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PRECOP-RF

Joint EU/CoE project on Protection of the Rights of Entrepreneurs in the Russian Federation against Corrupt Practices

Technical Paper:

Corruption risks and protection mechanisms for entrepreneurs in the Russian Federation

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ECCU-PRECOP-TP-7/2014

The PRECOP RF is funded through the Partnership for Modernization, a jointly launched initiative by the EU and Russian authorities. One of the priority areas of this initiative is the effective functioning of the judiciary and strengthening of the fight against corruption.

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1 EXECUTIVE SUMMARY

The Handbook on Corruption Risks for Entrepreneurs has been prepared within the framework of the Joint EU/CoE project on Protection of the Rights of Entrepreneurs in the Russian Federation against Corrupt Practices (PRECOP-RF). It has been developed as a practical guide on the steps that the companies may take to establish an anti-corruption programme for prevention of corrupt practices and may be used by large, medium and small-sized enterprises. The Handbook could help the companies to fulfil their legal and/or business obligations in respect of detection and prevention of corruption. It can be used also by the business organisations and professional associations, which play an important role in assisting companies in their anti-corruption efforts.

While recognizing the basic responsibility of the government in the fight against corruption phenomenon, including corruption in the private sector, the Handbook emphasizes the crucial role in this field of the self-imposed ethical rules and ant-corruption practices of enterprises. In this context, the adoption and effective implementation by companies of their own anti-corruption programmes and codes of conduct is strongly recommended.

The Handbook is based on and uses different sources, including: international anti-corruption conventions adopted by the United Nations (UN), Council of Europe (CoE), Organisation for Economic Co-operation and Development (OECD) and European Union (EU); similar guidance tools for business developed by the public international organisations or their specialised bodies, such as UN Office on Drugs and Crime (UNODC) and OECD; as well as on the international business instruments designed by the International Chamber of Commerce (ICC), the World Economic Forum Partnering Against Corruption Initiative (PACI) and Transparency International (TI). The comparison of these instruments shows that they include similar basic anti-corruption compliance and ethics standards.

The Handbook is divided into four main parts. The first part deals with the types of corrupt practices in business sector and the negative effect of corruption on business. The second part provides an overview of the international and Russian domestic anti-corruption framework, with which companies must comply. The third part provides information on how companies can assess corruption risk before developing an anti-corruption programme and code of conduct. The fourth part is the most significant and contains guidelines on developing business policies and measures assisting entrepreneurs to minimise the risk of corruption. In particular, this part addresses the company's internal policies and procedures, including preparation, oversight and content of the anti-corruption programme, internal control and record keeping, reporting mechanisms, treatment of violations and anti-corruption training. The fourth part deals also with collective business initiatives and public sector measures, including transparency of public procurement. The elements of the anti-corruption programme and the relevant measures suggested by the Handbook are illustrated by references to specific examples and case studies provided by European companies.

In the end, several appendices are included that contain extracts from the relevant anti-corruption instruments and sources, including key international conventions dealing with corruption, Russian domestic anti-corruption law, international business instruments.

2 INTRODUCTION

Corruption is widely recognised as a major obstacle to the stability, growth and competitiveness of economies. It impedes investments, increases unreasonably the costs for companies, and finally entails serious legal and reputational risks for them. Corrupt practices are detrimental to all businesses, including large and small-sized companies, multinational and national corporations.

Corruption is identified as the top impediment to conducting business in 22 out of 144 economies, as measured in the World Economic Forum's Global Competitiveness Report[1]. At European level, more than 4 out of 10 companies consider corruption to be a problem for doing business, and this is true for patronage and nepotism too. When asked specifically whether corruption is a problem for doing business, 50 % of the construction sector and 33 % of the telecoms/IT companies felt it was a problem to a serious extent. The smaller the company, the more often corruption and nepotism appears as a problem for doing business.[2] The above surveys show that the fight against corruption is strategically crucial for business.

Corruption represents a serious challenge to both public authorities and business entities in Russia. The Russian Federation took important step in the fight against corruption in the business sector by ratifying the main anti-corruption conventions, strengthening domestic legal framework against bribery of foreign public officials in international business transactions and introducing sanctions for companies involved in corruption. The effective implementation of the international anti-corruption standards by the authorities is examined within the anti-corruption monitoring mechanisms joined by the Russian Federation, such as GRECO and OECD Working Group on Bribery. The effective enforcement of newly adopted anti-corruption legislation and implementation of the recommendations made within the anti-corruption monitoring mechanisms will help Russian authorities and private sector to improve the situation in the field of anti-corruption. Business has a unique opportunity to join forces with governments and civil society to find lasting solutions to problems of corruption and to create a level playing field for today's globalized markets. The development and implementation by the companies of an effective anti-corruption programmes, including ethical rules and preventive procedures, are critical for fulfilling of their commitments to address corruption risks in the business sector.

[2] European Union Anti-Corruption Report 2014

3 CORRUPTION PHENOMENON AND BUSINESS

3.1 Types of corruption practices affecting business development - corruption in different sectors of economy

The main and most typical form of corruption perceived as such by the private sector is bribery. The bribery is described by the international anticorruption conventions as promising, offering or giving/respectively - requesting, accepting an offer or promise, or receiving, directly or indirectly, to/by a public official of any undue advantage, for himself or for anyone else, in order that this official act or refrain from acting in the exercise of his official duties. The perception surveys in Central and Eastern Europe show that the entrepreneurs consider bribery to be a general or relatively general phenomenon in their business sector. The main activity identified as corruption by Bulgarian small and medium enterprises (SMEs) is the acceptance and offering of bribes in the process of fulfilling public services (78.1%)[3].

However, the bribery is only one of the forms of corruption in the field of business and there are other types of corrupt behaviour that could affect business activities as well, such as embezzlement of property/misappropriation of funds in the private sector. The latter is established as corruption criminal offence by the UN Convention against Corruption (Art.22).

The most dangerous form of corruption for the businesses appears to be the "sale of rights granted by the government" by public officials for personal or political party gain (public procurement contracts, company registration, licenses, permits, state subsidies, tax incentives). This is particularly problematic for SMEs because they cannot compete with larger companies in terms of resources and thus are likely to be last in line when the "favours" are handed out[4].

The entrepreneurs could face corrupt conduct in all the bureaucratic institutions at federal, regional and local level. However, the smaller companies are mainly affected by the corruption of local officials in their respective region.

In addition to the above-mentioned public sector corrupt cases, solicitation for illegal payments by so-called natural monopolies (public services provided by private sector entities, e.g. the delivery of services such as electricity, water and gas supply) often constitute a severe obstacle to SMEs as they cannot run their business without those services. The problem is that due to limited consumption SMEs do not have bargaining potential and therefore have to obey the rules imposed on them by the monopolies.

The private-to-private bribery or the problems of corruption with private sector entities (suppliers, customers, banks, etc.) is also a serious problem which should be addressed by the business anti-corruption programs. Corrupt phenomenon occurs within the private sector in terms of misappropriation of property by employees and bribery or extortion of employees of larger companies in order to obtain contracts. Corrupt bank officials, for example, could be paid to approve loans that do not meet the financial requirements and can therefore not be collected later on.

[3] Vitosha Research Agency (2002); Corruption in Small and Medium-Sized Enterprises

[4] UNODC Expert paper (2006) "Small Business Development and Corruption"

Again, it seems that in the context of corruption the SMEs could be an "easy target" because in principle they lack the bargaining potential to reject solicitations for bribes and have less awareness of their rights. In addition, the SMEs are often not heard by authorities concerning corruption related problems they are facing.

Specific differences between business sectors are often regarded as important when focusing on the frequency/prevalence of corruption in the private sector. According to the Bribe Payers Index (BPI) published by Transparency International (TI) in 2011, the bribery is perceived to occur in all business sectors, but is seen as most common in the public works contracts and construction sector. According to the 2011 Bribe Payers Survey, agriculture and light manufacturing are perceived to be the least bribery-prone sectors, followed by civilian aerospace and information technology. The public works contracts and construction sector ranks most corrupt, as it did in 2008. Other sectors ranked as very corrupt include: utilities; real estate, property, legal and business services; oil and gas; and mining. These sectors are all characterised by high-value investment and significant government interaction and regulation, both of which provide opportunities and incentives for corruption. The EU Anti-corruption report of 2014 refers to construction, energy, transport, defence and healthcare sectors as most vulnerable to corruption in public procurement[5].

The 2011 Bribe Payers Survey asked respondents to distinguish between bribes paid to low-level public officials (petty corruption), improper contributions made to high-level public officials and politicians (grand corruption), and bribes paid to other companies in the private sector (private-to-private corruption). The survey shows that the most common form of bribery is perceived to be companies using improper contributions to high-ranking officials intended to secure influence over policy, regulatory and/or legislative decisions. Such improper contributions by companies can result in the development, passing and implementation of policies that are advantageous to those companies and detrimental to competitors, smaller companies, and the interests of society[6].

3.2 Corruption risks in different sectors of economy affecting business and entrepreneurs in the Russian Federation

Similar to European countries, the following two types of corruption are noticeable in the context of the Russian Federation:

- corruption in the public sector (bribery and abuse of public authority);
- corruption in the private sector (commercial bribery and abuse of authority within a private business).

Both these types influence the business sector in a certain way. Generally, corruption in public sector affects public institutions and damages the business reputation and the investment climate of a country. Corruption in the private sector has a direct consequence in the costs of doing business, thus affects advantageousness and profitableness of a business.

Another way of classifying corruption is to sort it depending on its level and illegal benefits offered:

[5] http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

[6] Bribe Payers Index (BPI), Transparency International (2011)

- a grassroots (petty) corruption (bribing a road policeman to avoid administrative penalty, bribing a teacher to get a higher mark, bribing a doctor to get better conditions in a hospital, etc.);
- mid-level corruption (bribing an investigating officer to avoid criminal penalty, bribing state officers to get necessary permits, etc.);
- major companies top-management and state Chief Executives (grand) corruption (e.g., Daimler has given more than 56 million USD to state CEs in 22 countries including Russia to get public contracts7, CEO of OAO "ZIL" had got RUB 250 million of annual salary while the accrued personnel compensation (backdated salary) had amounted to RUB 200 million[8]).

As it was shown by the majority of public opinion polls[9], the areas with the biggest risk of corruption in the Russian Federation are:

- health care;
- housing and utilities;
- construction;
- alcohol production and distribution;
- education sectors;
- government;
- police and other law enforcement authorities; and
- tax and customs authorities.

Also strongly affected by corruption risks are considered the:

- credit and financial sectors,
- monetary circulation,
- foreign trade,
- the stock market,
- real estate,
- market of precious metals and stones.

One of the most corrupt spheres is the purchase of goods (works, services) for public use. Russia annually loses about 1% of GDP due to corruption in the system of public contracting.

The most corrupt sectors of the economy are in principle the most heavily regulated: construction, trade and mining[10]. The construction industry depends on the bureaucracy to the most. It is controlled by 24% of the whole array of different laws, regulations, permits, etc. Wholesale and retail business takes the second place - 21%. The third is mining with its 16%. The fourth and fifth places – fishing and production and distribution of electricity – 11% and 8%, respectively.

[7] http://www.bbc.co.uk/russian/business/2010/04/100401_daimler_bribery.shtml

[8] http://news.mail.ru/politics/5662045/?frommail=1

[9] I.e..: http://wciom.ru/index.php?id=459&uid=114572, http://monitoring.tatarstan.ru/rus/file/pub/pub_273362.pdf, http://dkcenter.ru/upload/iblock/d10/report_khabarovsk-finalq1w.pdf, http://www.moshensk.ru/file/anticorup/anticor_04.pdf.

[10] O.Novozhenina, P.Smorschikov. Corruption Tax Calculation // http://www.gazeta.ru/financial/2009/03/25/2964129.shtml

3.3 The negative effect of corruption on business

Another issue, which needs to be considered, is the negative impact that corruption has on the development of business. In particular, the question to consider is how corruption affects the margin of profit, growth and expansion of enterprises.

One important aspect, in the context of assessment of the damage of corrupt behaviour, refers to the opportunity costs that acts of corruption impose on small businesses. The opportunity cost (also called economic cost) is defined as the value of the best alternative that was not chosen in order to pursue the current endeavour (i.e. what could have been accomplished with the resources expended in certain undertaking). In many cases the corruption environment influences the decisions of the managers: to reinvest in their business; to expand their business; to look for customers abroad; to set up a business; to hire, dismiss and train workforce; to improve product quality; to invest in research and development. Many businesses in the developing countries prefer to operate in the informal economy because they do not want to expose themselves to intrusions by the public sector[11]. In a corrupt legal and regulatory environment companies are usually discouraged from entering the formal sector, and formal sector entrepreneurs might even be induced to "de-formalize" their operations.

The damaging impact of corruption practices on the business environment requires strong efforts on behalf of the government and entrepreneurs to decrease corruption risk. If companies fail to undertake adequate preventive measures or allow being involved in corruption they face different negative legal or commercial-related consequences. In particular, the failure to prevent corruption could result in legal sanctions against the company and/or the corrupt employee (fines, imprisonment), commercial restrictions (black list, ban to participate in public tenders) and negative business reputation which affects the degree of competitiveness and investments.

In relation to this issue, reference may also be made to Article 34 "Consequences of acts of corruption" of the UN Convention against Corruption (UNCAC): "With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action."

3.4 Negative effects of corruption on the development of business and entrepreneurship in the Russian Federation

Despite the efforts of the Russian authorities in the adoption of various preventive and punitive measures, corruption remains an issue that is omnipresent in more spheres of life. This has a negative impact, especially on the political stability and economic development of the country.
Particular concern is caused by the fact that by means of corruption the organised crime runs shady business activities in the production and sale of illicit goods and services which bring

[11] World Bank (2004), Doing Business in 2005 – Understanding Regulation

enormous profits (drug dealing, sale of arms, slave-trade, prostitution, money laundering, etc.).
Damage resulting from corruption emerges in several directions:

- decisions making is influenced for the benefit of specific individuals or organisations, disregarding the broader interests of the Russian Federation;
- outflow of funds abroad;
- uncontrolled increase in demand in the consumer sectors of the economy and, as a consequence the rise in prices and inflation;
- strengthening the social divide of the population.

Comparative analysis[12] "On preventing misuse of public authority in the corporate sector" prepared under the PRECOP RF project, indicates a number of characteristics of the public danger of commercial bribery:

- commercial bribery speeds up individual operations but the number of such operations, requiring the participation of the corrupt manager, could grow so large that expenses for corrupt payments will outweigh the gains of acceleration , and the use of "petty corruption" will lead to demands for higher payments;
- a corrupt administrator who receives bribes does not give preference, upon choosing a contractor, to the most effective application in terms of the ratio of price and quality but selects the application that creates conditions for the receipt of benefits for private purposes;
- a corrupt claimant, using bribery, excludes other participants from the competition because they lack the ability to use corrupt relations and cannot compete in a situation where the basic criterion of choice is a "corrupt payment";
- the level of corruption, including commercial bribery, influences the assessment of the investment attractiveness of a project;
- the larger the share of the contract price, which must be paid by the organisation in the form of commercial bribe, the more likely is the choice of the "informal procedure" for the implementation of activities, which in turn will affect the growth rate of the economy;
- the longer the entrepreneur must wait for a decision on an issue, the more likely that the manager will receive the commercial bribe, because while the entrepreneur expects that decision, he/she incurs additional costs that can be avoided by passing a bribe. This situation reduces incentives for large investment in innovative projects, decisions on which take a long time while the cost recovery will come only after a few years.

In the Russian context corruption is perceived to be integrated into economic, political and social life of the country so strongly that it has become a shadow instrument of public administration. Thus, regarding the Russian Federation, the number of negative consequences of corruption are identified, including[13]:

- ungrounded privatization, held with significant breaches of the law to the benefit of a narrow group of persons;
- inefficient management (incomplete and imperfect administrative reformation);

[12] Comparative analysis on preventing misuse of public authority in the corporate sector - by Valts Kalnins, Mjriana Visentin and Vsevolod Sazonov // ECCU-PRECOP-TP-1/2014.

[13] O.A.Kimlatsky, I.G.Machulskaya. On combating of corruption in the Russian Federation // Government and Local Administration. 2008. No. 8.

- legislation drawbacks and retardation from actual social and economic relations;
- inefficiency of state (government) institutions;
- absence of a well-organised civil society;

In addition, following peculiarities of corruption in the Russian Federation could be identified[14]:

- powerful and broad shadow economy and enormous illegal incomes, most of which are the major source for bribing;
- breach and disregard of the legislation;
- complexity, divergence, ambiguousness of the legislation;
- plenty of bylaws and regulations, which give random interpretation of the current legislation;
- plenty of decisions that officials have the right to take alone (discretionary powers);
- the involvement of relatives in the corruption process at the grassroots level of government and in private life;

Corruption is most prevalent in areas that have more economic resources, especially where they are concentrated in a limited number of business entities. Among the most corrupt areas are large cities, transportation hubs, coastal and border towns, ports.

[14] O.A.Kimlatsky, I.G.Machulskaya. On combating of corruption in the Russian Federation // Government and Local Administration. 2008. No. 8.

4 INTERNATIONAL AND DOMESTIC ANTICORRUPTION LEGAL FRAMEWORK

4.1 International anticorruption legal framework and standards

4.1.1 Global and European instruments and monitoring mechanisms

International measures against corruption can be divided into binding instruments such as treaties and conventions together with soft law instruments such as Council of Europe and OECD recommendations, United Nations and General Assembly resolutions or declarations. The conditions laid down by technical assistance programmes may also be used for adopting measures against corruption. This section focuses only on international binding instruments and has been structured on a historical basis starting from the OECD Convention on Combating Bribery of Foreign Public Official in International Business Transactions of 1997 (OECD Anti-Bribery Convention) and concluding with the United Nations Convention against Corruption of 2003.

4.1.1.1 The OECD Anti-Bribery Convention

The OECD Anti-Bribery Convention establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction (i.e. active bribery). The 34 OECD member countries and seven non-member countries (Argentina, Brazil, Bulgaria, Colombia, Latvia, Russian Federation and South Africa) have ratified this Convention.

According to Art.1 of the OECD Convention, "Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business." It is important to underline that the OECD Convention does not address the taking of bribes by foreign officials (i.e. passive bribery).

In addition to that, the OECD Convention is aimed at preventing and punishing accounting and financial recording mechanisms that hide foreign bribes. Moreover, a mutual legal assistance mechanism is foreseen both for criminal investigations and for non-criminal proceedings. Within this context, the bank secrecy is excluded: "A Party shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of bank secrecy" (Art. 9.3 OECD Convention).

Finally, the Convention itself establishes an open-ended, peer-driven monitoring mechanism to ensure the thorough implementation of the international obligations that countries have taken on under the Convention. This monitoring is carried out by the OECD Working Group on Bribery which is composed of members of all State Parties to the Convention. The country monitoring reports contain recommendations formed from rigorous examinations of each country (Art. 12 OECD Convention).

The OECD adopted also "The Guidelines for Multinational Enterprises". It contains a set of social, labour, environmental and anti-corruption standards developed for transnational companies. A total of 40 nations (30 OECD governments and 10 non-member states) have endorsed them as a basic component of responsible corporate conduct for multinational enterprises that are based in or operating from their territories[15].

4.1.1.2 The European Union Conventions

The European Union Conventions endeavour to protect Union's finances, and seek accordingly the closer integration of the internal market.
The Convention on the Protection of the European Communities' financial interests and its Protocols have been adopted with the purpose of tackling fraud affecting the financial interests of the European Communities. Under this convention, fraud affecting both expenditure and revenue must be punishable by effective, proportionate and dissuasive criminal penalties in every European Union (EU) country.

The convention requires each EU country to take the necessary measures to ensure that the conduct referred to above, as well as participating in, instigating, or attempting such conduct, are punishable by effective, proportionate and dissuasive criminal penalties. In cases of serious fraud, these penalties must include custodial sentences that can give rise to extradition.

Each EU country must also take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable, in accordance with the principles defined by its national law, in cases of fraud affecting the European Communities' financial interests.

Each EU country must take the necessary measures to establish its jurisdiction over the offences it has established in accordance with its obligations under the convention.

If a fraud constitutes a criminal offence and concerns at least two EU countries, those countries must cooperate effectively in the investigation, the prosecution and the enforcement of the penalties imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another EU country[16].

The Protocols to the Convention elaborate the scope of that Convention: the first one defines the terms 'official' and "active" and "passive" corruption for the purposes of the Convention; and the second one provides for the liability of legal persons for corruption, confiscation of corruptly derived proceeds and cooperation between EU Member States and the Commission for the purpose of protecting the Union's financial interests.

Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union is aimed at fighting corruption involving European officials or national officials of Member States of the European Union.

[15] http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

[16] http://europa.eu/legislation_summaries/fight_against_fraud/protecting_european_communitys_financial_interests/l33019_en.htm

On the basis of this Convention, each EU Member State must take the necessary measures to ensure that conduct constituting an act of passive corruption or active corruption by officials is a punishable criminal offence.

The Convention also provides that Member States must ensure that conduct constituting an act of passive or active corruption, as well as participating in and instigating these acts, is punishable by criminal penalties. In serious cases, these could include penalties involving deprivation of liberty which can give rise to extradition. In addition, Member States must take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in cases of active corruption by a person under their authority acting on behalf of the business.

Each Member State must take the measures necessary to set up its jurisdiction over the offences it has established in accordance with the obligations arising out of this Convention in the following cases: when the offence is committed in whole or in part within its territory; when the offender is one of its nationals or one of its officials; when the offence is committed against European or national officials or against a member of the EU institutions who is also one of its nationals; when the offender is a European official working for a European Community institution, agency or body that has its headquarters in the Member State in question.

If any procedure in connection with an offence established in accordance with the obligations arising out of the Convention concerns at least two Member States, those States must cooperate in the investigation and prosecution and in carrying out the punishment imposed[17].

4.1.1.3 The Council of Europe Conventions

The Criminal Law Convention on Corruption was adopted in 1999 and represents a regional consensus on what states should do in the areas of criminalisation and international cooperation with respect to prosecution and punishment of corruption. The Convention covers the public sector and private sector corruption and a broad range of offences including bribery of domestic, foreign and international officials, trading in influence, money laundering and accounting offences. The Criminal Law Convention is complemented by an additional Protocol covering bribery offences committed by and against arbitrators and jurors. These two groups of persons do not legally qualify as public officials and are therefore not covered by the Criminal Law Convention.

The Convention covers the following forms of corrupt behaviour normally considered as specific types of corruption:

- active and passive bribery of domestic and foreign public officials;
- active and passive bribery of national and foreign parliamentarians and of members of international parliamentary assemblies;
- active and passive bribery in the private sector;
- active and passive bribery of international officials;
- active and passive bribery of domestic, foreign and international judges and officials of international courts;

[17] http://europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/l33027_en.htm

- active and passive trading in influence;
- money-laundering of proceeds from corruption offences;
- accounting offences (invoices, accounting documents, etc.) connected with corruption offences.

States are required to provide for effective and dissuasive sanctions and measures, including deprivation of liberty that can lead to extradition. Legal entities will also be liable for offences committed to benefit them, and will be subject to effective criminal or non-criminal sanctions, including monetary sanctions.

The Convention also incorporates provisions concerning aiding and abetting, criteria for determining the jurisdiction of States, the setting up of specialized anti-corruption bodies, protection of persons collaborating with investigating or prosecuting authorities, gathering of evidence and confiscation of proceeds.

It provides for enhanced international co-operation (mutual legal assistance, extradition and provision of information) in the investigation and prosecution of corruption offences.
Its implementation is monitored by the "Group of States against Corruption - GRECO", which started functioning on 1st May 1999. As soon as they ratify the Convention, States which do not already belong to GRECO will automatically become its members[18].

The Civil Law Convention on Corruption is the first attempt to define common international rules in the field of civil law and corruption. It requires Contracting Parties to provide in their domestic law "for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage" (Art.1). The Convention is divided into three chapters which cover measures to be taken at national level, international co-operation and monitoring of implementation. In ratifying the Convention, the States undertake to incorporate its principles and rules into their domestic law, taking into account their own particular circumstances.

In particular, the Civil Law Convention on Corruption deals with:

- right to civil action in order to obtain compensation for damage caused by corrupt act;
- conditions for liability;
- State liability for acts of corruption committed by public officials;
- contributory negligence: reduction or disallowance of compensation, depending on the circumstances;
- validity of contracts: contractual clause providing for corruption to be null and void;
- protection of employees who report in good faith their suspicious of corruption;
- clarity and accuracy of accounts and audits;
- effective procedures of acquisition of evidence in civil proceedings;
- court orders to preserve the assets necessary for the execution of the final judgment and for the maintenance of the status quo pending resolution of the points at issue (interim measures);
- international co-operation in civil matters related to corruption.

[18] http://conventions.coe.int/Treaty/en/Summaries/Html/173.htm

The Group of States against Corruption (GRECO) will monitor commitments entered into under the Convention by the States Party. The Convention is open to Council of Europe member States, to non-member States which took part in drawing it up (Belarus, Canada, the Holy See, Japan, Mexico and the United States of America) as well as to the European Union[19].

4.1.1.4 The United Nations Convention against Corruption.

The UN Convention is the most comprehensive anti-corruption instrument dealing with different aspects of anti-corruption, including preventive measures, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.

Corruption can be prosecuted after the fact, but first and foremost, it requires prevention. An entire chapter of the UN Convention is dedicated to prevention (Chapter II "Preventive measures"), with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. Once recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement. Those who use public services must expect a high standard of conduct from their public servants. Preventing public corruption also requires an effort from all members of society at large. For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organisations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it. Article 5 of the Convention enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption.

The Convention requires countries to establish criminal offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law (Chapter III "Criminalisation and law enforcement"). In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery in the public and private sector and trading in influence, but also abuse of functions by public officials, embezzlement of both public and private funds, and illicit enrichment. Offences committed in support of corruption, including money-laundering, concealment and obstructing justice, are also dealt with.

Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders (Chapter IV "International Cooperation"). Article 43 provides inter alia that "In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed

[19] http://conventions.coe.int/Treaty/en/Summaries/Html/174.htm

fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties". Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court and to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

In a major breakthrough, countries agreed on asset-recovery, which is stated explicitly as a fundamental principle of the Convention (Chapter V "Asset recovery"). This is a particularly important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments. Reaching agreement on this chapter has involved intensive negotiations, as the needs of countries seeking the illicit assets had to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought. Several provisions specify how cooperation and assistance will be rendered in the field of asset recovery. In particular, in the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it; in the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting state; in all other cases, priority consideration would be given to the return of confiscated property to the requesting state, to the return of such property to the prior legitimate owners or to compensation of the victims. Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption while sending at the same time, a message to corrupt officials that there will be no place to hide their illicit assets[20].

The implementation of the respective provisions of the UN Convention is examined within specific review mechanism run with the assistance of the UN Office on Drugs and Crime.

4.1.2 Liability of legal persons (enterprises) for corruption offences

Companies are often involved in corruption offences committed for their benefit by their managers or employees. This phenomenon takes place especially in business transactions and is addressed by the main international anti-corruption instruments. In particular, the establishment of liability of legal persons (corporate liability) for respective corruption criminal offences is a mandatory requirement of the Council of Europe Criminal Law Convention on Corruption (Art.18), OECD Anti-Bribery Convention (Art.2) and United Nations Convention against Corruption (Art.26). Various international instruments require the establishment of corporate liability also for fraud, economic crime, organised crime, money laundering, environmental crime, terrorism, trafficking in human beings, etc.

The corporate liability addresses the difficulties in identifying and prosecuting physical perpetrators of corruption in business transactions because of the complex structure and diffuse decision-making process in the large companies, makes it possible to target the assets of the legal entity used for criminal conduct, and has deterrent effect on the companies.

[20] https://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html

The concept of corporate liability for criminal offences is recognised also in the countries of traditional "individual criminal liability" systems, such as the Russian Federation. The conventions do not specifically require that criminal liability be introduced and the liability provided for legal persons may be criminal, civil or administrative in nature. However, many experts have argued against the effectiveness of civil or administrative liability of enterprises, also because criminal law is considered as a better deterrent. Thus, following the example of the common law systems, increasing number of countries are adopting legislation that provides for criminal liability of legal persons.

The following issues related to corporate liability are subject to the standards set out by the above international conventions:

- definition of legal person: usually the conventions do not provide an autonomous definition of legal person, but refer to national company or criminal laws. Public bodies and public international organisations cannot be held liable for active bribery but the responsibility of public enterprises is not excluded;

- three conditions for establishing liability: first, commission of (active) bribery offence or another corruption offence defined by the respective convention; second, the offence must have been committed for the benefit or on behalf of the legal person; and third, commission of the offence by a person who has a leading position within the company. The leading position can be assumed to exist in the following situations: a power of representation; an authority to take decisions; or an authority to exercise control within the legal person;

- link between proceedings against legal and natural persons: corporate liability does not exclude individual liability of the perpetrator, the reverse is also valid. Under the OECD Working Group standard, the corporate liability should be established also if the perpetrator cannot be identified or prosecuted. The latter problem of the link between proceedings against the natural perpetrator and the legal person is of high importance in the context of the Russian law, also because of the existence of the specific defence of "effective regret" in the case of active bribery (i.e. exemption from punishment granted to perpetrators of active bribery who report to law enforcement authorities and cooperate with them);

- sanctions: penalties to be imposed on legal persons for corruption should be effective, proportionate and dissuasive, and in any case should include monetary sanctions. The explanatory documents and some of the instruments provide specific sanctions examples, such as interim measures, confiscation, register of convicted legal persons and even liquidation.

Corporate liability should be also established where the lack of supervision or control within the legal person has made possible the commission of the corruption offence by a person who has not a leading position within the company, i.e. company employee.

4.1.3 Corrupt practices to be prohibited by the enterprises

It view of the above-mentioned anti-corruption instruments and standards adopted by the main global and regional international organisations (UN, EU, OECD, Council of Europe), it

is useful to consider the prohibited corrupt behaviour from the perspective of the entrepreneurs and business entities, i.e. to translate the standards of criminalisation of corruption to the business environment.

For this purpose, it is helpful to rely on what the International Chamber of Commerce (ICC) Rules on Combating corruption (Art. 1) wrote about the "Prohibited Practices", understood as "corruption" or "corrupt practices". These practices have been defined as follows:
"Enterprises will prohibit the following practices at all times and in any form, in relation with:

- a public official at international, national or local level,
- a political party, party official or candidate to political office, and
- a director, officer or employee of an enterprise,

whether these practices are engaged in directly or indirectly, including through third parties:

a) Bribery is the offering, promising, giving, authorizing or accepting of any undue pecuniary or other advantage to, by or for any of the persons listed above or for anyone else in order to obtain or retain a business or other improper advantage, e.g. in connection with public or private procurement contract awards, regulatory permits, taxation, customs, judicial and legislative proceedings.

b) Bribery often includes (i) kicking back a portion of a contract payment to government or party officials or to employees of the other contracting party, their close relatives, friends or business partners or (ii) using intermediaries such as agents, subcontractors, consultants or other third parties, to channel payments to government or party officials, or to employees of the other contracting party, their relatives, friends or business partners.

c) Extortion or solicitation is the demanding of a bribe, whether or not coupled with a threat if the demand is refused. Enterprises will oppose any attempt of extortion or solicitation and are encouraged to report such attempts through available formal or informal reporting mechanisms, unless such reporting is deemed to be counter-productive under the circumstances.

d) Trading in influence is the offering or solicitation of an undue advantage in order to exert an improper, real, or supposed influence with a view of obtaining from a public official an undue advantage for the original instigator of the act or for any other person.

e) Laundering the proceeds of the corrupt practices mentioned above is the concealing or disguising the illicit origin, source, location, disposition, movement or ownership of property, knowing that such property is the proceeds of crime."[21]

4.2 Russian Federation's domestic legal framework for combating corruption

Legal framework for preventing and combating corruption in Russia consist of the Constitution of the Russian Federation, federal constitutional laws, the generally recognised

[21] http://www.iccwbo.org/advocacy-codes-and-rules/document-centre/2011/icc-rules-on-combating-corruption/

principles and norms of the international law and the international treaties of the Russian Federation, the Federal Law of 25 December 2008 No. 273-FZ "On Combating Corruption" and other federal laws, normative legal acts of the President of the Russian Federation and normative legal acts of the Government of the Russian Federation, other normative legal acts of the federal authorities, regulatory legal acts of authorities of subjects of the Russian Federation and municipal legal acts[22].

Under Article 15 (part 4) of the Constitution of the Russian Federation, the universally recognised principles and rules of international law and international treaties entered into by the Russian Federation are an integral part of its legal system. However, the international anti-corruption instruments are non-self-executing what means that States Parties have to transpose their standards in the internal law by taking into account their own particular circumstances. Legislative measures at national level are necessary especially for introducing all elements of the definitions of corruption and corruption-related criminal offences established by the international conventions.

4.2.1 Criminal code and implementation of international standards

The Russian Federation has ratified the UN Convention against Corruption (9 May 2006), the Criminal Law Convention on Corruption (4 October 2006) and the OECD Anti-Bribery Convention (17 February 2012), and has only signed the Additional Protocol to the Criminal Law Convention (7 May 2009). The Civil Law Convention on Corruption has not been signed yet by the Russian Federation.

The Criminal Code of the Russian Federation (CC) includes active and passive bribery offences in the public sector (Articles 290 and 291 CC) and in the private sector (Articles 184 and 204 CC) but no specific trading in influence offences. Recent reforms aimed at aligning national legislation with international standards introduced the criminalisation of bribery of foreign and international public officials and changes to the sanctions available for bribery offences and to the definition of aggravated cases. However, the GRECO has identified some shortcomings in the corruption provisions of the CC as compared to the requirements of the Criminal Law Convention on Corruption and its Additional Protocol. The interpretation of Russian bribery law is primarily based on Decree of the Plenum of the Supreme Court of the Russian Federation of 09 July 2013 No. 24 "On the judicial practice concerning cases of bribery and commercial bribery" which is aimed at ensuring correct and uniform application of the law in cases of bribery and is authoritative for courts and law enforcement agencies.

The Criminal Code (CC) contains two specific offences which criminalise bribery of persons who are not public officials, namely (1) Article 204 CC on commercial bribery; and (2) Article 184 CC on bribery in sport and commercial entertainment contests.

Commercial bribery as a form of corruption in the private sector is established as a criminal offence by Article 204 CC. This provision contains definition of commercial bribery, both from the active and passive side, i.e. it incriminates both bribe giving and bribe receiving in the private sector:

[22] Article 2 of the Federal law of 25 December 2008 No. 273-FZ "On Combating Corruption" // Legislation corpus of the Russian Federation. 2008. № 52 (part 1). Art. 6228; 2011. № 48. Art. 6730; 2013. № 52 (Part 1). Art. 6961.

1) Active commercial bribery: illegal transfer of money, securities or other property, the provision of the monetized services, the provision of other property rights to a person discharging managerial functions in a commercial or other organisation in return for actions (or inaction) in the interests of the bribe-giver (Art.204, para.1 CC). Under paragraph 2 of Article 204 more severe sanctions are provided for the commission of bribery by a group of persons with prior conspiracy or by an organised group, as well as for commission of bribery in return for knowingly illegal actions (inaction);

2) Passive commercial bribery: illegal acquisition by the person performing managerial functions in a commercial or other organisation, of money, securities, or other property, and illegal use of monetized services, or other proprietary rights for actions (or inaction) in the interests of the bribe-giver in connection with the office held by this person (Art.204, para.3 CC). Paragraph 4 of Article 204 provides more severe sanctions for committing bribery by a group of persons with prior conspiracy or by an organised group, as well as for committing a bribery accompanied by extortion of bribe or in return for illegal actions (inaction).

It follows from the provisions of Article 204 of the Criminal Code of the Russian Federation that the subject of commercial bribery is illegal remuneration transferred to the person performing managerial functions in a commercial or other organisation, for actions (or inaction) in the interests of the bribe-giver in connection with position held by this person. The types of benefits include cash, securities, other property, the provision of monetized services, the provision of other property rights. Thus, the non-material benefits are not covered by the subject of commercial bribery.

Extortion (Paragraph 4(b) of Article 204 of the Criminal Code) refers to demand by the person performing managerial functions in a commercial or other organisation, to transfer the valuables or to provide services for free under threat of violation of the legitimate interests of the bribe-giver (of his relatives or organisation, which interests he/she represents) or intended placing of the bribe-giver in such circumstances in which he/she is forced to pass a fee in order to provide legally protected legal interests (Clause 18 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 09 July 2013 No. 24).

The note No.2 to Article 201 CC introduced a limitation to the prosecution of private sector bribery offences. According to this provision – which also applied to some other economic crimes, in the case of an offence under Article 204 CC (commercial bribery) which had caused harm exclusively to the interests of a commercial organisation that was not a governmental or municipal enterprise, prosecution was instituted only upon the application of this organisation or with its consent. GRECO had expressed its concern that this formal requirement may had constituted an obstacle to prosecution which was against the spirit of the Criminal Law Convention on Corruption and the trend to limit the differences between public and private sector bribery as corruption in business may cause significant damage to society at large.

The GRECO had recommended to the Russian authorities (i) to align the criminalisation of bribery in the private sector, as provided for in Article 204 of the Criminal Code, with Articles 7 and 8 of the Criminal Law Convention on Corruption, in particular as regards the categories of persons covered, the different forms of corrupt behaviour, the coverage of indirect commission of the offence, of instances involving third party beneficiaries and of non-material advantages; and (ii) to abolish the rule that in cases of bribery offences in the

private sector which have caused harm exclusively to the interests of a commercial organisation, prosecution is instituted only upon the application of this organisation or with its consent[23]. Under the Federal law of 2 November 2013 No. 302-FZ the said note had been declared to be no longer in force and thus the recommendation of the GRECO was accepted.

Depending on the interpretation of the scope of corruption-related behaviour, it is possible to distinguish different corruption and corruption-related offenses under the Russian Criminal Code[24]:

- typical corruption offenses (narrow definition), infringing on standing of state and local authority like on major and direct object – Articles 285 (abuse of public authority), 289 (illegal entrepreneurship), 290 (bribe taking), 291 (bribe giving), 291.1 (mediation to bribery), 292 (forgery by an official) of the Criminal Code of the Russian Federation;
- corruption offenses (wide definition), infringing on the same social values but like on obligatory additional object – Articles 169 (barring of legal entrepreneurship), 170 (registration of illegal land deals), 304 (provocation of bribery or commercial bribery) of the Criminal Code of the Russian Federation plus contraband, committed by an officer misusing his authority, and creation of a criminal group or organisation for committing of any of the offenses above and considered capital offense or high crime – Article 210 (organisation of criminal community and participating in it) of the Criminal Code of the Russian Federation;
- corruption offenses infringing on the same social values like on a facultative object paragraphs 3, 4 of Article 160 (embezzlement and defalcation), Articles 164 (theft of extrinsic values), 174 (laundering of money acquired by a criminal act of a third party), 174.1 (laundering of money acquired by own criminal act), paragraph 3 of Article 175 (acquisition or trading of property knowingly acquired by a criminal act), Articles 176 (illegal granting of a credit), 177 (malicious evasion of paying a credit debt), 193 (evasion of repatriation of money in foreign currency or currency of the Russian Federation), 199 (evasion of paying taxes by an organisation), paragraphs 2(c), 3(a) of Article 221 (theft or extortion of nuclear materials or nuclear substances), paragraphs 3(c), 4(a) of Article 226 (theft or extortion of weapons, ammunition, explosives and blasting compositions),paragraphs 2(c), 3(a) of Article 229 (theft or extortion of drugs, psychotropic substances, narcotic and psychotropic plants or their narcotic or psychotropic parts), paragraph 3 of Article 256 (illegal extraction of water biological resources), paragraph 2 of Article 258 (illegal hunting) of the Criminal Code of the Russian Federation.

4.2.2 Other domestic instruments

In addition to the Criminal Code of the Russian Federation, the Law on Combating Corruption and the Code of the Russian Federation on Administrative Offences contain provisions on prevention and fight against corruption in business.

[23] GRECO Third Evaluation Round Evaluation Report on the Russian Federation, theme I Incriminations, 2012

[24] S.Maksimov. Corruption crime in Russia: legal analysis, sources of development, measures of combating // Criminal Law. 1999. No. 2; D.V.Miroshnichenko. Corruption and criminal law affection: Ph.D. dissertation, Saratov, 2009.

