



Russia

Corporate ABC Report for 2017

# / Executive summary

## Introduction

ABC (anti-bribery and corruption) enforcement in Russia and the former Soviet republics in 2017 was marked by foreign multinational actions against international companies for large-scale offences. The pressure from abroad was increased by the World Bank which debarred persons from these regions from further financing projects due to fraud. ABC enforcement against companies enjoyed less support from the Russian side, with domestic enforcement actions focusing on small-scale bribery and slowing down slightly. The Russian legislator on the other hand has been quite active and the legislative outlook for 2018 is promising.

## Key developments

- **US, UK, Dutch and Swedish authorities** completed several, partly multinational, enforcement actions in Russia and former Soviet republics. For the first time, the UK Serious Fraud Office concluded a deferred prosecution agreement (DPA) for violations of the UK Bribery Act extending to Russia. As in 2016, the US Securities and Exchange Commission and the US Department of Justice completed a number of investigations of violations of the Foreign Corrupt Practices Act in former Soviet republics. Most foreign investigations targeted **large-scale bribery** in the energy, telecommunications and infrastructure sectors.
- The **World Bank's Integrity Vice Presidency (INT)** debarred or cross-debarred 18 companies and individuals from former Soviet republics from further World Bank projects following **fraud and corruption** investigations, and opened eight new cases in these regions.
- **Russian enforcement actions** in 2017 still focused on small-scale bribery committed by Russian companies. Compared to 2016, the number of convictions of legal entities for bribery offences **decreased slightly** (from 397 to 325). Many offences occurred in the construction, transportation, oil and gas, and retail sectors across Russia. Apparently, no major company has been held liable for corruption or bribery.
- Russian prosecutors continued to actively perform **inspections of Russian companies** to verify the implementation of anti-corruption measures. The need for these checks was confirmed in a survey by Transparency International Russia, which revealed that Russia's 200 largest companies have so far **failed to take basic anti-corruption measures**.
- Following **legislative changes** in Russia, corrupt companies are now debarred from state procurement contracts. There will be an online register of state employees who have been dismissed from public service due to corruption. In response to US sanctions, the Russian government is now authorized to restrict the disclosure of information by Russian sources (notaries, companies, public registers, bank, share issuers etc.). Important **legislative initiatives for 2018** include the adoption of a whistleblower law and the development of binding anti-corruption standards for private companies.

# / Foreign enforcement actions in Russia & former Soviet republics

## US Department of Justice (DOJ) and US Securities and Exchange Commission (SEC) – Kazakhstan, Azerbaijan, Uzbekistan and Georgia

Throughout 2017, the US Department of Justice (DOJ) and the US Securities and Exchange Commission (SEC) completed, partly jointly with UK, Dutch and Swedish law enforcement authorities, a number of investigations for violations of the **Foreign Corrupt Practices Act (FCPA)** in Kazakhstan, Azerbaijan, Uzbekistan and Georgia.

Most of these investigations targeted large-scale bribery in the energy, telecommunications and infrastructure sectors, and resulted in the payment of significant fines. The underlying corruption schemes included:

- commission **payments to intermediaries**, knowing that the intermediaries intended to use at least a portion of the commission payments to bribe foreign officials in order to win contracts;
- engaging a **local distributor** of parts and services, knowing that the distributor was beneficially owned by a high-ranking government official with decision-making authority over the ability to continue operating in the relevant market and to win contracts;
- payment of **bribes to a shell company** beneficially owned by a close relative of a high-ranking government official under the guise of lobbying and consulting services that were never provided;
- sharing the profits from the acquisition and subsequent operation of a state-owned industrial facility with high-level government officials by way of setting-up a **joint venture company** and entering into a **management agreement** with companies indirectly partly owned by the officials.

## UK Serious Fraud Office (SFO) – Russia

In January 2017, the UK Serious Fraud Office (SFO) concluded for the first time a deferred prosecution agreement (DPA) for violations of the **UK Bribery Act** extending to, among other, Russia.

With respect to Russia, the charges under the DPA related to **payments to intermediaries** for bribing an official of a state-owned company to award a supply contract. At the time of the award, there was no formal contract in place with either intermediary, and the appropriate due diligence on them had not been completed.

## World Bank – Uzbekistan, Kazakhstan, Kyrgyzstan, Azerbaijan and Tajikistan

Throughout 2017, the World Bank's Integrity Vice Presidency (INT) opened eight new cases for full investigations of **fraud and corruption** in World Bank Group-financed activities in Europe and Central Asia.

