



Protecting Business in Russia[®]

Anti-corruption policy in Russia

By

Zakhar Polezhaev

Senior Associate, Lidings Law Firm

1. Introduction

Until recently Russia did not have complex and integrated anti-corruption policy. Legislative regulations were uncoordinated and consisted in the Russian Criminal Code defining several corruption crimes, certain restrictions and additional obligations imposed on state and municipal officials by federal laws in general (Federal law 'On Civil Service of the Russian Federation', Federal law 'On Municipal Service of the Russian Federation', etc.) and by federal laws regulating professional activity of certain categories of state officers (Federal law 'On Status of Military', Federal law 'On Militia', etc.). However, reality demonstrated that these legislative measures are insufficient and struggling against corruption remained on the top of the agenda. Success in this fight is a prerequisite for Russia's further integration into the global economy, transparency of internal governmental and economic procedures and an increase of the country's attractiveness to foreign investors.

The current Russian President Dmitry Medvedev repeatedly emphasised in his election campaign the necessity to unify state policy in the field of fighting corruption and a determined implementation of an anti-corruption policy as one of the major missions of his presidency. Once he was elected to the office he consecutively took steps towards his aim. The Russian President issued several decrees outlining the plan of his fight against corruption and the formation of the Presidential Council for fighting corruption and also defined its authority. Besides he addressed the State Duma (the Russian parliament) with the proposal to review the existing anti-corruption legislation, to make it more logical and integrated and the adoption of new anticorruption laws. In a couple of years, a completely new anti-corruption policy was implemented in Russia and everyone hopes that it yielded soon. The most important components of the policy are listed below.

2. Definition of corruption

It is necessary to say that until recently there was no legislative definition of corruption. Only scientific definitions existed but they varied from one scholar to another and included different sets of crimes and other illegal actions. One of the newly adopted federal laws – 'On Counteraction to Corruption' – finally resolved this issue and defined corruption as

- (i) giving a bribe (to both officials and management of commercial or other organisations);
- (ii) receiving a bribe (both by officials and management of commercial or other organisations);
- (iii) abuse of authority (at positions in state or municipal bodies and state or municipal enterprises and positions in commercial or other organisations);
- (iv) any other illegal use of position for the purpose of obtaining money, assets, services or other benefits for the person being bribed or third person;
- (v) granting money, assets, services or other benefits for someone's illegal use of a position;
- (vi) committing the above illegal actions on behalf or in the interests of a legal entity.

The above crimes were always in the Criminal Code but contained in separate chapters (crimes against state power, crimes in the field of economy) and then not all or part of them were considered corruption crimes. Now the corruption crimes are explained in full by the legislation.

3. Corruption crimes

Generally speaking, the Criminal Code distinguishes corruption related to officials in state or municipal bodies, certain employees in state or municipal enterprises, and those related to management of commercial and other organisations. The first group of crimes includes (with the respective Articles of the Russian Criminal Code given in brackets):

- (i) abuse of official authority (Art. 285);
- (ii) receiving a bribe (Art. 290);
- (iii) bribing (Art. 291).

The second group of crimes includes:

- (i) abuse of authority (Art. 201);
- (ii) commercial bribery (Art. 204).

For all crimes the Criminal Code sets a range of alternative punishments up to imprisonment for a number of years. In addition, the court is entitled to forbid the guilty person to take certain positions in state and municipal bodies or organisations. It is necessary to note that only individuals may be prosecuted for bribing; under the Russian Criminal Code legal entities are not regarded as criminals at all. However, within the framework of the recently implemented anti-corruption policy legal entities were put under liability pursuant to the Code of Administrative Offences. The Code was amended with the new Article 19.28 called 'Illegal remuneration on behalf of a legal entity'. Regardless of the recipient of illegal remuneration (state/municipal officials or management in organisations) a legal entity on which behalf bribing took place may carry a fine up to triple the amount of the bribe.

For the prevention of bribes the Criminal Code envisages that persons who bribe officials are exempt from criminal prosecution if he or she informs law enforcement of the giving of the bribe. Basically, that measure aims to put officials receiving bribes at the risk of being exposed upon a statement of a bribing person after the latter committed the act.