4.2.2.1 Law on Combating Corruption

The Federal Law of 25 December 2008 No. 273-FZ "On Combating Corruption" (hereafter, Law on Combating Corruption) contains definition of corruption which is based on the corruption provisions of the specific articles of the Criminal Code. Thus corruption is defined by Art.1 of the Law as consisting of the following acts:

1) abuse of official position;
2) giving a bribe (active bribery);
3) receiving a bribe (passive bribery);
4) abuse of powers/authority;
5) commercial bribery;
6) any other misuse of official position by an individual contrary to the legal interests of the society and state in order to receive benefit in the form of money, valuables, other property and services of property nature, other property rights for him/herself or for the third persons or illegal provision of such a benefit to the above-mentioned individual by other parties;
7) as well as committing the above-mentioned acts on behalf or for the benefit of a legal entity.

In order to counter corruption the Law on Combating Corruption set the following restrictions and obligations for public officers:

- prohibition to open and operate accounts (deposits), to store cash and valuables in foreign banks located outside the territory of the Russian Federation, to own and (or) use foreign financial instruments (Item 3 of Paragraph 1 of Article 7.1);
- duty to provide information about their income, property and property obligations (Items 1 and 4 of Paragraph 1 of Article 8);
- duty to provide information about their spending (Paragraph 1 of Article 8.1);
- obligation to report about facts of inducement to the commission of corruption offenses (Paragraph 1 of Article 9);
- obligation to take measures to prevent any potential conflict of interest, to notify in writing their immediate supervisor of the conflict or the possibility of its occurrence, as soon as it becomes known (Paragraphs 1 and 2 of Article 11);
- duty to place securities and shares into trust in accordance with the legislation of the Russian Federation in order to prevent conflicts of interest (Paragraph 6 of Article 11).

Failure to perform these obligations and restrictions is considered administrative offense entailing dismissal of state and municipal officer. Individuals who have committed corruption offenses are subject to criminal and disciplinary liability in accordance with the legislation of the Russian Federation.

According to the Law on Combating Corruption, federal constitutional laws, federal laws and laws of subjects of the Russian Federation, municipal regulatory acts may contain other prohibitions, restrictions, duties and rules of official conduct for persons holding positions of public and municipal authority in order to combat corruption.

The above regulation corresponds to the normative legal acts establishing the legal status of state and municipal officers, which contain similar duties and prohibitions. For example, in accordance with the Federal Law on State Civil Service of the Russian Federation, the civil

officer is obliged to provide information on revenues, expenditures, property and property obligations. In addition, obligations and prohibitions established in order to combat corruption are allocated in the duty regulations of state and municipal officers[25].

According to Art. 13 of the Law on Combating Corruption, individuals who commit corruption offences can be brought also to administrative or civil proceedings and liability for corruption. In this connection, GRECO in its Joint First and Second Round Evaluation Report on the Russian Federation has expressed concerns that the existence of parallel criminal and administrative systems afforded opportunities for manipulation, for example, to escape from the justice process[26]. However, as explained by the Russian authorities, Art. 13 of the Law on Combating Corruption is only a framework law and the Russian legislation does not provide for administrative liability of individual persons for corruption offences (but only of legal persons). In cases of bribery the provisions of the CC would therefore have to be applied without exception. According to the Russian authorities, the only type of offence of a corrupt nature for which the laws of the Russian Federation envisaged the administrative liability was "Illegal Remuneration on behalf of a legal entity", pursuant to Article 19.28 of the Code of the Russian Federation on Administrative Offences. Moreover, Clause 2 of Article 14 of the Law on combating Corruption contains an important rule which says that the liability of a legal entity doesn't exclude the liability of an individual and that the criminal liability of an individual doesn't exclude the liability for a legal entity.

4.2.2.2 Code of Administrative Offences (CAO) and liability of legal persons

The Code of the Russian Federation on Administrative Offences (CAO) provides for establishment of liability of legal persons for corruption offences (Art. 19.28 "Illegal Remuneration on behalf of a legal entity"). Pursuant to this provision, administrative liability had been established, inter alia, for corruption offences, and illegal transfer of money, securities or other property. Since 2011, Article 19.28 CAO establishes liability for the illegal handing over, proposal or promise on behalf of for the benefit of a legal person to an official, person exercising managerial functions in a commercial or any other organisation, foreign official or an official of public international organisation of money, securities, other assets, providing services of a pecuniary nature or granting property rights for the commission of any act for the benefit of the said legal person (or omission to act) by an official, person exercising managerial functions in a commercial or any other organisation, foreign official or an official of a public international organisation in connection with his/her official duties.

The CAO provides also for differential approach to calculating the amount of the administrative fine for the bribe-giving. For a bribe not exceeding RUB 1 million, the amount of the fine is up to three times the amount of the bribe but not less than RUB 1 million with the confiscation of the bribe item. For a bribe not exceeding RUB 20 million, the amount of the fine is up to thirty times the amount of the bribe but no less than RUB 20 million with the confiscation of the bribe item; for a bribe exceeding RUB 20 million – up to 100 times the amount of the bribe but not less than RUB 100 million with the confiscation of the bribe item.

[25] Review of court practice in 2012-2013 on cases connected with discipline liability of state and municipal officers for corruption offenses (approved by Presidium of Supreme Court of the Russian Federation on 30 July 2014) // Legal information database "Consultant Plus".

[26] GRECO Joint First and Second Evaluation Rounds Evaluation Report on the Russian Federation, 2008

In the judicial practice there are already cases where a natural person (e.g. a manager of a corporation) had been convicted for giving a bribe according to Article 291 CC ("bribe-giving") and the corporation had been convicted for the illegal reward (gratification), according to Article 19.28 CAO for the same action.

Furthermore, recently a chapter on international legal assistance has been added to the Code of Administrative Offences and the statute of limitation for administrative offences has been extended from one year to six years from the date of commitment of an administrative offence. It is, moreover, stipulated in the CAO that a legal entity which has committed an administrative offence outside the territory of the Russian Federation shall be liable in conformity with the Code in cases provided for by the international treaties of the Russian Federation.

In addition, according to the Ruling of the Constitutional Court (No. 674) of 11 May 2012, holding a natural person responsible for the commitment of a criminal act of corruption does not prevent bringing a relevant legal person to administrative liability for the same act[27].

4.2.3 Covering damages resulting from corruption

An important issue for business in Russia is covering of damages caused by actions of corruption. Traditionally, Russian legislation protects interests of the state and the government. There's even a wide practice of claiming losses of the state resulting from act of corruption by prosecutors[28].
The Federal Law on combating corruption in Article 13 says that individuals are liable for acts of corruption under the Civil law (a blanket rule).

In principle, the regulations of Chapter 59 "Obligations from damaging" of the Civil Code of the Russian Federation could be used also in case of damages resulting from corruption. In the executive summary of the Russian report and document on the relevant Russian national legislation provided within the review of the implementation by the Russian Federation of the UN Convention against Corruption (UNCAC), in relation to the implementation of Articles 34 and 35 of UNCAC (consequences of corruption and compensation of damages), references are made to Art.168 of the Civil Code (invalidity of transactions which contradict the law), Art.104.3 Criminal Code (compensation of damages), Art.44 Criminal Procedure Code (civil plaintiff), Art.1064 of Criminal Procedure Code (general conditions for liability for damages caused), Articles 1068-1070 Criminal Procedure Code (liability of public authorities and law enforcement for damages)[29].

In addition, specific cases of damages caused by corrupt behaviour could be covered by the Federal Law of 30 April 2010 No. 68-FZ "On compensation for the violation of the right to trial within a reasonable time, or the right to enforce of a judicial act within a reasonable time". It is also noted that some laws provide for civil liability resulting from general misconduct or mistake despite the kind of this mistake and how it emerged (as, for example, in case with registration of real-estate property rights (Article 31 (paragraphs 2 and 3 of the

[27] GRECO Joint First and Second Evaluation Round Addendum to the Compliance Report on the Russian Federation, 2012

[28] http://genproc.gov.ru/anticor/doks/document-81542

[29] https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1382896Ae.pdf

https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1382898r.pdf

Federal law of 21.07.1997 No. 122-FZ "On official registration of real-estate property rights and deals with real-estate"). Such examples cannot be considered as specific legal instruments for covering losses resulting from corruption, because such provisions do not presume any intention to make a mistake and benefit from it. These mistakes may be either intended objective side of an act of corruption, or simply technical misprint in a property certificate disturbing a private landowner.

Analysis of Russian legislation[30] allows concluding that there are no direct regulations on the invalidity of transactions related to corruption offenses in the civil law of Russia. However, Articles 168, 169 and 179 of the Civil Code of the Russian Federation provide for corrupt transactions to be null and void or to be declared null and void;

Article 168 "The invalidity of the transaction that does not meet the requirements of the law or other legal acts" establishes that a transaction which does not meet the requirements of the law or other legal acts, is null and void.

Article 169 "The invalidity of the transaction made with a view contradicting to principles of public order and morality" establishes that the transaction made for the purpose, knowingly contrary to principles of public order or morality, is null and void.

Article 179 "The invalidity of the transaction made under the influence of fraud, violence, threats, malicious agreement of representative of one party with the other party or exceptional circumstances" establishes that such a transaction may be declared invalid by a court according to the suit of the plaintiff.

[30] V.V.Alyoshin. D.N.Petrovsky. I.V.Chernyshova. On particular legal measures against corruption in the present time // Analytical Newsletter of the Council of Federation of the Federal Assembly of the Russian Federation. No. 10 (453). 2012. (http://council.gov.ru/activity/analytics/analytical_bulletins/25918)

5 CORRUPTION RISK ASSESSMENT

5.1 The objective and importance of risk assessment

Preventing and fighting corruption effectively requires an understanding of the risks that a company may face. Therefore the first step for developing and implementing an anti-corruption programme is the assessment of corruption risks. Such an assessment is aimed at identification and prioritization of risks. Corruption risks differ according to the specific characteristics of the companies such as structure, size, internal operations or geographical activities. Consequently, there is no one model of anti-corruption programme applicable to all companies.

The primary objective of the corruption risk assessment is to understand better the risk exposure so that informed risk management decisions may be taken. A structured approach for how entrepreneurs could conduct a corruption risk assessment is outlined below. As mentioned above, each risk assessment exercise is unique, depending on the company's activities, size, location, etc. As it is the case with states and public entities, no company is immune from the risks of corruption. However a number of companies prefer to abstain from a risk assessment in order to prevent some negative perceptions or speculations. Thus the risks remain neglected resulting with negative consequences for companies (see section 3.2 above). The appropriate treatment of corruption risks includes their identification, assessment and mitigation with relevant decisions and procedures.

5.2 Risk assessment steps

5.2.1 Initiating the process - Roles and responsibilities of conducting the risk assessment

The strong commitment from the senior management for the establishment of the risk assessment process and further adoption and implementation of anti-corruption programme is a prerequisite for the success of the preventive efforts. As mentioned in section 4.c. of the Anti-Corruption Code of Conduct developed by the Asia-Pacific Economic Cooperation (APEC), the Board of Directors and the chief executive officer (CEO) should play a role in the launching of the anti-corruption programme and demonstrate ownership and commitment to the Code and Programme[31]. Similar principle is provided by section A.1 of the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance: Companies should consider strong, explicit and visible support and commitment from senior management to the company's internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery[32]. Without high-level management support, risk assessments could be an exercise without practical impact on the activities of the company.

An understanding of corruption risks, schemes, and potential legal and commercial consequences is a condition for an effective risk assessment. Therefore, it is necessary to raise awareness of the key managers and employees that will be involved in the process. In

[31] The Asia-Pacific Economic Cooperation (APEC) Anti-Corruption Code of Conduct for Business (2007)

[32] Organisation for Economic Co-operation and Development (OECD) Good Practice Guidance on Internal Controls, Ethics and Compliance (2010)

practical terms, the process could start by an introductory workshop prepared by the company's responsible person or unit responsible for the anti-corruption policy (e.g. legal adviser, risk management unit, business ethics officer) and senior management. The objective of such a meeting is to address the problems of corruption in business, acknowledge that the company might be exposed to corruption risks, determine the next steps to identify and explore these risks, and compose a risk assessment team.

For larger companies it is also appropriate to have regional risk assessment units which are responsible for conducting the risk assessment related to the respective region of business activities. Such units are composed by persons with specific local business knowledge who, of course, follow the guidelines provided by the company headquarters and senior managers. A good example in this direction is provided by the approach taken by Siemens[33].

5.2.2 Identifying the risks of corruption

In view of the above-mentioned negative legal or commercial-related consequences of corruption (section 3.2), the entrepreneurs have to utilise all available internal and external sources of information to identify corruption-related risks.
The requirements and prohibitions established by the national legal instruments are the basic source of information. The enterprises should be aware of the domestic regulation of the countries in which they operate. The regulatory requirements can indicate which types of transactions and operations are exposed to corruption. Thus, the operations that require licences and face a high administrative bureaucracy may be risky because, for example, they could imply use of facilitation payments (see section 6.1.3.1.4 on facilitation payments) or other illegal payments.

In addition, the employees whose activities are vulnerable to corruption may provide useful information to identify the risks. The identification of risks could be further carried out through consultations with external stakeholders such as trade unions, business partners and business associations. Public sources, such as government communications and judicial decisions, as well as media publications about previous corruption cases can also provide valuable information to the companies on the occurrences of corruption and possibilities for prevention. Finally, depending on their size and financial resources, the companies could use external consultants to conduct the risk assessment. The external consultants in principle are able to identify risks that have not been detected following the internal assessments.

5.2.3 Assessing the inherent corruption risk

In order to undertake effective preventive measures, the companies should identify corruption risks and the associated corruption schemes, and further to rate both the probability that each scheme might occur and the corresponding potential impact of that occurrence. The aim is to prioritise the remedies for these corruption risks based on a combination of their probability of occurrence and their potential impact.

The impact of occurrence represents an estimation of the negative legal, commercial and reputational consequences for the company, including direct financial and non-financial

[33] http://www.siemens.com/about/sustainability/pool/en/core_topics/compliance/compliance_system_en.pdf

consequences (punitive fine, debarment from a market, inclusion in a black list of corrupt companies) but also indirect costs such as legal consultants' and lawyers' fees. The probability of occurrence relates to the likelihood that a corruption risk will actually occur in the future.

The combination of the probability of occurrence and impact assessment for each corruption scheme constitutes an assessment of the inherent corruption risk. The inherent risk represents the overall risk level of each scheme without consideration of existing controls.

5.2.4 Mitigating the risks of corruption

5.2.4.1 Identify mitigating measures

Following the identification of corruption risks and schemes, the risk assessment team should start mapping existing control mechanisms and mitigating measures to each risk and scheme. Mitigation measures are part of the elements of an anti-corruption ethics programme or action plan. The purpose of the mitigating measures is to decrease the probability of occurrence and/or the impact of corruption risks. Such measures could include: increased managerial oversight (e.g. four-eyes principle for approvals) for hiring of external agents; training for transportation managers facing extortion requests from public customs officials; intensified engagement of middle management (e.g. speaking at company events); automated internal controls to analyse payment streams for long-term, complex contracts; increased due diligence on key suppliers or major investments; and engagement in collective action initiatives (e.g. industry peer groups)[34].

The mitigating control is important part of the mitigating activities. The controls could be preventative or detective, or combine both purposes. They should be proportionate to the probability and potential impact of the corrupt behaviour. At the end of this step, the enterprises would have select relevant mitigating measures, including mitigating controls, for each of the risks and schemes identified.

5.2.4.2 Assessing the residual risk

Residual risk is the extent of risk remaining after considering the risk reduction impact of mitigating measures and controls. In spite of anti-corruption mitigating activities, it is still possible for such risks to occur. As a result, there will be some level of residual risk for each corruption scheme. An assessment of residual risk is thus an important step because it can be used to assess whether existing controls and other measures are effective and proportionate to the level of inherent risk.

In cases where the mitigation measures cannot reduce the inherent risk below the company's risk tolerance, additional activities could to be considered. For instance, the enterprises can avoid risks by changing or abstaining from business operations which seem to involve corruption. Thus, a company can avoid risks even by not conducting individual transaction or by not entering into a high risk market. In addition, the company can transfer risks by shifting to another entity or person the responsibility of managing or executing specific measures.

[34] UNODC Practical Guide: An Anti-Corruption Ethics and Compliance Programme for Business (2013)

5.3 Risk assessment documentation

The results of the risk assessment, including identified risks and selected mitigating measures, should be documented to enhance the quality of evaluation and provide a basis for future assessments.

Anti-corruption risk assessments can be documented as a "risk register", i.e. in a form of detailed spread sheets or database templates. In such a template the risk factors, respective risks and schemes are documented individually. The risk register can also contain the ratings for each risk and scheme as well as to refer to the relevant mitigating measures.

The "heat map" is another document which is used to summarise the outcomes of the corruption risk assessment. The corruption risk heat map shows risks identified, placed according to their probability and potential impact, on a background of different colours with each colour representing a different level of risk. Simple heat maps usually have sections that are red, yellow, or green, representing high risk, medium risk, and low risk, respectively. Heat maps help to better understand and communicate the corruption risks throughout the company. An illustration of a sample risk register template and heat map could be found on pages 13-14 of the Anti-Corruption Ethics and Compliance Handbook for Business/OECD-UNODC-World Bank (2013)[35].

5.4 Risk assessment as an ongoing process - Internal and public reporting on risk assessment.

Effective anti-corruption risk assessment should be carried out periodically, e.g. on an annual basis. The risk assessment should be also reopened in some specific cases, such as undertaking new business activities, entry into new market, significant reorganisations or mergers.

Management is responsible not only for organising the risk assessment but also for reporting periodically to those charged with company's governance on the status and results of the anti-corruption risk assessment as well as on the implementation of the mitigating measures and control. In addition, companies should publicly report on their anti-corruption efforts. Within such reporting, companies can provide qualitative and quantitative information and highlight implemented activities or achieved results. International good practice standards can assist companies to report on their risk assessment activities[36].

[35] http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf

[36] United Nations Global Compact—Transparency International "Reporting Guidance on the 10th Principle Against Corruption"

6 BUSINESS POLICIES AND MEASURES ASSISTING ENTREPRENEURS TO MINIMISE THE RISK OF CORRUPTION

6.1 Internal policies and procedures

6.1.1 Anti-corruption policies /anti-corruption programme

As already mentioned in relation to the process of risk assessment (section 5.2.1), strong commitment to the anti-corruption policy on behalf of the company senior management is crucial to the success of the anti-corruption strategy. Such support should be explicit and visible and could be expressed in a formal public statement of zero-tolerance of corruption. However the anti-corruption statements of the company's senior management (similar to the declarations of the politicians who show political will to fight corruption) needs to be supported by an anti-corruption programme. Such a programme consists of detailed measures and procedures, and puts management's commitment into action. One of the best examples of recently developed anti-corruption programmes are the Siemens Business Conduct Guidelines issued in 2009 by the Siemens Corporate Compliance Office[37].

The main internationally recognised business instruments which deal with the development of companies' anti-corruption programme and its elements in a rather comprehensive manner have been adopted by the Organisation for Economic Co-operation and Development (OECD), International Chamber of Commerce (ICC), World Economic Forum Partnering Against Corruption Initiative (PACI), World Bank, Asia-Pacific Economic Co-operation (APEC) and Transparency International. In box 1 and 2 below we present excerpts from some of these international instruments in relation to countering bribery.

Box 1. Principles for countering bribery: Excerpt from the World Economic Forum Partnering Against Corruption Initiative (PACI)

2. The enterprise shall commit to the continuation or implementation of an effective Programme to counter Bribery. An effective Programme is the entirety of an enterprise's anti-bribery efforts, specifically including its code of ethics, policies and procedures, administrative processes, training, guidance and oversight. This commitment is to develop and administer an internal compliance Programme that effectively makes an enterprise's anti-corruption policy an integral part of daily practice.

3.1 An enterprise should develop a Programme that clearly and in reasonable detail articulates values, policies and procedures to be used to prevent Bribery from occurring in all activities under its effective control.

3.2 The Programme should be tailored to reflect an enterprise's particular business circumstances and corporate culture, taking into account such factors as size, nature of the business, potential risks and locations of operation.

3.3 The Programme should be consistent with all laws relevant to countering Bribery in all the jurisdictions in which the enterprise operates.

[37] http://www.siemens.com/about/sustainability/pool/cr-framework/business_conduct_guidelines_e.pdf

3.4 The enterprise should involve employees in the implementation of the Programme.

3.5 The enterprise should ensure that it is informed of all matters material to the effective development and implementation of the Programme, including emerging industry practices, through appropriate monitoring activities and communications with relevant interested parties.

Box 2. Principles for countering bribery: Excerpt from the Transparency International (TI)

2. The Business Principles:

- The enterprise shall prohibit bribery in any form, whether direct or indirect
- The enterprise shall commit to implementing a Programme to counter bribery. The programme shall represent an enterprise's anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance.

