (depends on the gravity of the committed crime), insanity or extortion of a bribe by a public official.

c. the penalties that may be imposed upon offenders.

Nowadays Russian Criminal legislation provides for the following types of corruption related crimes:

- **Commercial Bribery** may be punishable with a fine in an amount which is from ten times to ninety times as much as the sum of commercial bribe with disqualification from holding specific offices or engaging in specified activities for a term up to three years, or with deprivation of liberty for a term up to twelve years accompanied by a fine in an amount which is fifty times as much as the sum of commercial bribe. It is extremely important to note that if a criminal act has caused harm to the interests of an exclusively profit-making organization that is not a governmental or municipal enter-

prise, then prosecution shall be instituted upon the application of this organization, or with its consent.

- **Taking a Bribe** by an official, foreign official or an official of a public international organization may be punishable with a fine in an amount which is from twenty five times to one hundred times as much as the sum of the bribe with disqualification from holding specific offices or engaging in specified activities for a term up to three years or with compulsory labour to five years with disqualification from holding specific offices or engaging in specified activities for a term up to three years or by deprivation of liberty for a term up to fifteen years accompanied by a fine in an amount which is seventy times as much as the sum of bribe.
- **Giving a Bribe** may be punishable with a fine in an amount which is from fifteen times to ninety times as much as the sum of the bribe or with compulsory labour to three years or with a fine to eighty times accompanied by disqualification from holding specific offices or engaging in specified activities for a term up to three years or by deprivation of liberty for a term up to twelve years accompanied by a fine in an amount which is seventy times as much as the sum of bribe.
- **Intermediation in Bribery** may be punishable with a fine in an amount which is from twenty times to ninety times as much as the sum of the bribe with disqualification from holding specific offices or engaging in specified activities for a term up to three years or by deprivation of liberty for a term up to twelve years accompanied by a fine in an amount which is seventy times as much as the sum of bribe.
- **A Promise or Proposal to Intermediate in Bribery** may be punishable with a fine in an amount which is from fifteen times to seventy times as much as the sum of the bribe disqualification from holding specific offices or engaging in specified activities for a term up to three years or with a fine in an amount which from five thousand to five hundred million roubles with disqualification from holding specific offices or engaging in specified activities for a term up to three years or by deprivation of liberty for a term up to seven years accompanied by a fine in an amount which is from ten to sixty times as much as the sum of bribe.

Russian Administrative legislation provides liability for unlawful remuneration on behalf of a legal entity which may entail the imposition of an administrative fine on legal entities in the amount of up to one hundred times as much as the sum of money, value of securities, other property, services of property nature or other property rights unlawfully transferred or rendered, promised or offered on behalf of the legal entity but at least one million roubles accompanied by confiscation of money, securities, other property or the cost of services of property nature or other property rights. Meanwhile the liability of a legal entity does not exclude criminal liability for an individual who commits a corruption crime.

NOTE: According to Russian legislation criminal liability embraces only natural persons.

1.2 Does your jurisdiction outlaw “private” bribery/corruption (i.e. transactions between two or more private entities or persons) as well as “public” bribery/corruption? If so, please explain how the distinction is drawn between private and public bribery/corruption.

Russian anti-bribery legislation provides for two main types of bribery: bribes given to public officials and commercial bribery. The main difference here is to whom the bribe is given to: a public official or an employee or officer of commercial organization.

The definition of public officials is set forth in the Criminal Code of Russia in article 285. According to this definition public officials are persons who perform the functions of a representative of government on a permanent or temporary basis, or by special authority, or who perform organizing and regulative, administrative, and economic functions in state bodies, local self-government bodies, state corporations, governmental and municipal institutions, and also in the Armed Forces of the Russian Federation, in other troops, and military formations of the Russian Federation.

1.3 Is your law extra-territorial? If so, in what circumstances can it be enforced if the relevant acts/omissions of bribery/corruption occur outside your jurisdiction?

