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

Handbook on Good Governance in Business

Prepared by

Yves-Marie Doublet and Anatoly Yakorev

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For further information please contact:

Economic Crime and Cooperation Unit (ECCU)
Action against Crime Department
Directorate General of Human Rights and Rule of Law-DG I, Council of Europe

Tel: +33-3-9021-4550
Fax: +33-3-9021-5650
e-mail: mustafa.ferati@coe.int
www.coe.int/corruption
www.coe.int/precop

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1 EXECUTIVE SUMMARY

This handbook is developed within the framework of the joint EU/CoE project on "Protection of the Rights of Entrepreneurs in the Russian Federation from Corrupt Practices" (PRECOP RF)

The present handbook aims to help Russian business by providing an analysis of international standards and practices on good governance as well as providing an overview of the current practice in the Russian Federation. The handbook refers to a plethora of international standards which are described in this handbook briefly as the goal of the handbook is to mainly present/introduce these standards to the reader. The handbook provides appropriate referencing to ensure that the reader can easily find the quoted texts and standards and benefit from further reading of the source material.

In addition to providing information on the standards, the handbook provides numerous practical cases and recommendations of solutions adopted in companies which pursue less ambitious targets than general international standards and have a more pragmatic approach to fighting corruption.

The first part of the present document is devoted to rules and good practices embodied in international standards. The second part of this handbook is specifically focused on the regulatory framework in the Russian Federation regarding corporate governance and corruption. Examples of codes of conduct of companies which may be applied to prevent and fight corruption are presented in the appendix of this document.

2 INTRODUCTION AND METHODOLOGY

Corporate Governance is considered as one key element in improving economic efficiency and growth as well enhancing investor confidence. It defines relationship between a company's management, its shareholders and other stakeholders if we refer to principles set up by the OECD in 2004. Good Corporate Governance should provide incentives for the board and management to carry out objectives in the interest of the company.

Originally four principles needed to be in place: **transparency, accountability, fairness and responsibility**. Transparency meant that directors must make clear to the providers of capital and other stakeholders why every material decision was made. Accountability referred to another idea: directors should be held accountable for their decisions and account to shareholders by submitting themselves to appropriate scrutiny. Fairness was understood as the equal consideration to the shareholders by the directors and the management with the avoidance of bias or vested interests. Responsibility was the fulfilment by the directors of their duties with honesty, probity and integrity. In few decades this scope has been increasingly extended insofar as bribery has been considered as an outcome of poor Governance and as such had to be considered as a new challenge for companies and public authorities.

Corruption occurs when an individual or a legal entity offers or gives a benefit a bribe to another individual or legal person in exchange for an undue favour. This bribe may be given directly or indirectly over a third-party.

Corruption must be tackled for economic and social reasons. Corrupt practices distort competition and deprive buyers to buy products at the most competitive price. They reduce returns. They weaken corporate culture and quality of management. Misconducts, circumventions of the Rule of Law have a cost which is simply bad for business.

These costs have been well described by the Global Corporate Forum[1].

- **Resource misallocation.** Resources that could be put to productive purposes are used for corruption. Officials make biased investment decisions which are detrimental to public interest and to the tax payers.
- **Lower investment.** Making an investment in countries where the Rule of Law and property rights are not correctly applied is risky and deterrent investments don't favour economic growth.
- **Reduction in competition, efficiency and innovation.** New firms are discouraged by barriers in competition.
- **Unresponsive policies and poor administration.** Rules are used by the administration to favour rent-seekers and bureaucracy is not dissuaded to extract bribes.
- **Lower employment.** If the informal sector is too big private sector employment will be low.
- **Exacerbated poverty.** Poverty will increase if private sector employment opportunities are limited.

These costs destabilise society and favour conflicts. In a report released in December 2014 on a sample of 427 cases dealing with foreign bribery, the OECD revealed that 57% of these cases involved bribes to win public procurement contracts, 12% were to gain customs clearance and 6% were for tax breaks. Four sectors were responsible for almost two thirds of the cases: mining and energy at 20%, construction at 15%, logistics at 15% and Information technology at 10%[2]. On the basis of the same data 263 individuals and 164 entities were sanctioned for foreign bribery. In 60% of

[1] International Finance Corporation (2009), *The moral compass of companies : business ethics and corporate Governance as anti-corruption tools, Global Corporate Governance Forum*, Focus 7

[2] OECD (December 2014), *Foreign Bribery Report, an analysis of the crime of bribery of foreign public officials,* available at www.oecd.org

cases the company had more than 250 employees. Senior management was involved in over 50% of the cases and third-party agents in 9% of cases.

If it is very difficult to calculate the exact cost of corruption but some observers have estimated that every year close to $1 trillion dollars went to waste in bribes with the cascade of effects on economies and societies.

The view of the private sector in the corruption matters changed too over the years because corruption is detrimental to business. Companies are not only viewed as facilitators of corruption. They may be considered as victims of corruption too. That is the reason why good governance schemes and solutions may help to set standards of transparency and accountability in Corporate Governance. If for instance in the short term companies may lose contracts or public procurements if they refuse corrupt practices, in the long term an overall legal framework imposing duties, good practices and efficient sanctions will have a beneficial outcome for the economy and the society and will strengthen investor confidence.

Quality of ethics, stable regulations, enforcement of ethical standards are associated with low levels of corruption. On the contrary the "*World bank Doing Business survey*" showed that heavy company regulations and procedural complexities were generally linked with high levels of corruption. Two studies[3] from the UK Institute on Business Ethics based on a comparison of 250 British companies listed on the London Stock Exchange established in 2003 and 2007 noted a relationship between business ethics and financial performance. In particular the 2007 study showed that the companies which were implementing ethics training programs financially outperformed those which had just a simple commitment to business ethics.

Ethics and moral norms now set a benchmark for choosing to do the right things in business practices. This evolution has been codified in several international instruments, in national law and in various forms of anti-corruption ethics and compliance programs in many companies, mainly the ones which are on the international markets. Good Governance is foremost the responsibility of the company and Codes of conduct of the enterprises provide valuable guidance on the most common ethics and compliance issues. They supplement international standards and laws by setting forth mutual rights and obligations of the management, the employees and the third-parties of the companies.

[3] Studies of the UK Institute on Business Ethics are available at www.ibe.org.uk/

3 DEVELOPING AND IMPLEMENTING AN ANTI-CORRUPTION AND ETHICS COMPLIANCE PROGRAMME FOR BUSINESS

3.1 Introduce an effective Legal Framework on Anti-corruption, ethics and compliance

The international legal framework against corruption of the last decade, the domestic regulations and Codes of conduct which are presented in this handbook may serve as background material to address various forms of bribery in business and provide sources of inspiration.

UN convention against corruption[4] admits that neither governments nor companies can fight corruption alone. Companies exist to make profit but they have obligations imposed on them by many stakeholders such as their employees, regulators, customers, buyers and the public. These legal requirements which deal with Corporate Governance practices shall be consistent with the Rule of Law and standards developed over the years by international instruments, national legislation and Codes of conduct or ethics. All these tools have built over the years a culture of ethical business conduct which has to be reviewed.

The evolving international legal framework falls into major types: international conventions and standards[5].

3.1.1 International Conventions

The **OECD convention** on combating bribery of foreign public officials in international business transactions entered into force in February of 1999. It became the first legally binding international instrument on active bribery in business transactions. It relies on a peer review mechanism, the OECD Working Group on Bribery. It currently counts 41 members countries, that's the 34 OECD member states plus Argentina, Brazil, Bulgaria, Colombia, Latvia, Russia and South Africa. Russia ratified the Convention on the 17 February 2012. Phase One report on the Russian Federation was adopted on 16 March 2012[6] and Phase Two on 11 October 2013[7].

Countries have made substantial changes to their rules and institutions to comply with the convention. Governments had to make it a crime for their nationals and their companies to pay bribes to public officials abroad in order to win markets. This has been achieved by all member states. For instance the UK bribery act entered into force in 2011. Between 1999 and December 2012, 221 individuals and 90 companies were sanctioned for foreign bribery in 13 countries. The record fine for a foreign bribery case was imposed against Siemens. The convention is available in Russian[8].

The **Criminal convention of the Council of Europe on corruption** has been ratified by the Russian Federation the 4 April 2006 and went into force on 1 February 2007. It invites each party to establish as criminal offence active and passive bribery of domestic officials and in the private sector. The Group of States against corruption has been charged to assess the implementation of these regulations in the domestic law of the member states[9]. Civil Law convention on corruption aims to define common international rules of civil law on corruption[10]. Parties are required to compensate persons

[4] UNODC (2009), *Technical Guide to the United Nations Convention against Corruption*, UNICRI
[5] OECD (2013), *Anti-corruption Ethics and Compliance Handbook for Business* UNODOC and The World bank,
[6] OECD (2013) *Phase 1 report on implementing the OECD anti-bribery convention in the Russian Federation*, available at www.oecd.org/
[7] OECD (2013) *Phase 2 report on implementing the OECD anti-bribery convention in the Russian Federation*, available at www.oecd.org/
[8] OECD, *Convention on combating bribery of foreign public officials in international business transactions* is available at www.oecd.org/
[9] *Criminal convention of the Council of Europe on corruption* is available at http://conventions.coe.int/
[10] *Civil Law convention of the Council of Europe on corruption* is available at http://conventions.coe.int/

who suffered damage as result of corruption. It entered into force in 2002 and its compliance is monitored by the Group of States against corruption. The Russian Federation has not ratified Council of Europe's Civil Law Convention on Corruption.

The United Nations Convention against corruption was adopted in October 2003 and went into force in December 2005. It has 140 signatories. Russia signed it on 9 December 2003 and ratified it on 9 May 2006. It covers provisions for prevention, criminalisation, asset recovery, technical assistance and international cooperation. It refers to a broad scope of acts of corruption such as bribery, embezzlement, money laundering, abuse of functions, trading in influence and obstruction of justice. It applies to public and private sectors. It is available in Russian[11].

3.1.2 Other International Standards

Besides international conventions, several sets of standards have been developed in the last decades to define principles and procedures to safeguard the integrity of private sector.

Caux Round Table (CRT) Principles of Business

It has been initiated in 1994 by a network of business leaders committed to "*moral capitalism*". These principles express corporate values to create ethical awareness and lead to responsible and ethical corporate behaviour. One of these principles states that a responsible business does not participate in, or condone, corrupt practices, bribery, money laundering, or other illicit activities. They are available in Russian[12].

Extractive Industries Transparency Initiative (EITI)

This integrity program was launched in 2003 after its announcement by the British Prime Minister Tony Blair in October 2002. It is a global standard to promote openness and accountable management of natural resources. It seeks to strengthen government and company systems, inform public debate and enhance trust. In each implementing country it is supported by a coalition of governments, companies and civil society working together. It pleads for the verification and full publication of company payments and government revenues from the exploitation of oil, gas and mineral resources. Its aims at a larger transparency and accountability in the extractive sector[13]. This initiative inspired the EU Revised Directive adopted on the 12 June 2013 on transparency requirements for listed companies (Transparency Directive[14]), which introduced a new obligation for large extractive and logging companies to report the payments they make to governments. The following types of payments shall be reported: production entitlements; taxes levied on the income; production or profits of companies; royalties; dividends; signature, discovery and production bonuses; licence fees; rental fees, entry fees and other considerations for licences and/or concessions; payments for infrastructure improvements[15].

International Chamber of Commerce (ICC) Rules of Conduct and Recommendation to Combat Extortion and Bribery

It is a self-regulating instrument for international business. It calls on firms to adhere to a pack of integrity and to promote competition. These Rules of Conduct strongly expressed the objective of ending both bribery and extortion. They consider only a corruption-free system makes it possible for

[11] *United Nations Convention against corruption* is available at www.unodc.org/
[12] *Caux Round Table (CRT) Principles of Business* are available at www.cauxroundtable.org/
[13] *Extractive Industries Transparency Initiative* is available at http://eititransparency.org
[14] European Commission (2013), *Revised Directive on transparency requirements for listed companies*, available at http://ec.europa.eu/
[15] European Commission, *New disclosure requirements for the extractive industry and loggers of primary forests in the Accounting (and Transparency) Directives (Country by Country Reporting) – frequently asked questions* (12 June 2013), Memo available at http://ec.europa.eu/

all participants to compete on a level playing field. It has actively supported the OECD and the UN conventions. Their rules have been written in 2005[16].

Transparency International (TI) Business Principles for Countering Bribery

These principles offer guidance and practical tools to implement anti-bribery programs provided for by the OECD and UN conventions and to benchmark the effectiveness of existing anti-bribery programs. There were introduced in 2002 and then they have been tailored in 2008 to the Small and medium enterprises (SMEs).

Enterprises shall commit to implementing a programme to counter bribery. It shall address the most prevalent risks of bribery relevant to the enterprise: conflicts of interest, bribe, political contributions, charitable contributions and sponsorship, facilitation payments, gifts, hospitality and expenses. Concerning the monitoring the enterprise should establish feedback mechanisms and other internal processes supporting the continuous improvement of the programme. Senior management should monitor the programme and periodically review its suitability, adequacy and effectiveness[17].

Transparent Agents and Contracting Entities (TRACE)

TRACE is a business solution to the costly and uneven process of anti-bribery compliance with companies. The TRACE Matrix measures business bribery risk in all countries. It assesses countries across four domains – Business Interactions with Government, Anti-bribery Laws and Enforcement, Government and Civil Service Transparency, and the Capacity for Civil Society Oversight, including the role of the media – as well as nine sub-domains.

The first domain, business interactions with government, includes the sub-domains of "contact with government," "expectation of paying bribes," and "regulatory burden." These indicators capture aspects of the "touches with government" that regulatory and business interviews identified as very important indicators for business bribery. The second domain identifies both the anti-corruption laws enacted by a country and information about enforcement of those laws. The third domain, which addresses government and civil service transparency, includes indicators concerning whether government budgets are publicly available and whether there are regulations addressing conflicts of interest for civil servants. The fourth domain captures information concerning the extent of state-owned media and access to media, both of which serve as indicators of a robust civil society that can provide government oversight.

The TRACE Matrix calculates a composite score for each country around the globe, with a range from 1 to 100: the higher the score, the greater the business bribery risk. The 10 countries with the highest business bribery risk score according to the TRACE Matrix are: Nigeria, Yemen, Angola, Uzbekistan, Cambodia, Guinea, Burundi, Chad, South Sudan and Vietnam. The 10 countries with the lowest business bribery risk scores are: Ireland, Canada, New Zealand, Hong Kong, Sweden, Finland, Singapore, Japan, Germany and the United States. The TRACE Matrix is public[18]. The report discussing the development of the TRACE Matrix, "Business Bribery Risk Assessment," published by RAND Corporation, is also available.

UN Global Compact Principle 10

The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. With over 12 000 corporate participants and other stakeholders from over 145 countries, it is the largest voluntary corporate responsibility initiative in the world.

[16] ICCB, web page about Commission is available at www.iccwbo.org/
[17] Transparency International, Business Principle FAQ is available at www.Transparency.org/
[18] TRACE Matrix is available at www.traceinternational.org/

The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the above mentioned areas. It was introduced in June 2004. The benefits of engagement is sharing best and emerging practices to advance practical solutions and strategies to common challenges[19].

World Bank Institute fighting corruption Initiative

The participants to this initiative represented a range of stakeholders - companies, business associations, civil society groups, international organisations and government - and came together to learn about collective approaches to fighting corruption. 25 companies have joined this initiative[20].

