7. Corporate Compliance

7.1 Overview of the Key Provisions Anti-Bribery Laws of Russia

7.1.1 General Comments

On 1 January 2013 Russia’s first comprehensive anti-corruption law, Federal Law No. 273 “On Combatting Corruption,” was amended to require companies to take enhanced measures to prevent corruption. Specifically new Article 13.3 requires all organizations to develop and implement measures to prevent bribery and specifically recommends the following:

- designating departments and structural units and officers who will be responsible for the prevention of bribery and related offenses;
- cooperating with law enforcement authorities;
- developing and implementing standards and procedures designed to ensure ethical business conduct;
- adopting a code of ethics and professional conduct for all employees;
- means for identifying, preventing and resolving conflicts of interest;
- preventing the creating and use of false and altered documents.

An official guide as to how legal entities should take these measures has been prepared by the Russian Ministry of Employment in cooperation with several public associations and was released in November 2013. This comprehensive guide includes clarifications of the legal framework in terms of Russian, international and foreign laws and practical recommendations for implementing the requirements of the aforementioned Article 13.3.
The enforcement practice at the moment includes an increasing number of prosecutors’ actions and court cases in connection with inspections of Russian entities for noncompliance with the requirements of current anticorruption laws.

A number of other developments in Russia’s regulatory framework have prompted increased efforts by state authorities in combating corruption. Federal Law No. 230 “On control over the correlation between the expenses and earnings of state public officials” was passed on 3 December 2012 followed by Federal Law No. 79 of 7 May 2013 which effectively prohibits public officials (and their family members) from owning property and having funds on bank accounts outside of Russia. The government also issued a sequence of rulings in 2013 which envisage more stringent reporting procedures for profits and ownership of public officials. On 9 January 2014 the detailed procedures were introduced by ruling of the Russian government on reporting the gifts received by public officials, evaluating such gifts and possible repurchase of the gifts by the public officials.

Amendments anticipated in 2016 include criminalization of the transfer of non-material benefits as a bribe, and leniency for a legal entity reporting bribes on its behalf and extraterritoriality of active public and commercial bribery on behalf of a foreign legal entity. However, the amendments are still draft bills and their future is uncertain.

7.2 Administrative Offenses

In Russia, there is no criminal liability for legal entities. When a legal entity is held responsible for unlawful conduct, such an entity is ordinarily subjected to administrative liability, such as administrative fines.
7.2.1 Active Public and Commercial Bribery on Behalf of a Legal Entity

Article 19.28 of the Code of Administrative Offenses provides for administrative liability of a legal entity for unlawful provision, offer or promise of anything of pecuniary value to a Russian or foreign public official, an official of a public international organization as well as officers in a commercial company for any actions or omissions to act in the interests of this legal entity.

Definitions of a Russian public official, a foreign public official, an official of a public international organization as well as a person performing managerial functions in a commercial or other organization are the same as for the corresponding criminal offenses (see sections on Active Public Bribery and Active and Passive Commercial Bribery below).

7.2.2 The Concept of Fault as a Qualified Defense

For legal entities and individuals in Russia, administrative liability is fault-based. Article 2.1 of the Code of Administrative Offenses defines fault of a legal entity as a failure to take all measures within its power to comply with the Code’s requirements. Therefore, a legal entity may raise as a defense the measures it has taken to prevent bribery on its behalf.

Recent enforcement practice confirmed that a legal entity may avoid liability under Article 19.28 of the Code of Administrative Offenses if it proves that it has taken all reasonable measures to prevent corruption, including those recommended by Article 13.3 of Federal Law No. 273 “On Combatting Corruption.”

7.2.3 Sanctions

The sanctions under Article 19.28 of the Code of Administrative Offenses vary depending on the amount of the unlawful remuneration, i.e. the bribe. The minimum sanction for a bribe up to RUB 1 million is a fine of up to 3 times of the amount of the bribe, but not less than RUB 1 million. The maximum sanction for a bribe over RUB 20
million is a fine of up to 100 times of the amount of the bribe, but not less that RUB 100 million. In all cases, the bribe or its equivalent value may be confiscated.

A legal entity may be held liable under Article 19.28 of the Code of Administrative Offences irrespective of liability of a particular individual involved in the giving of a bribe.

7.2.4 Extraterritoriality

Russian authorities will also have jurisdiction over any legal entity located in Russia if a bribe is directed at a foreign official or an official of a public international organization. As reported earlier, there is currently a draft bill providing for extraterritoriality of active public and commercial bribery on behalf of a foreign legal entity, if aimed against the interests of the Russian Federation.

7.2.5 Liability of Legal Successors

According to Article 2.10 of the Code of Administrative Offenses, legal entities succeeding to the rights of other legal entities as a result of various corporate reorganizations, mergers, etc. are liable for the administrative offenses committed by the legal predecessors regardless of whether the succeeding entities knew of such administrative offenses.

7.3 Criminal Offenses

Russian criminal law prohibits active and passive bribery in both the public and private sectors.

7.3.1 Active Bribery of Public Officials

Article 291 of the Criminal Code prohibits provision of a bribe to Russian public officials, foreign public officials and officials of public international organizations. This Article also covers provision of a bribe through intermediaries.
Russian public officials are defined in Article 285 of the Criminal Code as persons who permanently, temporarily or pursuant to a specific authorization perform the function of a representative of state power as well as persons who perform organizational or administrative functions in the state and municipal bodies, state or municipal establishments, as well as in the Russian military and other armed forces.

A foreign public official is defined in Article 290 of the Criminal Code as any person who is appointed or elected to an office in the legislative, executive, administrative or judicial body of a foreign state, including a public administration or enterprise. An official of a public international organization is an international civil servant or any person authorized by such an organization to act on its behalf.