The World Bank statistics do not disclose to what extent these cases concern projects in Russia and the former Soviet republics. However, in 2017, in total 18 companies and individuals from former Soviet republics (Uzbekistan, Kazakhstan, Kyrgyzstan, Azerbaijan and Tajikistan) were, as a result of completed INT investigations, **debarred** or, following debarment by other development banks, cross-debarred from further projects financed by the World Bank Group. It is therefore likely that some of the new cases also relate to projects in former Soviet republics.

# / Russian enforcement actions against legal entities

## Continued focus on small-scale bribery

According to information published by the general prosecutor's office for 2017, legal entities were held liable for bribery offences in 325 cases (based on Article 19.28 of the Administrative Offences Code, i.e. unlawful remuneration on behalf of a legal entity). That means that, compared to 2016 (397 cases), Russian investigations **slowed down slightly** in 2017. Since some legal entities have been convicted repeatedly under different case numbers, the actual number of convicted legal entities is even less than 325.

Almost all cases – predominantly dealing with illegal payments to civil servants or employees of other companies – resulted in the imposition of a fine. Depending on the bribe sum, the law provides for fines of up to RUB 100m (approx. USD 1.7m) or more. In most cases only the statutory minimum fine of RUB 1m was imposed. Often, the minimum fines were further reduced by the courts of appeal. That means that Russian ABC enforcement actions against legal entities continue to focus on **small-scale bribery**.

As an additional sanction, since January 2017 all legal entities convicted of bribery offences according to Article 19.28 of the Administrative Offences Code will be prohibited from bidding in state procurement tenders for a period of two years from the date of conviction.

The published information shows that, as in 2016, the ABC enforcement actions targeted exclusively **small and medium-sized Russian companies** with Russian beneficiaries (many in the construction, transportation, oil and gas, and retail sectors across Russia). No major Russian company has been held liable. Apparently, there have been no convictions of Russian subsidiaries of foreign companies or of foreign companies themselves.

None of the foreign enforcement actions based on bribery and corruption offences related to Russia (e.g. under US FCPA or UK Bribery Act) seem to have triggered any subsequent ABC investigations by Russian law enforcement authorities.

## Anti-corruption measures as defence

Legal entities can be held liable under Article 19.28 of the Administrative Offences Code (unlawful remuneration on behalf of a legal entity) if the prosecutor can prove that they have not taken all measures necessary to prevent such bribery being committed by their employees or agents.

Since its introduction in 2013, these measures arguably include the raft of anti-corruption measures which must be taken by Russian organizations according to **Article 13.3 of the Anti-Corruption Law** (appointment of a compliance officer, adoption of a compliance code, cooperation with law enforcement authorities etc.).

However, the available court practice still gives **no guidance** on how legal entities must implement the anti-corruption measures in order to be exempted from administrative liability. Currently, the courts regularly establish the failure of legal entities to take the necessary measures to prevent bribery without further reference to the anti-corruption measures.

## Inspections of legal entities by prosecutors

Outside of ABC investigations, public prosecutors continued in 2017 to actively perform inspections of Russian legal entities to check whether they have actually adopted the anti-corruption measures of Article 13.3 of the Anti-Corruption Law.

Russian law does not specify sanctions for non-compliance with the requirements of Article 13.3 of the Anti-Corruption Law. Therefore, the prosecutors filed **civil law claims** against the companies "in the interest of an indefinite number of persons" which were processed by the courts. As in 2016, these claims resulted in numerous court orders obliging companies to implement anti-corruption measures within a certain time period (usually one month). In a few cases, the general directors of these companies had to pay **small fines** for failure to comply with the prosecutors' instructions to implement the missing anti-corruption measures.

Practice shows that Russian subsidiaries of foreign companies are also frequently subject to such checks.

## Large companies' failure to take anti-corruption measures

That there is an actual need to monitor the anti-corruption measures adopted by Russian legal entities is confirmed by Transparency International Russia's report, "Transparency in Corporate Reporting: Assessing the Russian's Largest Companies", which was published on 25 January 2018 (<https://transparency.org.ru/special/trac2018russia/en/>).