World Bank Stolen Asset Recovery (StAR) Initiative

Launched in 2007, StAR provides technical assistance to countries that are operationally engaged in asset recovery cases. Working with all the relevant institutions – including financial centres and anti-corruption agencies – StAR adds value by offering technical advice and best practices in the development of case strategy, as well as in the identification and mobilisation of the most appropriate asset-tracing tools – such as mutual legal assistance, seizing and confiscating assets, and assisting in the acceleration of international cooperation. StAR is a partnership between the World Bank Group and the United Nations Office on Drugs and Crime (UNODC) that supports international efforts to end safe havens for corrupt funds. StAR works with developing countries and financial centres to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets[21].

World Economic Forum - Partnering Against Corruption Initiative (PACI)

Created by Chiefs Executive Officers (CEOs) at the World Economic Forum Annual Meeting 2004 in Davos, the Partnering against Corruption Initiative (PACI) was established to level the playing field among industry players and help consolidate industry efforts on the issue. Today, PACI brings together over 140 companies from multiple industries and global locations, including industry leaders from multiple sectors, regardless of their size or affiliation with the World Economic Forum, to fight bribery and corruption.

Representing "*the business voice against corruption*", PACI ensures that companies committed to the fight against corruption are recognised for their engagement. To become engaged in PACI, CEOs sign the PACI support statement, and thereby commit to a zero-tolerance policy towards bribery and corruption and agree to put in place an internal anti-corruption program that reflects the PACI Principles[22].

Standards contained in these initiatives may be significant benchmark data regarding prevention and fight against corruption.

3.1.3 Examples of National Laws[23]

Canadian Corruption of Foreign Public Official Act (CFPOA)

This Act is the Canadian legislation implementing its obligation under the UN convention against corruption. It applies to persons and companies and makes it a criminal offence for persons or companies to bribe foreign public officials or retain a business advantage. The CFPOA applies to bribery of foreign public officials when the offence is committed in whole or in part within Canada.

[19] The Global Compact Anti-Corruption principle is available at www.unglobalcompact.org/
[20] World Bank Institute fighting corruption Initiative portal is available at http://info.worldbank.org/
[21] World Bank Stolen Asset Recovery (StAR) Initiative is available at http://star.worldbank.org/star/
[22] World Economic Forum - Partnering Against Corruption Initiative (PACI) portal is available at www.weforum.org/
[23] GAN, Business Anti-corruption portal is available at www.business-anti-corruption.com/

Its provisions also apply to offences committed outside Canada by a Canadian citizen, a permanent resident or an entity organised under Canadian law. The term" *business*" has been interpreted to apply to the conduct of all business not just "*profit*" business. Canada has announced its intention to eliminate the facilitation payments but no date for this amendment to the Law has been set up. The maximum penalties for offences include 14 years imprisonment and millions in fines.

German Anti–corruption Legislation

German Anti-Corruption legal provisions are contained in the Criminal Code and the Administrative Offence Act. The Criminal Code's provisions apply to persons while companies face civil responsibility under the Administrative Offence Act. Corruption offences committed abroad can be enforced in Germany.

The Criminal Code makes it a criminal offence for a person to offer, pay or accept a bribe in domestic and foreign transactions and it does not contain exception for facilitation payments. Executive managers can be held responsible for offences committed by companies' representatives where they actively support or fail to stop the offence. Persons convicted of bribery face up to 10 years imprisonment, a criminal fine and confiscation of revenue obtained as a result of the offence.

According to the Administrative Offences Act, companies are civilly responsible for corruption offences committed on behalf of the company. The owners and management can be held responsible for intentionally or negligently omitting supervisory measures for preventing criminal offences. The maximum fine is EUR 10 million for each intentional criminal offence and EUR 5 million for each negligent criminal offence.

UK Bribery Act 2010

The UK Bribery Act establishes companies' liability for corrupt acts committed by persons acting on behalf of the company. The Act prohibits bribery of public officials and business to business bribery. With global jurisdiction companies may be held liable in the UK for acts of corruption committed by employees, agents or subsidiaries anywhere in the world. Unlike the US Foreign Corrupt Practices Act the UK Bribery act does not make any difference between small and large bribery payments. It means that under British Rules facilitation payments are prohibited. The Bribery Act provides a full legal defence where a company has implemented adequate procedures prior to an offence. This can be established through adherence to the six principles stated in the Act.

The six principles are:

1. **Proportionate procedures** – the procedures adopted should be proportionate to the risk faced;
2. **Top-level commitment** – the company should adopt a culture of zero tolerance through a commitment by senior management;
3. **Risk assessment** – the company should identify its bribery risks and prioritise its actions in high-risk areas;
4. **Due diligence** – the company should take appropriate care when entering into relationships or markets with a risk of bribery;
5. **Communication** – the company's policy should be clearly communicated to all relevant parties, supported by appropriate training;
6. **Monitoring and review** – the procedures put in place should be reviewed and updated as the company's risks change over time.

US Foreign Corrupt Practices Act (FCPA)

The US Foreign Corrupt Practices Act (FCPA) of 1977 aims at combating bribery and introduces corporate liability, responsibility of third parties and extraterritoriality for corruption offences. The anti-bribery provisions of the FCPA also apply to foreign firms and persons who cause, directly or through agents, an act in furtherance of such a corrupt payment to take place within the territory of the United States. Prohibition of bribery payments is limited to foreign officials and the FCPA includes a

limitation for facilitation payments. A business does not have to be established in the US to be prosecuted. A listing on the New York Stock exchange or making transactions through an American bank can be enough for the law enforcement authorities to prosecute a business. Authorities can prosecute a foreign business in the US if a subsidiary pays a bribe in Asia.

The US Department of Justice (DOJ) and the US Securities and Exchange Commission (SEC) will consider the extent to which a company has self-reported, cooperated and taken appropriate measures when considering an enforcement action. The DOJ and the SEC will evaluate the adequacy of the company's compliance program. The DOJ and SEC will not formulate requirements regarding compliance programs. When evaluating compliance programs, inquiries will be related to three questions: Is the company's compliance program well designed? It is applied in good faith? Does it work?

Each company may have different compliance needs depending on their size or risk exposure and therefore there is not a model of compliance program which may be applied to every business. The Resource Guide of the FCPA recommends the following procedures and policies:

Tone at the top: a commitment from senior management and a clearly articulated policy against corruption. Code of conduct is the foundation of an effective compliance program. Policies and procedures detailing proper internal controls, auditing practices, documentation policies as well as disciplinary measures should be in place.

Oversight, autonomy and resources, individuals in charge of oversight should be autonomous from management and have sufficient resources to ensure the program is implemented correctly.

Risk assessment: companies should analyse and address the particular risk they face.

Training: companies should take the appropriate measures to ensure that the policies and procedures have been communicated throughout the organisation.

Incentives and disciplinary measures: clear disciplinary measures should be in place and the adherence to compliance policies and procedures should be incentivised throughout the company.

Third-party due diligence and payments: third parties should be assessed regularly and informed of the company's compliance program and code of conduct.

Reporting: a company's employees should be able to report suspected or actual violations without fear of retaliation through a whistleblowing mechanism based on confidentiality. The company should then update their compliance program and internal controls after an internal investigation.

Testing and review: as a company's business and environment in which it operates changes over time, a good compliance program should be reviewed and constantly evolve over time.

Many of US enforcement activities have involved transactions processed by banks on behalf of their counterparties.

3.1.4 Codes of Ethics to build an ethical business conduct

Business Integrity guides may be useful to determine the behaviour of employees of the company in certain situations and to serve as a basis of discussion of ethical issues which may arise. If they have a pragmatic approach of the problems, they may recommend standards which help to make the right decisions in line with the principles laid down in the Code. These guides may be designed by a dedicated Ethics Committee and the Legal Department of the company. They should be clear, concise, accessible and simple.

Different terms may be used for these guidelines: Integrity, guides, Business standards, Good practices, Codes of conduct and Codes of ethics. Whatever is their name, they outline the values and the beliefs of the company. They codify the behaviour which is expected from the employees when conducting with internal and external stakeholders. On one hand it is a good way for motivating employees to pay attention to the danger of corruption with long term goals and the will to communicate these values outside. On the other hand the danger is that they absolve them to take initiatives and lead to apathy. The **Global Corporate Governance Forum** proposes six phases for the development and the implementation of a Code of ethics:

- The first step will be the definition of **the purpose of the code**: What objectives will the code serve and towards what end state will it be employed? To answer this question usually companies conduct an ethical risk assessment as a means to decide how to get from the existing state to the desired ethical organisation.
- The second phase deals with **the form of the code**: will the code be more directional or aspirational in form or will it be a hybrid of both? If it is aspirational, the staff has discretion to apply it. If on the contrary it is directional it is easier to enforce it. Codes may be based more on rules than on values. A rules based code is a prescriptive one with not a bright margin of interpretation. Values based codes seek to spread values. For instance codes of conduct of **Glaxo Company or Nestle Company** are values codes of conduct while codes of conduct of **Michelin**, **Tesco, Thales or Total** which we will refer to in this handbook are more operational. That is the reason why they have been selected.
- The third round is about **the formulation process:** it refers to the way of the making process of the code. Will it be a consultation or a consensus building decision?
- The next step relates on **the content**. It includes the values, standards, prevention mechanisms and sanctions to guide the company.
- **The tone** with which this tool is written is important.
- The **implementation** is the last dimension of this process. If the employees note a big discrepancy between the statement of principles and their enforcement, it will not encourage ethical behaviour.

Besides general principles, simulations and cases with dilemmas may be helpful for the employees and other stakeholders such as customers, buyers and intermediaries. Examples of codes of conduct related to various risks of bribery are presented in appendix 1.

3.2 Introduce an effective Legal Framework on Corporate Governance

Corporate Governance is defined as the way businesses are directed and controlled. Principles and practices of governance vary between countries and organisations. But there are common recommendations dealing with integrity which may provide a benchmark for good practices.

OECD principles of Corporate Governance published first in 1999 and reviewed in 2004 and 2014 provide for guidance which includes references to ethical elements core to corporate governance. These principles cover the following areas: 1/ ensuring the basis for an effective corporate governance framework; 2/ the rights, equal treatment of and role of shareholders; 3/ disclosure and transparency; 4/ the responsibilities of the board.

The corporate governance framework in the European Union applies to listed companies, i.e. companies that issue shares admitted to trading on the regulated market. This framework includes legislation, soft law, recommendations and Codes of conduct.

The EU raises the question of the extension of these provisions to unlisted companies. Scope of unlisted companies encompasses starts up, single owner-manager companies, family businesses, private equity-owned companies, joint ventures and subsidiary companies. Many state–owned companies are part of these unlisted companies.

If the principles of good governance of listed companies may not be simply transposed to unlisted companies which face different problems and challenges insofar as these ones are most of the time owned by single individuals, coalitions of company insiders who play a significant role in the

management, there are substantial similarities in the problems and solutions devised for both types of companies[24]. With regard to the choice of form of organisation of management, unlisted companies are concerned with Corporate Governance too[25]. Points which may be of interest to unlisted companies are: responsibility with the role of the Board of directors, accountability with the "*comply or explain*" approach and the matters of the rights of shareholders[26]. One of the main characteristic of unlisted companies is that shareholders are restricted in terms of their ability to sell their shares. An effective Corporate Governance framework must respect their interests. Primary source of information for investors is the periodic publication of the company's annual accounts and reports. Building corporate reputation in line with expectations from society is important. Even if the public opinion does not make any difference between listed and unlisted enterprises, it is true that unlisted companies are more suspected by external observers than listed companies because they have a lower level of transparency. So there is a strong demand from experts for improved accountability and transparency which explains recent publication of codes of practice for these companies in Belgium, Finland and Spain[27]. Key concepts are very close to the ones which apply to listed companies: delegation of authority; checks and balances; professional decision-making; accountability; transparency; conflicts of interest and aligning of incentives.

Corporate governance issues cover three main areas: responsibility, accountability and rights of shareholders. If they mainly address listed companies some like rights of shareholders matter to unlisted companies.

3.2.1 Responsibility

Composition of the Board

Board structure differs in countries. The UK favours a unitary Board system with executive and independent or non-executive directors at the same Board. Germany uses a two-tier Board system with both a supervisory and a management Board. France and Luxemburg operate both models. Principles of good Governance are relevant to all and can be implemented irrespective of the Board structure. Regardless of the board structure Board composition plays a key role too. The European Commission views that diversity of competences and opinions among the Board's members is very important. It facilitates understanding of the business organisation and affairs. In contrast insufficient diversity leads to less debate and potentially less effective oversight of the management Board or executive directors. The directive on disclosure of non – financial and diversity information by large companies with more than 500 employees, adopted on 15 April 2014, improved Corporate Governance[28] in respect to this issue of insufficient board diversity. This directive requires the disclosure of diversity policy in the administrative management and supervisory bodies.

Functions of the Board

When there is a dual board structure the mandate of the supervisory Board is to oversee the activities of the management board. In unitary board structures the Board mixes a supervisory function and managerial functions due to the presence of the executive directors in the Board. In the EU, a recommendation was adopted in February 2005 to clarify the role of Board directors and committees. It is necessary to define clearly the roles of each party, the Board, the executive management and the employees, involved in the risk management process. This clarification has to be highlighted regarding specially the risks of bribery. Most Member States require or recommend the separation of the highest executive managerial and supervisory functions.

[24] OECD (2006), *Corporate Governance of Non-Listed Companies in Emerging markets*
[25] Institute of Directors (2010), *Corporate Governance Guidance and Principles for Unlisted companies in the UK*
[26] European Commission (5.04.2011), *Green paper, The EU corporate governance framework*, COM(2011) 164 final
[27] 9th European Conference on Corporate Governance (28 and 29 June 2010), *Good Governance in unlisted companies*
[28] European Commission, EC Web portal on Non-Financial Reporting

The Commission's 2005 Recommendation on the role of the non-executive or supervisory directors of listed companies stated that the board should evaluate its performance each year. Companies could have recourse to an external evaluator for that purpose.

Director's duties

If we refer to the responsibilities of the board, the principles for its conduct go beyond compliance with the law. This ethical conduct should take account of stakeholders' interests because board action is directly connected to interests of employees, shareholders, customers and other stakeholders. A good example of implementation of this principle is provided for on national level by the 2006 UK Companies Act. Directors are invited to avoid conflicts of interest, not to accept benefits from third parties and to declare any interest in a proposed transaction or arrangement.

In 2012 the Belgian Director's Association (GUBERNA) released a Director's Toolkit which is a practical guide for individual directors. It defines Integrity requirements:

- A director acts ethically and with integrity.
- A director participates in the development and promotion of a culture of honesty. Honesty consists of irreproachable behaviour, with regard to both law and the company's internal rules as well the generally accepted definition of honesty (uprightness, loyalty etc.).
- A director does not participate in any way in unlawful transactions and does not use unlawful means to perform his or her duties.
- A director draws a clear line between the performance of his or her official duties for the company and the promotion of other professional or business activities or executive responsibilities. A director does not use his or her office or the information obtained further there for purposes other than to manage and represent the company.
- A director does not participate in the creation of misleading situations and does not spread or state incorrect information.
- A director is incorruptible. A director takes care to maintain his or her free will and to ensure that he or she is free of all pressure when taking decisions.

3.2.2 Accountability

The OECD handbook on Principles of Corporate Governance notes that weak disclosure and non-transparent practices can contribute to unethical behaviour and to a loss of market integrity at great cost for the company, its shareholders and to the economy as a whole. The economic crisis of 2008 has highlighted the need of accountability and showed that Corporate Governance was not an end in itself but was a means of adding value.

Corporate governance reports codes in the EU are applied on a "*comply or explain*" basis.

Comply or explain is a regulatory approach used in the United Kingdom, Germany, the Netherlands and other countries in the field of corporate governance and financial supervision. Rather than setting out binding laws, government regulators set out a code, which listed companies may either comply with, or if they do not comply, explain publicly why they do not. The UK Corporate Governance Code, the German Corporate Governance Code and the Dutch Corporate Governance Code use this approach in setting minimum standards for companies in their audit committees, remuneration committees and recommendations for how good companies should divide authority on their boards

The "*comply or explain"* approach recognises that good governance cannot be constrained by ever-increasing statutory regulations which tend towards a "*one size fits all*" solution. Sometimes, an alternative to following a provision of the code may be justified in particular circumstances. A condition of doing so is that the reasons for it should be explained to shareholders who may wish to discuss the position with the company and whose voting intentions may be influenced as a result.

