Russia

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Brief overview of the law and enforcement regime

Russian bribery and corruption legislation

Russian bribery and corruption legislation mainly consists of the following inter-related blocks:

- **Anti-corruption laws** – in particular, the National Anti-Corruption Plan (adopted every two years by the Russian President; coordinates the efforts to combat corruption in Russia and lists the specific anti-corruption measures to be taken by the Russian state) and Federal Law No. 273-FZ "On Combatting Corruption" of 25 December 2008 (the "**Anti-Corruption Law**"; sets out the legal and organisational framework for the prevention and combat of corruption as well as the mitigation and remediation of the consequences of corruption)
- **Antitrust regulations** – in particular, Federal Law No. 135-FZ "On Protection of Competition" dated 26 July 2006 (e.g., Article 17 regulates antitrust requirements applicable to public tenders; Article 18 sets out rules for selecting financial organisations).
- **Public procurement regulations** – in particular, Federal Law No. 44-FZ "On the Contract System in State and Municipal Procurement of Goods, Works and Services" dated 5 April 2013 (adopted to prevent corruption and other violations in the area of public procurement; shall ensure efficiency and transparency of decision-making, equal access of bidders as well as control over the procurement process) and Federal Law No. 223-FZ "On Procurement of Goods, Works and Services by Certain Types of Legal Entities" dated 18 July 2011 (establishes specific procurement procedures for legal entities of the Russian Federation such as state corporations and state companies).
- **Administrative Offences Code** – establishes administrative liability for violations of anti-corruption laws, antitrust and public procurement regulations.
- **Criminal Code** – establishes criminal liability for violations of anti-corruption laws, antitrust and public procurement regulations.

Applicable international anti-corruption conventions

In addition, the following international anti-corruption conventions apply in Russia:

- **United Nations Convention against Corruption** of 31 October 2003 (ratified by Federal Law No. 40-FZ dated 8 March 2006, entering into force on 20 March 2006).
- **Council of Europe Criminal Law Convention on Corruption** of 27 January 1999 (ratified by Federal Law No. 125-FZ dated 25 July 2006, entering into force on 28 July 2006).
- **Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime** of 8 November 1990 (ratified by Federal Law No. 62-FZ dated 28 May 2001 entering into force on 31 May 2001).

- **United Nations Convention against Transnational Organised Crime** of 15 November 2000 (ratified by Federal Law No. 26-FZ dated 26 April 2004, entering into force on 29 April 2004).
- **International Convention for the Suppression of the Financing of Terrorism** adopted by the General Assembly of the United Nations on 9 December 1999 (ratified by Federal Law No. 88-FZ dated 10 July 2002, entering into force on 24 July 2002).
- **Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on financing of terrorism** of 16 May 2005 (ratified by Federal Law No. 183-FZ dated 26 July 2017, entering into force on 6 August 2017).

Competent Russian law-enforcement authorities

Bribery and corruption offences under the Administrative Offences Code (committed by legal entities) and the Criminal Code (committed by individuals) are generally investigated and prosecuted by the Prosecutor's Office of the Russian Federation. The relevant functions of the Prosecutor's Office are distributed among (i) the General Prosecutor's Office on the federal level, (ii) the prosecutor's offices in the 85 so-called subjects of the Russian Federation on the regional level, and (iii) the prosecutor's offices of the districts and cities on the municipal level.

In addition, the Investigative Committee of the Russian Federation – a federal authority previously part of the Prosecutor's Office but since 2011 separate and subordinated to the President of the Russian Federation – performs pre-investigative reviews of notifications on offences as well as preliminary investigations against individuals for bribery and corruption offences under the Criminal Code. As the Prosecutor's Office, the Investigative Committee performs its functions on the federal, regional and municipal levels – through (i) its central office on the federal level, (ii) its investigative departments in the subjects of the Russian Federation, and (iii) its investigative departments of the districts and cities.