3. Development of a programme for countering bribery:

3.1. An enterprise should develop a Programme that, clearly and in reasonable detail, articulates values, policies and procedures to be used to prevent bribery from occurring in all activities under its effective control.

3.2. The enterprise should design and improve its programme based on continuing risk assessment.

3.3. The Programme should be consistent with all laws relevant to countering bribery in each of the jurisdictions in which the enterprise transacts its business.

3.4. The enterprise should develop the Programme in consultation with employees, trade unions or other employee representative bodies and other relevant stakeholders.

3.5. The enterprise should ensure that it is informed of all internal and external matters material to the effective development and implementation of the Programme, and, in particular, emerging best practices including engagement with relevant stakeholders.

6.1.1.1 Principles of developing anti-corruption policies/programme

The following principles provide the basis for developing effective business anti-corruption programme:

Compliance with the applicable laws and regulations: companies should be aware of the different laws and regulations of the country or countries in which they operate and conduct business. It is possible to entrust legal experts with drafting programme with respect to its compliance with relevant national and international instruments;

Promotion of trust: the anti-corruption programme should promote a culture which favours trust rather than excessive control. The trust-based culture would facilitate the establishment

of anti-corruption values and integrity among employees and naturally encourage their honest and ethical behaviour.

Tailored content: the anti-corruption programme should correspond to the individual characteristics of the company, including its personnel. Thus, the specific areas to be addressed by anti-corruption activities should be determined on the basis of the results of the respective company's risk assessment. In addition, the special knowledge and skills of employees, as well as their preferences, may show the best way to deliver trainings (e.g. computer-delivered trainings are appropriate for companies operating in technology sector);

Participatory approach and ownership: employees and trade unions should participate in the implementation and revision of the anti-corruption programme. Discussions with employees and consultations with trade unions would facilitate the understanding and acceptance of the anti-corruption programme by the personnel. For instance, adequate understanding of the need for effective control system to preserve company's assets and reputation can avoid objections or resistance to the implementation of the supervising measures. The business partners, such as contractors, suppliers, agents, representatives, consultants, brokers, could also be involved in this process because the company's anti-corruption programme should be applied also to external stakeholders (e.g. joint trainings of employees and suppliers) – see below section 6.1.1.3;

Consistency in the application: the programme should be applied by all managers and employees of the company and both categories should be responsible for failure to comply with and respect the established rules and principles of behaviour. The consistency approach has to be reflected in the company's human resources policy;

Visibility and accessibility: the anti-corruption programme and relevant materials (e.g. code of conduct) should be published on the company's website and/or distributed through other communication materials. This information should be easily accessible to the employees, business partners and customers. Visibility and accessibility of the programme enhance both awareness of employees and reputation of the company;

Ongoing process: As it is with respect to the risk assessment (section 5.5), developing an anti-corruption programme should be considered as an ongoing process, e.g. the programme has to be adapted to changing business environment and circumstances.

6.1.1.2 Implementation and oversight of anti-corruption policies/programme

As mentioned above (section 5.2.1), the senior management (CEO) is responsible for the implementation of company' anti-corruption programme. Senior management monitors whether anticorruption policy and procedures are applied in the daily activities of the enterprise and whether the programme is implemented according to defined benchmarks. The senior management should also inform the Board of Directors of the status of implementation of the programme. In larger companies, senior management may appoint an independent internal unit, such as a legal department, to assess the daily activities related to implementation of the programme. This internal unit could collect information on the various activities related to the anti-corruption programme (e.g. incidents, control, trainings) and reports it to senior management.

On the other hand, the responsibility for the oversight of the programme lies with the company's Board of Directors. In the larger companies the Board may appoint an ethics or audit committee in order to assist it in fulfilling this responsibility. The Board of Directors guarantees that the anti-corruption programme is properly implemented by: promoting anti-corruption as a priority for the company and ensuring adequate level of human and financial resources for the implementation of anti-corruption programme; monitoring senior management regarding the implementation of anti-corruption policies and procedures throughout the company, including by considering regular status reports on the programme and information on cases of incidents and remedy actions; prescribing corrective actions throughout the company and individual sanctions for infringements of the procedures.

Depending on the structure and size of the company, responsibilities for implementation and oversight may be delegated to different hierarchical and functional departments (e.g. regional units).

Box 3. Principles for Countering Bribery: Excerpt from the World Economic Forum Partnering Against Corruption Initiative (PACI)

5.1.1 The Board of Directors (or equivalent body) is responsible for overseeing the development and implementation of an effective Programme.

5.1.1.1 The Programme should be based on the PACI Principles and the Board (or equivalent body) should provide leadership, resources and active support for management's implementation of the Programme.

5.1.1.2 The Board (or equivalent body) should ensure that the Programme is reviewed for effectiveness and, when shortcomings are identified, that appropriate corrective action is taken.

5.1.2 The Chief Executive Officer (or executive board) is responsible for seeing that the Programme is carried out consistently with clear lines of authority. Authority for implementation of the Programme should be assigned to senior management with direct line reporting to the Chief Executive Officer or comparable authority.

5.1.2.1 Authority for implementation of the Programme should be assigned to senior management with direct line reporting to the Chief Executive Officer or comparable authority.

The OECD also provides for the establishment of practices for the oversight and monitoring of the implementation of anti-corruption policies.

Box 4. Principles for Countering Bribery: Excerpt from the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:

A.4 Oversight of ethics and compliance programmes or measures regarding foreign bribery, including the authority to report matters directly to independent monitoring bodies such as internal audit committees of boards of directors or of supervisory boards, is the duty of one or more senior corporate officers, with an adequate level of autonomy from management, resources, and authority.

6.1.1.3 Application of the anti-corruption policies/programme to business partners

Engaging with business partners is a condition for doing successful business, but it may be also a significant risk for the companies with respect to consequences of corruption. Companies whose business partners are involved in corrupt practices may face the risk of corruption investigation or even be held responsible for the misconduct of their partners. Furthermore, the company's reputation could suffer considerably if it is connected to corrupt partner. Therefore, the company's anti-corruption programme should be applied also to external stakeholders and business partners, such as contractors, suppliers, agents, representatives, consultants, brokers.

It should be taken into account that the level of interaction with the partners and the level of influence that a company has on its partners also varies. Some business partners operate in a fully independent way, but others become financially dependent because of investments or may even act on behalf of the company. Thus, business partners, over which a company has enough influence and control, may be required to comply with the company's anti-corruption policies and programme. For other business partners, encouraging measures could be considered, including commercial incentives or sanctions for (non)adherence to anti-corruption standards. For example, commercial sanctions for business partners can include the exclusion from business opportunities (e.g. debarment from contracting), termination of relationships (e.g. cancellation of contract), or imposing unfavourable business conditions (e.g. higher financing costs due to high risk). Commercial incentives for business partners can include access to business opportunities (e.g. granting preferred supplier status) and the granting of favourable business conditions (e.g. reduced frequency of the monitoring exercised by the company).

Finally, the contracts with business partners could contain an anti-corruption clause aimed at ensuring appropriate integrity of the parties. The example for such anti-corruption agreement is the "International Chamber of Commerce (ICC) Anti-corruption Clause (the 'Clause')" which is intended to apply to any contract that incorporates it either by reference or in full.

The general aim of the Clause is to provide parties with a contractual provision that will reassure them about the integrity of their counterparts during the pre-contractual period as well as during the term of the contract and even thereafter[38]. In case of infringement of an anti-corruption contract clause, the company can impose a contractual penalty on the corrupt partner.

Box 5. Excerpt from the International Chamber of Commerce (ICC) Rules on Combating Corruption

Part I: Anti-Corruption Rules

Article 2: Third Parties: With respect to Third Parties subject to the control or determining influence of the Enterprise, including but not limited to agents, business development consultants, sales representatives, customs agents, general consultants, resellers, subcontractors, franchisees, lawyers, accountants or similar intermediaries, acting on the Enterprise's behalf in connection with marketing or sales, the negotiation of contracts, the obtaining of licenses, permits or other authorizations, or any actions that benefit the Enterprise or as subcontractors in the supply chain, Enterprises should:

a) instruct them neither to engage nor to tolerate that they engage in any act of corruption;

[38] http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2012/ICC-Anti-corruption-Clause/

b) not use them as a conduit for any corrupt practice;
c) hire them only to the extent appropriate for the regular conduct of the Enterprise's business; and
d) not pay them more than an appropriate remuneration for their legitimate services.

Part II: Corporate Policies to Support Compliance with the Anti-Corruption Rules

Article 3: Business Partners: Business Partners include (i) Third Parties and (ii) joint venture and consortium partners as well as contractors and suppliers.

A. An Enterprise should, with respect to a Third Party, and to the extent that it is within its power:

a) make clear that it expects all activities carried out on the Enterprise's behalf to be compliant with its policies; and
b) enter into a written agreement with the Third Party:
- informing it of the Enterprise's anti-corruption policies and committing it not to engage in any corrupt practice;
- permitting the Enterprise to request an audit of the Third Party's books and accounting records by an independent auditor to verify compliance with these Rules; and
- providing that the Third Party's remuneration shall not be paid in cash and shall only be paid in (i) the country of incorporation of the Third Party, (ii) the country where its headquarters are located, (iii) its country of residence or (iv) the country where the mission is executed.

B. The Enterprise should further ensure that its central management has adequate control over the relationship with Third Parties and in particular maintains a record of the names, terms of engagement and payments to Third Parties retained by the Enterprise in connection with transactions with public bodies and state or private Enterprises. This record should be available for inspection by auditors and by appropriate, duly authorised governmental authorities under conditions of confidentiality.

C. An Enterprise should, with respect to a joint venture or consortium, take measures, within its power, to ensure that a policy consistent with these Rules is accepted by its joint venture or consortium partners as applicable to the joint venture or consortium.

D. With respect to contractors and suppliers, the Enterprise should take measures within its power and, as far as legally possible, to ensure that they comply with these Rules in their dealings on behalf of, or with the Enterprise, and avoid dealing with contractors and suppliers known or reasonably suspected to be paying bribes.

E. An Enterprise should include in its contracts with Business Partners a provision allowing it to suspend or terminate the relationship, if it has a unilateral good faith concern that a Business Partner has acted in violation of applicable anti-corruption law or of Part I of these Rules.

F. An Enterprise should conduct appropriate due diligence on the reputation and the capacity of its Business Partners exposed to corruption risks to comply with anti-corruption law in their dealings with or on behalf of the Enterprise.

G. An Enterprise should conduct its procurement in accordance with accepted business standards and to the extent possible in a transparent manner.

6.1.2 Codes of Conduct/Codes of Ethics - SMEs position

The anti-corruption policy of the company constitutes the basis for all other practical elements of its anti-corruption programme. It prescribes principles and rules to be followed by all directors, officers and employees at all levels within the company, as well as by the business partners. Usually the anti-corruption policy is formally documented as part of a Code of Ethics or Code of Conduct which should be implemented in the company's activities. Briefly, the Code of Conduct compiles company's ethical values and norms. It should refer to real-world examples or case descriptions to enhance the understanding of how the anti-corruption policy applies to day -to- day work situations.

Article 12, para2, letter (b) of the UN Convention against Corruption requires "promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State".

The introduction of a Code of Conduct, prohibiting all forms of corruption (including facilitation payments) is the main internal instrument of the company aimed at preventing and sanctioning corruption. Many large companies that are subject to greater public scrutiny have introduced such instruments prescribing ethical standards. However, there are some differences between SMEs and large companies in terms of adopting and implementation of the anti-corruption policy and ethical standards, i.e. codes of conduct. One of the reasons is that SMEs, due to their size and scope of operations, are often driven by the values of the owner and dispose of a rather informal communications structure. For instance, the above mentioned (section 6.1.1.2) work split between different levels of management for the proper implementation of codes of conduct could not be applied in the SMEs because such organisational structures often do not exist in SMEs and this is the owner/manager of the company who assumes all management responsibilities. In addition, based on their risk assessment, usually the SMEs need to address fewer manifestations of corruption than larger companies (e.g. bribery of foreign public officials seems to be irrelevant to the scope of SMEs anti-corruption policies). However, in spite of the fact that SMEs have less formalised and documented business processes, it is important that they formally set and publish their anti-corruption policy and ethical rules. As already mentioned, the visibility and accessibility of anti-corruption policy helps to clarify the expectations between employees and business partners, and thus enhance the preventive anti-corruption effect.

See also Case study 2 on development of company's new Code of Conduct.

6.1.3 Issues to be addressed by the anticorruption programme or code of conduct

This section deals with the various manifestations of corruption which should be addressed by the company's policies and procedures, including codes of conduct. Not all corruption related activities are clear-cut, such as bribing a public official, and it is often difficult to differentiate between legitimate practices and corrupt behaviour. Companies should draw in their anticorruption policies a clear line between legitimate and non-legitimate business

practices. This task is challenging because, on the one hand, some company's expenditures are illegal but perceived as acceptable or even required (e.g. facilitation payments) and, on the other hand, other expenditures are legal but risky in terms of being misused to hide corruption (e.g. misuse of political contributions, gifts or hospitality as a bribe for public official). In view of the fact that in different countries the above-mentioned expenditures may be perceived differently in the context of corruption, the company's anti-corruption programme need to take into account different local customs and business practices.

In addition to the problematic expenditures, some business practices are based on biased decisions (conflicts of interest) and this issue should be also addressed in a detailed way by the company's anti-corruption policies and procedures.

Therefore, clear definition of and relevant guidance in both expenditures and conflict of interest issues should be provided in the company's anti-corruption programme and code of conduct.

Box 6. Excerpt from the World Economic Forum Partnering Against Corruption Initiative (PACI) Principles for Countering Bribery:

4.2 Political contributions
4.2.1 The enterprise, its employees or intermediaries should not make direct or indirect contributions to political parties, party officials, candidates or organisations or individuals engaged in politics, as a subterfuge for Bribery.
4.2.2 All political contributions should be transparent and made only in accordance with applicable law.
4.2.3 The Programme should include controls and procedures to ensure that improper political contributions are not made.

4.3 Charitable contributions and sponsorships
4.3.1 The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for Bribery.
4.3.2 All charitable contributions and sponsorships should be transparent and made in accordance with applicable law.
4.3.3 The Programme should include controls and procedures to ensure that improper charitable contributions and sponsorships are not made.

4.4 Facilitation payments
4.4.1 Recognizing that facilitation payments* are prohibited under the anti-bribery laws of most countries, enterprises which have not yet eliminated them entirely should support their identification and elimination by (a) explaining in their Programme that facilitation payments are generally illegal in the foreign country concerned, (b) emphasizing in their Programme that they are of limited nature and scope and must be appropriately accounted for, and (c) including in their Programme appropriate controls and procedures for monitoring and oversight of facilitation payments by the enterprise and its employees.

4.5 Gifts, hospitality and expenses
4.5.1 The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever such arrangements could improperly affect, or might be perceived to improperly

affect, the outcome of procurement or other business transaction and are not reasonable and bona fide expenditures.
4.5.2 The Programme should include controls and procedures, including thresholds and reporting procedures, to ensure that the enterprise's policies relating to gifts, hospitality and expenses are followed.

Box 7. International Chamber of Commerce (ICC) Rules on Combating Corruption: Part II: Corporate Policies to Support Compliance with the Anti-Corruption Rules:

Article 4: Political and Charitable Contributions and Sponsorships:

(a) Enterprises should only make contributions to political parties, party officials and candidates in accordance with applicable law and public disclosure requirements. The amount and timing of political contributions should be reviewed to ensure that they are not used as a subterfuge for corruption;
(b) Enterprises should take measures within their power to ensure that charitable contributions and sponsorships are not used as a subterfuge for corruption. Charitable contributions and sponsorships should be transparent and in accordance with applicable law; and
(c) Enterprises should establish reasonable controls and procedures to ensure that improper political and charitable contributions are not made. Special care should be exercised in reviewing contributions to organisations in which prominent political figures, or their close relatives, friends and Business Partners are involved.

Article 5: Gifts and hospitality: Enterprises should establish procedures covering the offer or receipt of gifts and hospitality in order to ensure that such arrangements:
(a) comply with national law and applicable international instruments;
(b) are limited to reasonable and bona fide expenditures;
(c) do not improperly affect, or might be perceived as improperly affecting, the recipient's independence of judgement towards the giver;
(d) are not contrary to the known provisions of the recipient's code of conduct; and
(e) are neither offered or received too frequently nor at an inappropriate time.

Article 6: Facilitation payments: Facilitation payments are unofficial, improper, small payments made to a low level official to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment is legally entitled.
Facilitation payments are prohibited in most jurisdictions.

Enterprises should, accordingly, not make such facilitation payments, but it is recognised that they may be confronted with exigent circumstances, in which the making of a facilitation payment can hardly be avoided, such as duress or when the health, security or safety of the Enterprise's employees are at risk.
When a facilitation payment is made under such circumstances, it will be accurately accounted for in the Enterprise's books and accounting records.

Article 7: Conflicts of interest: Conflicts of interest may arise when the private interests of an individual or of his/her close relatives, friends or business contacts diverge from those of the Enterprise or organisation to which the individual belongs.
These situations should be disclosed and, wherever possible, avoided because they can affect

an individual's judgment in the performance of his/her duties and responsibilities. Enterprises should closely monitor and regulate actual or potential conflicts of interest, or the appearance thereof, of their directors, officers, employees and agents and should not take advantage of conflicts of interest of others.

If their contemplated activity or employment relates directly to the functions held or supervised during their tenure, former public officials shall not be hired or engaged in any capacity before a reasonable period has elapsed after their leaving their office. Where applicable, restrictions imposed by national legislation shall be observed.

6.1.3.1 Problematic expenditures of companies

6.1.3.1.1 Regulation on political donations in the Russian Federation

In principle, the donations and other contributions to political parties, coalitions of parties and individual candidates in elections can be used by companies to support democratic process. There are several risks for the business entities related to political donations. First, in many countries political donations made by private enterprises are subject to strict regulation and may be even illegal under the domestic law. Furthermore, political contributions can be misused to influence political decision-making for undue advantage and may constitute disguised/hidden bribery.

In the anti-corruption programme or code of conduct the companies should clarify what kind of political donations and contributions (financial or in kind, i.e. including goods or services) are allowed and under which circumstances. It is possible also to provide guidance on the types of political and social goals that respective company wants to support through political contributions. For instance, the managers of a private bank may be allowed to participate in promotional activities to support a political party but prohibited to provide loans to political nominees who are involved in a public procurement.

In the Russian Federation the prohibited funding sources and limits for donations for political parties are listed in Section 30 of the Federal Law No. 95-FZ of 11 July 2001 "On Political Parties" (LPP). Prohibited funding includes, inter alia, donations from foreign governments, entities or persons, legal entities with foreign participation exceeding 30%, ….state and municipal institutions or unitary enterprises, legal entities with participation of the Russian Federation/a federal subject/municipalities exceeding 30%, organisations established by governmental bodies or local governments with foreign or government participation exceeding 30%, ……charities, religious organisations or organisations established by them, anonymous donors, legal entities registered for less than one year and non-profit organisations having received during the preceding year funds from specified sources (such as foreign countries, governments, entities or persons, state government bodies, other government authorities or local governments, etc.). Donations may be granted to political parties by domestic legal persons, i.e. companies, with the exceptions mentioned above, and take the form of monetary donations or "other property". The law establishes that during a calendar year a legal person may pay to a political party, including its regional branches not more than RUB 43 million 300 000. The total amount of annual donations received by a political party and its regional branches must not exceed RUB 4 billion 330 million, whereby the sum of annual donations received by one regional branch must not exceed RUB 86 million 600 000. In the case of a non-monetary donation, the party concerned or its regional

branch has to assess its monetary value in accordance with the law and record it in its financial statements (see GRECO Third Round Evaluation Report on Russian Federation – theme II[39]).

6.1.3.1.2 Gifts and hospitality

Gifts or hospitality usually are legitimate expenditures and common practices for establishing and maintaining business relationships. For example, a company may cover travel expenses in order to demonstrate a company's capabilities and resources by organising a presentation or visiting an enterprise.

However, the legitimacy of the gifts, hospitality, travel and entertainment expenses depends on their proportionality and other circumstances. For example, inviting a public official, who is responsible for the public tender which is currently under consideration, to an expensive trip obviously may be perceived to be subterfuge for bribery. See also Case study 3 related to company's policy on delegation trips.