This report reveals that most of **Russia's 200 largest companies** by revenue have so far failed to take basic anti-corruption measures:

- Only 115 companies have anti-corruption rules which are publicly accessible on their website;
- Most of the reviewed compliance documents do not include sufficient hospitality provisions (e.g. requirement to report gifts or thresholds for acceptable gifts);
- Only 20% of the companies expressly prohibit facilitation payments (which may qualify as bribery under Russian law);
- Only 26% of the companies extend their anti-corruption policies to agents and consultants;
- 60% of the companies do not have an anonymous hotline for whistleblower reports;
- Most companies either do not conduct anti-corruption training at all, or organize it only on an irregular basis.

# / Russian legislative developments in 2017

## Debarment of corrupt companies from state procurement

Since 1 January 2017, corrupt companies have been debarred from state procurement contracts based on amendments to the Federal Law No. 44-FZ "On Contract System in Procurement of Goods, Works, Services for State and Municipal Needs" that tightened the requirements for participants in the procurement process.

Participation by a company in the procurement process means that its CEO, the members of its management board and its chief accountant must not be subject to any **unspent convictions** for a corruption offence under Articles 289, 290, 291 and 291.1 of the Criminal Code. Further, these individuals must not be subject to an unspent administrative or criminal conviction that prohibits them from holding offices or from engaging in activities which are connected to the delivery or provision of the goods, works or services that are to be procured.

Likewise, a company must not participate in the procurement process if the company itself, within **two years** preceding the submission of its bid, was convicted of corruption according to Art. 19.28 of the Administrative Offences Code (illegal remuneration on behalf of a legal entity).

As described above, Russian ABC investigations into legal entities and their management currently focus on small-scale bribery by smaller companies. The effectiveness of the new debarment rules will therefore depend on whether the Russian enforcement authorities start targeting large-scale bribery in the corporate sector as well.

## Register of blacklisted former state employees

Since 1 January 2018, the state authorities have had to record information on civil servants, state officials and other state employees who have been dismissed from public service based on a "loss of trust" due to the commission of **corruption offences**. Information on the blacklisted individuals will be available through a unified register on the official website of the federal state information system at <https://gosszluzhba.gov.ru/>.

A civil servant is any individual professionally exercising state functions at a federal, regional or municipal level according to Federal Law 58-FZ "On the System of State Service in the Russian Federation", Federal Law 79-FZ "On Public Service of the Russian Federation", Federal Law 76-FZ "On the Status of Military Personnel" or Federal Law 25-FZ "On Municipal Service in the Russian Federation" (*gosudarstvennaya sluzhba*). The term state official extends to a limited number of individuals who directly exercise state powers at a federal level or at the level of the 85 subjects of the Russian Federation (*gosudarstvennaya dolzhnost*).

The entries on the blacklisted individuals will be kept in the register for **five years**.

The unified register will allow employers in Russia to screen former state employees for corruption offences prior to hiring them. Checking the joint register should also become part of the know-your-customer (KYC) due diligence of potential Russian business partners.

## Restriction of disclosure of information

Since 31 December 2017, the Russian government has been authorized to determine cases, in which Russian individuals and organizations (notaries, companies, public registers, banks, share issuers etc.) no longer have to comply with their statutory obligations to disclose information. These legislative changes have been introduced in **response to US sanctions**, in particular to the Countering America's Adversaries Through Sanctions Act (CAATSA) of 2 August 2017 which envisages the possibility of imposing additional sanctions on persons who engage in certain transactions relating to Russia.

Based on these legislative changes, on 12 January 2018 the Russian government issued Order No. 5 according to which certain information (pledges of movable property, issuing of an independent guarantee, financing agreements including assignment of monetary claims) is **no longer published** on the website of the legal entities' register if it relates to Russian legal entities or individual entrepreneurs which are subject to foreign sanctions.

On 15 January 2018, the Russian government issued Order No. 10 which relieves Russian companies of their obligation to disclose information on large-scale transactions and interest-party transactions if these transactions are (i) performed in fulfilment of state defence orders and the implementation of military-technological cooperation or (ii) entered into with Russian legal entities or individuals which are subject to foreign sanctions.

These restrictions, as well as additional restrictions on information disclosure which are expected in the future, must be taken into account when performing compliance investigations with respect to Russian companies.



# / Russian legislative outlook for 2018

## Draft law – protection of whistleblowers

On 13 December 2017, the State Duma adopted in its first reading amendments to the Anti-Corruption Law which introduced measures in Russia aimed at the protection of whistleblowers who report on corruption offences.