In specific sectors, the functions of other law-enforcement authorities may overlap with the investigative functions of the Prosecutor's Office and the Investigative Committee. In particular, violations of anti-trust requirements during public procurement processes, in particular state tenders, are often accompanied by bribery and corruption offences which are then also investigated by the Federal Antimonopoly Services (FAS). Following the completion by FAS of its own investigations and the imposition of administrative sanctions for the violation of anti-trust requirements, the matters can then be transferred to the Prosecutor's Office for the opening of criminal proceedings.

Specific bribery and corruption offences

The key corruption and bribery offences in Russia are:

- **Unlawful remuneration on behalf of legal entity** (Article 19.28 of the Administrative Offences Code) – the legal basis for corporate liability for bribery; prohibits the bribery of Russian or foreign civil servants/state officials or executives of commercial or other organisations to induce them to use their authority to act in favour of a legal entity.
- **Bribery in commercial organisations** (Article 204 and 204.2 of the Criminal Code) – prohibits the bribe-giving and bribe-taking to/by executives of commercial or other organisations in connection with their position in these organisations.
- **Mediation in bribery in commercial organisations** (Article 204.1 of the Criminal Code) – prohibits the direct transfer of bribes to executives of commercial or other organisations on a considerable scale (i.e. exceeding RUB 25,000; currently approx. USD 400) on instructions by the bribe-giver or bribe-taker as well as promises and proposals of such transfers.

- **Bribe-taking by civil servants** (Article 290 and 291.2 of the Criminal Code) – prohibits bribe-taking by Russian or foreign civil servants/state officials to induce them to use their authority to act in favour of the bribe-giver.
- **Bribe-giving to civil servants** (Article 291 and 291.2 of Criminal Code) – prohibits bribe-giving to Russian or foreign civil servants/state officials.
- **Mediation in the bribery of civil servants** (Article 291.1 of the Criminal Code) – prohibits the direct transfer of bribes to Russian or foreign civil servants/state officials on a considerable scale (i.e. exceeding RUB 25,000; currently approx. USD 400) on instructions by the bribe-giver or bribe-taker as well as promises and proposals of such transfers.

Sanctions against legal entities

For committing offences according to Article 19.28 of the **Administrative Offences Code (unlawful remuneration on behalf of a legal entity)** the following penalties may be imposed on legal entities:

- **Minimum:** The penalty is of up to triple the amount of the bribe sum, but not less than RUB 1m (currently approx. USD 17,000).
- **Large-scale bribery:** If the bribe sum exceeds RUB 1m (currently approx. USD 17,000), the penalty is of up to thirtyfold the amount of the bribe sum, but not less than RUB 20 million (currently approx. USD 350,000).
- **Extra-large-scale bribery:** If the bribe sum exceeds RUB 20m (currently approx. USD 350,000), the penalty is of up to a hundredfold the amount of the bribe sum, but not less than RUB 100m (currently approx. USD 1.7m).

Sanctions against individuals

Individuals may be held liable for committing anti-corruption offences under the **Criminal Code** as follows:

- **Bribery in a commercial organisation** (Article 204): Depending on the bribe sum and other circumstances, the penalty may be up to: (i) the amount of (a) RUB 2m (currently approx. USD 35,000) to RUB 5m (currently approx. USD 85,000), (b) two to five years' salary, or (c) fiftyfold to **ninetyfold of the bribe sum**, and an occupational ban from certain professions for up to six years; or (ii) **imprisonment from seven to twelve years**, a penalty in an amount up to fiftyfold of the bribe sum, and an occupational ban from certain professions for up to six years.
- **Mediation in bribery in commercial organisations** (Article 204.1): Depending on the bribe sum and other circumstances, the penalty may be up to: (i) the amount of (a) RUB 1.5m (currently approx. USD 25,000), (b) one-and-a-half years' salary, or (c) fortyfold to **seventyfold of the bribe sum**, and an occupational ban from certain professions for up to six years; or (ii) **imprisonment from three to seven years**, a penalty in an amount up to fortyfold of the bribe sum, and an occupational ban from certain professions for up to six years.
- **Bribe-taking by civil servants** (Article 290): Depending on the bribe sum and other circumstances, the penalty may be up to: (i) the amount of (a) RUB 3m (currently approx. USD 50,000) to RUB 5m (currently approx. USD 85,000), (b) three to five years' salary, or (c) eightyfold to a **hundredfold of the bribe sum**, and an occupational ban from certain professions for up to 15 years; or (ii) **imprisonment from eight to 15 years**, a penalty in an amount up to seventyfold of the bribe sum, and an occupational ban from certain professions for up to 15 years.
- **Bribe-giving to civil servants** (Article 291): Depending on the bribe sum and other circumstances, the penalty may be up to: (i) the amount of (a) RUB 2m (currently approx. USD 35,000) to RUB 4m (currently approx. USD 70,000), (b) two to four