6.1.3.1.3 Charitable contributions/sponsorship

Charitable contributions constitute cash or in kind (i.e. including goods or services) donations from companies to support charitable causes or artistic, cultural, scientific, educational or sport activities. Sponsorship is the provision of financial support to events, activities or organisations which on their behalf grants rights to the sponsoring company (e.g. to use the sponsored organisation's name in advertising). In principle, charitable contributions and sponsorship are considered to be part of companies' legitimate efforts to act as socially responsible entities and to promote their products.

As it is in the case of political contributions, the risk of charitable contributions and sponsorship is that they can be used as a subterfuge for corruption, i.e. to be used as a means of transferring undue advantage to corrupt public official or other counterpart. In view of the above, companies should clarify what kind of contributions are allowed and under which circumstances. For instance, under the company's policy, it should be prohibited to make charitable contributions when payments are to be transferred to private bank accounts.

6.1.3.1.4 Facilitation payments

Facilitation payments are unofficial small payments made to induce low level officials to perform their functions and to expedite the performance of a routine action to which the company is legally entitled. Usually such payments are made to public officials (to obtain licences, permits, certificates or other public services) but they can also be paid to commercial service providers, e.g. to electricity or gas providers. Under the standards of the UN Convention against Corruption and Council of Europe Criminal Law Convention on Corruption facilitation payments constitute bribes and are prohibited. However, according to the standard of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, small "facilitation" payments do not constitute payments made "to obtain or retain business or other improper advantage" in the meaning of the

[39] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)6_RussianFed_Two_EN.pdf

Convention and, accordingly, this Convention does not require criminalisation of such payments[40].

The facilitation payments are challenging issue because in number of countries they may be considered as acceptable practice and companies that abstain from them may face competitive disadvantages. It should be emphasized that the principle of zero tolerance of corruption is severely undermined when facilitation payments are acceptable.

6.1.3.2 Conflict of interest

The conflict of interest is a problem which may arise in both public and private sector. Not only the public institutions but also companies may face risks when decisions taken by their managers or employees are based on conflicting interests.

A conflict of interest arises from a situation in which a manager or employee in a company has professional, personal or any other private interest which could influence the proper carrying-out of his/her responsibilities, i.e. the individual's private interest conflicts with the company's interest.

As it is with the problematic expenditures mentioned in section 6.1.3.1, conflict of interest may not necessarily result in negative consequences for a company. However, conflict of interest represents a risk where a manager or employee may choose his/her private interest in preference to the corporate interest and take inappropriate business decision. As mentioned above, conflict of interest is a situation with potential negative consequences and may not imply illegitimate behaviour or corrupt act. However, such situation can be easily misinterpreted and raise doubts about the objectivity of a business decision.

6.1.3.2.1 Different types of conflict of interest situations in business

The following situations are examples of potential conflict of interest in the business context:
An employee may take a decision in favour of a company that has provided gifts and hospitality to him/her because he/she expects such personal advantages in future. For example, a manager receiving regular benefits from an internet service provider may prefer this company without considering other favourable offers.

Financial investments can lead to conflicts of interest when managers or employees could favour business relationships with companies in which they have invested. For instance, during procurement a manager may have a preference for a supplier in which he/she has bought shares.

Additional outside employments can lead to conflicts of interest if a person concerned is engaged in another company and has to balance between interests of the two of them. For

[40] Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, OECD (1997): "Small "facilitation" payments do not constitute payments made "to obtain or retain business or other improper advantage" within the meaning of paragraph 1 and, accordingly, are also not an offence. Such payments, which, in some countries, are made to induce public officials to perform their functions, such as issuing licenses or permits, are generally illegal in the foreign country concerned. Other countries can and should address this corrosive phenomenon by such means as support for programmes of good governance. However, criminalisation by other countries does not seem a practical or effective complementary action."

instance, a senior manager of a fast food chain store who acts also as Board Member of a large dairy products' company, may appoint the latter as the preferred supplier for the fast food chain store, without considering other favourable offers.

Parallel internal tasks can lead to conflicts of interest in a situation where employees have competing professional responsibilities within the same company. For instance, an employee who performs operational and controlling tasks in the company can face a situation where the objectives of the two functions are conflicting.

Employment of relatives or friends can lead to conflicts of interest because managers may favour family members or friends over other better qualified candidates for a position in the respective company. Such conflicts of interest may result in nepotism or favouritism in the company's human resources policies and negative reputational and business consequences for the company.

The employment of public officials in a private company (which in principle may be legitimate) could lead to allegations that company obtains an undue benefit or uses insider information through such an employment and thus may have negative consequences for the reputation of the company.

6.1.3.2.2 Establishing and resolving conflict of interest situations

Based on results of the risk assessment, the company's employees or selected categories of employees may be requested to disclose possible conflict of interest circumstances which could be perceived as undermining their fair and objective decision-making. In view of the examples provided in the previous section, it seems that the conflict of interest disclosure is particularly important with respect to finance, commercial, procurement and human resources activities. Disclosure requirement may also include disclosure of assets (e.g. outside remunerations, fees, ownership, investments, expensive gifts, etc.) of the Board members or/and senior managers and even of their close family members, e.g. spouses and underage children.

The simplest way to resolve a potential conflict of interest is to avoid the situations that may cause it, e.g. not to accept any gifts or an additional outside appointments. Another possibility would be to remove the employee facing the conflict of interest from a particular decision-making situation. In practice, both solutions may not be feasible (e.g. when the company operates in an environment where relatively expensive gifts are perceived as normal business practice or the company does not have sufficient human resources to replace the employee concerned in the tendering procedure). In such cases, the company needs to use mechanisms to reduce the risk that a business activity will be perceived as influenced by conflict of interest. For example, a contract that is being negotiated by an employee exposed to a conflict of interest could be assessed by a third party to demonstrate that the contract has been negotiated in a proper and fair manner.

6.1.4 Internal control and record keeping

6.1.4.1 System of internal control

The original objective of a system of internal control is to provide reasonable assurance as to the effectiveness and efficiency of a company's operations, the reliability of its financial

reporting, and its compliance with applicable laws, regulations, and internal policies[41]. In general, the internal control is aimed at reducing the corruption-related risk and at supporting senior management to protect company's assets and reputation and prevent negative business consequences.

System of internal control includes organisational measures and procedures related to the company's activities (such as division of responsibilities, clear job description, preliminary approval of decisions related to specific business practices), and control, in a strict sense, applied in respect of separate business activities or company's units. In practical terms, such a control helps both prevention and detection of corruption. Example of preventive control is the requirement for additional approval before transferring donation to a political party. Detection control usually consists in checks and internal investigations to discover irregularities and breaches of rules after the performance of the relevant activities, e.g. identification of payments over the approved limits. Companies can use different internal and external sources to detect irregularities and breaches of their anti-corruption procedures. In principle, companies prefer to detect irregularities through internal sources in order to avoid possible consequences damaging their reputation. However, the internal investigations could be often perceived as abusive and it is recommended to ensure as much transparency as possible with respect to them.

A system of internal control should be balanced in terms of avoiding either excessive or insufficient control. The reason for keeping such a balance is that, on the one hand, the excessive control and checks can imply distrust to employees and impede business activities, while, on the other hand, insufficient control makes company vulnerable to corruption.

Box 8. Excerpt from the World Economic Forum Partnering Against Corruption Initiative (PACI) Principles for Countering Bribery:

5.7 Internal controls and audit:

5.7.1 The enterprise should maintain accurate books and records, which properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts.
5.7.2 The enterprise should establish and maintain an effective system of internal controls, comprising financial and organisational checks and balances over the enterprise's accounting and recordkeeping practices and other business processes related to the Programme.
5.7.3 The enterprise should establish feedback mechanisms and other internal processes designed to support the continuous improvement of the Programme.
5.7.4 The enterprise should subject the internal control systems, in particular the accounting and recordkeeping practices, to regular audits to verify compliance with the Programme.

6.1.4.2 Accounting, auditing and financial controls - books and records

In order to prevent and to detect "corruption" and "corrupt practices", it is useful to make sure that company, taking into account its size, type, legal structure and geographical and industrial sector of operation, take the necessary measures regarding the maintenance of accurate books and records. The books and records are, on the one hand, the basis for the detection control and, on the other hand, evidence in case where irregularities and breaches

[41] 55 Committee of Sponsoring Organisations of the Treadway Commission, "Internal Control—Integrated Framework", 1992.

are identified. The term "books and records" includes first of all the documentation of financial transactions but it is related also to other documents on business activities, e.g. contracts and delivery receipts.

The maintenance of accurate books and records is established as compulsory requirement by Art.12, para.3 of the UN Convention against Corruption: "In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;
(b) The making of off-the-books or inadequately identified transactions;
(c) The recording of non-existent expenditure;
(d) The entry of liabilities with incorrect identification of their objects;
(e) The use of false documents; and
(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law."

The above prohibitions established by the UN Convention against Corruption should be reflected in the company's procedures related to the maintenance of books and records. Books and records should be available for inspection by the company's board, internal and external auditors. Article 12, para.2, letter (f) of the UN Convention prescribes that private enterprises, taking into account their structure and size, must have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures[42].

Box 9. Excerpt from the ICC Rules on Combating Corruption:

Part II: Corporate Policies to Support Compliance with Anti-Corruption Rules

Article 9: Financial and Accounting: Enterprises should ensure that:

• all financial transactions are adequately identified and properly and fairly recorded in appropriate books and accounting records available for inspection by their Board of Directors or other body with ultimate responsibility for the Enterprise, as well as by auditors;

• there are no "off the books" or secret accounts and no documents may be issued which do not fairly and accurately record the transactions to which they relate;

• there is no recording of non-existent expenditures or of liabilities with incorrect identification of their objects or of unusual transactions which do not have a genuine, legitimate purpose;

• cash payments or payments in kind are monitored in order to avoid that they are used as substitutes for bribes; only small cash payments made from petty cash or in countries or locations where there is no working banking system should be permitted;

• no bookkeeping or other relevant documents are intentionally destroyed earlier than required by law;

• independent systems of auditing are in place, whether through internal or external auditors, designed to bring to light any transactions which contravene these Rules or applicable accounting rules and which provide for appropriate corrective action if the case arises;

[42] https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

• all provisions of national tax laws and regulations are complied with, including those prohibiting the deduction of any form of bribe payment from taxable income.

Part III: Elements of an Efficient Corporate Compliance Programme
Article 10 (Elements of a Corporate Compliance Programme):

h) designing financial and accounting procedures for the maintenance of fair and accurate books and accounting records, to ensure that they cannot be used for the purpose of engaging in or hiding of corrupt practices;
i) establishing and maintaining proper systems of control and reporting procedures, including independent auditing;

6.1.5 Reporting mechanisms and protection whistleblowers (reporting persons)

Reporting mechanisms are another effective tool to detect corrupt practices. The reporting of violations in good faith is known as whistle-blowing. It constitutes voluntarily disclosure of information about actual or perceived irregularities and misconduct in the company, including corruption, to persons or bodies who are presumed to be responsible to undertake relevant action. Usually such insider information has not been detected by the internal control activities. However, the internal reporting is an appropriate ground for further investigation. In principle, misconduct could be reported directly to the superior or the special company's department. Any further actions undertaken by the company in relation to the signal should be communicated to the reporting person. If reporting persons feel that their reporting does not lead to any action, they will be discouraged from doing so in future cases or they may go outside the company to report.

Box 10. OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:

A.11 Companies should consider effective measures for:

i. providing guidance and advice to directors, officers, employees, and, where appropriate, business partners, on complying with the company's ethics and compliance programme or measures, including when they need urgent advice on difficult situations in foreign jurisdictions;

ii. internal and where possible confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, business partners, not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for directors, officers, employees, and, where appropriate, business partners, willing to report breaches of the law or professional standards or ethics occurring within the company, in good faith and on reasonable grounds; and

iii. undertaking appropriate action in response to such reports;

It is very important to ensure that the voluntarily reporting of violations committed by colleagues or superiors will take place without risk of retaliation, e.g. job loss, harassment, restrictions on access to information. For this purpose, the senior management should clearly state that no employee or business partner will suffer dismissal or any negative consequences

because of voluntarily bona fide (in good faith) reporting of violations. The actual protection of reporting persons requires that the report be processed confidentially. A reporting mechanism could imply the establishment of additional facility, such as reporting hotline. The hotline may be internally staffed or, in the case of large corporations, outsourced to a service provider. When designing their reporting procedures and relevant policy, the companies should take into account that the voluntarily reporting of violations may be a sensitive and problematic issue due to cultural and historical reasons (e.g. reporting persons may be perceived as traitors or informants, especially in the countries of Central and Eastern Europe). With respect to this problem, companies need to promote a positive image of the reporting persons among their employees, e.g. by including the subject in special training course.

Box 11: Council of Europe Civil Law Convention on Corruption[43]:

Article 9 – Protection of employees

Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.

The protection of reporting persons in the private sector is a subject dealt by the international anti-corruption instruments. Under Art.9 "Protection of employees" of the Council of Europe Civil Law Convention on Corruption, the states parties should provide in their internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities. Protection of reporting persons is also required by the UN Convention against Corruption (Art.33). On 30 April 2014 the Committee of Ministers of the Council of Europe adopted Recommendation[44] CM/Rec(2014)7 to member States on the protection of whistleblowers. This Recommendation is a comprehensive legal instrument on protecting individuals who report or disclose information on acts and omissions in the workplace that represent a serious threat or harm to the public interest.

The PRECOP RF project has prepared a technical paper 'ECCU-PRECOP-3/2014'[45] on the protection of whistleblowers in the Russian Federation, including tailored-made recommendations for measures in this field.

In addition to the Council of Europe and the OECD other international organisations have also addressed the issue of protection of whistleblowers, including here the International Chamber of Commerce (ICC) – see box 12 below, the World Economic Forum Partnering against Corruption Initiative (PACI) – see box 13 below; the Transparency International etc.

Box 12: ICC Rules on Combating Corruption:

Part III: Elements of an Efficient Corporate Compliance Programme

[43] http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=174&CM=1&DF=&CL=ENG

[44] https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec%282014%297&Language=lanEnglish&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383

[45] http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/PRECOP/Technical%20Papers/ECCU-2312-PRECOP-TP-3-2014.pdf

Article 10 (Elements of a Corporate Compliance Programme):

m) offering channels to raise, in full confidentiality, concerns, seek advice or report in good faith established or soundly suspected violations without fear of retaliation or of discriminatory or disciplinary action. Reporting may either be compulsory or voluntary; it can be done on an anonymous or on a disclosed basis. All bona fide reports should be investigated;

Box 13. World Economic Forum Partnering Against Corruption Initiative (PACI) Principles for Countering Bribery:

5.5 Raising concerns and seeking guidance

5.5.1 The Programme should encourage employees and others to raise concerns and report suspicious circumstances to responsible enterprise officials as early as possible.

5.5.2 To this end, the enterprise should provide secure and accessible channels through which employees and others can raise concerns and report suspicious circumstances ("whistleblowing") in confidence and without risk of reprisal.

5.5.3 These channels should also be available for employees and others to seek advice or suggest improvements to the Programme. As part of this process, the enterprise should provide guidance to employees and others on applying the Programme's rules and requirements to individual cases.

6.1.6 Treatment of violations

6.1.6.1 Disciplinary procedures and sanctions for violations

Companies should establish a clear and transparent disciplinary policy in order to address violations of anti-corruption procedures and rules on behalf of their employees and business partners.

Sanctions should be clearly defined. In respect of the employees, sanctions could be of monetary or non-monetary character and may include for example fines, decrease in remuneration or fee, suspension of promotion, transfer to another (lower) position, dismissal or termination of the contract. Termination of the business relationship, some kind of exclusion from business opportunities or imposing of unfavourable operational conditions (e.g. very detailed examination of a company and its financial records before becoming involved in a further business relations, i.e. stricter due diligence requirements,) could be provided for the business partners who have been involved in corrupt practices. Proportionate sanctions have both disciplining and preventing effect because they discourage future violations and deter other employees and business partners from corrupt or negligent behaviour.

Right to appeal the imposed disciplinary sanctions should be provided in order to ensure the fairness of the disciplinary procedure. In addition, the public announcement of the

disciplinary measures that have been taken could have strong preventive and awareness raising effect, also in respect of the business partners.

6.1.6.2 Cooperation with authorities for detection and prosecution of corruption

Article 39 of the UN Convention against Corruption requires to establish anti-corruption cooperation between national authorities and the private sector. In accordance with this provision, the states parties to the Convention should take the necessary measures to encourage, in accordance with their domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of corruption offences (Art.39, para.1 UNCAC). In addition, states should consider encouraging their nationals and other persons with a habitual residence in their territory to report to the national investigating and prosecuting authorities the commission of corruption offences (Art.39, para.2 UNCAC). The latter requirement implies reporting of company's management and employees.

The above internationally recognised anti-corruption standards emphasizes the role of companies in the prevention, detection and prosecution of corruption in both private and public sectors. Private sector entities may also be in a position to play an important role in the identification of proceeds from corruption crimes and their return to legitimate owners (the latter is a fundamental principle established by the UN Convention (Chapter V "Asset recovery" UNCAC).

Company should cooperate with authorities before allegations have been raised against it or some of its employees or managers. The reporting may relate not only to internal information, but also to information regarding company's business partners. Company may also cooperate with competent authorities after the authorities are aware of the corrupt act, in spite of the fact whether the violation was reported by the company or was identified by authorities themselves. In case where company's employees or managers were alleged to have been involved in corruption offences, the respective company should consider the removal or other disciplinary measures against persons concerned.

Box 14. Excerpt from the various international instruments on the treatment of violations

TI Business Principles for Countering Bribery:
6.9.1 The enterprise should cooperate appropriately with relevant authorities in connection with bribery and corruption investigations and prosecutions.

ICC Rules on Combating Corruption:
Article 10 (Elements of a Corporate Compliance Programme):
n) acting on reported or detected violations by taking appropriate corrective action and disciplinary measures and considering making appropriate public disclosure of the enforcement of the Enterprise's policy;

OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:
A.10 Companies should consider appropriate disciplinary procedures to address, among other things, violations, at all levels of the company, of laws against foreign bribery, and the company's ethics and compliance programme or measures regarding foreign bribery;

PACI Principles for Countering Bribery:

5.3.3 The enterprise should apply appropriate sanctions for violations of the Programme, up to and including termination in appropriate circumstances.

6.1.7 Anti-corruption training

Companies which have adopted an anti-corruption programme or code of conduct should provide to their employees and business partners relevant training on the companies' anticorruption policies, values and procedures. The specific content and frequency of training should be based on the anti-corruption risk assessment. The regular and mandatory training activities would ensure that the employees have knowledge and skills to identify and react to corruption practices. It could be provided to all employees or only to those who are obviously exposed to corruption. Companies' managers must participate in the training in order to deliver key messages based on company's anti-corruption policy. High-risk personnel, such as procurement officers, may receive more frequent and tailored training.

In addition to the information on company's policies and procedures, training programmes should contain references to different situations in which risks of corruption may occur, messages from the company's management, practical examples, including such which demonstrate the compliance with the company's anti-corruption policies and values in specific challenging situations. Training may use media channels for self-study, e.g. websites, emails or computer-based training courses. Such media channels would ensure easy and cost-effective distribution of training materials. Tailored training would enable employees to react properly to solicitation or extortion requests by a public official or business partner.

Small and medium-size companies may consider different possibilities to remove resource constraints obstacles, e.g. participation in trainings organised by larger company, use of training materials that are available for free or computer based training course[46], train-the-trainer approach (small number of employees can attend an external anti-corruption training organised by bigger company and then share the information with their colleagues), participation in trainings organised by the chambers of commerce or trade unions.

In order to enhance the impact of the training, it can be organised on special occasions or events, such as organisational changes (e.g. appointment of new manager) or regular meeting of shareholders.

Training seminars and workshops should be documented to enable the assessment of their effectiveness. Appropriate training documentation and records would allow the company to better defend itself if allegations of corruption occur, including in a case of procedures related to responsibility for criminal offences committed by company's managers or workers.

Box 15. Excerpt from international instruments emphasising the need and importance of training:
World Economic Forum Partnering Against Corruption Initiative (PACI) Principles for Countering Bribery

[46] United Nations Office on Drugs and Crime and United Nations Global Compact e-learning tool for the private sector "The fight against corruption" (http://thefightagainstcorruption.org).

5.4 Training
5.4.1 Managers, employees and agents should receive specific training on the Programme, tailored to relevant needs and circumstances.
5.4.2 Where appropriate, contractors and suppliers should receive training on the Programme.
5.4.3 Training activities should be assessed periodically for effectiveness.