The UK Financial Reporting Council claims that the ''*comply or explain''* approach is strongly supported by both companies and shareholders. Belgium produced guidance in the content of explanations the board must approve. The EU Statutory Audit Directive 2006 requires all member

states to adopt the "*comply or explain"* approach for its listed companies. It introduced new requirements. First, companies are required to include a Corporate Governance statement in a specific section of their annual report. Alternatively member states may permit the Corporate Governance statement to be set out in a separate document together with the annual report. Second the directive imposes the requirement for statutory auditors to check that the Corporate Governance statement has been produced.

The disclosure of comply–explain information may take place on a general basis or on a provision-per-provision basis. But according to a study achieved in 2009 on a sample of 270 listed companies from 18 Member states of the EU, companies disclosing general information tend to disclose explanations with higher informative value than companies disclosing information a provision-per-provision basis. This is especially the case for the group of mid-cap companies[29]. But we have to consider that in practice the majority of companies provide limited explanations when they have departed from the recommendation.

The UK Governance code was amended in 2012 to provide that the Board should present a fair, balanced and understandable assessment of the company's position and prospects. It should establish arrangements that will enable it to ensure that the information fulfils these requirements.

3.2.3 Shareholders

Cases of bribery which are brought by regulators or by Justice Prosecutors result either in criminal convictions against individuals or in fines imposed on listed companies. So consequently these fines have a serious impact on shareholders. It may lead to declining share prices and to a loss of profitability. In that respect companies are invited to provide better information on their corporate governance to their investors and shareholders. For that reason the OECD advocated for the protection and the facilitation of the exercise of shareholders' rights. They should have the opportunity to ask questions to the Board including questions relating to the external audit, to place items on the agenda of general meetings and to propose resolutions to reasonable limitations.

The Commission of the EU pleaded in a communication on European company law for a stronger engaging of shareholders in Corporate Governance[30]. They should be offered more possibilities to oversee remuneration policies and related party transactions. In their response to the 2010 Green Paper the European Commission investors thought public disclosure would optimise investors' decisions and encourage shareholder engagement. One of the options currently take in account by the Commission is to create a framework for transparency in disclosure of general information about voting policies.

The above mentioned directive on disclosure of non–financial and diversity information by large companies with more than 500 employees requires disclosure of a statement in their annual report including material information relating to anti-corruption and bribery aspects. This statement will include a description of the policy of the company, results and risk-related aspects. The scope includes approximately 6000 large companies and groups across the EU. In their separate report companies may use international, European or national guidelines which they consider the most appropriate. In unlisted companies too necessary transparency of relevant elements of information will ensure that shareholders have a true image of the situation of the company and Board will have the responsibility to be accountable to shareholders and to facilitate the exercise of their rights.

[29] Risk Metrics Group (2009), *Study on monitoring and enforcement practices in corporate governance in the member states*, p.15. available at http://ec.europa.eu/

[30] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Action Plan: *European company law and Corporate Governance*, COM/ 2012/ 0740 final.

3.3 Ethics compliance programme

The future developments outline different risks to which companies may be exposed regarding different forms of corruption and compliance programmes which may help them to prevent these risks. They may vary from company to another but they address common issues. These developments try to benchmark the existing anti-corruption mechanisms. These programmes must be consistent with the legal framework and the above mentioned standards. They must take in account the characteristics of the company. It must be an interactive approach with all stakeholders because it is clear now that fight against corruption concerns not only the company but also its employees, its branches, its customers, intermediaries etc. and the fight against corruption has expanded from physical persons to legal persons. So many relevant stakeholders are involved in this process and the legal scope of prevention of bribery and fight against corruption has been widened too. The extra territorial scope of anti-corruption conventions and acts means also that legal entities can be prosecuted for acts of bribery committed in the world. It is the reason why the Compliance programme must be clear, accessible and has to promote an efficient environment which favours ethics.

Prevention and fight of corruption supposes an assessment of the potential risks the companies may meet.

3.3.1 Bribery

Article 12 (1) of the United Nations Convention against corruption calls on States parties to "take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures".

There are various forms of corruption: bribery of national public officials, of foreign public officials and officials of international public organisations; bribery in the private sector; embezzlement of property in private sector; trading in influence; abuse of functions; illicit enrichment; laundering of proceeds of crime; concealment of proceeds of crime and obstruction of justice.

APEC in its Anti-Corruption Code of Conduct for Business describes bribery as: offering, promising or giving, as well as demanding or accepting any pecuniary or other advantage, whether directly or indirectly, in order to obtain, retain or direct business to a particular enterprise or to secure any other improper advantage in the conduct of business.

Instances of bribery which are the subject of these principles may involve transactions by, or in relation to subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or employees with (including but not limited to) a public official, family members and close associates of a public official, a political candidate, party or party official, any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), or a third party.

3.3.2 Assess risks of bribery

If the risk assessment of corruption depends on the size of the company, its location, its activity, some factors are common to all companies. Small and Medium-sized companies may be more vulnerable to corruption due to extortion requests from business partners of public officials[31]. They have fewer financial and human means to assess the risks as well.

Risks exposure to corruption has to be identified and rated and then a risk assessment policy may be carried out.

[31] UNODC(2013), *An Anti-Corruption Ethics and Compliance Programme for Business, A practical guide*, p.13

3.3.3 Identify risks of bribery

Companies may collect information on the ways corruption risks may occur in their activities. Reports from the internal audit service on non-compliance incidents or from external sources provided for by listed corruption cases, information received from employees, business partners or customers and targeted surveys. For instance situations that involve relationship with competitors, product or service markets in which a company holds a strong position in an area, highly concentrated markets with high barriers for entry are considered as risk situations. Risk of bribery regarding tax authorities may be high and kickbacks for sale orders may be low and conversely.

These risks may be rated to assess their potential impact on bribery. A rating scheme may classify these risks on a scale from low to high over medium from a qualitative point of view. Combination of probability and potential risk assessments for each corruption scheme may be a useful tool. According to each situation the company can choose either specific or general supervision systems or preventative or detective systems.

To avoid being an academic exercise this risks assessment procedure needs a high level management commitment, what is usually called the "*tone from the top*". It means to conduct a policy in that field and to develop an anti-corruption programme.

In its above mentioned compliance programme TRACE developed subdomains for each domain. For instance concerning Business interactions with Government, all other things equal, firms face higher risk when they have more interactions with the government and public officials. Risks are generally around licenses, contracts and taxes. An indicator of business bribery risk may be in that field the number of meetings required with tax officials. Corruption risk may be identified when tax procedures are not enforced uniformly but with discrimination by a discretionary authority[32] too. Another sub-domain connected with interactions with Government is the regulatory burden. If we refer to the website doingbusiness.org, indicators of risk may be the number of procedures which are required: to build a warehouse, to enforce a contract, to register a property or to register a business for instance.

If legal requirements are a major source of information to identify risks of corruption, consultations with employees and contributions of external consultants may be helpful. They can use the "*Guide for Anticorruption Risk Assessment*" developed by the abovementioned United Nations Global Compact.

3.3.4 Examples of risks

3.3.4.1 Facilitation payments

Facilitation payments are additional payments to guarantee the execution of routine administrative services that the payer is legally or otherwise entitled to receive such as under the terms of contract by virtue of professional terms. Exceptions are tolerated for individuals facing possible harm. An example would be refusing a vaccination that is not required in a country with poor sanitary conditions. In the Netherlands, the Public Prosecution Service does not find it necessary to investigate and prosecute facilitation payments in addition to investigating and prosecuting bribery. It is true that in some cases companies which resist to facilitation payments may suffer from disadvantages in the competition if their competitors use this practice. But this issue must be addressed in the Anti-corruption and Compliance Programme of the companies to assist their employees and partners.

Rules established by Legal Standards

Laws of European countries - France, the United Kingdom for instance - whose legislation applies outside their territory prohibit any and all facilitation payments without exception.

[32] Global Integrity portal is available at www.globalintegrity.org/

Following is a description and rules of facilitation payments by ICC:

- 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.

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

What is the difference between bribes and facilitation payments?

A company is ready to open a branch outside the territory where the company is seated. A last permit has not been issued because information requested by local authorities was not provided on time. The mayor states that after investigations this additional information is no more requested if the company pays him € 15,000 in cash. Given the amount of this payment this is bribery and not a facilitation payment.

3.3.4.2 Charitable contributions

As for other forms of expenditures various factors interfere with that practice: the amount of the contribution, its nature and the context. For instance the timing of the contribution may be taken in consideration. If the contribution is made during the procedure of a tender, it raises obviously suspicion of undue advantage.

The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for bribery.

Both the ICC and the PACI Principles for countering Bribery call for the establishment of controls and procedures to ensure that improper 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.

3.3.4.3 Political contributions

Political donations of companies are a sensitive issue. Article 2 of the Council of Europe Recommendation (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns defines donations in fairly broad terms as "*any deliberate act to bestow advantage, economic or otherwise, on a political party*". But countries which prohibit donations from companies to political parties are rare in Europe: Belgium, Bulgaria, Estonia, France, Lithuania, Poland and Portugal. When they are admitted and their amount and disclosure are regulated[33], political donations should not influence the decision-making process. It is the reason why donations in kind or anonymous donations should be prohibited. Sponsorship of a political event may be found in this framework.

According to **APEC Anti-corruption Code of Conduct for Business** - The enterprise, its employees or intermediaries, should not make direct or indirect contributions to political parties, party officials, candidates, organisations or individuals engaged in politics, as a subterfuge for bribery. All political

[33] GRECO, Compliance Reports on Russia, *Greco RC-III (2014)1E* and *Greco RC-III (2014)2E* available at www.coe.int/greco

contributions should be transparent and made only in accordance with applicable law. The Program should include controls and procedures to ensure that improper political contributions are not made.

Similar to APEC the ICC in its rules on combating corruption deals with political contributions and calls on companies to only make contributions to political parties, party officials and candidates in accordance with applicable law and public disclosure requirements (Art 4, Part II). The amount and timing of political contributions should be reviewed to ensure that they are not used as a subterfuge for corruption.

3.3.4.4 Gifts and hospitality

These contributions may be given in kind or paid in cash. They may be given to expect an advantage such an authorisation, a license or a tender for instance.

The enterprise should develop a policy and procedures to ensure that all gifts, hospitality and expenses are *bona fide*. The enterprise should prohibit the offer, giving or receipt of gifts, hospitality or expenses whenever they could influence or reasonably be perceived to influence the outcome of business transactions.

The ICC in Article 5 (**Part II: Corporate Policies to support compliance with Anti-corruption Rules)** on Gifts and hospitality requires Enterprises to 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 judgment 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.

The PACI principles for countering bribery provide a set of recommendations to enterprises on how to handle gifts and hospitalities as provided below:

- The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever such arrangements could improperly affect, or might perceived to improperly affect the outcome of procurement or other business transaction and are not reasonable and bona fide expenditures.
- 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.

How to consider delegation trips?

Delegation trips are an important marketing instrument. They allow companies to present on site their production and services. Customers expect reimbursement of travel costs, of stay and entertainment expenses. In some businesses activities the difference between leisure and business is not so easy to make. For this reason a dedicated policy on delegation trips should precisely define that these trips need to have a legitimate business purpose and the importance of entertainment must be residual, in addition the coverage of expenses for the delegation needs an approval of the executive management of the company.

3.3.4.5 Conflicts of interests

They have to be avoided to prevent individuals seeking personal gain from their position in a company. The Board members may be liable to conflicts of interest. A member of the Board may represent a major shareholder in the capital of the company. Directors may have a personal interest or connection in a business, in a transaction or procurement. They have to withdraw from the discussion inside the board. One way to prevent such situations to rise to conflicts of interest is to oblige members of the board to make preliminary declarations of activities.

This matter is mostly regulated by internal law, by some soft law standards and by Codes of conduct.

Some of the EU Member States have addressed this issue through legislation. For example the British law obliges directors when there are grounds to question their impartiality to declare the conflict of interest they face when a transaction is proposed to the Board. The UK Corporate Governance code in its version released in September 2014 provides that the Board should identify in the annual report each non-executive director it considers to be independent. Regarding appointments to the Board there should be a formal rigorous and transparent procedure for the appointment of new directors to the Board. In Belgium directors have to notify in advance conflicts concerning a proposed transaction to the Board[34] In Sweden directors who participate in the decision making process in which they have a vested interest have to recuse themselves.

According to article 7 of the ICC rules on combating corruption: 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 of thereof, of their directors, officers, employees and agents and should not take advantage of conflicts of interests 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 before a reasonable period has elapsed after their leaving their office. When applicable, restrictions imposed by national legislation shall be observed.

3.3.4.6 Suppliers, contractors, intermediaries, agents

These stakeholders are generally named third-parties[35]. Suppliers are individuals or organisations that supply parts or services to another organisation. Contractors are non-controlled individuals or organisations that provide goods or services to an organisation under contract. A subcontractor is an individual or organisation that is hired by a contractor to perform a specific task as part of the overall project. Agents are individuals or organisations authorised to act for or on behalf of or to otherwise represent another organisation in furtherance of its business interests. There are sales agents to win a contract for instance and process agents such as visa permit agents[36].

A number of organisations have introduced soft law measures/standards on third parties. The World Economic Forum's (WEF) Partnering Against Corruption Initiative (PACI) proposes a third party risk assessment which would consist of:

a) Assessing the level of corruption risk with individual third parties

i. Conduct Spot Checks to deter Abuse in the Process

Use your compliance team to conduct spot checks of the risk assessment process. This will ensure that the risk assessment process is well understood and applied by business units of the organisation.

ii. Use Technology to Make the Process More efficient

Several compliance software programmes providing for direct data input, work flow management and red flag alerts are now available in the market.

b) Due diligence - *Conducting risk based anti - corruption due diligence*

The three key elements to conduct thorough third party due diligence are:

[34] Belgium Corporate Law is available in French at www.Droitbelge.be/
[35] World Economic Forum (2013), *Good Practice Guidelines on Conducting Third Party Due diligence*
[36] World Economic Forum (2013), *Good Practice Guidelines on Conducting Third Party Due diligence*

- Data collection.
- Verification and validation of data.
- Evaluation of results including identification of red flags.

c) Approval Process and Post-Approval Risk Mitigation

i. Contract protections

- Organisations may request to include the following provisions representations and warranties in their contractual agreements with third parties.
- A written agreement by the third party to comply with the organisations' anti-corruption policies and programmes.
- A written confirmation that the third party has read the organisation's Supplier Code of conduct and agrees to satisfy its requirements.
- A right to audit provision providing access to the third party's relevant records.
- A provision obligating the third party to maintain accurate books and records and an effective system of internal controls.
- A contractual right of termination in case of breach of anti-corruption laws.
- Provisions limiting the third party's ability to act on behalf of the company and / or to have interactions with government officials.
- A contractual obligation by the third party to report on services rendered.

ii. Monitoring measures

- A periodic renewal or update of the risk assessment and due diligence process.
- Recurring Internet and database searches to identify new red flags.
- Implementing a post approval assurance programme including training activities and periodic and or risk based audits of the third party.
- A request for the third party to submit an annual certification of compliance with applicable anti-corruption laws.
- A periodic review of the third party's payment requests and payments.
- Tracking unusual or excessive expenses by the third party.
- Effective Implementation of the Third Party Due Diligence Process.
- Monitoring of due diligence process.
- Consultation channels for questions and support.
- Disciplinary sanctions for non-compliance.