years' salary, or (c) seventyfold to **ninetyfold of the bribe sum**, and an occupational ban from certain professions for up to 10 years; or (ii) **imprisonment from eight to 15 years**, a penalty in an amount up to seventyfold of the bribe sum, and an occupational ban from certain professions for up to 10 years.

- **Mediation in the bribery of civil servants** (Article 291.1): Depending on the bribe sum and other circumstances, the penalty may be up to: (i) the amount of (a) RUB 1.5m (currently approx. USD 25,000) to RUB 3m (currently approx. USD 50,000), (b) two to three years' salary, or (c) sixtyfold to **eightyfold of the bribe sum**, and an occupational ban from certain professions for up to seven years; or (ii) **imprisonment from seven to 12 years**, a penalty in an amount up to seventyfold of the bribe sum, and an occupational ban from certain professions for up to seven years.

Overview of enforcement activity and policy during the last year

Russian corporate bribery investigations

According to information published by the General Prosecutor's Office, 397 legal entities were held liable for bribery offences in 2016 alone (based on Article 19.28 of the Administrative Offences Code, i.e. unlawful remuneration on behalf of a legal entity). A similar figure can be expected for 2017 given that 231 legal entities have been sanctioned for bribery offences as of 4 September 2017.

Most cases – almost all 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, however, only the minimum fine of RUB 1m was imposed. That means that Russian bribery investigations against legal entities currently focus on **small-scale bribery**.

The disclosed information also shows that the bribery investigations have targeted almost exclusively Russian companies with Russian beneficiaries; in 2016 there were only two cases against foreign companies (one Kazakh company and one Turkish construction company) and only a few cases against Russian subsidiaries of foreign companies (e.g. German and Dutch) were disclosed.

Non-Russian enforcement actions

In 2016 and 2017, the U.S. Securities and Exchange Commission (SEC) and the U.S. Department of Justice (DOJ) completed several enforcement actions for violations of the Foreign Corrupt Practices Act (FCPA) relating to Russia. Most published cases occurred in the **Russian healthcare sector**. In contrast to Russian investigations, these actions targeted **large-scale bribery** and resulted in significant fines.

Other non-Russian law enforcement authorities may investigate bribery and anti-corruption offences related to Russia as well. E.g., in August 2017, prosecutors at Sweden's National Anti-Corruption Unit charged a Russian employee of Bombardier Transportation Sweden and the former head of business development at Bombardier Transportation's Moscow office with bribery in connection with a 2013 tender for the modernisation of the rail-signalling systems in Azerbaijan. The employee had been accused of giving bribes to an official of Azerbaijan Railways to ensure that a contract with a value of USD 340m was awarded to a Bombardier-led consortium. In October 2017, the employee had been acquitted by the Swedish court; however, other (German and Swedish) higher-up employees of Bombardier may still face charges.