Transparency International (TI) Business Principles for Countering Bribery
6.4. Training
6.4.1. Directors, managers, employees and agents should receive appropriate training on the Programme.
6.4.2. Where appropriate, contractors and suppliers should receive training on the Programme.

OECD Good Practice Guidance on Internal Controls, Ethics and Compliance
A.8 Companies should consider measures designed to ensure periodic communication, and documented training for all levels of the company, on the company's ethics and compliance programme or measures regarding foreign bribery, as well as, where appropriate, for subsidiaries.

6.2 Collective business initiatives and cooperation with public authorities

6.2.1 The role of business associations and trade chambers

As mentioned above (section 3.2), while properly implementing anti-corruption policy and programme, companies could face competitive disadvantages and even be exposed to marginalization, because other companies do not follow the same anti-corruption standards.

One of the possibilities to address these risks is to participate in "collective action" activities with other partners that are in similar situation and face the similar challenges. Stakeholders that participate in collective initiatives could more effectively achieve their common objective than if acting individually. Collective action of the business stakeholders to some extent could compensate for weak anti-corruption legislation and practices. Collective anti-corruption initiatives could take place within the private sector (e.g. associated SMEs establishing harmonized standards in respect of the relationship with larger companies) or as public-private partnership (e.g. collectively supporting appropriate regulatory arrangements and reform). Business associations that bring together companies of certain region or business sector could be an important tool to increase the efficiency of the anti-corruption initiatives. Collective action has the advantage of being more coordinated and cost-effective. Business associations could serve as platforms for companies' agreements and commitments to ethical standards and other joint anti-corruption actions. Trade chambers have been identified as another important player that could also assist companies in their anti-corruption efforts. Trade chambers could provide platform for information exchange and discussions, as well as consulting and other services.

The associated actions are of particular importance to the success of anti-corruption efforts of the SMEs because of their limited human, financial and managerial resources. On the other hand, the SMEs could implement internal anti-corruption measures more easily and faster than large companies. However, because of the vulnerable position of the SMEs, their internal measures alone would not have considerable impact without the support of other

business partners and public institutions. Therefore a comprehensive multi-stakeholder approach is required for the implementation of anti-corruption measures and efforts of SMEs.

6.2.2 Public sector measures and cooperation with public authorities - Transparency of public procurement

It should be emphasized that all of the above mentioned initiatives could not and should not replace the government's responsibility to create a clean business environment and integrated public sector. The cooperation between the authorities and the companies in respect of detection and sanctioning of corrupt behaviour was addressed in section 6.1.6.2 above. However, this is only one of the aspects of the anti-corruption cooperation between the public sector and the private sector. Improving the business environment requires an increased interaction between companies and government and the creation of effective partnership.

Usually companies indicate non-transparent laws and regulations, the inefficiency of court system and lack of transparency in public procurement as the main factors making corruption possible and constituting obstacles to their business activities. Companies should also play their pro-active role in the reform of justice system, establishing transparency of legislative process, and promoting integrity in public procurement.

It should be noted that the abstention from lodging complaints before the courts, because of mistrust in the judiciary or even fear for the own security, is one of problems which needs to be addressed by the institutions responsible for upholding the rule of law. For this purpose special programs could be introduced to encourage companies to use the available judicial mechanisms and to defend themselves against corruption acts. The business sector should participate actively in the design of such programs and their implementation. Such programs could be also aimed at raising companies' awareness of the existing anti-corruption legal framework, including substantive law and procedural law provisions. The applicable legislation and the proposed amendments to the legislation should be easily accessible to companies.

The business associations should participate actively through their representatives in the public consultations on the new laws related to prevention of corruption and both the government and the parliament should ensure high transparency of the legislative process. One of the aspects of prevention of corruption addressed by the GRECO within its Fourth Evaluation Round deals especially with the issue of the transparency of the legislative process.

The companies should cooperate with the public authorities also in respect of promoting integrity and transparency in public procurement that is an area highly exposed to corruption. A decrease of corrupt practices in public procurement would particularly benefit the clean enterprises as they would not be able to compete with the corrupted companies in a corrupt environment even if they fulfil all technical requirements.

The issue of prevention of corruption in public procurement is dealt in detail by the first European Union Anticorruption report. According to the 2013 flash Eurobarometer survey on corruption relevant to businesses, more than three out of ten (32 %) companies in the Member States of the European Union that participated in public procurement say corruption

prevented them from winning a contract. This view is most widely held amongst companies in the construction (35 %) and engineering (33 %) sectors. More than half of company representatives from Bulgaria (58 %), Slovakia (57 %), Cyprus (55 %) and the Czech Republic (51 %) say this has been the case. The above EU anti-corruption report pointed out that in a few cases, civil society initiatives have had a beneficial effect on the accountability of local administrations with regard to transparency of public spending and the following example is given as good practice:

Box 16. Guidelines for prevention of corruption in public procurement at local level – Germany

A Brochure on the Prevention of Corruption in Public Tendering agreed by the German Association of Towns and Municipalities jointly with the Federal Association of Small and Medium-Sized Building Contractors provides an overview of preventive measures against corruption in public procurement at the level of towns and municipalities. These include: awareness raising and codes of conduct; rotation of staff; strict observance of the 'four eyes' rules; clear regulations on sponsoring and the prohibition on accepting gifts; establishing centralised authorities for tender/awarding; precise description of the tender and control of estimates; organisation of tender procedures, including secrecy of bids and prevention of belated manipulation of the bids; increased use of e-procurement; documentation of adjudication and careful control by supervisory bodies; exclusion of enterprises found guilty of corruption offences and establishing black lists/corruption registers.

Another trend for prevention of corruption in public procurement are the integrity pacts between the contracting authority and the bidders, under which both parties commit themselves to abstain from any corrupt practices. Specific transparency and sanctioning provisions could be included in the integrity pacts. These agreements may be monitored by the civil society. In some European countries integrity pacts are implemented with regard to certain public procurement procedures, particularly where important public contracts are concerned (e.g. large infrastructure projects).

6.3 Collective business initiatives and cooperation with public authorities in the Russian Federation

6.3.1 The National Anti-Corruption Plan

The National Anti-Corruption Plan for 2014 - 2015 was approved by Decree of President of the Russian Federation of 11 April 2014 No. 226. Heads of federal executive authorities were obliged to amend their anti-corruption plans in accordance with this National Plan in order to aim at achieving of particular goals[47].

President of the Russian Federation also recommended that Public Chamber, the Chamber of Commerce, All-Russian public organisation "Association of Lawyers of Russia", political parties, self-regulatory organisations, public organisations of industrialists and businessmen, continued their work on the formation of social intolerance to corrupt behaviour.
National plan provides for various anti-corruption activities, including:

[47] A.P.Tishin. National Anti-Corruption Plan for 2014-2015: measures for legal entities // Tax audit. 2014. No. 4.

- improvement the organisational grounds of anti-corruption in the subjects of the Russian Federation;
- enforcement of legislation and administrative decisions in the field of anti-corruption;
- intensification of anti-corruption education of citizens;
- implementation of the requirements relating to the responsibility of organisations to take measures to prevent corruption to liability for unlawful compensation from a legal entity.

Government of the Russian Federation was instructed to analyse risks of corruption in the sphere of housing and communal services, consumer market, construction, in the development of major infrastructure projects and to ensure the implementation of measures aimed at reducing the level of corruption in these areas.
In addition, the Government of the Russian Federation has to submit the following proposals:

- to expand the range of entities subject to disclosure of their beneficial owners;
- to carry out a regulatory legal framework for the activities of individuals and organisations to promote the interests of the social groups or individuals in state and municipal authorities in order to take the most favourable for a given social group or of individual solutions (lobbying), including the preparation of proposals for regulatory consolidation of the relevant federal executive power function of development and implementation of measures for the consistent application of practice of the institution of lobbying and the relevant HR strengthening this area of work;
- to authorise legally a federal executive body to develop, implement and provide for methodological support to measures to prevent corruption in organisations and to monitor the implementation of these measures, as well as the HR strengthening of the relevant areas of work;
- to improve coordination and regulation of the interaction of regulatory agencies of the Russian Federation in the planning and implementation of its activities, including the conduct of joint inspections and exchange of information resources and presenting a unified reporting on results in order to improve the effectiveness of anti-corruption.

Government of the Russian Federation was also requested to provide on the basis of the Federal State Research Institution "Institute of Legislation and Comparative Law under Government of the Russian Federation," for the scientific interdisciplinary research on the grounds of the legislation of the Russian Federation and practice of its implementation on the following:

- administrative liability of legal entities for corruption offenses;
- release of the legal entity from the administrative liability under the Article 19.28 of the Administrative Code of the Russian Federation, in case of cooperation in investigation of the offense;
- formation of a system of measures of property liability for corruption offenses;
- formation of a system of anti-corruption prohibitions, restrictions and responsibilities;
- creation of legal, organisational and ethical foundations of organisation and tactics of the supervision over compliance with the established prohibitions and restrictions;
- organisation and tactics of the protection of persons who report corruption.

Government of the Russian Federation together with the Prosecutor General's Office, the Chamber of Commerce, All-Russian Public Organisation of Small and Medium Enterprises "Support of Russia", the All-Russian Public Organisation "Russian Union of Industrialists

and Entrepreneurs," All-Russian Public Organization "Business Russia", Representative of the President of the Russian Federation for the Protection of Rights of entrepreneurs were tasked to organise monitoring organisations performing their obligations to take measures to combat corruption.

Government of the Russian Federation is also required to ensure the effective operation of the working group on joint participation in combating corruption of the business community and the public authorities of the Presidium of the Presidential Council on anti-corruption, with special attention to the implementation of the Anti-Corruption Charter of Russian Business.
In 2012 the Federal Law No. 273-FZ was supplemented with Article 13.3 "The duty of organisations to take preventive measures." According to this Article, all the organisations are required to develop and implement measures to prevent corruption, including:

- foundation of units or officials responsible for the prevention of corruption and other offenses;
- cooperation with law enforcement;
- development and introduction of standards and procedures designed to ensure fair business;
- adoption of a code of ethics and official conduct of employees of the organisation;
- prevention and settlement of conflicts of interest;
- prevention of informal reporting and use of forged documents.

6.3.2 Business associations and trade chambers in the Russian Federation

Depending on the nature of activities and forms of interaction with the state, the following types of business associations are distinguished in the Russian Federation:

- Associations of entrepreneurs (e.g. Russian Union of Industrialists and Entrepreneurs, Support of Russia) expressing the general socio-political views of a particular group of entrepreneurs. Their role is reduced mainly to the formation of the overall environment of intolerance to corruption as a form of degradation of entrepreneurial activity that destroys free competition between bona fide members of the business turnover;
- Chambers of commerce: one of their tasks is to develop rules and standards for the provision of professional services in the market as a whole or any of its segments. Development of such rules is aimed at determining standard model of the entrepreneur’s conduct which would facilitate contractual and business relations;
- Professional associations of market participants, including both self-regulatory organisations (SROs) and other associations performing functions similar to the SRO, but are not registered as a SRO;
- Organisations of the market infrastructure, which are, as a rule, business associations, determining the order of the transactions in the market or its individual segments.

A special feature of the organisations of market infrastructure in comparison with professional associations of entrepreneurs is that they develop documents are compulsory for market participants using their services in the normal course of business. Obligingness of documents adopted by organisations of market infrastructure derives from a contractual nature of these documents. In order to get appropriate services, professional market

participant agrees to provide such services in accordance with the documents of the organisation - market infrastructure[48].

6.3.3 Anti-Corruption Charter of the Russian Business[49]

On September 21, 2012 the President of the Chamber of Commerce and Industry of the Russian Federation S. N. Katyrin , the President the Russian Union of Industrialists and Entrepreneurs A. N. Shokhin, co-chairman of the all-Russian Public Organisation "Delovaya Rossiya" (Business Russia), A. S. Galushka, the President of the all-Russian Public Organisation of Small and Medium Business "OPORA Russia" S. R. Borisov signed the Anti-Corruption Charter of the Russian Business.

The Charter provides for introduction of special anti-corruption programmes and practices into companies' corporate acts regulating not only to the internal corporate policies but also:

- monitoring and evaluation of anti-corruption programme implementation;
- effective financial control;
- personnel training and supervision;
- collective efforts and publicity of anti-corruption measures;
- rejection of illegally obtained benefits;
  - partner and counterparty relationships based on anti-corruption policy principles;
- transparent and open procurement procedures;
  - the use of information to counter corruption;
- cooperation with the government;
- promotion of justice and respect for the rule of law;
- combating bribery of foreign public officials and officials of international public organisations.

The Parties to this Charter declare that they shall make every effort to ensure that corrupt practices, regardless of their forms or methods, are not only punished by law but also condemned by general public and rejected as a dangerous social evil.

Each founding sponsor of the Charter shall appoint one of its representatives in the Committee as a Committee Co-Chairperson; therefore the Committee shall comprise four Co-Chairpersons, one from each of the founding sponsors of the Charter.

Co-Chairpersons shall manage the Committee's work, preside over Committee meetings, and set the agenda based on the proposals of the Committee members; co-Chairpersons shall rotate on a semi-annual basis.

Committee members who do not represent a founding sponsor of the Charter may not act as Committee Co-Chairpersons. Committee meetings shall be organised by the entity keeping the consolidated Register of Parties to the Charter.

This Committee shall:

[48] Semilyutina N.G. Exchange transactions in the modern civil law // Journal of Russian law. 2011. No. 6.

[49] http://ach.tpprf.ru/

- develop recommendations to lay the organisational and methodological groundwork for the implementation of the Charter;
- prepare proposals on the application of measures of government support for corporate anti-corruption practices, including those based on annual reporting and corporate non-financial social reporting;
- set rules for posting data (up-to-date information on the Register, monitoring results, outcomes of dispute resolution, etc.) on a single website;
- decide whether or not to hold competitions, set the procedures for ranking companies, establish awards and other measures of reputation enhancement and encouragement, as well as rules for communicating information on the implementation of the Charter;
- review and summarize information on the implementation of the Charter and prepare proposals to expand the Charter;
- set the procedure and conditions of issuing certificates confirming public endorsement of the results of the implementation of the Charter by companies party thereto and approve the standard form of such Certificates; adopt Regulations on Maintaining the Consolidated Register of Parties to the Charter and monitor its maintenance;
- decide upon the recommendation of founding sponsors whether or not to issue a Certificate of Public Endorsement;
- decide upon the recommendation of founding sponsors whether or not to accredit to the Committee an expert centre for the public endorsement of the implementation of the Charter by companies and entities (such centres may also be established under the organisations that sponsored the Charter);
- decide upon the recommendation of founding sponsors or the decision by bodies in charge of settling Charter-related disputes whether or not to suspend an entity that is party to the Charter from the Register for a year or exclude a company or an organisation party to the Charter from the Register for the violation of its provisions.

The Charter is open to accession by any business person or company, regardless of its form of ownership or incorporation, size, line of business, or location, and by associations or organisations whose purpose is to represent the interests of the business community. Self-employed entrepreneurs acceding to the Charter shall follow only the provisions that are applicable to their business activity.

6.3.4 The civil anti-corruption initiatives

Civil initiative is a response to the needs of social development, expresses the need to resolve the existing contradictions and promotes the progressive development of society. In this regard, special attention should be given anti-corruption civil initiatives[50].

Civil anti-corruption initiative can be law making or law enforcing. Law-making initiative could be aimed at the formation of new ideas or the needs of society in the formulation of a new legal regulation, as well as directly to the adoption of the law, the formation of new patterns of behaviour (law-making initiative). Enforcement initiative is aimed at a lawful

[50] Participation of civil society institutions in combating corruption: scientific and practical handbook (edited by Y.A.Tikhomirov. Moscow: Institute of legislation and comparative legal study under Government of the Russian Federation, POLIGRAPH-PLUS, 2013.

solution of the particular situation basing on the current regulatory model (bringing to justice for corruption).

Depending on the content the anti-corruption initiative can be connected as with drawing attention to some cases of corruption, as with application of citizens with a specific project solutions (legal act), which is necessary to adopt and implement.
The forms of civil anti-corruption initiatives can vary in accordance with the current legislation:

- a law-making initiative;
- a petition - a collective appeal to the citizens of the competent authority with a proposal to adopt a specific regulation or decision (usually with the draft) or to consider the matter in question at a meeting of the body;
- meetings, marches, picketing;
- participation in public hearings, formal discussions of the draft decisions in the press and other media, on the Internet and in some cases can be attributed to civil initiatives;
- voluntary associations;
- appeal to government, especially collective.

Institutions of civil society, particularly the media, public organisations, in cooperation with public authorities can promote the education of citizens, and especially the younger generation in the spirit of the anti-corruption thinking, approval in the mass consciousness of democratic values and priorities that are incompatible with corruption. Institutions of civil society, particularly the media, seek and broadcast information on corruption in all spheres of public life, thereby effecting control over the activities of state authorities.

According to the research[51] of the Institute of Legislation and Comparative Law study under Government of the Russian Federation, public organisations, in collaboration with the executive bodies exercising control and supervisory authority, are able to:

- implement an anti-corruption monitoring;
- undertake the development and implementation of anti-corruption programs;
- exercise public control of bills;
- undertake joint activities aimed at developing recommendations on combating corruption;
- promoting anti-corruption actions and intolerance to any form of corruption;
- monitor the status of legislation and law enforcement, which allows depicting corruption in Russia and outlining measures to combat it.

Systemic anti-corruption presumes direct interaction between the state and civil society. Therefore, an important indicator of the implementation of anti-corruption initiatives is to enable representatives of the civil society in anti-corruption councils and commissions that operate in government. Such participation can also be viewed as a civil anti-corruption initiative. Civil anti-corruption initiatives can also be implemented through the deputies of different levels of the public authorities.

[51] Participation of civil society institutions in combating corruption: scientific and practical handbook (edited by Y.A.Tikhomirov. Moscow: Institute of legislation and comparative legal study under Government of the Russian Federation, POLIGRAPH-PLUS, 2013.

6.3.5 Moscow Anti-Corruption Committee

In 2009, on the initiative of citizens and small and medium-sized enterprises of Moscow, the institutions of civil society represented by the Moscow Chamber of Commerce, the various guilds and community committees, the Moscow Anti-Corruption Committee (hereinafter - MACC) at the Moscow Chamber of Commerce was founded. It is an independent, combined with business entities, public, expert and advisory structure of the Moscow region of the Russian Federation. Activities of the Committee are supported by the Administration of the President of Russia and a special order of the Government of Moscow of 27 August 2009 № 295.

It should be emphasized that the MACC is a completely new model that underlies the unique (which has no precedents today, not only in Russia but also abroad) mechanism for implementing the anti-corruption legislation, in accordance with the proposals of the President of Russia.

Currently MACC operates in the following areas[52]:

1) telephone "hot line" to receive complaints, allegations and reports from citizens and business entities related to the facts of corruption. Each fact is legally assessed taking into account the situation by MACC experts who send the documents to the law enforcement and supervisory authorities to take specific actions (for the period of the MACC work all its public receptions filed more than 2 thousand applications);
2) independent anti-corruption legal examination of drafts and regulations issued by governing bodies. Experts of MACC received accreditation at Russian Ministry of Justice and were granted the right to conduct such an examination;
3) public receptions activity in administrative districts of Moscow at the active support of business (at the expense of own funds of enterprises and organisations). In all 10 Moscow districts MACC has created and runs with the assistance of prefectures its representative offices which receive and process complaints directly related to corruption facts, forward them to law enforcement and other executive authorities of the city and advise people on how to prevent corruption;
4) anti-corruption propaganda, education and training for the representatives of the business community and civil society;
5) scientific, legal and methodical work, in frames of which five handbooks on combating corruption were published and distributed in amount of two thousand copies. In addition, MACC members give lectures and conduct seminars on anti-corruption legislation in three Moscow universities to introduce students to techniques aimed at preventing corruption;
6) implementation of the MACC programs "World without corruption". In 2012 the program involved 94 organisations and enterprises in Moscow, which officially announced a decisive rejection of the corruption component in their activities;
7) creation on the initiative MACC of a unified website for independent experts accredited by the Ministry of Justice of Russia;

[52] M.R.Yusupov. Institutes of the civil society and the business community in Russia as subjects and factor of implementation and improvement of anti-corruption legislation // Analytical Newsletter of the Council of Federation of the Federal Assembly of the Russian Federation. No. 10 (453). 2012. (http://council.gov.ru/activity/analytics/analytical_bulletins/25918)

8) MACC representatives activity in the regions of Russia on the basis of business entities (organisations and companies);
9) publication of the journal "Bulletin of the Moscow Anti-Corruption Committee of the Moscow Chamber of Commerce".