3.3.4.7 Customers

Benefits in kind, inflated contract prices with kickbacks[37], cash donations may be given by a customer as sponsorship may be spent by the customer. All these practices are made in return of an undue advantage. They infringe obligation of transparency and expose the company to a loss of confidence and litigation.

3.3.4.8 Business partners

These Business partners may be subsidiaries, affiliates or joint ventures. Companies have a big influence over subsidiaries in terms of decision making power, management and capital. So subsidiaries have to comply with the same anti-corruption standards as the mother company. Affiliates are business partners of which a company owns a minor part of capital. For that reason the influence of the company on affiliates regarding anti-corruption programme is weaker than the one on subsidiaries. Regarding joint ventures, companies which respect standards on anti-corruption should integrate their values and principles in this common project with another company. The involvement of all participants in the framework of the Integrity Pact for Suburban Train Project in Mexico in 2005

[37] A kickback is the provision of a benefit or financial reward in return for favourable treatment to another party. This can involve anything of value and is used to ensure a decision in favour of the party providing the kickback. It is important that a company ensures that its main operations do not provide kickbacks and that third parties acting on its behalf do not engage in the practice (Anti-Bribery and Corruption, Considerations for companies and investors, Standard Life Investments, November 2014).

may be quoted as a model. All partners signed declarations of integrity stating under oath they would abstain from any conduct that could affect evaluation of bids submitted. In Europe the Bavarian construction industry has established an association with far-reaching enforcement mechanisms to foster integrity in that sector. This policy had an outcome. German Rail accepted certification as proof of anti-corruption measures for qualification of bidders[38].

Given their size we note that it is difficult for SME's to share in practice same values with bigger companies.

According to the nature of the risk exposure different approaches for monitoring the business partner whatever it is are possible. Companies may require, in an informal framework, the partner to provide information on its own anti-corruption programme. Another approach consists in investigations carried out by the company to collect information on its partner. Third option would to entrust this task to an independent assessment body. When the partner does not have any anti- corruption compliance programme or is not concerned about the risks related to bribery and corruption, there are different ways for penalizing non-adherence to anti-corruption standards. The first one would to increase the costs of the contract given the risks of corruption which could make the contract less attractive or to terminate the contract before its time limit. Contractual penalties may be provided to the contract if anti-corruption clauses have not been implemented by one of the partner.

3.3.4.9 Public procurement

Among various public activities public procurement is certainly one that is the most vulnerable to corruption. The impact of bribery on the cost of the services may add between 5 and 20% to the final costs of the tenders. It hinders economic competition and increases public expenditures to the detriment of the taxpayer.

Identification of risks in public procurement

Tendering is a transparent technique requiring, if it is totally opened, unrestricted solicitation by suppliers or contractors and a comprehensive description of the items to be procured, disclosure of the criteria to be used for comparison and selection based on quality and price.
In the tendering phase the common risks which may lead to bias and corruption are the followings:

- Technical specifications that are tailored for one company, which are not based on experience or performance and are too vague;
- Selection on criteria which are unclear;
- Unequal treatment of potential suppliers by responding to questions for clarification;
- Contract splitting under the legal threshold to split projects into smaller components and circumvent thresholds for tenders[39];
- No verification of the accuracy of the information given by the potential supplier;
- Conduct of negotiations in an unethical manner which discriminates between different suppliers;
- Unjustified advantage given by an act breaching the statutory or regulatory provisions designed to ensure freedom of access and equality for candidates in respect of tenders for public service; and
- Amendments during the management of the contract which increase the cost of the contract and distort the initial competition.

Misconduct in the tendering phase may have the following consequences:

- Inadequacy of the procurement with the need of the public body;
- Misuse of public funds regarding the purposes intended; and
- Possible invalidation of the procurement as void by the judge.

[38] The World Bank (2008), *Fighting corruption through Collective Action. A guide for business* World Bank Institute
[39] Ceiling for tenders of supplies and services varies from a country to another in the EU: € 40,000 in Austria, € 15,000 in France and € 14,000 in Poland for instance.

Key principles on public procurement set up by the OECD[40]

1) **Transparency**
   - ✓ Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers.
   - ✓ Maximise transparency in competitive tendering and take precautionary measures to enhance integrity in particular for exceptions to competitive tendering.
2) **Good management**
   - ✓ Ensure that public funds are used in procurement according to the purposes intended
   - ✓ Ensure that procurement officials meet high professional standards of knowledge, skills and integrity.
3) **Prevention of misconduct, compliance and monitoring**
   - ✓ Put mechanisms in place to prevent risks to integrity in public procurement.
   - ✓ Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.
   - ✓ Provide specific mechanism to monitor public procurement as well as detect misconduct and apply sanctions accordingly.
4) **Accountability and control**
   - ✓ Establish a clear chain of responsibility together with effective control mechanisms.
   - ✓ Handle complaints from potential suppliers in a fair and timely manner.
   - ✓ Empower civil society organisations, media and the wider public to scrutinize public procurement.

3.4 Internal Control

Internal control has pursued two aims. It is a mean to reduce risks of corruption and it is a way to encourage senior management to address potential risks and to promote and implement a culture of integrity. If it is quite impossible to regulate all possible challenges faced by individuals or entities regarding corruption, it is by building a culture of integrity through internal control that companies will better deter corrupt practices. This internal control must be balanced. As it is noted by the Practical guide on Anti-corruption Ethics and Compliance Programme for Business, "*Excessive controls can have a negative effect on the organisational culture by signalling distrust to employees and possible delaying business process while insufficient controls leave company vulnerable to corruption*".

Internal control is split in two elements: organisational measures such as approval limits, separation of responsibilities, restricted access to sensitive information and control. Detection controls may be carried out to supervise the risk of double payment or split payments. To perform this supervision four eyes principle may be applied. The Company should maintain accurate books and records that document all financial transactions. Off–the- books should be prohibited. Transactions, assets and liabilities should be recorded on time and in a chronological order. Books and records must be safeguarded to prevent intentional or unintentional destruction, improper or unauthorised alterations or disclosures. Books and records should not be destroyed prior to the expiry of any time limit imposed by legal regulations. Every transaction should be consistently recorded from origin to completion. Transactions should have a genuine, legitimate purpose. Electronic records should be kept in a form that is non-erasable and non-rewritable, be organised and immediately be produced or reproduced[41].

It is up to the internal audit department to monitor these procedures and to regularly review the accounting and record-keeping practices. More generally the adequacy of the internal procedures and compliance programme should be periodically reviewed.

[40] OECD (2009), *Principles for Integrity in Public Procurement*, available at www.oecd.org
[41] UNODC (2013), *An Anti-Corruption Ethics and Compliance Programme for Business, A practical guide*, op.cit.

If SMEs are too small to have a dedicated oversight unit they may appoint a dedicated person to fulfil this duty.

The World Economic Forum **PACI** has established the following standards for internal controls:

- 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.
- The enterprise should establish feedback mechanisms and other internal processes designed to support the continuous improvement of the Program.
- The enterprise should subject the internal control systems, in particular the accounting and recordkeeping practices, to regular audits to verify compliance with the Programme.

3.5 Communication and reporting

Communication and reporting cover procedures directed at employees and various business partners. They suppose regular training activities tailored to the risks exposure. They must rely on guidelines, meetings, publication of an Integrity report if necessary. Business must implement policies that ensure code of conduct is observed such as training courses and internal communication. Communication can be done via e-mail or posted on intranet in the form of a notification to know if employees have read the message. Otherwise the code is a dead letter[42]. Training and communication reflect the commitment of the company in its anti-corruption compliance programme. Use of case studies may be a pragmatic approach of problems which may be raised and help for a risk assessment policy. In addition to general training programmes topic specific training sessions on intermediaries, gifts and hospitality may be offered to employees to raise awareness of the underlying principles of ethics. Making training, prevention, due diligence and others compliance tools available is a function which can be performed by Business organisations and Professional associations[43] too: the impact of codes of conduct will be limited if they are not supported by a value-driven culture that has the full endorsement of the management. Companies that perform a substantial amount of business through third parties should provide as well training to those parties about the applicable laws and company policies[44].

The ICC introduces the following elements of an efficient Corporate Compliance Programme

- ensuring periodic internal and external communication regarding the Enterprise's anti-corruption policy;
- providing to their directors, officers, employees and Business Partners, as appropriate, guidance and documented training in identifying corruption risks in the daily business dealings of the Enterprise as well as leadership training;
- including the review of business ethics competencies in the appraisal and promotion of management and measuring the achievement of targets not only against financial indicators but also against the way the targets have been met and specifically against the compliance with the Enterprise's anti-corruption policy;

To make Anti-corruption and Compliance Programme and training more attractive and let adhere employees to ethical behaviours, incentives mechanisms may be introduced. A balanced combination of effective and proportionate sanctions and incentives for good or improved performance is a way to strengthen compliance with anti-corruption rules. To fulfil that purpose, companies may have recourse to financial and non-financial rewards. Bonuses, promotions may be used for instance. They must be based on objective criteria and do not take personal value into account.

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[42] *What you can do as an entrepreneur, Honest Business without corruption*, p.12, 2012

[43] OECD (2010) *Good Practice Guidance on Internal Controls, Ethics and Compliance*

[44] Financier Worldwide Magazine, *FORUM: Managing third-party fraud and corruption risks* is available at www.financierworldwide.com/

3.6 Detecting and reporting violations

There are various tools to detect violations of anti-corruption procedures. Internal sources are based on internal audit, internal hotline for guidance. External sources are provided for by complaints from outside parties or from media.
Examples of hotlines are provided in Appendix 1, i.e. Tesco and Tyco.

3.6.1 Whistleblower protection

Whistleblowing is considered to be one of the most effective means to remedy bribery. Risk of corruption is heightened in contexts where the reported of wrongdoing in public or private sectors is not protected. People who report wrongdoings may be liable to harassment, pressures, intimidation and violence. Providing protection of whistleblowers is necessary if reporting of misconduct and corruption is encouraged. First initiatives to promote enforcement of whistleblowing have been taken originally in the public services by the OECD in 1998. The 2009 OECD Recommendation for further Combating Bribery of Foreign Public Officials in International Business Transactions provides for the protection of whistleblowers in public and private sectors. Whistleblowers protection has been introduced too in the United Nations Convention against corruption (article 32) and both Council of Europe Civil Law (article 9) and Criminal Law (article 22) Conventions.

The G20 countries committed themselves in 2010 and 2012 to adopt adequate measures to protect whistleblowers and to provide them with reliable means to report corruption. At the Seoul Summit in November 2010, G20 leaders insisted on the need to protect from discriminatory actions whistleblowers, who report in good faith suspected acts of corruption. Findings on the different whistleblower protection laws which have been adopted among the G20 countries show several shortcomings and insist on few items: the needs of anonymous channels for employees to report sensitive information; the need of internal disclosure procedures used by organisations to protect employees; the need of independent agencies to investigate whistleblowers' disclosures and complaints and transparent and accountable enforcement of whistleblowers laws[45]

Among G20 countries Australia, Canada, Japan, South Africa, the United Kingdom and the United States have passed comprehensive and dedicated legislation on these matters[46]. South Africa and the United Kingdom are regarded to have the most developed legal framework having adopted unique disclosure regulations for both private and public whistleblowing protection. But in 2013 the Enterprise and Regulatory Reform Act in the United Kingdom amended the Public Interest Disclosure Act concerning protection of whistle-blowers. The disclosure must be made any more "*in good faith*" as before but in the "*public interest*" due to misuse of this right by people with just employment grievances.

Criminal codes may provide protection of whistleblowers in Mexico. Labour laws are a frequent tool of protection of whistleblowers in the private sector: in France[47], in Germany[48] and in Italy[49]. In France when a whistleblower makes a disclosure in good faith relating to offences and crimes, they are protected from reprisal from their employer. An Act of the 6 December 2013 on Tax fraud and economic delinquency grants approved civil society organisations to bring civil claims against those who committed such offences in place of the Public prosecutor. Whistleblowers disclosing

[45] Simon Wolfe, Mark Worth, Suelette Dreyfus, A J Brown (2014), *Whistleblower Protection Laws in G 20 countries Priorities for Action*, The University of Melbourne, Griffith University,
OECD (July 2012), *Whistleblower protection: encouraging reporting*, available at www.oecd.org
[46] G20 Anti-corruption Action Plan, *Action 7: Protection of whistleblowers*
[47] Law 2007-1598, 13 November 2007
[48] German civil code, section 612. Bundesarbeitsgericht 3.7.2003, 2AZR 235/02, 7.12.2006, 2AZR 400/5
[49] The Labour Code protects workers against dismissal but not against other forms of reprisal. Corporate employees have no specific legal protections. While some private companies have introduced Whistleblowing Procedures in recent years, most of these where to comply with the US Sarbanes-Oxley Act.

information related to corruption and breaches of integrity contact the Central Service for the Prevention of Corruption with the help of the Public Prosecutor.

A G20 compendium of best practices or legislation on the protection of whistleblowers brings together guiding principles on that subject while a Recommendation of the Council of Europe with an appendix sets outs principles to member states too[50].

Two particular points deserve consideration: channels for facilitating reporting and protection of whistleblowers.

Fears of retaliation, cultural traditions, historical background, and belief that the concern will not be received are serious obstacles to whistleblowing. A clear policy to explain when and how to report is necessary to ensure the effectiveness of this ethical behaviour.

Regarding detection of violations the size of SMEs with fewer hierarchies may be considered as an advantage insofar as it is easier for an employee to detect for instance a corrupt payment and the level of social control is high in these companies. On the other hand pressure in small structures may be stronger given the close interactions between management, employees and third-parties.

A detailed account of the standards for the protection of whistleblowers is provided in the comparative analysis[51] of practices for protection of whistleblowers in the area of corruption in CoE member states which was prepared within the PRECOP RF project in 2014.

3.6.2 Addressing infringements

Violations of the law have a strong outcome on companies and on their reputation. One of the lessons to emerge from these rules and guidelines on Good Practices against corruption is that enforcement by the companies is a key point. But address risks and infringements requires more than just complying with domestic laws and international conventions and goes through a comprehensive anti-corruption programme which covers penalties and incentives for cooperation of employees and partners. We note an increase of the number of sanctions and of the amount of the fines. In 2011a total of 102 companies were excluded for corruption offences from projects by the World Bank. From January to July 2013 there were 252 companies that found themselves in such situation.

An example of good practice in this regards is Thales has put in place a global ethics alert (whistleblowing) facility as laid out in a guide describing the scope of the facility which was approved by the French national Commission for information and liberties in 2011. This ethics alert facility allows a Group employees to:

- obtain information and advice in case of questions or doubts about the application or interpretation of the Code of Ethics.
- raise ethics- related concerns that could impact the Group's business or seriously jeopardize its performance as a responsible operator with respect to accounting, financial and banking practice, corruption and fair trade.

The alert may reported by any means (letter, email, telephone or face-to-face conversation).
It is based on the principles of confidentiality and respect for the rights of each person concerned throughout the procedures. The alert facility must be used in compliance with applicable law and rules in the country in which the employees lives or works.

[50] Council of Europe, *Recommendation CM/ Rec (2014)7 of the Committee of Ministers to member States on the protection of whistleblowers. The appendix of the Recommendation contains 29 principles which are intended to guide Member states*, available at www.coe.int/

[51] PRECOP-RF Technical paper on "*Comparative analysis of practices for protection of whistleblowers in the area of corruption in CoE member states*" is available on www.coe.int/

Sanctions must be fact- based and should not rely on mere suspicion. They may apply to employees and business partners but if both are liable to penal sanctions, disciplinary sanctions may be imposed to employees. These disciplinary sanctions may lead to the termination of the contract with the employee. According to legal standards, sanctions must be relevant, proportionate and dissuasive. Whether through fines, imprisonment or other penalties the punishment must reflect the level of the offence. They can exist in a framework which provides incentives too which may be financial such as rewards or not financial.