In addition to foreign enforcement actions, bribery and corruption offences relating to Russia may have further adverse consequences deriving from non-Russian anti-corruption

requirements. Since, e.g., in the example above, Bombardier's Azerbaijan contract is partly financed by the World Bank, the World Bank is also currently conducting an anti-corruption audit into this project. Should the World Bank audit conclude that Bombardier participated in corrupt practices, Bombardier may be barred from participating in other World Bank-financed projects.

Inspections of companies

Outside of bribery investigations, during the last few years Russian prosecutors have been actively performing inspections of Russian legal entities to check whether they have actually adopted the anti-corruption measures required to be taken by organisations operating in Russia according to Article 13.3 of the Anti-Corruption Law (for these measures please see below under *Article 13.3 of the Anti-Corruption Law*).

Russian law actually 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** "in the interest of an indefinite number of persons" which were processed by the courts. These claims resulted in numerous court orders obliging companies to implement anti-corruption measures within a certain time period (usually one month).

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

Law and policy relating to issues such as facilitation payments and hospitality

No specific rules on facilitation payments

There are no specific rules under Russian law regulating facilitation payments. Such payments are therefore subject to the general rule on the prohibition of gifts whose value exceeds RUB 3,000 (currently approx. USD 50) (please see further below) and the sanctions for unlawful remuneration and bribery under the Administrative Offences Code and the Criminal Code.

Prohibition of gifts exceeding RUB 3,000 in relations between commercial organisations

Article 575 (1) of the Civil Code prohibits any gifts – except for common gifts with a value not exceeding **RUB 3,000** (currently approx. USD 50) – in relations **between commercial organisations**. Since under Russian law any benefits transferred to the donee qualify as a gift, this prohibition formally also extends to travel expenses, meals, entertainment and other hospitality costs which are borne by companies for the benefit of their (potential) business partners.

Transactions performed in violation of Article 575 (1) of the Civil Code are generally considered void. Since in practice it is rather unlikely that the donor demands to return or compensate the relevant benefits, the violation of the RUB 3,000-threshold does not usually entail any civil law consequences.

However, the prohibition of gifts with a value exceeding RUB 3,000 is usually also reflected in the internal compliance regulations of Russian organisations. Under Russian labour law, the employees of Russian organisations are obliged to fully comply with such internal regulations. Giving or receiving gifts in violation of Article 575 (1) of the Civil Code may therefore lead to the relevant employee being reprimanded or even dismissed.

General prohibition of receipt of gifts by civil servants/state officials

Russian legislation **generally prohibits** the receipt by Russian civil servants/state officials of any remuneration in connection with the performance of their duties from individuals or legal entities (including gifts, money, loans, services, entertainment costs and travel expenses).

A civil servant is any individual professionally exercising state functions on the federal, regional or municipal level according to Federal Law No. 58-FZ "On the System of State Service in the Russian Federation", Federal Law No. 79-FZ "On Public Service of the Russian Federation", Federal Law No. 76-FZ "On the Status of Military Personnel" and Federal Law No. 25-FZ "On Municipal Service in the Russian Federation" (*gosudarstvennaya sluzhba*). The term state official extends to a limited number of individuals who are directly exercising state powers on the federal level or the level of the 85 subjects of the Russian Federation (*gosudarstvennaya dolzhnost*).

The general prohibition to accept gifts does not apply to gifts received by Russian civil servants/state officials in connection with protocol events, business trips and other official events. However, gifts received at such occasions are deemed to be state property and subject to transfer to the relevant state body (e.g. Article 17 (1) (6) of Federal Law No. 79-FZ "On Public Service of the Russian Federation").

General prohibition of receipt of gifts by employees of state corporations

According to Article 349.1 of the Labour Code and Article 2 (b) of the Order of the Russian Government No. 841 of 21 August 2012, the general prohibition to receive gifts is extended to certain positions in state corporations and state companies.