MACC activity continuously improving and expanding depending on the growth of civil activity of civil society, the business community and government structures in the field of anti-corruption.

6.3.6 Anti-corruption examination

In 2009 President of the Russian Federation Dmitry Medvedev announced a new mechanism to prevent corruption – anti-corruption examination of normative legal acts and their drafts by accredited independent experts53. In March 2009 Government of the Russian Federation adopted rules54 and methodology55 for anti-corruption examination of normative legal acts and their drafts. In June 2009 the Ministry of Justice of the Russian Federation started to issue first certificates of accreditation of independent experts authorised to examine normative legal acts and their drafts on corruption factors.

Today this issued are regulated by Federal law of 17 July 2009 No. 172-FZ "On anti-corruption examination of normative legal acts and drafts of normative legal acts" and Decree of Government of the Russian Federation of 26 February 2010 No. 96, including new rules and new methodology of anti-corruption examination of normative legal acts and their drafts.

The significance of this mechanism of preventing of corruption is brightly illustrated by the chronology of adoption of legal acts, regulating these procedures – Federal law was adopted after Decrees of Government of the Russian Federation and after the Ministry of Justice of the Russian Federation started to accredit independent experts. Moreover, the only requirements to independent experts in 2009 were higher professional education and minimum five years of professional work experience (disregarding the sphere) for individuals and minimum 3 employees meeting the requirements to individuals – for legal entities.

Cooperation between the state and civil society institutions is enshrined as one of the basic principles of anti-corruption in the Federal Law of 25 December 2008 No. 273-FZ "On Combating Corruption". In accordance with the Federal Law of 17 July 2009 No. 172-FZ "On anti-corruption expertise of legal acts and draft regulations" cooperation of federal executive authorities, other public bodies and organisations, bodies of state power of subjects of the Russian Federation, local self-government, their officials and civil society institutions in conducting anti-corruption expertise of legal acts (draft laws and regulations) is one of the basic principles of the organisation of the anti-corruption expertise of legal acts (draft laws and regulations).

6.3.7 The Federal Ombudsman for the protection of Entrepreneurs

[53] http://www.gazeta.ru/politics/2009/03/10_a_2955574.shtml

[54] Decree of Government of the Russian Federation of 5 March 2009 No. 195.

[55] Decree of Government of the Russian Federation of 5 March 2009 No. 196.

Another mechanism for combating corruption and protecting rights and legal interests of entrepreneurship is the institution of the **Federal Ombudsman for the protection of Entrepreneurs**. The idea of this institution was for the first time officially announced at the 16th International Economic Forum in St. Petersburg in the speech of President of the Russian Federation Vladimir V. Putin. Later this institution was legally enacted by the Federal Law of 7 May 2013 No. 78-FZ "On Entrepreneurs' Ombudsmen in the Russian Federation".

Analysing its work in 2013 the Entrepreneurs' Ombudsman of the Moscow region (Moskovskaya oblast')[56] divides complaints of entrepreneurs into complaints on law enforcement authorities and other regular complaints.

Complaints on law enforcement are connected with:

- initiating or refusing to initiate a criminal case;
- inaction of law enforcement authorities;
- illegal actions of law enforcement authorities.

Other complaints are connected with:

- failure of local authorities to execute a judgement;
- problems in realization of the preferential right to buy-out a municipal property;
- violation of rights of entrepreneurs in sphere of construction (including connection of buildings to utility infrastructure).

Among typical problems arisen the Entrepreneurs' Ombudsman of the Moscow region outlines:

- lack of practice in co-operation with municipal authorities in Moscow region;
- uncertainty of entrepreneurs in defending their violated rights;
- low entrepreneurs' awareness of the competence and activities of the Entrepreneurs' Ombudsman of the Moscow region.

Summarizing results of its activity in 2013 the Entrepreneurs' Ombudsman sets the following objectives for 2014:

- to improve efficiency of protection of rights and legal interests of entrepreneurs in Moscow region, including foundation of new reception offices, assistants pro-bono and working groups and other institutions;
- to develop and give recommendations on improvement of legal regulation of business activity in Moscow region;
- to provide legal education;
- interaction with the Office of Entrepreneurs' Ombudsman of the Russian Federation.

6.3.8. Legal education

A very important direction in combating corruption in Russia is legal education. The significance of provision of society with information on consequences of corruption, legal methods of combating corruption, results of government efforts in combating corruption and formation of intolerant attitude to corrupt behaviour in civil society has been emphasized multiple times.

[56] Annual report of the Entrepreneurs' Ombudsman of the Moscow region on the results of activity in 2013. Podmoskovje, 2014.

On 14 May 2014 Government of the Russian Federation issued a decree No. 816 and approved the Programme of anti-corruption education for 2014-2016. It includes the following steps and arrangements:

- development and improvement of legislation in order to create conditions for increase in legal sense of citizens and popularization of anti-corrupt standards of behaviour based on awareness of common freedoms and obligations (incl. monitoring of law enforcement, study of problems in moral orientation and legal sense, study of foreign experience, amendment of federal educational standards, law making, development of methodical and informational materials);
- carrying out of organisational and managerial decisions providing conditions for increase in legal sense of citizens and popularization of anti-corrupt standards of behaviour based on awareness of common freedoms and obligations (incl. monitoring of implementing new elements of educational standards, informing society of basic foreign systems of combating corruption and adoption of them in Russia, publication of special editions on anti-corruption, interaction between state and municipal authorities and civil society, methodological assistance to educational organisations, arrangement of effective feedback from civil society, including "hot lines" for citizens, provision of legal assistance on anti-corruption for free, anti-corruption propaganda.

6.3.9. Recommendations issued by public authorities and codes of conduct

In November 2013 the Ministry of Labour and Social Security has issued Methodical recommendations on development and arrangement for measures preventing and combating corruption. It is emphasized in these recommendations that they are addressed to all organisations despite their form and owners.
These recommendations declare the following basic principles of combating corruption inside the organisation:

- accordance of the organisation's policy to the current legislation and common norms;
- importance of the top-management personal example;
- involvement of employees;
- adequacy of anti-corruption procedures to the level of a corruption risk;
- effectiveness of anti-corruption measures;
- responsibility and inevitability of punishment;
- transparency of business;
- permanent control and regular monitoring.

In the private sector adoption of such recommendations or codes of anti-corrupt behaviour is optional. For the time being, mostly big companies or group of companies afford resources to this issue.

Many companies join a compact or an association of companies with relevant standards of operation or adopt own code of corporate ethics and publish it in order to enhance own reputation.

For example, Code of business ethics of ROSNEFT was adopted in 2008, Code of business ethics of LUKOIL – in 2010, Code of business ethics of GAZPROM and RZD – in 2012. All

these documents provide for regulation of the conflict of interests and relations with public authorities to a certain extent.

Concerning associations and compacts, the Association of Russian Regional Chambers of Commerce and organisations in the sphere of economic security and anti-corruption "Security of Business" declares in aim to bring together in the framework of the "Business free of corruption" and coordination of efforts of Russian and foreign companies, enterprises and organisations that undertake to carry out their activities in accordance with internationally accepted standards, anti-corruption, strict compliance with the laws of the Russian Federation and the states where there are the interests of the domestic business[57].

As a basic model of corporate behaviour the companies-participants have chosen the "Principles for Countering Bribery", developed by the World Economic Forum PACI – Partnership Against Corruption together with the Transparency International and the Basel Institute on Governance and the Code of Corporate Conduct of Federal Commission on Securities of Russia (later Federal Commission for the Securities Market, which was abrogated and functions of which were transferred to Central Bank of Russia as from 01 September 2013), based on internationally accepted principles of corporate governance developed by the Organisation for Economic Cooperation and Development (OECD).

Companies-members of the Association share and support the "Principles of PACI", signed a commitment to abide by the Code of Business Ethics and assume two basic commitments:

- policy of complete rejection of bribery and
- the development of specific, effective instruments of internal control over the implementation of this policy.

[57] http://www.mnp.ru/ru/articles/1/168/

7 APPENDIX 1: CASE STUDIES OF FOREIGN COMPANIES

Case Study 1: Large-sized Company involved in bribery develops anti-corruption policy[58]

1. Company X is a corporation in one of the Council of Europe member states (Member State A). For over 160 years Company X has been one of the most successful conglomerate companies in Europe. Currently, Company X is one of the world's largest provider of energy and energy sources (electricity, gas, oil). The Company also manufactures energy control systems, energy equipment and energy networks. In 2008, Company X employed approximately 428,200 people and operated in approximately 190 countries worldwide. Company X reported net revenue of $16.5 billion and net income of $8.9 billion for its fiscal year ended 30 September 2008.

In accordance with local law, Company X has a Supervisory Board and a Managing Board. The Supervisory Board is generally comparable to the board of directors in that it oversees management but with less oversight power under local law. The Managing Board generally performs the duties and responsibilities of senior management and includes the Company's Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO").

Prior to a recent reorganisation, Company X operated through a complex network of business groups and regional companies. The business groups are divisions within Company X and are not separate legal entities. The regional companies are wholly- or partly-owned subsidiaries of Company X. Company X itself is fully owned by the Council of Europe Member State A, and a special law governs its public control. For example, under the special law, a majority of government officials have to sit on its Managing Board in order to control the corporation with respect to its vital public importance as it delivers more than 95 % of the energy needed by the country's households and industries.

2. In 2002, Company X transferred a bribe of €15 million to several ministers in Council of Europe Member States A and B. The bribe was meant to facilitate the construction of a gas pipeline from Member State A to Member State B, which would provide B and other European countries with comparatively cheap gas resources and would help European countries in the diversification of their energy sources.

The same year, Company X also bribed an arbitrator in Member State C who was deciding in a formal arbitration procedure between Company X and a steel company on the delivery of pipes to Company X for the pipeline. The arbitrator was a private consultant working occasionally as arbitrator in international arbitration cases.

The prosecution could only establish that the money for the bribes stemmed from subsidiaries of Company X but could not detect any individual physical person committing the bribery offence. The ministers accepting the bribes used their right to remain silent but were convicted of accepting a bribe. The arbitrator made partial use of his right to remain silent and only stated that Company X would have won the case anyways and this should have been obvious to Company X from an analysis of the facts and law. Nonetheless, the arbitrator was convicted of accepting a bribe.

[58] Training manual "Liability of Legal Persons for Criminal Offences", Eastern Partnership-Council of Europe Facility Project on "Good Governance and Fight against Corruption", 2013

3. On 15 April 1999, the very day Member State A ratified the OECD anti-bribery convention, the then-CEO of Company X expressed his concern at the number of criminal and other investigations into members of the Company," further noting that "[a]s the Board could possibly be held responsible for various offenses, it was important to take protective measures."

In mid-2000, the legal department of Company X forwarded a memorandum to the Supervisory Board Chairman and CFO identifying certain off-books accounts. The memorandum made it clear that Company X' accounts had to be maintained "in harmony with the principles of orderly accounting. Otherwise sanctions are likely under criminal law." However, the off-books accounts continued to exist for years to come.

In April 2000, the Management Board rejected a proposal by the Company's General Counsel to create a Company-wide list of business consultants and a committee to review these relationships. Although Company X issued various principles and recommendations regarding business consultants, Company X had no mandatory and comprehensive Company-wide rules in place governing the use of business consultants until June of 2005.

In the fall of 2003, Company X's outside auditor identified € 4.12 million in cash that was brought to Nigeria by employees of a Company X division (COM) and flagged the payments for review. A compliance attorney at the Company conducted a one-day investigation of the payments and wrote a report indicating that COM employees admitted that it was not an isolated event and warned of numerous possible violations of law. Though the compliance report was reviewed in November 2003 by Company X's then-CFO, no disciplinary action was taken, no further investigative work was conducted, and the report was not provided to or discussed with the Management Board as a whole or the Company's audit committee.

During the time, Company X implemented certain improvements to its compliance program. These included an anti-bribery speech delivered by the then-CFO to high-level business managers in summer 2004 and the establishment of a Corporate Compliance Office in October 2004. In addition, the Company issued policies over bank accounts, including requirements relating to the initiation and use of Company accounts and authorizations regarding cash. However, it was not until one year later, in June 2005, that the Company issued mandatory rules governing the use of business consultants, e.g. prohibiting corrupt-related fees and requiring compliance officers to sign off on business consulting agreements. While these measures appear to have been partially effective, improper payments continued at least until November 2006.

The Corporate Compliance Office included both defending the Company, and preventing compliance breaches. The Corporate Compliance Office comprised of a Chief Compliance Officer and up to six full-time lawyers until 2007. Until 2007, there was no mandatory training on compliance with international bribery regulations.

Case Study 2: Company develops new Code of Conduct

Company X is a medical products and services company, based in a European country, which operates globally. Company X has sales subsidiaries in principal markets and production in several countries in Europe, Asia and North America.

Recently Company X decided to update and strengthen its Code of Conduct and compliance system for the following reasons: (a) it needed to comply with the new UK Bribery Act, which set a new international standard for facilitation payments, gifts, and hospitality that Company X needed to address directly; (b) the employees did not have sufficient awareness of the company's current policy for ethical behaviour; and (c) managing conflicts of interest needed to be addressed differently in the new Code of Conduct.

Company X wanted to create a global Code that would apply regardless of location. The development of the new Code of Conduct was based on the consideration of the following issues:

- global Code of Conduct could be applied in practice throughout different cultures in which Company X does business and it should be taken into account that expectations regarding business ethics and offering of gifts can vary significantly from country to country;
- the employees throughout all Company X's subsidiaries should easily relate to the new Code of Conduct so it has to incorporate real-life situational examples from different countries.

In order to address the above issues the corporate ethics team, entrusted with the preparation of the new Code of Conduct, sent out a detailed questionnaire covering all relevant topics (bribery, trading in influence, gifts and hospitality, political donations, status of healthcare professionals in the respective country) and after that interviewed country managers and marketing managers in all countries where Company X operates. The interviews allowed the drafting team to collect examples of corruption-related situations and remedies taken. The process of drafting new Code of Conduct was an opportunity for the country managers to inform the company's management about all issues or challenges regarding the company's anti-corruption policy.

As a result of the above drafting process, the new Code of Conduct of Company X could apply to all countries where the company operates. The Code contains three parts dealing respectively with: bribery and other corruption practices (including prohibition of facilitation payments); detecting and resolving conflicts of interest; contacts and interaction with healthcare professionals (including rules on gifts, entertainments, social events, training, donations).

The situational examples provided during the above consultation process were included in the Code of Conduct in order to ensure that the employees of Company X and its partners and clients, including healthcare professionals, know what to expect.

The Code of Conduct language is clear and simple. Company X has also developed an e-learning course with an exam on the Code of Conduct's guidelines that all key employees must pass.

Case study 3: Company develops policy on organising delegation trips

In light of recent punitive actions against other companies that involved allegations of improper travel and entertainment provided to clients, Company X decided to evaluate its anti-corruption policy with respect to the trips organised by the company for customers and delegations.

As a principle, company X recognised that delegation trips are legitimate and important marketing tool which gives an opportunity to present on-site company's products and service standards. However, in a case of a delegation trip, the customers may expect the inviting company to host the participants and to cover or reimburse certain costs, e.g. for accommodation, transportation, entertainment, etc.

The ethics departments of Company X provided relevant guidance to managers and employees organising delegation trips. It is pointed out that in some cases it may be difficult to distinguish leisure activities from the business content of the visit. For example, the sites to be visited are often located in newly established buildings in interesting cities in Europe. Therefore, it is necessary to review from an ethics perspective such delegation trips in order to avoid any appearance of potential corrupt practice in connection with such trips and to ensure that all details of the trips are accurately reflected in the books and records of the company.

In order to give more detailed guidance to company's employees and to implement a consistent procedure of approval and recording in the books and records, Company X issued the Company Policy on Delegation Trips. This policy covers all kinds of domestic or international visits, visits of company sites and product presentation trips organised and by Company X for public or private customers or other business partners.

For example, the Policy on Delegation Trips provides that all delegation trips need to have a legitimate business purpose, such as a trip to present products or to share technical knowledge, service standards and skills. The hosting and entertainment during the trips must be insignificant in terms of time and value in relation to the professional part of the visit. Accommodation expenses and costs for entertainment and gifts that are borne by the company must be reasonable in amount and necessary to serve the legitimate business purpose. In addition, any reimbursement of expenses for transportation and accommodation has to be avoided and could only occur in exceptional cases. Cash reimbursement should be excluded at all.

The Policy on Delegation Trips establishes also the conditions under which delegation trips with accommodation and transportation coverage or reimbursement may be agreed and how they have to be documented. For instance, the delegation trips need prior approval by the responsible executive management of the company and, in certain cases, a review by the legal department and/or ethics officer. In addition, all requirements must be fulfilled in relation to documentation of the invitation process, the programme, hosting or entertainment (including value of any provided benefits).

8 APPENDIX 2: EXAMPLES OF CRIMINAL CASES OF CORRUPTION AFFECTING THE BUSINESS SECTOR IN THE RUSSIAN FEDERATION

The crimes in this category are characterized by a high level of latency. So the official statistics, according to criminologists, give only a rough picture of the status and dynamics of corruption-related crimes. Moreover, inspections conducted by prosecutors have shown that violations continue to take place in the activities of the competent authorities.

It is often noted that operational investigation activity in the majority of subjects of the Russian Federation, as a rule, is limited to the collection and accumulation of information that is not followed by implementation. Measures to search and arrest of property obtained by criminal means, investigation of the facts of its legalization are rare.

Compensation for the damage from corruption offenses remains topical. With the growth of proved material damage in criminal cases filed to the court by almost RUB 11 billion (from RUR 21.8 to 32.7 billion) last year, the amount of compensation for the damage decreased by more than RUB 500 million (from RUB 4 to 3.5 billion). Thus, the proportion of compensation of damage in files to the court criminal cases on corruption in 2013 was only 10.7% (RUB 3.5 billion of RUB 37.8 billion). This the problem was emphasized by the Prosecutor General's Office of the Russian Federation in letters to the Russian Interior Ministry and the Investigative Committee of the Russian Federation in November 2013.

The most popular types of punishment imposed on convicted of corruption crimes are still imprisonment and a fine. And it is remarkable that many of the convicted avoid paying the fines. Thus Liberalization of anti-corrupt legislation did not work properly. The convicted successfully evaded the payment of fines and moreover often avoiding also a possible replacement of the fine with imprisonment, which is inconsistent with the principle of inevitability of punishment.

Prosecutor General's Office[59] of the Russian Federation has drawn attention to it. The result of the joint with the concerned authorities discussion of the matter was the amendment to the Resolution of the Plenum of the Supreme Court of the Russian Federation of 09 July 2013 No. 24 "On judicial practice in cases of bribery and other corruption crimes". Now, courts when deciding on the imposing a fine on a convicted person are obliged to discuss the possibility of its execution. When defining a fine size courts should into account not only the seriousness of the offense, but the financial situation of the convicted person and his family, as well as possibility to receive their salaries or other income.

In 2013, an additional punishment of deprivation of the right to run certain positions or certain activities, as well as a fine, was imposed most frequently. In some cases, the convicted were also deprived of a special, military or honorary title, class rank and state awards.

[59] See more in the Report of the Prosecutor General's Office of the Russian Federation on law and order in the Russian Federation and on the work done for their improvement in 2013.

8.1 Case of “Omsk Technical Centre”

Referring to the evidential material of the prosecution of the Omsk region a criminal case was opened on the fact of the violations in bankruptcy of OJSC "Omsk Technical Centre", the shares of which were federally owned. Criminal actions of concerned parties and failure of the territorial administration of the Federal Agency on State Property Management to take appropriate measures to protect the interests of the state resulted into transfer of the company’s property totalling to RUB 176 million to creditor, claims of which amounted to nearly RUB 160 million less than the value of the transferred property.

Prosecutors inspected government agencies and local authorities with competence in the areas strongly prone to corruption risks. Their result was a significant increase in the number of violations revealed, including those connected with breaches of criminal law. Thus, in 2013, prosecutors have revealed more than 12.5 thousand violations of the law on combating corruption in state and municipal supervision (16%) and more than 22.8 thousand violations in the provision of public and municipal services (+ 79%). Practice shows that there are still many cases when public officials illegally accept of undone or (and) bad quality work under public contracts.

In 2013, prosecutors took measure in order to reveal failures of state civil and municipal officers, as well as other persons, to prevent and resolve conflicts of interest. Special attention was drawn to cases of affiliation of state bodies (organisations) management in the performance of municipal contracts and etc.