3.7 Application of an Anti-corruption Programme

Implementation of an Anti-corruption Programme requires the commitment of the management, the employees, the business partners and the relevant third parties. This countering bribery culture shared in by all these stakeholders must detect, investigate any risk and form of misconduct, has to emerge good practices and to monitor the effectiveness of procedures and policies. It is up to the Board of directors to have the ultimate responsibility for the oversight of the compliance of such a programme. It may evaluate the involvement of the senior management in the implementation of this policy and for that purpose it may be assisted by an Ethics Committee in the most important companies.
Carrying out an anti-corruption compliance programme in a company entails acting on various levels: prevention under different ways such assessment of the risk, detection, communication, reporting and training. Building trust and confidence among all stakeholders takes time. If some standards of Soft Law seem to be too ambitious, a well-defined and narrow scope allows easier monitoring.

Ethical principles on corruption are not universal to every company because every company has its own identity. This is a reason why there is a growing recognition of the importance of Codes of conduct which are closer to the reality on the playing field than general standards. Besides a statement of rules of conduct these codes may be very useful in response to failures, wrongdoings and misdemeanours inside companies.

Companies which do not have anti-bribery and corruption supervision mechanisms face numerous risks. The cost burden of such a programme for a company must not be underestimated because it requires a strong commitment in terms of financial and human resources. But firstly it is in companies own interests to implement this overall policy which is valuable in the long term. Secondly costs associated with the required disclosure procedures are commensurate with the value of the information and the size of the business. Thirdly most companies recognise that today's active enforcement culture implies robust compliance programmes. It is a way to create an environment with reduced risk of corruption. A clear integrity policy can enhance the image of a company with customers, business partners and public authorities too.

4 GOOD GOVERNANCE IN BUSINESS IN RUSSIA

4.1 Introduction

Russia has made remarkable progress in corporate governance over the past few years: a voluntary Code of Corporate Governance[52] has been introduced in 2014, private companies began to publish their own corporate ratings and legal and regulatory networks have been improved to provide better protection for shareholders. Overall, market players have recognised the importance of adhering to the principles of good corporate governance. These new developments require additional reforms to ensure that enforcement mechanisms are put in place. Corporate governance improvements in Russia contributed to pave the way towards global standards and have had positive impact on both private and public institutions in Russia as it is a shared responsibility between the public and private sectors.

The key role of Russian professional associations such as Association of Independent Directors, Russian Institute of Directors, Organisation of Corporate Directors and Top Managers, Association of Managers *et alii* needs to be recognised for their contribution to the development and implementation of corporate governance codes, guidelines, tools as well as education and training of professional staff. It is undeniable that public institutions, too, benefited from higher ethical and professional standards set by the private sector organisations. Good corporate governance has contributed to the legitimacy and credibility of market players among general public. It has helped to build trust and improve the quality of professional services.

The state-owned enterprise sector account for about 50 % of the GDP in Russia as some of the largest listed companies are controlled by the State. But with the adoption of a new Corporate Governance Code they, too, will have to enhance their corporate practices and adopt anti-corruption policies which should gradually improve corporate governance standards in the public sector.
Along with rapid improvement in corporate governance, the need to address the issue of corruption set in motion significant changes to adopt new anti-corruption legislation by the State and embed them into the National Anti-corruption Strategy[53]. As it became more specific and detailed, it brought about basic components to be adopted by public institutions like anti-corruption policies, anti-corruption mechanisms such as hotlines and anti-corruption provisions in contractual obligations. That in turn had a positive effect on the quality of public governance which had to catch up with on-going changes.

4.2 Anti-corruption policies

Russia's ranking in Transparency International Corruption Perception Index went from 143 in 2011 to 133 in 2012, then 127 in 2013 and rolled back to 136 in 2014 which is quite a tangible fall.

According to GRECO, "The Russian authorities recognise that the level of corruption in the country is inadmissibly high"[54].

Business sector is particularly sensible to corruption but it is also confronted with other barriers. Some of these barriers include:

- the high level of bureaucracy and red tape i.e. overregulation helps mask various manifestations of corruption. The need to obtain multiple permits contributes to higher costs and productivity losses;
- the unpredictable nature of drafting new laws makes the life of entrepreneurs difficult;
- the increased tax burden on SMEs and individual entrepreneurs (increased taxes that go into effect in 2015[55], i.e. federal laws 52, 382, 366, 477, 134, 238[56] along with simplified tax

[52] *Code of Corporate Governance* unofficial translation in English is available at www.ebrd.com/

[53] Press release in English from the Presidency of the Russian Federation is available at http://en.kremlin.ru/

[54] Council of Europe, *Greco Eval I-II Rep (2008) 2E* is available at www.coe.int/greco

system and offered tax benefits to new start-ups[57]) drives them into the shadow segment of economy resulting with loses to the Federal Budget;
- high costs of running business are still influenced by protection racket and other extortion risks that are still specific to SMEs in Russia;
- the overall conservative thinking of the public officials, business owners and consumers. Introducing a pro-business mentality would make business and investment climate in Russia better for everyone.
- the limited access to infrastructure which is conditioned by pressure to coerce bribes.[58]

4.2.1 Overview of the National Anti-corruption Plan and anti-corruption legislation

The National Anticorruption Plan 2014-2015 was adopted on 11 April 2015.The Decree approving the plan sets the deadline for executive and legislative authorities until 1 July 2014 to ensure that amendments intended to achieve specific results in fighting corruption are introduced in local and business related anticorruption plans, as well as to establish supervision over the implementation of anticorruption measures.

The Anti-corruption Plan covers fighting corruption in the public sector as well as specific anti-corruption measures in the private sector. One of its key objectives is to implement the requirements of Article 13.3, an amendment to the Federal Law on Countering Corruption №273-FZ (25 December 2008), which was introduced on the 1st of January 2013. Article 13.3 lists a set of actions to be undertaken by all organisations to prevent corruption. It also covers the implementation of Art. 19.28 of the Russian Administrative Code №195-FZ (30 December 2001) "Unlawful Compensation on Behalf of a Legal Entity". This article prohibits the unlawful transfer, on behalf of or in the interests of a legal entity to a public official, or an individual performing managerial functions in a commercial or other organisation, of money, securities or other property in return for an action to be performed by the public official in the interest of such a legal entity. This article supplements the anti-corruption provisions of the Criminal Code applicable only to individuals by establishing liability for violations related to corruption on the part of legal entities. The penalty established for this violation in a form of administrative fine is the amount of up to a threefold sum of the money or other property transferred but not less than 1 million Rubles.

Among other things the Decree envisages the development of practical recommendations on application of the laws of the Russian Federation. Section "P" [П] aims at developing a proposal to improve Code of Ethics and Conduct for public officials and a draft to protect whistleblowers by 1 November 2014. Section "Y" [И] of the Plan requests that business associations, Business Ombudsman jointly with Prosecutor General's office conduct monitoring and control actions on how organisations took steps to counter corruption. The deadline set was 1 March 2015.

Section "Ts" [Ц] of the Plan envisages effective cooperation of the Working group on joint activities on the part of business community and state authorities to counter corruption, while paying close attention to the awareness rising of the Anti-corruption Charter of the Russian business. The deadline set for is 1 October 2014.

Another important element of the Plan was to set up and consolidate an electronic database to monitor expenses and property of public officials. Besides training on anti-corruption is key as many professional and generic anti-corruption courses have been introduced. The Russian Academy of

[55] Polnoe Pravo (2015), *The list of major changes in the tax legislation in 2015* [*КонсультантПлюс: Перечень основных изменений налогового законодательства с 2015 года*] available at www.polnoepravo.ru/
[56] Credit Inform (2015), *In 2015 business and population are expected the increase of tax burden*available at www.creditinform.ru/
[57] PWC, *A big present for small business*, available at www.pwc.ru
[58] International Monetary Fund (2001), *Competition and Business Entry in Russia*, available at www.imf.org

National Economy and State Services designed a special anti-corruption curriculum with standalone modules to be included in training programs.[59]

The introduction of a detailed plan is intended to address many aspects of countering corruption in the public sector to allow further developments and draft more specific recommendations. The execution of the prescribed measures brought in more transparency and order in regulating the activities of public entities and officials. The work continues to produce more specific internal documents that regulate specific activities aimed at curbing corruption further.

Article 13.3 introduces a requirement for organisations to take steps to prevent corruption; the measures taken may include the following:

- Identifying departments and officers who will be responsible for the company's compliance programmes;
- Cooperating with law enforcement agencies;
- Developing and implementing anti-corruption standards and procedures;
- Adopting a code of professional ethics and conduct;
- Preventing and resolving conflicts of interest;
- Preventing the creation and use of false documents.

Despite being enumerated in Article 13.3, the law does not make clear that compliance mechanisms in these areas are sufficient. The law simply requires implementation of measures aimed at the prevention of corruption. If a violation occurs and one of these mechanisms was not in place, it may be determined that appropriate measures had not been taken. Companies may nevertheless be liable for failing to adopt measures in furtherance of the Code of Administrative Violations. Thus, it behoves to those doing business in Russia (entrepreneurs) to assess their existing internal compliance mechanisms and consider implementation of compliance procedures.

It is also important to note that the requirements may be interpreted to extend to third parties and non-Russian businesses. Thus, if a business in Russia has implemented the compliance mechanisms enumerated in Article 13.3, but has agents or deals with third parties who have not implemented such policies, it is possible that the business may have failed to take appropriate measures to prevent corrupt acts by these agents or third parties, especially where such agents or third parties act "on behalf of or in the interest of" the business. This may have far-reaching consequences, so businesses should take steps to assess potential exposure through third parties and agents and where practicable, encourage these organisations to implement compliance mechanisms. Further, the law does not require that a company be based in Russia to be subject to the compliance requirements as such businesses based outside of Russia but doing business there should assess exposures and existing compliance mechanisms.

Article 13.3 appears to bring anti-corruption laws more into accord with US and UK laws. The message is clear that Russian authorities are taking corruption seriously, although it remains to be seen how enforcement over time will effectuate true institutional and cultural change, both within enforcement authorities, government offices, and businesses.

4.2.2 Recent developments

In terms of positive developments all public institutions and state owned enterprises are now obliged to set-up a commission to consider cases of violation of the provisions of the Code of Ethics and regulation on conflict of interest. Monitoring of corruption risks improved through the introduction of a list of government positions associated with high corruption risks. While there is still no specific legal protection of public servants reporting irregularities, some procedural measures protecting

[59] MIGSU, Presentation of curriculum is available at http://migsu.rane.ru/

whistleblowers were introduced. Officials are held liable to disciplinary actions only after the respective case is addressed at a meeting of the Ethics committee monitoring the implementation of the code of conduct and assessing the settlement of conflicts of interest. Previously and in case of serious violations, guilty officials were relieved of their duties under "the loss of trust" clause. But recently a new draft on the protection of whistleblowers in the public sector was introduced in a meeting at the Civic Chamber on 15 May 2015 in Moscow where recommendations were sought and collected from the expert and legal community. The key elements of a new draft contain monetary reward (10% was offered by the experts), stringent measures to protect the identity of a whistleblower and his/her family members. Special attention was paid to addressing the retaliation issue. Whistleblowers are thought to be entitled to free legal assistance. A representative from the Prosecutor Office will be involved to ensure full cooperation from the employer. Reporting systems (hotlines) were also reviewed. Based on the very active involvement of the professional community, this new draft is a true hallmark on the path of developing whistleblower protection laws for public and private sector.

Public officials must declare their income since 2008. In recent years, the requirements were tightened, requiring officials to disclose their financial assets and property as well as incomes, assets and properties of their spouses and children. Law enforcement agencies requested that their employees part with property abroad and close their foreign bank accounts. In the case of non-compliance, an official can be dismissed. A law adopted in 2012 obliges public officials to declare all expenditures on real estate purchases and financial instruments exceeding three-year family earnings. A separate new law requires senior officials and their close family members to close bank accounts abroad by September 2013 and move their money back to Russia. However, officials are allowed to keep their property abroad, only having banking accounts and securities abroad is prohibited. Public officials are also obliged to report all the gifts that they receive during the duration of their service.

Obligatory rotation of civil servants was introduced in January 2013. This applies primarily to public officials exercising control and supervisory functions. The purpose was to prevent them from building close and cosy ties. Hence, public officials are to change jobs every 3-5 years, with the specific period in a particular position with respect to associated corruption risk assessment. Changing jobs is neither a disciplinary measure nor a reward, but officials are offered an option of additional vocational training and reimbursement of moving costs. Again, the refusal to move by an official would be treated as a resignation matter. These conditions though would incur additional personal costs for officials to comply.

Proposed rules on lobbying prepared by the Ministry of Economic Development are currently being considered by the Presidential Administration.

A new Corporate Governance Code[60] was adopted by the Central Bank of Russia's Board of Directors on 21 March 2014 which was developed along the guidelines of the market regulators, the Moscow Exchange, OECD, issuers and investors. Russian JSC companies with listed securities have to respond to a higher level of corporate governance by making companies implement the Code's principles and ensure its compliance monitoring. The Moscow Exchange already put some Code's recommendations in the new Listing Rules. Now public companies will be required to comply with the new Code's principles or explain why they fail to do so.

Highlights of the new Corporate Governance Code:

- Public companies should disclose how they comply with the Code principles in their annual report;
- Moscow Exchange listing rules have some of Code's provisions reflected;
- Increase the effectiveness of the Board of Directors; and

[60] Spencer Stuart, *Russia Board Index 2014* I available at https://www.spencerstuart.com

- Have better monitoring: to have a Committee on monitoring (i.e. Bashneft has already implemented) to be able to monitor the availability of resources, existing problems and conflicts, deadlines etc. to timely introduce corrective measures during the implementation of the project and not after its completion.

The original concept alongside new Corporate Governance Code was to compile a list of about 100 state owned companies that would be obligated to adhere to the main provisions of the Code.
One of the key messages in the Code is fair and equal treatment of shareholders, protections of their dividend rights and prevention of the activities that lead to changing the corporate control.

It provides more transparency to the Board, making sure not less than one third of the Board is represented by independent directors.
- Effective and organised work of the Board;
- Creation of independent committees of the Board;
- Assessment of effectiveness of the Board's work;
- Role and responsibilities of Corporate Secretary;
- Sound and fair remuneration policy;
- Risk management and Internal Controls systems to provide assurance and properly resourced and equipped business units to support their work.

4.2.3 Disclosure and annual reporting

The introduction of a new Code is very important as a serious attempt to regulate state owned companies and empower the Board of Directors to increase transparency in a company's activities.
90% of Russia's largest financial companies (by asset value) are owned by other financial holding companies, so risks are transferred within their own holdings, contributing to increasing systemic risks.

Public companies will be subject to strict requirements in relation to information disclosure and their management structure. Payments to beneficiaries who do not disclose this information will be subject to 30% tax rate.

The new federal law №44 on public procurement, adopted on 5 April 2013, also addresses corruption. Public procurement always has a higher risk of corruption in all countries. This risk is also high in Russia due to large volumes of procured goods and materials. According to the World Economic Forum (2013), preferences shown by officials to firms and individuals with ties to the officials in Russia was estimated at 2.4 on the scale of 1 to 7 (with 7 representing the best result). That score among BRICS countries puts China at 3.8, Brazil at 2.9 and India at 2.8. The new law addresses this problem by regulating and increasing transparency and openness at all stages of the procurement process, including forecasting and planning, new implementation of new purchasing procedures, contract performance, audit and control based on the evaluation of the final project results. Relevant information about all the public tenders has to be published on the official procurement website. Bids are managed electronically on five official electronic trading platforms. The business history, and qualifications and reputation of the bidders will be also checked. In the past, a company with no business record could win a tender by offering low prices and subsequently failing the task. Such a situation provided ample opportunity for corruption and collusion. The new law envisages a "black list" of unfair providers to be officially published by the Federal Antimonopoly Service. While this is a step in the right direction, the new law does not disqualify firms with past corruption track record.