State corporations and state companies are non-commercial organisations which are set up by the Russian Federation under a federal law (Articles 7.1 and 7.2 of the Law on Non-Commercial Organisations). Examples for state corporations are Vnesheconombank, Rostec, Roscosmos and Rosatom. Commercial organisations with a majority participation of the Russian state (such as, e.g., Gazprom Public Joint Stock Company and Rosneft Oil Company) do not qualify as state corporations/companies in the meaning of Article 349.1 of the Labour Code. They are, however, still subject to the restrictions of Article 575 (1) of the Civil Code (please see above) and potentially even stricter requirements under the organisation's internal compliance regulations.

Administrative and criminal liability

The violation of the above-listed restrictions as to the granting and receiving of gifts as such does not entail any administrative or criminal liability. Such a liability would require the completion of additional elements of an administrative or criminal offence, in particular criminal intent. The scope of the sanctions under the Administrative Offences Code and the Criminal Code depends on the amount of the bribe sum (please see above).

Best practice in Russia

Best practice in Russia is the adoption by an organisation of internal compliance regulations incorporating (i) the prohibition of granting and receiving gifts exceeding RUB 3,000 in relations between commercial organisations according to Article 575 (1) of the Civil Code, and (ii) the general prohibition of granting any gifts to Russian civil servants/state officials or employees of state corporations/companies.

The adoption of such internal compliance regulations is one of the anti-corruption measures to be – mandatorily – taken by each organisation operating in Russia according to Article 13.3 of the Anti-Corruption Law (please see below under *Article 13.3 of the Anti-Corruption Law*).

Key issues relating to investigation, decision-making and enforcement procedures

Self-reporting

Individuals who self-report may benefit from the **leniency provisions** of Articles 204 (bribery in commercial organisations), 204.1 (mediation in bribery in commercial organisations),

291 (bribe-taking by civil servants), and 291.1 (mediation in the bribery of civil servants) of the Criminal Code. Under these provisions, the bribe-giver is in certain cases released from criminal liability, if he (i) actively enabled the discovery and/or investigation of the crime, (ii) had been subject to blackmailing by the bribe-taker, or (iii) following the commission of the crime voluntarily informed the competent law-enforcement authority of the bribe-taking.

Also, under the Administrative Offences Code (Article 4.2 (3)), the voluntary disclosure of an offence to the competent law-enforcement authority qualifies as an extenuating circumstance. That means that the amount of the fine imposed on the legal entity for committing an offence under Article 19.28 of the Administrative Offences Code (unlawful remuneration on behalf of legal entity) will be reduced. The scope of reduction of the fine is, however, within the sole discretion of the court.

Plea bargaining

Since 2009, the Criminal Procedural Code allows entering into plea bargaining agreements in **criminal proceedings** (Chapter 40.1), including proceedings regarding bribery offences. Irrespective of many practical problems, such plea agreements are also entered into in practice.

Under the plea bargaining agreement, the defendant undertakes to provide information and render cooperation in the **investigation of crimes committed by other persons** (disclosure of his own crimes does not suffice). If the defendant fulfils these obligations and circumstances aggravating liability are not determined, the sentence for his own crimes shall not exceed half of the maximum punishment provided for such types of crime by the Criminal Code. The court may – at its sole discretion – show further leniency.

Whistleblower protection

Currently, Russian law contains one specific provision on the protection of whistleblowers – Article 9 (4) of the Anti-Corruption Law states that civil servants/state officials who report on corruption violations shall enjoy the protection of the state. However, this protection is only afforded in accordance with the general provisions of Russian law granting protection to participants in criminal cases (in particular the Criminal Procedure Code, Federal Law No. 119-FZ "On State Protection of Victims, Witnesses and Other Participants in Criminal Proceedings" of 20 August 2004 and Federal Law No. 46-FZ "On State Protection of Judges, Public Officials of Law enforcement and Controlling Bodies" of 20 April 1995).

Overview of cross-border issues

Extraterritorial Russian jurisdiction

Under the Administrative Offences Code, foreign companies bear administrative liability for administrative offences committed on the territory of the Russian Federation.