8.2 Case of OOO “Torgkomplekt”

The prosecution of Kursk region found that the chairman of the consumer market, small business development and licensing committee of the Kursk region was personally involved in the issue of providing state support in the form of grants and loans to OOO "Torgkomplekt". The sole shareholder and director of the said company was his wife. In order to take remedial measures the prosecution initiated bringing to justice of this official for disciplinary offense. The money transferred to the said company was returned to the budget.
Inspections have shown inefficient budget spending and even outright profligacy. It was not always, for objective reasons, possible to prove a conflict of interests. At the same time, prosecutors tried to find the final beneficiaries of these actions, to compensate damages and to bring the offenders to justice. Thus, these measures resulted into prevention of dishonest officers from reaching of their goal to receive illegal benefit for themselves or the third parties.

8.3 Case of illegal payments by authorities in the Vologda region

According to the materials of the Vologda region prosecutor's office a criminal case was opened under Clause 2 of Article 286 of the Criminal Code of the Russian Federation in respect of the former Deputy Governor of the Vologda region - Head of the Department of Finance, which in the period 2009 - 2011, exceeding official powers, in violation of the budget legislation signed contracts to provide state guarantees for regional commercial organisations in the amount of RUB 1.7 billion. Moreover, the said officer was knowingly aware that organisations are in poor financial condition, have arrears on obligatory payments

to the budget system of the Russian Federation. Illegal actions entailed the payment upon requirements of OAO "Rossiysky Bank for Small and Medium Entrepreneurship» at warranty of OOO «Stroyneftegaz» of more than RUB 158 million.

Last year prosecutors initiated disciplinary charges against more than 68.5 thousand officers (+10.7%). In case an offense entails terminating the service contract due to the loss of confidence as a penalty, prosecutors insist on it. However, a significant number of state and municipal officers are relieved of liability because of non-constructive approach of the Commission to comply with the requirements of the official conduct and settlement of conflicts of interests. At the same time the prosecutor are not entitled to force the employer to the use of disciplinary measures corresponding to the seriousness of the corruption offense. Despite these challenges the development of the practice of dismissal due to the loss of confidence was continued in 2013.

Inspections of compliance with the requirements of anti-corruption legislation imposing on officers obligations to file data on their income, property and property obligations are held on a regular basis. This work helped to increase the course of law in this area almost in inspected state bodies and organisations.

A number of serious and widespread violations were revealed in 2013.

8.4 False or incomplete declaration of assets in Altai Territory

The prosecutor's office of the Altai Territory during the audit in the Investigation Department of the Investigative Committee of the Russian Federation in the Altai Territory found that almost every second officer has filed incomplete and (or) false information about income, property and property obligations (115 officers did not report on accounts in credit organisations, and etc.).

In order to repair the damage caused by corruption offenses, prosecutors filed 1206 claims. 778 claims totalling more than RUB 1.5 billion (+ 85.7%) were sustained.

In frames of anti-corruption expertise prosecutors tested more than 832 thousand acts (+14%). 41.8 thousand acts contained corruption-factors (+1.6%), more than 36 thousand of which contradicted the requirements of federal law (+6.5 %). In order to exclude of corruption-factors from regulatory legal acts prosecutors issued more than 5 thousand claims, brought nearly 34.7 thousand protests, filed 584 claims to the courts, filed 934 petitions.

For the first time since 2010 there's an increase of detection (for 2%) of receiving a bribe (Article 290 of the Criminal Code of the Russian Federation). The result of the measures taken was a number of opened criminal cases on corruption crimes committed by high-ranking officials. These cases have had a wide public outcry.

8.5 Political Bribery

For example, the Moscow City Court admitted to examination the criminal case against the former deputy of the State Duma of the Federal Assembly of the Russian Federation K.V.Shirshov, who together with V.V.Myasin, L.I.Karagodov and V.N.Gurdjy convinced

that they have the authority to include him in the electoral list of the political party "United Russia" in order to grant him a parliamentary mandate for a cash consideration of EUR 7.5 million. Criminal intention of this group was not fully carried out for reasons beyond their control - the transmission of the remuneration was stopped by the FSB of Russia, and the money was confiscated.

8.6 Embezzlement of budgetary funds by Deputy Governor of Kurgan region

Criminal proceedings are opened against the Deputy Governor of the Kurgan region, who committed embezzlement of budgetary funds; the Deputy Prime Minister of the Volgograd region who received a bribe in the amount of RUB 17 million; the Chairman of the Committee of Capital Construction of the Government of the Saratov region, who received a bribe in the amount of RUB 7 million for the transfer of federal budget funds in the amount of RUB 100 million to a third party; Mayor of Astrakhan, who was detained with a bribe in the amount of RUB 10 million. Last year criminal penalties were imposed on 276 deputies of different levels, over 1,000 officers of local governments, including 272 heads of municipalities, 30 members of election commissions, more than 1,200 police officers, 529 soldiers, 691 officers of Justice of the Russian Federation. Materials of criminal cases generally indicate that the most vulnerable to corruption are the use of state and municipal property, public contracting, works and services for state and municipal needs, education, health, housing and communal services.

9 APPENDIX 3: GOOD PRACTICES OF PROTECTION MECHANISMS ESTABLISHED BY THE BUSINESS SECTOR IN THE RUSSIAN FEDERATION

9.1 AVTOVAZ[60]

Boston Consulting Group reports that corruption and embezzlement at AvtoVAZ have become a tradition (continuing for more than 20 years since the collapse of the Soviet Union) and are one of the key problems to be solved by the auto giant.

The management have been strongly combating these negative phenomena in the last decade. The company knew that the violation of internal regulations and policies may be either on the part of employees or on the part of contractors throughout the cost chain and considered each group of such risks individually:

- purchase (the risk of acquiring low-quality products, "kickbacks");
- production and logistics (risk of theft and shadow production);
- sales (risk of unfair behaviour on the part of dealers, for example, inflating the price on paper, "kickbacks").

Purchases

Problems arise mainly for two main reasons: the vendors who are unable to supply high-quality components and employees who purchase at inflated prices in exchange for "kickbacks" (the size of which can vary from 5 to 50%). A recent illustration of the first case – extremely low sales of "LADA Granta" in the summer of 2012 because of low-quality components, reduced output and formation of queues and delays. Examples of the second case may have less impact on the profitability of the company, but occur more frequently and often stay unnoticed. In this regard, it is essential to prevent both problems with suppliers and employees.

The following measures were introduced. Firstly, the company plans to arrange for a comprehensive audit of all quality manufacturers of parts and components to prepare the list of approved suppliers, and already in 2014 to enter into contracts only with organisations that are included in this list.

Secondly, for several years, the company maintains a database of comparative pricing and conducts additional inspections in cases where the price specified in the contract differs too much from the average in the market.

Thirdly, on the AvtoVAZ was introduced limitation of the powers in sphere of purchase budgeting, which presumes setting price limits for each level of responsibility: for example, if the contract price exceeds the limit, the contract must be approved at a higher level. Finally, the Russian company has expanded its partnership with foreign automakers (in 2008 Renault-Nissan acquired a 25% stake in AvtoVAZ) by opening procurement agency cooperation with the Franco-Japanese alliance (RNPO) in 2012. RNPO acts as an intermediary between Renault, Nissan and AvtoVAZ, on the one hand, and suppliers – on the other, and is responsible for evaluation, selection and development of suppliers common to these three

[60] Implementation of the best anti-corruption practices and exchange of combating corruption experience in Russia // IBLF Russia, 2013.

manufacturers. It is planned that by 2016 up to 80% of all purchases will be made by AvtoVAZ through RNPO.

Production and logistics

Problems in production and logistics arise mainly because the lower level employees use company resources for personal purposes by deliberately making mistakes and complex manipulations. Volumes of shadow production, identified by AvtoVAZ in 2011, exceed that of the European manufacturers for 20-30 times. Analysis showed that petty theft and shadow production, mostly not tracked, significantly increased the company's costs.

The main reasons for the shadow production are:

- lack of hard rationing that allows accumulating unaccounted materials;
- incomplete tracking of materials, components and labour, which created an opportunity for the shadow production of parts from the unrecorded material;
- numerous "holes" in the system of control of incoming and outgoing transport (huge volumes, weak technical equipment and procedures for transport control);
- low "fighting spirit" and lack of motivation of production staff.

Due to the fact that the problem partially was of social nature, it cannot be solved only by increasing the security measures. It was necessary also to use motivation. BCG has developed six cross-functional and targeted initiatives in their complex aimed at removing of the main causes of the problem:

- revision of production norms;
- stressing of materials and resources accounting;
- strengthening of traffic flows monitoring;
- revision of access rights to IT systems;
- amending of motivation system;
- improving the system for violations reporting.

These initiatives, formulated in the spring of 2012, had to reduce the amount of shadow production and theft for 70-90% within two years. According to the results of the last inspection, carried out by the client, the goal has been achieved in pilot production for less than a year, providing a significant cost savings, reduction of inventory levels and a significant increase in professional standards of employees of the client; in 2013 this experience was implemented at all the major productions of AvtoVAZ.

Sales

Problems with sales arise from the illegal actions of dealers. A recent illustration is losses of RUB 600 million resulted from sales of "LADA Grant" in 2012, when dealers artificially inflated the price of this model by hard-selling of options not requested by the buyer and selling places in queues created by the dealers themselves.

To reduce the commercial risks in 2010, AvtoVAZ within "Strategy 2020", developed in collaboration with BCG, has built a new system of regional distribution and calculation of margin. Under the new system margin for dealers has been changed from a fixed to a variable

that is calculated according to the four bonus indicators: sales, compliance with corporate standards, customer satisfaction levels and penalties for illegal actions.

9.2 OOO "Ural Locomotives"[61]

The company considers the following potential corruption risks of doing business in Russia:

- conflicts of interest;
- dishonest contractors;
- misconduct of employees.

In order to cover potential risks the following actions were taken:

1) the compliance department was created as a structural unit for monitoring compliance with the requirements of antitrust and anti-corruption legislation;
2) internal regulations were developed and implemented in order to strictly observe the rules of anti-corruption policies, based on the requirements of the international law, including:
    - Terms of Business Conduct and Ethics (2010);
    - Regulation of contractual work (2010);
    - Regulation on the study and testing of job candidates (2010);
    - Regulations on the procedure for purchase of goods, works and services (2010);
    - applications to the Company's accounting policies governing the implementation of representation expenses and providing business entertainment (2010);
    - Regulations on the prevention and processing of overdue and problematic receivables (2011);
    - Regulation of the internal control of payments (2010);
    - Terms of business conduct (2012), based on the requirements of international law in terms of intolerance of corruption;
    - Code of Conduct for suppliers (2012).

Based on the internal regulations the company has prepared materials for the training, which explains the importance of anti-corruption and anti-trust legislation; regulating the internal rules for representation expenses and clarifying the rights and responsibilities of each employee.
Ural Locomotives envisages the involvement of compliance department in such areas of operation of the business as:

- contractual work – security clearance / approval of new contractors, contracts, contract documents;
- procurement – to participate in the procurement commission, monitoring compliance with the requirements according to internal procedures and regulations;
- analysis of compliance risks when considering the possibility of negotiating contracts and preparing reports for the provision of rule.

Results achieved

- as of today's date about 59% of the more than 1,400 suppliers of Ural Locomotives have joined the Code of Conduct for suppliers of LLC "Ural Locomotives" and

[61] Implementation of the best anti-corruption practices and exchange of combating corruption experience in Russia // IBLF Russia, 2013.

ratified it, thus supporting the initiative of the Working Group B20 to increase transparency and combat corruption in part of the collective action, announced at the B20 in 2012;

- Currently 17% of the suppliers of the company consider the possibility of joining the Code.
- more than 2.5 million employees were familiarized with the Rules of Business Conduct and follow the goals set in the Rules.

9.3 ROSNEFT[62]

3.2.7. Conflict of interests

Conflict between the interests of the Company and its employees' personal interests adversely affects the quality of work and is detrimental to the Company. Rosneft seeks to eliminate any possibility of such situations. The company considers it necessary to meet the following requirements:

- deciding on business matters, you should be guided solely by the interests of the Company. Personal or family circumstances should not affect your judgment about what actions are most relevant to the interests of the Company;
- avoid financial or other relationships that might lead to conflicts of interest and prevent the effective implementation of your work;
- if an employee or an immediate relative has any pecuniary or financial interest in the activities of a competitor, the supplier or customer (or their affiliates), he or she must report it to the supervisor. This must also take place in the case if the employee participates directly or indirectly in financial assets or equity of such companies;
- prevent the use of your official position for personal gain, for example, for gifts, remuneration or other benefits for themselves or others, including in exchange for the Company products, works or services, or in exchange for providing confidential information.

In case of occurrence or risk of conflict of interest it is necessary to discuss this issue with the supervisor

3.2.8. Gifts or other benefits

The company allows receiving or giving business gifts only if it corresponds to the highest business practices and does not violate existing laws and ethical standards.

Receiving or giving a gift, it should be remembered that:

- it must not imply any obligation to the donator;
- value of the gift should be relevant to the occasion and the business relations between the receiver or the giver and the Company.

Representing the interests of Rosneft you should strictly obey the following rules:

- avoid situations, when receiving or giving gifts or services may result to conflict or impression of a conflict of personal and corporate interests;

[62] http://www.rosneft.ru/attach/0/02/76/Kodeks_rus.pdf

- working with state and local agencies and organisations, as well as their employees, adhere strictly to the requirements and prohibitions of laws and regulations relating to the grounds and procedures for giving gifts or engage in other forms of remuneration;
- giving or accepting expensive gifts and participation in expensive events is allowed only with the prior permission of the supervisor.

If an employee believes that there can be a situation of ambiguity between the donator and the recipient of the gift or service, you must notify your supervisor.

9.4 LUKOIL[63]

Relations with public authorities and non-governmental organisations

OAO LUKOIL, being aware of the social significance of the results of its activities, adhere to the principle of information openness of its work, aims to build and support stable, constructive relationships with governmental and local authorities.

The company runs its activities in strict compliance to the laws and other normative legal acts of the Russian Federation and the countries where the Company operates.
Lukoil relationship with government and local authorities bases on the principles of responsibility, integrity, professionalism, partnership, mutual trust and respect and unbreakable obligations.

The company allows for the participation of their employees in the political processes, public organisations and trade unions, when it is not contrary to the laws and common practice of the country. In this case, the employee, under any circumstances cannot introduce him or herself a representative of OAO LUKOIL, its subsidiaries and affiliates. Participation of an employee in the political and non-governmental organisations is possible only during off-hours and without use of Company resources so that this part was not considered as the Company's political or social position.

Conflict of interests

OAO LUKOIL considers its employees as main and independent value, since the implementation of creative abilities of staff – vital for effective operating. At the same time, it recognises and respects the diversity and the importance of the off-duty aims and interests its employees.

However, the Company cannot be indifferent to the situation, when personal, family and other circumstances may cease loyalty and objectivity of an employee in relation to the Company. The resulting in this case the conflict of personal interests with the interests of Company has a negative impact on its effectiveness, and the Company considers itself entitled to prevent this impact.

The best policy is prevention of conflict of interest – to participate directly or indirectly in the business relations with clients, suppliers or competitors when acting on behalf of the Company only.

[63] http://www.lukoil.ru/materials/doc/documents/lukoil_corp_code.pdf

9.5 GAZPROM[64]

4. Conflict of interests

Conflict of interests is a situation when the personal interest of an employee affects or may affect the objective and impartial performance of official duties and when there is or may be a contradiction between the personal interests of the employee and legitimate interests of the Company that can cause harm to the legitimate interests of the Company.

Conflict of interests (or apparent existence of such a conflict) poses a threat to the Company's reputation in the eyes of employees of the Company and other persons (including shareholders, contractors, state and government agencies, trade unions and professional associations, securities market participants).

Employees should avoid situations in which a conflict of interest may arise.

In case of a conflict of interests employees should inform their immediate supervisor, and in cases referred to in Art. 14 of this Code, the body authorised to consider questions of ethics - the Commission on the Company's corporate ethics.

There's no conflict of interests in case when a transaction in which there was an interest, later had been duly approved by the management (the General Meeting of Shareholders, the Board of Directors) as a transaction in which there is an interest in accordance with the legislation of the Russian Federation.

In case of conflict of interests of the employee and the Company, when it is not possible to eliminate this conflict, interests of the Company shall prevail.

Here, in the articles 5-8, 10 of the Code there are examples of situations in which a conflict of interests may arise. The list of situations is not exhaustive: workers should assess whether there are conflicts of interests and in other situations.

11. Anti-Corruption

Corruption is the abuse of office, bribe giving, bribe taking, abuse of authority, commercial bribery or other illegal use individual's official position contrary to the legitimate interests of society and the state in order to benefit in the form of money, valuables, other property or property-related services, other property rights for one's own or others, or illegal provision of such benefits by the said person to other individuals.

The Company has established and maintains an atmosphere of intolerance to corrupt behaviour.

On the territory of the Russian Federation and abroad, employees of the Company comply with the requirements and limitations set out in accordance with legislation on anti-corruption.

The Company doesn't accept any form of undue influence on the provision of decisions of public authorities, including bribery, offering of impermissible gifts, employment of relatives

[64] http://www.gazprom.ru/f/posts/00/302817/2012-07-30-codex-of-corporate-ethics.pdf

of public officials, charity or sponsorship upon request of public officials whose decisions affect the Company.

Employees should report to their immediate supervisor, the Commission on Corporate Ethics, Service Corporate Security on any attempt to induce them to the commission of corruption offenses.

9.6 RZD (Russian Railways)[65]

IX. Preventing conflicts of interests between Russian Railways and its employees

31. Russian Railways seek to eliminate any possibility of a conflict of interests between Russian Railways and its employees. Officials and employees in their relations with legal entities and individuals from other organisations are obliged to refrain from acts of risk in terms of a conflict of interests.

32. Officials and employees are required to be guided solely by the interests of Russian Railways and avoid actions that hinder the efficient operation. Their personal, family and other circumstances, as well as financial interests, should not influence their decisions.

33. Officials and employees must avoid financial and other business relationships, as well as participation in co-operation with organisations whose business may cause a conflict of interests and interfere with efficient operation of Russian Railways.

34. On the occurrence of a conflict of interests, financial or other threats to interests of Russian Railways, in case of an outside personal business interest, receipt of a proposal and / or the decision to move to work in another organisation with which Russian Railways jointly run business or have business communication, officials and employees shall immediately notify their immediate supervisor.

35. Employees should orient their families to the inadmissibility of creating a conflict of interests with Russian Railways due to family circumstances.

X. Business gifts or other benefits

36. Receiving or giving of business gifts is permitted only if it is complies with accepted business practices and does not violate the laws and ethical standards.

37. Receiving of a business gift should not imply the occurrence of any obligations to the donator and considered as bribery in the interests of the donator.
Receiving gifts, remuneration and other benefits for oneself and others in return for the provision of any service by Russian Railways, for particular actions or inaction, the transmission of information that constitutes a trade secret or having insider character, is unacceptable.

38. Business gifts donated by officials and employees to the third parties must comply with the brand values of Russian Railways.

[65] http://doc.rzd.ru/doc/public/ru?STRUCTURE_ID=704&layer_id=5104&id=6176#4701525

39. The cost of a business gift should match the occasion and the business relations between the receiver or giver and Russian Railways. In particular, gifts and souvenirs can be awarded or taken on the occasion of the national holidays, anniversaries, birthdays and anniversaries, as well as in other cases stipulated by the business etiquette, or common practice.

40. In dealing with competitors or business partners it is not allowed to take any gift or gifts in the form of cash payments or in any other form, which can be considered as the equivalent of cash payment.

41. In case a business gift is subject to the gift tax, officials and employees who have received such a gift, shall timely pay the tax in accordance with the legislation of the Russian Federation.

42. Officials and employees are not allowed to use their position to receive services, including loans from affiliates, except for credit institutions or individuals offering as part of its loans or similar services on comparable terms to third parties.

43. Representing the interests of Russian Railways, officials and employees must:

- avoid situations when receiving or giving gifts or services may result or appear to result to conflict of personal interests and the interests of Russian Railways;
- strictly abide legal requirements of the Russian Federation and other normative legal acts defining the grounds and procedure for giving presents or performing other types of remuneration when dealing with public authorities, local governments, organisations;
- keep in mind that their gifts and awards ceremony should not conflict with local, national and religious traditions of the region of the presence of Russian Railways;
- give or take expensive business gifts, as well as participate in expensive entertainment events, only with the permission of the immediate supervisor;
- promptly inform the supervisor about the origin of the ambiguity of the situation between the donator and the recipient of the gift or service.