5 ANTI-CORRUPTION LEGISLATION

Russia is a signatory to the following international anti-corruption conventions:

- Council of Europe Criminal Law Convention on Corruption (Strasbourg, 27 January 1999) (the 1999 Strasbourg Convention), which came into force for the Russian Federation on 2 February 2007;
- The UN Convention against Corruption (31 October 2003) (UNCAC), which came into force for the Russian Federation on 8 June 2006;
- The UN Convention against Transnational Organised Crime (15 November 2000), which came into force for the Russian Federation on 25 June 2004;
- on 7 March 2009 the Russian Federation signed the Additional Protocol to the Criminal Law Convention on Corruption (15 May 2003), but has not yet ratified it; and
- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (21 November 1997), which came into force for the Russian Federation on 17 April 2012.

At the core of **Russian anti-bribery legislation** are the following norms:

- The Federal Law on Countering Corruption (25 December 2008 №273-FZ) as amended by Article 13.3 of January 2013.
- The Federal Law on monitoring of correspondence between the expenses of the holders of public officers and other persons, and their income (3 December 2012 №230-FZ);
- The Federal Law on the prohibition for certain persons to open and maintain accounts (deposits) and to keep cash and other values with the foreign banks located outside the Russian Federation as well as to use foreign financial instruments (7 May 2013 №79-FZ);
- Articles 184, 204, 290, 291, 304 and 309 of the Criminal Code of the Russian Federation (13 June 1996 №63-FZ) (the Criminal Code);
- Articles 13 to 20 of the Federal Law on the State Civil Service of the Russian Federation (27 July 2004 №79-FZ);
- Article 169 of the Civil Code of the Russian Federation (Part I) (30 November 1994 №51-FZ) and article 575 of the Civil Code of the Russian Federation (Part II) (26 January 1996 №14-FZ) (both parts referred to as the Civil Code); and
- Articles 19.28 and 19.29 of the Code of the Russian Federation on the Administrative Offences (30 December 2001 №195-FZ) (the Administrative Offences Code).

5.1 Domestic bribery

5.1.1 Bribery

Bribery of a domestic public official is prohibited by articles 290 and 291 of the Criminal Code of the Russian Federation (the Criminal Code).
To establish bribery, the prosecutor must prove that:

- The receipt of or the payment in money, securities or other property or pecuniary benefits, effectuated directly or through an intermediary. At least part of the bribe must be transferred for the crime to be declared completed;
- The bribe was given or taken for the actions in favour of the bribe-giver or any person represented by him or her, as well as for general employment-related favour or connivance;
- Such actions are the bribe-taker's authority, or the bribe-taker can promote such actions due to his or her authority. If those actions are illegal, the bribery is punished more severely; and
- The bribe-taker is a public official (see infra point 1.3.).

It must be mentioned that some of the corruption crimes provided for by international treaties are not expressly proscribed by the cited articles of the Criminal Code. In this light the question arises in the doctrine of criminal law whether it is possible to punish these crimes under some other articles of the Criminal Code.

The Administrative Offences Code now includes article 19.28, which prohibits providing undue advantage to an official (whether in the private or public sector) in return for some actions or omissions in the exercise of the functions of such official. The elements of this offence are similar to those described above in relation to the crime under article 291 of the Criminal Code. The official in the private sector is defined in the note to article 201 of the Criminal Code (see question 28). The only difference between this administrative offence and the crimes described above and in question 28 is that the Criminal Code punishes only individuals whereas article 19.28 provides for the liability of legal entities. The Administrative Offences Code stipulates no sanctions for companies for bribery in sport, and bribery of witnesses, interpreters, victims and experts in court and other official proceedings

The Federal Law on the State Civil Service of the Russian Federation (№79-FZ of 27 July 2004) also prohibits state civil servants from, *inter alia*:

- engaging in entrepreneurial activities or being in any way engaged to represent any private party in the state agency where he or she is employed;
- acquiring any interest-bearing securities or holding such securities if that leads to a conflict of interest;
- being in any way engaged for remuneration without the employer's consent or if that leads to a conflict of interest;
- receiving from natural persons and legal entities gifts in connection to performance of their public duties (except for those received in connection with the official events amounting to less than 3,000 Rubbles);
- travelling abroad within the scope of his or her public duties at the expense of individuals and legal entities (unless otherwise provided for by international treaties of the Russian Federation or agreed by the Russian Federation state authorities and foreign state authorities and international and foreign organisations);
- receiving, without the written permission of the employer, awards, honorary and special degrees (except for scientific ones) from foreign states, international organisations, political parties and other social and religious associations if he or she interacts with them in the scope of his or her office;
- using his or her public authority in favour of political parties, other social and religious associations or other organisations or publicly expressing his or her attitude to these associations and organisations if such activities are outside the scope of his or her public duties;
- engaging, without the written permission of the employer, in paid activities that are financed exclusively by foreign states, international or foreign organisations, foreign citizens or stateless individuals (unless otherwise provided by an international treaty or the legislation of the Russian Federation); and
- being employed or working on the basis of a civil law contract in profit-making and non-profit organisations within two years after release without the special commission's consent, if he or she performed particular state managing functions in the scope of his or her authority in respect of these organisations.

The Federal Law on the prohibition for certain persons to open and maintain accounts (deposits) and to keep cash and other values with the foreign banks located outside the Russian Federation as well as to use foreign financial instruments (№79-FZ of 7 May 2013) introduces the prohibition that its name suggests for various public officials. Violation of this prohibition is a separate ground for dismissal of the public official under paragraph 7.1 of article 81(1) of the Labour Code of the Russian Federation. The idea of conflict of interest is one of the focal points of the anti-corruption provisions related to the status of civil servants. Civil servants are responsible for settling their own conflicts of interest and the conflicts of interest of their subordinates. Failure to do that may lead to dismissal for 'loss of trust'. Similar and even more restrictive provisions have been introduced for other public servants and for the senior state and municipal officials that do not fall within the category of public servants.

Most relevant to the bribery provisions of civil legislation are article 169 and article 575 of the Civil Code. The latter regulates gifts to state and municipal officials related to performance of their functions (for details, see question 26). The former makes invalid *ab initio* transactions that are against the fundamentals of legal order and morals, such as a transaction to acquire a bribe. Pursuant to the National Plan on counteraction against corruption, a standard guidance on receiving gifts was issued by the government (Ruling No. 10 of 9 January 2014). In the course of 2014 it has been reproduced by various state agencies.

5.1.2 Private commercial bribery

Commercial bribery is prohibited in the Russian Federation. Article 204 of the Criminal Code criminalises both giving and receiving commercial bribes (see point 5). An official in the private sector is defined in the note to article 201 of the Criminal Code as any person performing the functions of CEO, member of the board of directors or any other executive board or a person performing on a permanent or temporary basis or by special authority organising, regulatory, administrative and economic functions in any organisation.

Liability for legal entities is provided for in the Administrative Offences Code (see point 1.2). Facilitating payments are not allowed under any circumstances, and bribery laws are applicable to them.

5.1.3 Prohibitions

As mentioned above, both paying and receiving a bribe are prohibited. Furthermore, provocation of a bribe or of a commercial bribe is criminalised as well by article 304 of the Criminal Code. 'Provocation' is defined as an attempt to give a bribe without the consent of the person who is supposed to receive the bribe, where such attempt has the ultimate aim of manufacturing evidence of criminal taking of the bribe or of blackmailing the person allegedly receiving a bribe.

5.1.4 Public Officials

Different provisions of the Russian law target different categories of public officials and state servants. For the purposes of criminal law, a public official is the person who discharges the functions of a public authority representative on a permanent or temporary basis or by special authority (delegation), or performs organisational, regulatory, administrative and economic functions in state bodies, local self-governing bodies' state and municipal institutions, state corporations and also in the armed forces of the Russian Federation, in other troops and military formations of the Russian Federation (note 1 to article 285 of the Criminal Code). State and municipal institutions and state-controlled corporations are separate legal entities entirely controlled by the state. As indicated in the definition their employees performing the mentioned functions in these legal entities are to be treated as public officials for the purposes of the Criminal Code.

Paragraph 1 to article 19.28 of the Administrative Offences Code defines public official by reference to the described provisions of the Criminal Code.

For the purposes of article 575 of the Civil Code (see *supra* paragraphs 1 and 2.2) the list of public officials is provided separately and includes employees of legal entities operating in the fields of health care, education, social services and other similar entities.

The Federal Law on Counteracting Corruption imposes compliance obligations upon the officers of state corporations, state funds and other entities created to perform the functions of federal state agencies, as well as institutions owned by municipalities. Those officers shall avoid conflict of interest and report any attempted corruption. For the purposes of anti-corruption regulations they are treated as civil servants.

The Law on Counteracting Corruption and the Federal Law 'On monitoring of correspondence between the expenses of the holders of public officers and other persons, and their income' №230-FZ of 3 December 2012 require certain public officials and state servants to report on their income and expenses. The purpose of this legislation is, of course, to ensure that appropriate inquiries are made where a state official or a state servant spends more money than he earns. These requirements only extend to the public officials specifically listed for that purposes in the legislation (see, for example, Decree of the President No. 557 of 18 May 2009).

5.1.4.1 Public official participation in commercial activities

Commercial activity is directly forbidden to civil servants (article 17 paragraph 1(3) of the Federal Law on the State Civil Service of the Russian Federation). Apart from this, as a general rule any public official who is in a civil service has a right to be engaged in other paid activity (article 14 paragraph 2 of the Federal Law on the State Civil Service of the Russian Federation). This rule is subject to several conditions: such activity should not create a conflict of interest, it can be started only with the preliminary consent of the employer in a state organisation, and such activity should not be in violation of general restrictions on a civil servant's activity (articles 16 to 18 of the Federal Law on the State Civil Service of the Russian Federation and other special laws, see point 1) or in violation of any specific prohibition on being engaged in other paid activity that relates to his or her position or a type of service. Ownership of shares domestically is, as a general rule, not restricted for public officials in the civil service but should be reported and is subject to some specific rules, such as a duty to submit securities to trust management in case of a conflict of interest (article 17 paragraph 1(4) and paragraph 2 of the Federal Law on the State Civil Service of the Russian Federation). Ownership of shares abroad is prohibited for most senior state and municipal officials.

The restrictions applicable to civil servants have been extended to most of the other state officers in Russia. Those are, in particular: officers of the prosecution office of the Russian Federation, of the Ministry of Internal Affairs of the Russian Federation, of the Federal Customs Service, of the Drugs Control Service, execution officers (bailiffs), military personnel (subject to any exceptions introduced by the president's or government's acts) and police officers. As mentioned in question 24, officers of state corporations, state funds and other entities created to perform the functions of federal state agencies can be treated as state servants for present purposes.

For state public officials, such as judges, members of parliament, federal ministers, the President of the Russian Federation and so on (these are called collectively 'individuals holding state offices of the Russian Federation and of the constituencies of the Russian Federation'), appropriate restrictions are directly provided for by special laws and by the Federal Law on Counteracting Corruption. In general, apart from performing their public function, such state officials are very limited in the paid activities that they may perform. Normally such permitted activities include teaching, scientific activity and creative activity (e.g., painting). Similar restrictions have been introduced for officers and employees of the Federal Security Service of the Russian Federation and of the Central Bank of the Russian Federation.

As mentioned in point 1.2., in accordance with the Federal Law on monitoring of correspondence between the expenses of the holders of public officers and other persons, and their income (№230-FZ of 3 December 2012) most public officials, including some senior officials of state companies that perform functions of state agencies, are obliged to report on any acquisition of real estate, vehicles or securities where the consideration that they pay exceeds their aggregate income with their respective spouses for the preceding three years. The information about the sources of funds for such transaction should be made public. Most public officials should also provide information about their income and property in respect of themselves, their spouses and minor children, which information should also be made public (article 8 of the Federal Law on Counteracting Corruption). The courts have already shown willingness to intervene if the information is not published, despite the legal requirements.

5.1.5 Travel and entertainment, gifts and gratuities

Restrictions on gifts and gratuities are provided by the Federal Law on the State Civil Service of the Russian Federation and the Civil Code indicated in point 4.1. It should be noted that only those gifts that are received in connection with the performance of an official's public functions are affected. Unfortunately, other relevant provisions are scattered across various legal acts and regulations with varying and imperfect formulations. However, it may be argued that in practice the rules are the same for all public officials and all kinds of state service, and that discrepancy between the formulations of various regulations should be ignored for practical purposes. The intended regime appears to be that the no gifts be received in private in connection with the performance of an official's public functions and that those gifts received officially be surrendered by the recipient within three days to the state body where he or she works. If the gift does not exceed 3,000 Rubles in value, it is returned to the recipient. Otherwise is can be purchased back within two months.

All that has been said above about gifts applies equally to any other advantages, apart from the 3,000 Rubles allowance, which applies only to those transactions that can be classified as gifts in accordance with the Civil Code.

5.1.6 Penalties and enforcement

5.1.6.1 Penalties

Bribe giving and taking is mostly punished by fines and deprivation of liberty. Since 2011 the fines are linked to the amounts of bribes given or received. In the most serious cases of bribe taking a fine can be as high as 100 times the amount of the bribe.

For public officials that are in the civil state service or municipal service, acts of bribery or other violations of anti-corruption provisions (such as failure to provide full reports of funds and assets, failure to address conflicts of interest) can cause disciplinary liability on the basis of the Federal Law on the State Civil Service of the Russian Federation (articles 19, 20, 37 and 57) or the Federal Law on Municipal Service in the Russian Federation (№25-FZ of 2 March 2007) (articles 14.1, 15, 27, 27.1). Moreover, even the failure to inform an employer of any offer of a bribe constitutes a disciplinary offence for all the state and municipal servants (article 9 of the Federal Law on Counteracting Corruption).

The forms of disciplinary liability for state civil officers are as follows: admonition; reprimand, warning about partial ineptitude, dismissal from office and release from the office. Disciplinary liability for municipal officers can ensue in fewer forms: admonition, reprimand and release from service. Most violations of anti-corruption law would result in dismissal from office.

5.1.6.2 Leniency and dispute resolution

The Administrative Offences Code (article 4.2) provides for a voluntary disclosure of an offence as an extenuating circumstance. Thus a lesser fine will be imposed in such case under article 19.28. This mitigation of liability is wholly within the court's discretion.

Several tools exist for private individuals to achieve leniency in a criminal prosecution. If a person pleads guilty, article 75 of the Criminal Code (that requires application to confess to commitment of crime, remorse and assistance to investigation) or articles 314 to 317 of the Code of Criminal Procedure of the Russian Federation (that provide for a 'simplified' trial, based on the confession of guilt) might be applicable. In general, those tools are within the discretion of investigators, prosecutors and the court; however, if the procedure of simplified trial is applied, the actual punishment cannot exceed two-thirds of the maximum punishment (article 316, paragraph 7 of the Code of Criminal Procedure of the Russian Federation).

The wrongdoer may also choose to cooperate with the investigation by entering into a formal cooperation agreement with the investigators in the course of the preliminary investigation, if the criminal sanction for the offence that he or she has committed does not exceed 10 years' imprisonment. To enter into this agreement the wrongdoer shall make a full report of the crime committed; the article(s) of the Criminal Code applicable to this crime shall also be indicated in this agreement. The wrongdoer shall further undertake to provide information and render cooperation to help to investigate the crimes committed by other persons. It is not sufficient to provide cooperation with regard to criminal own activities.