Since March 2016, Russian law enforcement authorities may prosecute foreign legal entities for bribery offences committed outside of Russia too. Such extraterritorial prosecution requires additional justification – the offence must be directed against the **interests of the Russian Federation** or such possibility must be established by international agreements acceded to by the Russian Federation (new Article 1.8(3) of the Administrative Offences Code).

The Strategy of National Security of the Russian Federation (approved by Presidential Decree No. 683 dated 31 December 2015) defines the national interests only vaguely as the "aggregate of internal and external needs of the Russian state to ensure security and sustained development of its identity, society and nation". Based on this vague definition,

theoretically any foreign bribery offence involving a Russian element may be subject to administrative proceedings in Russia.

However, the risk of ungrounded investigations is limited to a certain extent by the express prohibition of double jeopardy – Russian jurisdiction arises only if the foreign entity has not been held liable in a foreign state.

Cross-border data transfer

Bribery and anti-corruption investigations by non-Russian law enforcement authorities as well as internal investigations by companies whose Russian operations may be the target of such enforcement actions regularly require the transfer of protected data from Russia to foreign jurisdictions. The collection and cross-border transfer of such data is subject to extensive Russian regulation.

In particular, e-mails, WhatsApp messages, SMS and other correspondence by Russian employees are protected by the **privacy of communication** principle. Unless the Russian company adopted internal rules on the use of office communication means for business purposes only, the collection and transfer of such data requires the prior written consent of the relevant employees.

Further, **confidential materials** may be protected by the so-called commercial secret regime (i.e. statutory rules according to which the owner of confidential information can take certain specifically listed measures to achieve protection of the materials as a "commercial secret") or otherwise be subject to confidentiality obligations of the company. In this case, sufficient confidentiality obligations must be imposed on the third-party recipient to maintain the protection of the materials as confidential following a cross-border data transfer.

The **transfer of personal data** of Russian employees also requires the relevant employee's written consent to the transfer (which may, by way of precaution, also be reflected in the employment agreement). In case of a cross-border transfer, such a transfer must be specifically allowed by the consent. Since the employee's consent can be difficult to obtain in practice, the relevant data may have to be depersonalised prior to the transfer. Further, a data transfer agreement must be signed between the employing Russian company and the foreign recipient. In addition, due to Russian data localisation requirements, the primary database for personal data transferred abroad must be set-up in Russia and, prior to the transfer of any new data, be updated accordingly.

On the other hand, Russian law does not know a general **attorney-client privilege**. A concept similar to this privilege only exists as "advocate secrecy" in relations between clients and so-called advocates (i.e. lawyers who passed a bar exam to represent clients in criminal and certain civil law court proceedings). Therefore, the protection of the attorney-client privilege does usually not restrict the (cross-border) transfer of data for investigation purposes.

Disclosure of beneficial owners

Amendments to Federal Law No. 115-FZ "On Combatting Money Laundering […]", which have been effective since December 2016, upped the pressure on Russian legal entities to identify their beneficial owners. For various reasons, these beneficial owners are often concealed by sophisticated cross-border corporate structures.

Each Russian legal entity must now take feasible action – even in difficult circumstances – to identify their Russian or foreign beneficial owners and, upon request, disclose such information to the Russian Federal Financial Monitoring Service or the tax authorities. Shareholders and persons otherwise controlling a legal entity are obliged to provide the

required information to the legal entity. The beneficial owner data must be verified once a year and kept for at least five years. Failure to collect, disclose or provide relevant information may result in administrative fines for legal entities and their officers.

These amendments may simplify the **know-your-customer (KYC) due diligence** which currently often fails in practice due to a general reluctance of potential Russian business partners to disclose their beneficial owners.

Corporate liability for bribery and corruption offences

Administrative liability

Under the Criminal Code, companies cannot bear criminal liability (Article 19). However, under the Administrative Offences Code, companies can also be held liable for administrative offences (Articles 1.4 (1) and 2.10.). In particular, for bribery and corruption offences, companies may be held liable according to Article 19.28 of the Administrative Offences Code (unlawful remuneration on behalf of legal entity).