4. Special anti-corruption measures

4.1. Structural measures

Special anti-corruption measures recently implemented by the new anti-corruption policy can be divided into three groups. The first one relates to additional authority of state bodies and interaction between them. In particular, the Federal law 'On Counteraction to Corruption' determines the authority of the President of the Russian Federation, the State Duma, federal ministries and prosecution office for maintaining an anti-corruption policy and sets procedure for any interaction between them. In 2008 the President formed the Counsel to coordinate executive bodies within the framework of an anti-corruption policy. It comprised key ministers, representative of the regional authorities, other officials and scholars. The Counsel was formed to analyse law enforcement practices, draft normative documents and suggest them to the President, the Government or respective ministries for adoption. The General Prosecution Office and lower prosecution offices coordinate the anti-corruption activities of law enforcement agencies.

4.2. Anti-corruption expertise of normative acts

The second group of preventative measures is about prior anti-corruption expertise of normative acts to be adopted. That procedure was established by the Federal law 'On Anti-corruption Examination of Normative Acts and Draft Normative Acts' in 2009. This law aims to reveal and eliminate provisions facilitating corruption behavior. Under these provisions the law regards the following provisions:

- (i) empowering officials with unreasonable authority to decide certain matters at their own discretion or unreasonable possibility to apply statutory exclusions;
- (ii) containing of indefinite, hardly-accomplishable or burdensome requirements on individuals and organisations and thus creating an environment open to corruption.

Depending on the category and subject-matter of normative acts and their drafts they may be subject to anti-corruption examination by the prosecution office or the Ministry of Justice. The state authorities also conduct anti-corruption expertise while applying normative acts adopted by themselves. Opinions issued by the prosecutions office and the MOJ must be considered by the authorities which prepared the draft or issued the normative act in question. According to the Law, individuals and public interest organisations are entitled to carry out their own anti-corruption examination and submit its results to state or municipal body, which prepared the draft or issued the normative act. Results of that examination must be also considered by the respective authorities.

4.3. Anti-corruption requirements for state and municipal officials

The third group of measures relates to the prevention of corruption through setting additional requirements, restrictions and obligations imposed on state and municipal officials. Some restrictions and obligations existed earlier but it is only now that they are coupled with new measures which have finally been systemised. Generally speaking, they involve all aspects of state and municipal service: hiring and appointment, period of being on duty, resignation and further professional activity. Measures listed below may be regarded as most important:

- (i) professional requirements regard education and experience of candidates applying to official positions and the checking of information submitted by candidates in course of hiring;
- (ii) disclosure of information on income received and assets possessed by candidates and members of their families and a check of such information;
- (iii) prohibited to run a private business and hold positions in commercial organisations;
- (iv) official's obligation to transfer shares owned to trust management;
- (v) mandatory public disclosure of information on income received and assets possessed by officials and members of their families and firing for non-disclosure or improper disclosure;
- (vi) official's obligations to report to his or her supervisor or law enforcement agencies on proposals of bribery and dismissal for non-reporting;
- (vii) official's obligations to report to his or her supervisor on any conflicts of interest arising from an official's personal interests negatively impacting the fulfillment of his or her duties;
- (viii) prohibited to receive remuneration other than official salary connected with the exercise of their duties (gifts, money, services, transportation expenses, etc.);
- (ix) all gifts received by officials with regard to holding positions are deemed as state or municipal property and must be transferred to the respective state or municipal body;
- (x) possibility to work after retirement in the organisations, which were supervised by the official when he or she was in offices only upon permission of the respective ethic commission, that restriction is in force for two years.

Most of the above requirements are stipulated by the Federal laws 'On Civil Service of the Russian Federation' and 'On Municipal Service of the Russian Federation'.

4.4. Other anti-corruption measures

The fourth group of anti-corruption measures relates to regulations in proceedings traditionally regarded as having a high corruption risk, for example, law enforcement activity, public procurement, privatization of state or municipal property and others. They are defined by the federal laws regulating the respective state institutions. In general, anti-corruption measures establish transparency of proceedings, require disclosure of information impacting interests of persons involved, increase availability of proceedings for all interested individuals and organisations and

independence of officers who make decisions in areas in question, possibility to challenge decisions violating somebody's rights and legal interests, etc.

After considering the newly implemented anti-corruption policy it may be concluded that from a legal point of view it has everything to be successful. However, the final results will depend on practical application of the policy. The near future will demonstrate whether positive results will be achieved and to what extent.