If the wrongdoer fulfils all his or her obligations under the valid cooperation agreement, the court shall hold summary proceedings to issue sentence, which shall not exceed half (or, in exceptionally serious cases where life imprisonment might be applicable, two-thirds) of the maximum punishment provided by the Criminal Code for the crime at issue. The court may at its entire discretion show further leniency, but is not obliged to do so.

It should be mentioned that the rules concerning plea bargains are relatively new and do not provide for all practical possibilities. On 28 June 2012 the Supreme Court of the Russian Federation issued its Resolution No. 16 to clarify certain provisions of the Criminal Procedure Code. This resolution makes it clear that the court in certain cases has powers to proceed as in the normal course of procedure, if required by the interests of justice. Although this field would benefit from more detailed regulations, cooperation agreements are already used in practice.

5.2 Foreign bribery

The legal consequences of an offence of bribery of foreign officials are provided for by Russian criminal and civil legislation.

Articles 184, 204 and 309 of the Criminal Code that respectively criminalise bribery in sport, commercial bribery and bribery of witnesses, interpreters, victims and experts in court and other official proceedings are applicable to appropriate cases of foreign bribery. The provisions of the Criminal Code (articles 290 and 291) that criminalise bribery of public officials apply not only to Russian state and municipal officials (including some the officials of some state-owned entities), but also to foreign officials and the officials of international organisations. It is notable that the Criminal Code is silent on the possibility of extraterritorial application of these provisions. In the absence of any relevant court practice we can only state in general terms that nowadays the bribery of foreign state and municipal officials is criminally sanctioned in Russia in the same way as domestic bribery, but applicability of these provisions *ratione loci* is not clear.

In general, according to articles 184, 204, 290, 291 and 309 of the Criminal Code, bribery takes place when there is a giving (article 184 paragraphs 1 and 2; article 204 paragraphs 1 and 2; article 291; article 309 paragraphs 1 and 4 of the Criminal Code) or when there is a receiving (article 184 paragraphs 3 and 4; article 204 paragraphs 3 and 4; article 290) of a consideration for the performance or non-performance of an official function (in the public sector or in private sport or commercial interest) to the person that can or has to perform such function or to refrain from performing such function and who is not officially entitled to such consideration.

Most relevant to foreign bribery is the provision stipulated in article 169 of the Civil Code. It makes invalid *ab initio* transactions that are against the fundamentals of legal order and morals, for example a transaction to acquire a bribe, and provides for taking of all or part of the consideration in such transactions into federal state ownership.

5.2.1 Definition of a foreign public official

Russia is bound by the definitions of FPOs contained in article 2(b) of UNCAC and in article 1(c) and article 5 of the 1999 Council of Europe Convention. The definition in article 2 (b) of UNCAC is the most detailed and reads:

'Foreign public official' shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise.

This definition has been reproduced almost verbatim in article 290 of the Criminal Code. An official of an international organisation is defined in the same article as 'any international civil servant or any other person authorised by the international organisation to act on its behalf'. These definitions are valid for articles 290, 291 and 291.1 of the Criminal Code. The same definitions have been introduced into article 19.28 of the Administrative Offences Code.

As soon as these benefits, given to an official, amount to bribes under the Criminal Code or the Administrative Offences Code, they are prohibited as explained in questions 3 and 8. However, the restrictions provided for in the other acts (such as the Federal Law on Counteraction against Corruption), the Federal Law on the State Civil Service of the Russian Federation or article 575 of the Civil Code) do not apply to any foreign officials.

5.2.2 Facilitation payments through intermediaries or third parties

Any undue payments to an official intended to influence performance of his or her functions or to facilitate a result that is dependent on the performance of his or her functions are criminalised, regardless of the amounts of such payments. This applies regardless of whether intermediaries or third parties were involved. An intermediary or a third party, if they acted intentionally in facilitating a bribe, shall be criminally liable under article 291.1 of the Criminal Code.

5.2.3 Agency enforcement

Criminal and administrative anti-corruption provisions are enforced by the state prosecutors through the courts of general jurisdiction.

Particular investigation of criminal bribery of state and municipal officials shall be in most cases within the jurisdiction of the Investigations Committee of the Russian Federation and its territorial bodies as well as within the jurisdiction of investigative bodies of the Ministry of the Interior. Investigation of sports bribery is within the jurisdiction of the Ministry of the Interior. Commercial bribery and bribery of witnesses is generally within the jurisdiction of the investigative bodies of the Ministry of the Interior, but can in some cases be investigated by the other law enforcement bodies (article 151 of the Code of Criminal Procedure of Russian Federation).

In the area of civil law, remedies for bribery can be claimed by an interested private party or, in some cases, by the state prosecutors of the Russian Federation.

5.2.4 Patterns in enforcement

There are no recently reported cases of foreign bribery. In general the most up-to-date non-binding but very authoritative judicial interpretation of bribery can be found in the Resolution No. 24 of the Plenum of the Supreme Court of the Russian Federation of 9 July 2013, on Court Practice in the Cases of Bribery and other Corruption Crimes, as amended by the resolution of the same court No. 33, of 3 December 2013.

This resolution provides useful guidance in the cases of both domestic and foreign bribery, but on the matters of special relevance to foreign bribery (such as the definition of a foreign public official) mostly recites the statute. The guidelines of this resolution may be said to interpret some provisions of the Criminal Code to impose even stricter prohibitions than might appear from the text of the statute itself.

5.2.5 Prosecution of foreign companies

The legal regime for prosecuting a foreign company in Russia is the same as for companies of Russian nationality: a legal entity is not subject to the criminal law. Civil liability and the liability under the Administrative Offences Code can be applied by the competent Russian court, as previously described in relation to Russian companies (points 3.1.4. and 4.6.2). An offence of a foreign entity can only be punished in the Russian Federation under the Administrative Offences Code, if such offence is committed within the Russian Federation.

5.2.6 Sanctions

In criminal law, depending on the nature of the crime (giving or taking of a bribe), the type of the official involved (acting in public or in private interest) and on the severity of crime, sanctions can take the form of a fine, public works, administrative arrest, deprivation of the right to hold a specific position or to work at a specific job, or imprisonment. In the most severe cases imprisonment can be for a period of 12 years.

Article 19.28 of the Administrative Offences Code provides for the fine, which, as a general rule, shall be up to three times as much as the amount of the bribe, but not less than 1 million Rubles. Depending on the amount of the bribe involved, the fine may go up to 100 times the bribe amount, with an absolute maximum of 100 million Rubles. The amount of money constituting this bribe shall be confiscated.

In civil law the following remedies are available: restitution and compensation for damage caused by the bribery.

6 FINANCIAL RECORD, CORPORATE AFFAIRS AND CORPORATE ACCOUNTABILITY

The system of reporting in Russia is rather complicated. There are three layers of reporting provisions: 1) provisions on bookkeeping and tax reporting; 2) corporate affairs reporting; and 3) investments and securities related reporting. All of the above are briefly described below

6.1.1 Laws and regulations on bookkeeping and tax reporting

The Tax Code of the Russian Federation (Federal Law №146-FZ of 31 July 1998) (article 23) provides that corporate taxpayers have a duty to submit appropriate tax reports to the tax authorities as well as bookkeeping reports according to the Law on Bookkeeping (Federal Law №129-FZ of 21 November 1996).
The Law on Bookkeeping generally requires the following submissions:

- Balance sheet;
- Account of financial results;
- Supplements to these documents provided for by the normative acts; and
- Audit reports when mandatory auditing is provided for by federal law.

The first two submissions are prepared quarterly as interlocutory accounting and the set in full is produced and submitted annually. That law further obliges some legal entities (open-type joint-stock companies, insurance companies, banks, funds, exchanges, etc.) to publish their accounts.

Mandatory auditing is prescribed by article 5 of the Federal Law on Auditing Activities (№307-FZ, of 30 December 2008) for, *inter alia*, joint-stock companies, insurance companies, banks and investment funds. Mandatory auditing can also be provided for by other federal laws.

Special statements are also submitted to the state non-budgetary funds. This law was amended to obligate auditing companies and individuals who work as auditors to report to law enforcement agencies and other federal agencies on instances of violations related to corruption and instances of bribery of foreign public officials or about likelihood of such instances.

6.1.2 Corporate affairs reporting

Corporate affairs reporting is generally prescribed by the Federal Law on the State Registration of Legal Entities and Individual Entrepreneurs (№129-FZ of 8 August 2001) and by several laws on specific types of corporations, such as the Federal Law on Joint-stock Companies (№208-FZ of 26 December 1995) and the Federal Law on Limited Liability Companies (№14-FZ of 8 February 1998).

Thus in the sphere of internal accounting the Federal Law on Joint-stock Companies prescribes mandatory formation of the internal auditing commission for all joint-stock companies. This commission supervises the financial and economic life of the company. The formation of a similar internal body is prescribed by the Federal Law on Limited Liability Companies for limited liability companies formed of more than 15 members. Auditing commissions have a duty to examine annual reports and balance sheets of the company before they are approved by the general meeting of shareholders or members, and in a more general sense are obliged to supervise the financial and economic life of the company.

Competition legislation (Federal Law on the Protection of Competition №135-FZ of 26 July 2006) makes it obligatory for corporations to communicate with or to report to the competition regulator in the case of certain intra-corporate changes as well as in the case of some inter-corporate market-affecting transactions.

Special rules of reporting are established for non-commercial legal entities. In addition to the Law on Bookkeeping further requirements can be found in the Civil Code of the Russian Federation (Part I) (Federal Law №51-FZ of 30 November 1994), by the Law on Non-profit Organisations (Federal Law №7-FZ of 12 January 1996), by the Law on Charitable Activities and Charitable Organisations

(Federal Law №135-FZ of 11 August 1995), by the Law on Social Associations (Federal Law №82-FZ of 19 May 1995) and by some other acts.

6.1.3 Investments and securities-related reporting

The Federal Law on the Securities Market (№39-FZ of 22 April 1996) governs, *inter alia*, issuance of and operations concerning shares and bonds. It requires reporting, maintaining a register and keeping and disclosure of information with regard to shares. Some special rules on disclosure of information are established by the Federal Law on Mortgage Securities (№152-FZ of 11 November 2003).

The Federal Law on Investment Funds provides for some reporting and record keeping by funds, managing companies and some other related entities.

Special reporting was introduced for some professional market participants (banks, insurance and leasing companies, etc.) by the Law on Countermeasures to Legalisation (Laundering) of Criminally Drawn Income (Federal Law №115-FZ) of 7 August 2001 (the AML Law). Anti-money laundering measures include, inter alia, providing the competent authority with information on the wide range of operations concerning money and property.

Federal Law №275-FZ of 28 November 2007 supplemented article 7 of the AML Law with paragraph 1.3, requiring market participants to pay additional attention to the operations of foreign officials and their close relatives. On 3 June 2009 (by Federal Law №121-FZ) these provisions were re-enacted as article 7.3 of the same law. The AML Law and various ensuing regulations also establish diligence requirements (know-your-client policies) for banks (article 7.2).

The requirements of the AML Law are partially extended to advocates, notaries, law firms and firms of accountants.

Other regulations issued by various government agencies are a significant part of the regulation of accounting and reporting, especially with regard to bookkeeping, tax, investment and securities-related reporting.

6.2 Individual and corporate liability

Companies are not subject to criminal liability according to Russian criminal legislation (article 19 of the Criminal Code). Only individuals who have reached the age of 16 and older can be criminally liable for bribery (article 20 of the Criminal Code). Companies are liable for giving bribes under the Administrative Offences Code. The legal entity can be made liable under this provision even if its officer faces criminal charges for the same offence. In civil law individuals and companies alike can be held liable for bribery. In particular, a bribery transaction should be declared illegal according to article 169 of the Civil Code. This applies to both companies and individuals. Bribery can also be regarded as a tort, but it is unlikely that any private party would be damaged directly by an act of bribery (as opposed to any unlawful act committed by a public official for a bribe).

6.3 Enforcement on accounting infringements

6.3.1 Disclosure of violations or irregularities

There are no direct provisions establishing a duty of companies to disclose violations of anti-bribery laws or of associated accounting irregularities. However, these violations and irregularities should be reported if the companies comply with their duties to report important information to investors and other participants in the financial markets and to submit the correct reports and bookkeeping records to the appropriate state bodies.

6.3.2 Prosecution under financial record keeping legislation

Financial record keeping laws are used as an ancillary to the appropriate provisions of criminal and civil codes and other laws establishing civil, criminal or administrative liability.

6.3.3 Sanctions for accounting violations

It is important to distinguish between violation of bookkeeping and tax reporting provisions and violation of other types of reporting provisions. Sanctions for violation of bookkeeping rules are provided for by article 15.7 of the Administrative Offences Code.

Sanctions for violation of tax-reporting provisions take the form of administrative fines of various amounts and are provided for by the sixth section of the Tax Code of the Russian Federation (Part I) and articles 15.3, 15.4 to 15.9 of the Administrative Offences Code.

The second group includes sanctions for violation of the AML Law rules, provided by the Administrative Offences Code (article 15.27) and the AML Law itself. Article 15.27 of the Administrative Offences Code now includes four different offences against the AML rules. The wrongdoer may be subjected to a fine or administrative suspension of a company's activity for a period of up to 90 days. The company's executives, including any responsible officers, can also be fined and prohibited from holding certain offices for a defined period of time. The AML Law itself provides in particular for annulment of the company's licence to perform specific types of activity such as banking or lease financing.

6.4 Anti-corruption initiatives of the Russian business community

Anti-corruption Collective Action initiatives can include industry standards, multi-stakeholder initiatives, and public-private partnerships. The focus is generally on the "supply" side of bribery because companies engage with other stakeholders to tackle the payment of bribes.

In countries where corruption is systemic or entrenched and contracts between the private and public sectors involve government or government entities, the legal and reputational risks for companies can be very high. For companies seeking a practical solution, Collective Action may provide a means to redress the risks for companies and improve the wider business environment. Engaging with competitors, local authorities, government agencies and civil society stakeholders to confront bribery risks that are common to market participants can be an efficient way to reduce corruption.

In September 2012, four Russian business organisations, i.e. Russian Union of Industrialists and Entrepreneurs (RSPP), Chamber of Commerce and Industry of the Russian Federation (CCI of Russia), All-Russia Public Organisation "Delovaya Rossiya" (Business Russia), All Russian Non-Governmental organisation of Small and Medium Business "OPORA Russia" signed the Anti-corruption Charter of the Russian business[61].

This initiative, launched by the Russian business community, seeks to prevent and combat corruption by stating the corporate consensus against it, and setting forth measures to address corruption within and between companies, as well as between companies and government. As a Collective Action it contributes to advancing good governance through better transparency, integrity and trust between private and public sectors.

To successfully apply the Charter principles in business practices, the initiators established a joint committee to deal with all matters relating to the implementation of the Charter, such as ensuring relevant organisational, methodological and informational conditions. Each corporate initiator delegates two representatives to the Joint Committee and appoints a co-chairperson, thus resulting in

[61] OPORA Russia, *Anti-corruption Charter of the Russian business* is available in English at http://against-corruption.ru/

four co-chairpersons, one on behalf of each organisation. Each co-chairperson, on a rotation basis, manages the work of the Committee for a six-month term. A co-chairperson holds the meetings of the Committee and draws up the agenda based on the proposals made by the Committee members. In all its decisions, the Committee is to be governed by consensus.

The charter is open to accession by Russian national, regional, or industry associations, as well as by Russian and foreign companies operating in Russia. Companies may accede to this Charter directly or through associations of which they are members. The provisions of the charter apply to both the relations inside the business community and those between the business community and public authorities. Some of the major elements by which the charter will operate in the fight against corruption include the following:

- Corporate management based on anti-corruption programmes
- Monitoring and assessment of anti-corruption programmes
- Efficient financial control
- Personnel training and control
- Joint efforts and transparency of anti-corruption measures
- Rejection of illegally gained benefits
- Relations with partners and counterparties based on the anti-corruption principles
- Transparent procurement procedures
- Information measures to counteract corruption
- Collaboration with the government
- Advocating law and order
- Combating bribery of foreign public officials and international organisation officials.