Under the principle of the Code of Administrative Offences, unless an international treaty provides otherwise, a person committing an administrative offence (for example, unlawful remuneration on behalf of a legal entity) in the territory of the Russian Federation shall be held administratively liable. A person committing an administrative offence outside the Russian Federation shall be held administratively liable under the Code of Administrative Offences where it is provided for by an international treaty made by the Russian Federation.

According to provisions of the Criminal Code set forth in articles 11 and 12 any person who has committed a crime in the territory of the Russian Federation shall be brought to criminal liability under the Code. Foreign nationals and stateless persons who do not reside permanently in the Russian Federation and who have committed their crimes outside the boundaries of the Russian Federation shall be brought to criminal liability under the Criminal Code in cases, if the crimes run counter to the interests of the Russian Federation, and in cases provided for by international treaty of the Russian Federation, and unless they have been convicted in a foreign state.

1.4 Are there any “safe harbours” or exemptions in relation to transactions that might otherwise be regarded as bribes, such as “facilitation payments”, which are expressly excluded from being illegal? If so, is this determined by statute/codified law, by case law or otherwise?

Russian legislation provides neither for exemptions, nor for facilitation payments.

Formally, any sum of money given to officials for the certain acts to be done from their side may be qualified as a bribe.

But Russian Civil legislation allows to make gifts to state servants in case this gift does not exceed RUB 3000 (approximately 43 EUR). Herewith, it is very important to understand what constitutes a gift and a bribe under Russian law. A gift may be made only gratuitously while bribes, according to the definitions, are given in exchange of certain acts to be done in favor of a bribe-giver.

Therefore, RUB 3000 threshold cannot be considered as a barrier always distinguishing a bribe and a gift. As we have mentioned, a gift may be made only gratuitously. It means that courts always pay attention to intention and particular circumstances of the situation when a gift was made, i.e. certain benefit for the bribe giver.

Therefore, a gift sometimes may exceed RUB 3000 if it was made gratuitously and no acts from the official to whom it was made are expected. And to the contrary, a gift not exceeding RUB 3000 may sometimes be qualified as a bribe if it was given in exchange of certain act done by an official.

1.5 Does the financial regulatory system (i.e. the law and regulations governing the operation and conduct of banks and other financial institutions) in your jurisdiction address the topic of bribery & corruption? If so, please provide a brief summary of the obligations (including systems/controls and reporting obligations) that are imposed on banks and other financial institutions in this regard.

Federal Law No. 115-FZ “On Combating Money Laundering and the Financing of Terrorism” dated 7 August 2001 (hereinafter – the “Money Laundering Law”) provides for some obligations of financial institutions.

The Money Laundering Law requires banks and a wide range of financial institutions to monitor and report any transaction that equals or exceeds RUB 600,000 (approximately 8 681 EUR) and involves or relates to cash payments; operations of individuals or legal entities domiciled in countries that do not participate in the international fight against money laundering; bank deposits; precious stones and metals; payments under life insurance policies and/or gambling; all transactions of extremist organisations or individuals included on Russia's domestic list; transactions with immovable property if amount of this transaction is equal to or exceeds RUB 3 000 000 (approximately 43 400 EUR).

2. CORPORATE CRIMINAL LIABILITY

2.1 In the context of bribery/corruption, does your law recognise the concept of corporate criminal liability? E.g. can a corporate entity be found guilty of bribery?

No, legal entities cannot be criminally liable. Only officials of a legal entity may be criminally liable.

But legal entities may be brought to administrative liability for corruption offences.

2.2 If the answer to 2.1 above is “yes”, please provide a brief explanation of the legal theory of corporate criminal liability (i.e. what circumstances must be established for corporate liability to arise and what form does that liability take) as well as the penalties that may be imposed upon a corporate offender.

Not applicable.

2.3 Are there any pending or expected changes to the law of corporate criminal liability in your jurisdiction? If so, please explain the proposed changes and the expected timeframe for implementation.

The Investigative Committee of the Russian Federation developed a draft law on criminal liability of legal entities.