7.3.2 Sanctions for Bribery of Public Officials

The sanctions under Article 291 of the Criminal Code vary depending on (a) whether the person giving a bribe has acted alone or in conspiracy with others, (b) whether the bribe is given for the commission of a lawful or an unlawful act (omission) and (c) the amount of the bribe. The minimum sanction – for a bribe not exceeding RUB 25,000 – is a fine of up to RUB 500,000, or a salary or other income of the convicted for a period of up to 1 year, or a fine from 5 to 30 times the amount of the bribe, or correctional labour for a period of up to 2 years with or without the prohibition from holding certain positions or engaging in certain professional activities for up to 3 years, or forced labor for the period of up to 3 years or imprisonment for up to 2 years with or without a fine of 5 to 10 times the amount of the bribe. The maximum sanction – for a bribe exceeding RUB 1 million – is a fine from 70 to 90 times the amount of the bribe or imprisonment from 7 to 12 years and a fine 70 times the amount of the bribe.

A person who has given a bribe may be relieved of criminal liability if he actively aids detection and prosecution of the crime or reported himself after the commission of the crime to the criminal law
enforcement authorities or was solicited by a particular public official to give a bribe.

7.3.3 Confiscation

According to Article 104.1 of the Criminal Code, property obtained as a result of a criminal offense and any property into which such criminally obtained property has been subsequently transformed as well as any proceeds from the use of such property may be subject to confiscation. If criminally obtained property or proceeds from its use have been commingled with other property, confiscation will be proportional to the value of the criminally obtained property and the proceeds from its use. Criminally obtained property transferred to another person may be confiscated only if this person knew or should have known that such property was obtained as a result of a criminal act.

According to Article 104.2 of the Criminal Code, a court may decide to confiscate the value of the criminally obtained property if, by the time the court issues a judgment, confiscation of this property as such becomes impossible due to this property having been used, sold or for other reasons.

7.3.4 Active and Passive Commercial Bribery

Article 204 of the Criminal Code defines commercial bribery as the unlawful provision of anything which has pecuniary value (including property rights, services, etc.) to a person who performs managerial functions in a commercial or other organization for an act or omission in connection with such person’s official position in the interests of the provider.

Article 204 contains provisions on passive commercial bribery, that is, receipt by a person who performs managerial functions in a commercial or other organization of anything which has pecuniary value (including property rights, services, etc.) for an act or omission in connection with such person’s official position in the interests of the provider.
Moreover, the same conduct may be prosecuted under Article 201 of the Criminal Code which prohibits abuse of authority, i.e. the use by a person who performs managerial functions in a commercial or other organization of his authority contrary to the lawful interests of this organization for the purpose of obtaining an advantage not only for himself but also for other persons as well as for the purpose of causing damage to other persons.

A person who performs managerial functions, according to Article 201 of the Criminal Code, can be an individual executive officer or a person who is a member of a collective executive body or the board of directors. In addition to the top management, relevant persons include those who perform organizational or administrative functions, i.e. engage in the management of at least some personnel or at least some property of the organization. As a practical matter, it should be noted that Article 204 of the Criminal Code also covers conspiracies to engage in commercial bribery which expands the reach of this Article beyond persons with managerial functions.

7.3.5 Sanctions for Commercial Bribery

The sanctions for active commercial bribery under Article 204 of the Criminal Code vary depending on whether the person giving a commercial bribe has acted alone or in conspiracy with others as well as on whether the commercial bribe is given for the commission of a lawful or an unlawful act (omission). The minimum sanctions are a fine from 10 to 50 times the amount of the commercial bribe and prohibition from holding certain positions or engaging in certain professional activity for a period of up to 2 years, or a limitation of freedom for a period of up to 2 years, or forced labor for a period of up to 3 years, or imprisonment for a period of up to 3 years. The maximum sanctions are a fine from 40 to 70 times the amount of the commercial bribe and prohibition from holding certain positions or engaging in certain professional activity for a period of up to 3 years, or forced labor for a period of up to 4 years, or an arrest for a period from 3 to 6 months, or imprisonment for a period of up to 6 years.
The sanctions for passive commercial bribery under Article 204 of the Criminal Code vary depending on whether the person receiving a bribe has acted alone or in conspiracy with others as well as on whether the commercial bribe is received for the commission of a lawful or an unlawful act (omission) and on whether the commercial bribe was extorted. The minimum sanctions are a fine from 15 to 70 times the amount of the commercial bribe and prohibition from holding certain positions or engaging in certain professional activities for a period of up to 3 years, or forced labor for a period of up to 5 years with or without prohibition from holding certain positions or engaging in certain professional activities for a period of up to 3 years, or imprisonment for a period of up to 7 years and a fine up to 40 times the amount of the commercial bribe. The maximum sanctions are a fine from 50 to 90 times the amount of the commercial bribe and prohibition from holding certain positions or engaging in certain professional activities for a period of up to 3 years, or imprisonment for a period of up to 12 years and a fine up to 50 times the commercial bribe.

A person who has committed active commercial bribery covered by Article 204 of the Criminal Code may be relieved of criminal liability if he/she actively aided in detecting or prosecuting this offense, or the commercial bribe was extorted from him/her, or he/she voluntarily reported the commercial bribe to criminal law enforcement authorities.

7.3.6 Aiding and Abetting Public Bribery

Article 291.1 of the Criminal Code makes aiding and abetting public bribery a separate criminal offense. Aiding and abetting is defined as the physical giving of a bribe on the instructions of the person either giving or receiving a bribe as well as any other assistance to either of these persons in reaching or executing an agreement between them to give and take a bribe. This Article applies only to bribes with a value exceeding RUB 25,000. This Article also applies to offers or promises of assistance in public bribery regardless of the value of the bribe. The sanctions are comparable to those for active public bribery.