Failure to take necessary measures

Under the Administrative Offences Code, a legal entity shall be guilty of an administrative offence if it can be established that is has not taken all measures which are necessary to ensure compliance with the regulations whose violation constitutes the relevant administrative offence (Article 2.1 (2)).

Since its introduction in 2013, these measures arguably include the raft of measures listed in Article 13.3 of the Anti-Corruption Law (please see below). That means that a legal entity accused of an offence according to Article 19.28 of the Administrative Offences Code (unlawful remuneration on behalf of legal entity) may claim that it has taken all measures necessary to prevent such bribery committed by its employees or agents.

Article 13.3 of the Anti-Corruption Law

Article 13.3 of the Anti-Corruption Law obliges organisations to **develop and implement measures to prevent corruption**. According to the law, these measures can include, but are not limited to:

- designating departments and officers responsible for preventing bribery and other violations of law;
- cooperating with law-enforcement authorities;
- developing and implementing policies and procedures designed to ensure ethical business conduct;
- adopting a code of ethics and professional behaviour by its employees;
- identifying and regulating conflicts of interest; and
- preventing the creation of false accounts und the use of forged documents.

The general obligation under the Anti-Corruption Law to develop and implement anti-corruption measures is further elaborated by the "Methodical Recommendations for the Development and Adoption of Anti-Corruption Measures […]" of the Federal Labour Ministry dated 8 November 2013. This document lists in detail the specific steps which are recommended to be taken by organisations in order to fully comply with their obligation under the Anti-Corruption Law.

Strict requirements of courts

Following the current court practice, however, only very few of the legal entities prosecuted had implemented the necessary measures and were exempted from liability. The relevant decisions give no guidance on the proper implementation of anti-corruption measures in

order to be exempted from liability. That only very few companies succeeded confirms, however, that the prosecutors and courts seem to have fairly strict requirements as to the sufficiency of a company's compliance management system.

Proposed reforms / The year ahead

Criminal liability of legal entities

As described above, currently under Russian law, only individuals can bear criminal liability – including liability for bribery and corruption (Article 19 of the Criminal Code). Organisations can be held liable only under the provisions of the Administrative Offences Code.

Since 2015, the Russian State Duma is considering a draft law extending criminal liability to legal entities (Draft Federal Law No. 750443-6 of 23 March 2015), which provides for criminal liability of foreign companies based on principles identical to those of the Administrative Offences Code.

Since the draft was not supported by the Government of the Russian Federation and the Supreme Court of the Russian Federation, it is, however, not possible to predict if/when this law will actually enter into force.

Extended whistleblower protection

In February 2017, the Federal Ministry of Labour proposed a draft law amending the Anti-Corruption Law. On 16 October 2017, the draft law was submitted to the State Duma. The proposed amendments shall encourage individuals in Russia to contribute to the prosecution of corruption-related offences in the public and private sectors. For this purpose, "protection by the state" shall be granted to individuals who report corruption offences to their employer, the Prosecutor's Office or the police, or otherwise contribute to counteracting corruption.

This state protection shall be afforded by:

- protection of the whistleblower from unlawful dismissal or any other disadvantages in his/her employment relations;
- a confidentiality regime with respect to the whistleblower's identity and the reported corruption offence; and
- free legal aid to the whistleblower.

Should the draft law be adopted in its current form, in practice problems could in particular be caused by the proposed confidentiality regime. Under the draft law, the company, its legal advisors and informed third parties shall be obliged to keep confidential both the content of the reporting (i.e. details of the corruption case) and the identity of the whistleblower. Probably also within the company, the whistleblower's identity shall be disclosed only with the whistleblower's consent. In order to comply with these requirements within the framework of Russian law, many companies would have to significantly amend their existing reporting system on compliance violations, in particular where this system provides for cross-border reporting to external compliance departments.

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