As of the present moment the draft law is in the stage of public discussion, therefore, now it is difficult to predict whether this draft law will be adopted and within what time.

3. MUTUAL LEGAL ASSISTANCE / CO-OPERATION

3.1 Is your jurisdiction a signatory to any bi-lateral or multi-lateral treaties or other instruments regarding mutual legal assistance / co-operation in the context of bribery & corruption? If so, which ones?

Russia is a signatory to some multi-lateral and a number of bi-lateral treaties regarding mutual legal assistance.

Among multi-lateral treaties, it is worth mentioning OECD Anti-Bribery Convention, European Convention on Mutual Assistance in Criminal Matters of 1959, United Nations Convention against Transnational Organized Crime of 2000, United Nations Convention against Corruption of 2003, European Convention on the Transfer of Sentenced Persons of 1983, European Convention on the Suppression of Terrorism of 1977, CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 1993 and some others.

As it has been mentioned Russia is a member of a number of bi-lateral treaties on mutual legal assistance, for example, with Bulgaria, Hungary, Vietnam, Greece, India, Canada, Cyprus, China, Korea, Poland, Romania, USA, Finland, Mexico and some others.

3.2 Are the regulatory/prosecution authorities in your jurisdiction parties to any formal or informal co-operation arrangements with equivalent authorities in other jurisdictions (e.g. a memorandum of understanding, etc.)? If so, please provide a brief summary of the arrangements and the other authorities/jurisdictions.

Yes, Russian law enforcement bodies are parties to some formal agreements with the equivalent authorities in other jurisdictions.

For example, Investigative Committee is a party to cooperation agreements and memorandum of understandings with law enforcement bodies of Kazakhstan, USA, Finland, Germany, Cuba, Israel, Norway, China, Belorussia and others.

Moreover, Russia is a member of Interpol and has a body (Interpol National Central Bureau) as a special division of the Ministry of Internal Affairs.

4. CASES

4.1 Please describe in brief three (3) cases of bribery/corruption in (or involving) your jurisdiction which illustrate the trend towards cross-border/global investigation and enforcement of anti-bribery laws. For example, cases where:

a. your jurisdiction's law(s) were enforced on an extra-territorial basis;

We are not aware of any similar cases.

b. there was a degree of cooperation/assistance provided by your jurisdiction to another jurisdiction, or vice versa; and/or

- In a ruling N 6004/13 of October 8, 2013 Supreme Arbitrazh Court of the Russian Federation stated that the Russian Federation and the UK are parties to the UN Convention against Corruption of 2003 that imposes on its parties an obligation to cooperate in taking measures aimed at more efficient prevention of corruption in private sector and its counteraction, including by means of admitting the contracts invalid concluding as a result of influence of corruptive factors.

Therefore, recognition in Russia of a foreign court judgement on admitting the transaction invalid made under unprofitable conditions for one of the parties with violation of conflict of interest rules may be regarded as performing by the Russian Federation of its international obligations, i.e. of the principle of cooperation between courts and law enforcement bodies set forth in point 5 article 14 of the UN Convention against Corruption of 2003.

- Another case relates to the former top representative at the European Bank for Reconstruction and Development, Elena Kotova. Russian law enforcement bodies obtained materials on the relevant corruption offence transferred to them from the English law enforcement bodies.

As a result a Russian court handed the country's former top representative at the European Bank for Reconstruction and Development a suspended sentence after finding her guilty of seeking a bribe of more US\$1.4 million. Kotova had demanded the payment in return for facilitating a US\$95 million loan by the London-based international lender to a Canadian oil and gas company.

c. penalties were imposed by your jurisdiction as well as by other jurisdictions, in relation to the same set of facts.

We are not aware of any similar cases. To the contrary, it should be noted that although HP, Daimler, Diebold, Pfizer and some other companies were fined in the US for bribery given to officials in different countries including Russia and representatives of these companies acknowledged its guilt, in Russia there was no relevant investigations and therefore, bribe takers were not punished.