This legislative process follows the recommendations under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions to establish effective mechanisms for the protection of individuals reporting on bribery of foreign public officials.

Exceeding these recommendations, the draft law extends to the reporting on any bribery offence in the **public or private sector** in Russia. According to the draft law, individuals who reports on such an offence to their employer's representative, the prosecutor's office or the police is to be "protected by the state". The protective measures include:

- confidentiality obligations regarding the whistleblower's identity and the content of their report;
- the whistleblower's protection against any discrimination in their employment situation for the period of two years following the reporting;
- the granting of free legal aid to the whistleblower.

If adopted, the draft law is likely to require organizations operating in Russia to (i) adjust their procedures for handling whistleblower reports from Russia, (ii) set up mechanisms to obtain the whistleblower's consent to the use of personal data and (iii) adopt at the Russian level an internal document regulating the handling of whistleblower reports.

## Draft law – bribery in the interest of affiliated entities

In late December 2017, the State Duma adopted in the first reading legislative amendments which will **close a loophole** in the liability of legal entities for corruption offences according to Art. 19.28 of the Administrative Offences Code (illegal remuneration on behalf of a legal entity).

Currently, this offence only covers cases of providing, offering or promising bribes by its representatives in the name or in the interest of the legal entity itself. Under the proposed amendments, bribery offences committed by the company's representatives in the interest of its affiliated companies will also be punishable.

## Draft law – additional compliance measures in public companies

On 12 January 2018, the State Duma adopted in the second reading amendments to the Federal Law No. 208-FZ "On Joint-Stock Companies" which require public joint-stock companies to implement risk management and internal control measures. Public joint-stock companies are Russian joint-stock companies whose shares are publicly traded or whose company name and charter refer to it as public.

The public company's supervisory board must adopt a policy on the organization of risk management and internal controls. Further, each public company must perform an **internal audit** to assess the reliability and efficiency of its risk management and internal controls. The audit must be performed by an officer of the company or a legal entity instructed by the company. To ensure independence from the company's management, the auditor will be appointed and dismissed by the supervisory board. The supervisory board will also approve the terms of the employment or services agreement with the auditor.

Russian companies already must implement compliance measures according to Article 13.3 of the Anti-Corruption Law (appointment of a compliance officer, adoption of a compliance code, cooperation with law enforcement authorities etc.). The new risk management and internal control measures will have to be adopted by public companies in addition to the measures under the Anti-Corruption Law.

The amendments are expected to enter into force on 1 September 2018.

## Draft law – new anti-corruption standards for private companies

On 9 August 2017, the Federal Labour Ministry proposed significant amendments to Article 13.3 of the Anti-Corruption Law. This article currently obliges Russian organizations to develop and implement measures to prevent corruption, and provides recommendations for these measures (appointment of a compliance officer, adoption of a compliance code, cooperation with law enforcement authorities etc.).

According to the amendments, private organizations will be obliged to develop and implement measures in accordance with certain "**approved anti-corruption standards**". These anti-corruption standards are to be developed by a new National Council for Corruption Prevention consisting of representatives of the Chamber of Commerce and Industry of the Russian Federation, the Russian Union of Industrialists and Entrepreneurs and the Russian government. Compliance by the organizations with these standards shall be assessed and certified by specifically accredited legal entities (so-called expert centres).

Different requirements will apply to organizations which are owned or controlled by the Russian state. These organizations will have to implement specific measures already listed in the amendments and comply with anti-corruption standards approved by the Russian government.

The draft amendments must still be submitted to the State Duma. If adopted as currently proposed, they will enter into force on 1 January 2019.

## / Your contacts



### Hannes Lubitzsch, LL.M.

Rechtsanwalt  
Local Partner

Compliance & Investigations Practice Group  
Corporate/Mergers & Acquisitions Practice Group

T +7 495 7995696  
hannes.lubitzsch@noerr.com



### Tatiana Dovgan

Associate

Antitrust & Competition Practice Group

T +7 495 7995696  
tatiana.dovgan@noerr.com



### Yulia Baimakova

Associate

Compliance & Investigations Practice Group  
Corporate/Mergers & Acquisitions Practice Group

T +7 495 7995696  
yulia.baimakova.pm@noerr.com

Alicante  
Berlin  
Bratislava  
Brussels  
Bucharest  
Budapest  
Dresden  
Düsseldorf  
Frankfurt/M.  
Hamburg  
London  
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