The weak spot of the Charter is in its voluntary nature. Many companies are reluctant to join the Charter because of high expectations and potential obligations that are not too clear to its members. Yet the objective of the Charter is to attract a maximum number of participants which in turn should allay fears of coercion to implement costly measures to counter corruption.

Recently some innovative ways were used by local authorities to attract more attention to the Charter through creating better conditions for those who sign it.

Another advantage is that under the new anti-corruption law №273-FZ Art.13.3 companies need to implement compliance programs and procedures to ensure their compliance with the anti-corruption legislation. Certain benefits are being regarded for companies that implement anti-corruption provisions and compliance programs by the Prosecutor's office. Now when the law went into force, the Charter received another boost to promote it further in the Russian business community.

The number of companies that signed the Charter is growing fast and is well over a thousand now, so the issue that remains is how for the companies to demonstrate assurance and commitment to fight corruption. To make things easier the expert council under the Chamber of Commerce has developed methodology on compliance program implementation that would allow companies to both demonstrate their compliance with the federal law №273 Article 13.3 and begin to implement anti-corruption compliance procedures to uphold their membership of the Charter. Two challenges that still remain are the lack of awareness in the regions of Russia about the availability of such a toolkit and compliance overall and limited capacity at the Chamber's Chapters throughout Russia to provide assistance necessary to raise the awareness and allocate local resources to help companies develop their own ethics and compliance programs. This is now being addressed through the Coordination Council on the Anti-corruption Charter implementation by getting compliance organisations and experts engaged by using their expertise on pro bono basis.

As Collective Action the Charter still remains as most vibrant and far-reaching initiative by the Russian business as it has been underpinned by major business associations and has a big potential to become an essential part of anti-corruption framework in Russia.

7 APPENDIX 1: GOOD PRACTICES ESTABLISHED BY BUSINESS

7.1 Rules established by a Code of conduct on risk assessment and identification

Thales Good practices[62]

Thales system is used to manage 19 major risks: 8 operational risks, 4 financial risks and 7 compliance risks including the risk of corruption. Each risk is supervised by a risk sponsor. The vice-president, Ethics and Corporate Responsibility is the risk sponsor for the risk of corruption.
The risk of corruption is analysing using risk scenarios. Each scenario has an associated risk level, impact level and set of risk reduction measure. The scenarios cover direct and indirect risks of corruption and risks associated with inadequate application of risk measures.

The **Risks control department** is responsible for:

- analysing exposure to risks
- updating the risk of mapping
- assessing risks

The Legal and contracts department ensures the legal compliance of all of the Group's activities
Compliance officers and ethics officers

A total of 150 **Compliance officers** reporting to the Legal and Contract Department ensure compliance with national laws and with the Group's business ethics and corruption prevention standards. A total of 18 Ethic officers are responsible for deploying the Code of Ethics and its principles into Thales.

Total SA[63]

When a company acquires facilities to expand a business, the vendor insists that it teams up with an unknown company that will assume certain local risks associated with the operation.

The risks

- Committing the Company's assets and reputation in a relationship with a dishonest partner that is pursuing different goals with may harm the company's interests.
- Inadvertently becoming associated with unprincipled or dangerous practices.
- Find out exactly whom you are dealing with, by conducting a risk analysis with your compliance officers to spot potential warning signs and address them.
- Consider alternative solutions that offer better guarantees over the long term, by looking beyond the original deal structure.
- Prepare a document clearly setting out all the commitments of the parties involved with the help of a lawyer.
- Ensure that these commitments are compatible with Group policies.

[62] This company with € 14 billion of sales in 2013 has 65 000 employees in 5 markets: aerospace, space, ground transportation, defence and security.
[63] Total had a net income of € 189 billion and 100 0000 employees in 2013

Checklist on risk assessment[64]

Risk assessment	Yes	No	In progress
The company conducts a standard risk assessment on a regular basis. - The company identifies operational roles and responsibilities in charge of conducting the risk assessment. - The company defines and documents operational processes for conducting the risk assessment. - The company defines oversight responsibilities. - The company embeds risk assessment in existing process. - The company is aware of the negative consequences of failing to prevent corruption. - The risk assessment includes all major areas of risk. - The company identifies corruption-related risks by using internal and external sources. - The company defines priorities based on the overall risk exposure. - The company develops a risk strategy to minimise the overall risk exposure and identified residual risks. - The company documents the outcome of the overall risk assessment. - The company reports publicly on its risks assessment.			

7.2 Good practices on facilitation payments established by a code of conduct

Your company has applied for an administrative authorisation. The procedure is dragging on and you realise that your contacts are waiting for a "*gesture*" in exchange for completing the formalities.

The risks:

- Encouraging further the requests, abuse of office and a lack of integrity;
- Participating in corruption; and
- Incurring unwarranted costs that are difficult to evidence and check.

Recommendations:
Do not give into the request because Total prohibits facilitation payments.
Find out why the procedure is being held up–are these legal reasons? – And assess whether the matter should be taken up with high level officials.
Ask local contacts whether they have experienced similar problems.
Remind the officials concerned of our business principles and discuss alternative courses of action with the local team, especially your compliance officer.
Determine with the Legal Department whether the payment can be made within the law and have the final decision approved by your manager.

[64] UNODC 2013, *An Anti-Corruption Ethics and Compliance Programme for Business, A practical guide*, op.cit.

Check list on facilitation payments[65]

Facilitation payments	Yes	No	In progress
- A clear, visible and accessible policy prohibiting facilitation payments is in place - The policy contains a comprehensive definition of facilitation payments. - The policy recognises situations where facilitation payments cannot be avoided. - A detailed risk assessment is carried out to understand the situations and practices in which facilitation payments can occur. - The outcomes of the detailed risk assessment are reflected in the policy and procedures to mitigate the risk of facilitation payments. - The policy and the procedures are communicated to employees and relevant business partners. - Adherence to company's policy and procedures is monitored. - Employees and relevant partners are trained and receive guidance with facilitation payments. - In cases where facilitation payment cannot be avoided (i.e. personal security and safety) they need to be documented in the company's books and records. - The company uses its influence to support the prohibition of facilitation payment. - The company's oversight body regularly reviews policies and procedures prohibiting facilitation payments. - The company publicly reports on its policies and procedures prohibiting facilitation payment.			

7.3 Rules regarding the charitable contributions established by a Code of conduct

An important trading partner asks the company to make a gift to a charity ball organised by a charity headed by his wife.

The risks:

- Waiting company resources or using them inefficiently.
- Associating the name or reputation of the Company with a cause that is not universally supporting given the circumstances.
- Making a gift in the hope of obtaining an unjustified benefit in the company's or your own personal interests, thereby participating in an illegal practice.

- Notify your manager of the request.
- Obtain information about the charity (purpose and bylaws, members, officers, reputation) and the purpose of the events, which should be for the public interest (healthcare, education, humanitarian action, environment, and heritage).

[65] UNODC (2013), *An Anti-Corruption Ethics and Compliance Programme for Business, A practical guide*, op.cit.

Check list on charitable contributions[66]

Charitable contributions	Yes	No	In progress
- A clear, visible and accessible policy addressing charitable contribution to prohibit the misuse of this type of expenditure in order to obtain advantages or business transactions or as subterfuges to a corrupt act. - The policy contains a comprehensive definition of charitable contributions. - A detailed risk assessment is carried out to understand the situations and practices in which contributions are illegal can be misused. - The outcomes of the detailed risk assessment are reflected in the policy and the procedures. - The policies and procedures are communicated to employees and relevant business partners. - Practices to mitigate the risks associated with charitable contributions are established. - Employees and relevant business partners are trained and receive guidance on dealing with such expenditures. - Adherence to company's policy and procedures is monitored. - The company's oversight body regularly reviews policies and procedures prohibiting charitable contributions. - The company publicly reports on its policies and procedures addressing charitable contributions.			

7.4 Rules established by a Code of conduct on political contributions

A valued customer is a candidate in local elections. He/she asks the company to contribute to his/ her political party's campaign fund

The risks:

- Breaking the law;
- Impairing the political neutrality of the Company; and
- Creating a situation of dependence or an unjustified relationship, raising suspicions of corruption

Inform the customer that Group companies are banned from funding political organisations and providing any form of partisan support.
Notify your manager of the request.
Refuse to provide any in-kind support such as the loan of resources, or equipment or the purchase of advertising space or promotional items.

[66] UNODC (2013), *An Anti-Corruption Ethics and Compliance Programme for Business, A practical guide*, op.cit.

7.5 Rules established by Codes of conduct on gifts and hospitality

Airbus industry[67]
Good judgment should always guide us in these situations. Business courtesies are prohibited by law under certain circumstances and in certain countries. We must each follow the policies that apply to us. Gifts of cash or cash equivalents, such as gift certificates and vouchers, are never permitted.
Michelin [68]
Gifts and entertainment sometimes are offered that will affect our ability to make independent decisions in relationships with our business partners. The general rule to be applied for all gifts given to you or a member of your family is that you must return the gifts to the Company. In any case, you should not accept gifts or invitations (including favours for family members) if acceptance would impair your ability to make independent decisions at work, or if you would be put in a delicate situation if you accepted these gifts, or such that you would feel uncomfortable if it was known to your Manager. You may, however, be permitted to accept business gifts of reasonable value, for example, an occasional meal, an invitation to a social, sporting or cultural event, or participation in a company sponsored promotional event or resulting in a donation. You shall inform your manager.
Thales
The Gift and Hospitality Guidelines lay down the guidelines on behaviour applicable to all employees and particularly those who work directly with customers, partners and suppliers The Guide highlights four key points: - Compliance with all relevant laws and regulations. - Compliance with internal rules on the delegation of responsibilities and the principle of reasonable behaviours and choices. - Accountability for choices and seeking out assistance (from Management, Compliance officers, Ethics Officers etc.). - Transparent recording of operations in a registry addition to the required countries - In addition Thales formally prohibits the offering or receiving payments of cash.

7.6 Rules established by Codes of conduct on conflict of interest

Airbus industry: Identifying and Managing Conflict of Interest
As part of our efforts to protect EADS[69]' reputation and ensure we are acting on the basis of what is best for the Company we must avoid both actual and apparent conflicts of interest at all times, and we cannot avoid a conflict of interest, we must make it known to our supervisor. In particular when hiring current and former public officials or government employees, we should comply with all applicable laws, regulations and directives, including those with conflicts of interest. These rules extend to negotiations or contacts with government employees relating to potential employment by EADS either on the payroll or as consultants or subcontractors.

[67] In 2013 Airbus announced € 59, 3 billion revenues and had 144 000 employees
[68] In 2014 Michelin announced a turnover of € 19 billion and had 111 000 employees
[69] European Aeronautic Defence and Space Company (EADS) was renamed in 2014 to Airbus Group.

Total SA: Conflicts of interest

A conflict of interest may not automatically be perceived as such and its possible consequences may not be readily apparent. The perception of a conflict of interest varies according to the persons and the type of interest involved.
Guided by tradition or your beliefs you may underestimate the risks of a situation leading you to ignore other feasible situations, seek to fulfil your own interest or those of a third party to the detriment of the company, lose the trust of your colleagues or inadvertently encourage illicit practices.
You should therefore seek other points of view to identify the existence of a conflict of interest, assess the implications and ensure that you make choices consistent with the company's interests.

Our recommendations
Identify potential personal conflict of interest
Regularly reviewing whether personal considerations may influence your decision making helps you pinpoint potential conflict of interest and take appropriate action as needed.
If you are not sure whether a conflict of interest exists, **notify** your manager and **explain** the situation, particularly if it may lead you to obtain benefits that are contrary to the group's interests. You should follow this procedure:
Regardless of whether or not there is a risk of the law being breached
Whether the advantage is real or potential and benefits you or a relative, friend or a person that has any power or authority over you.
Declare any conflict of interest to your manager to protect yourself and the company
Full disclosure of the situation allows risks to be assessed and managed as needed. In some cases it will be sufficient for you to be recused from making a decision (for example to hire one of your relatives). In other cases solutions may have to be found to prevent or eliminate the conflict of interest. It may also be the case that, after considering the case, management decides that no conflict of interest exists.
Adhere to strict principles of business conduct to minimise potential conflict of interest.
In addition to your obligation to protect Total's interests you can reduce your risk of finding yourself in situations involving potential conflicts of interest if you:
Avoid acquiring any interest in the business of a competition, supplier or customer without your manager's prior written approval.
Do not take on a second job without first obtaining your manager's written approval if you have a full time employment contract with Total.
Avoid direct or indirect personal business relationship with Total customers, suppliers or competitors.
Decline all gifts or benefits that might make you feel beholden to a customer, a supplier, a partner or any other third party.

Check list of questions you should ask

- Do you or your friends or family stand to gain from the contract, the hire etc.?
- Do you feel obliged to make a decision for the wrong reasons due to personal consideration?
- Could other people believe that the conflict of interest will influence the way you work?
- Would you be embarrassed if your interests came to light?
- How would a customer or a supplier react?
- Do you have the impression that your actions fall outside the scope of your responsibilities?
- Are you afraid that your working or business relationship will suffer?

Check list on managing conflicts of interest[70]

Conflicts of interest	Yes	No	In progress
- A clear, visible and accessible policy addressing conflicts of interest in place. - The policy contains a comprehensive definition of conflicts of interest and outlines possible sources (such as outside appointments). - The policy addresses the disclosure of possible conflicts of interest by employees and relevant business partners. - The policy requires the disclosure of incomes and assets by senior management - The disclosure of assets is extended to family members of senior management. - The policy recognises situations where conflicts of interest cannot be avoided and defines clear procedures to address such situations. - A detailed risk assessment is carried out in order to understand the situations and practices in which conflicts of interest can occur. - The outcomes of the detailed risk management are reflected in the policy and procedures to mitigate negative consequences arising from conflicts of interest. - Due diligence for conflicts of interest is exerted in major operational processes such as procurement, sales or production. - Adherence to company's policy and procedures is monitored. - The company's oversight body regularly reviews policies and procedures and major occurrences of conflicts of interest. - The company publicly reports on its policies and procedures prohibiting facilitation payment.			

7.7 Rules established by Codes of conduct on third parties

During business negotiations an intermediary (such as Sales agent, local correspondent, consultant, financial advisor or lawyer) offers "help" in securing a contract or ensuring that a transaction goes smoothly.

The risks:

- Committing a serious offence (corruption or influence peddling) personally or in the company's name;
- becoming inadvertently involved in a tax fraud or money laundering transaction,
- being fined;
- banned from bidding for Government contracts; and
- sent to prison or incurring other punishments provided for by law.

Check the intermediary's identity, reputation, competence and whether or not he or she is legally able to intervene, by conducting a risk analysis in accordance with "Representatives" procedure.
Avoid agreeing to an escalating fee based on results and negotiate a reasonable flat fee in line with local industry practices.

[70] UNODC (2013), *An Anti-Corruption Ethics and Compliance Programme for Business, A practical guide*, op.cit.

Clearly **describe** in the contract the services to be rendered by the intermediaries in the contract
Insert clauses in the contract whereby the intermediary undertakes to comply with the Group's code of conduct and to refrain from engaging in any corrupt practices or influence peddling
Refuse to make payments in cash and avoid making offshore e-payments.
Check that the beneficiary of the payment really is the intermediary with whom the contact was signed.
Remain attention to any incidental benefits or additional costs generated by the contract. Any such benefits or costs must be adequately evidenced and traceable.
Consult the legal Department and your compliance officer.

7.8 Rules established by a Code of conduct in relation to customer contracts

When signing a major customer contract, the customer's representatives propose waiving your proposed discount in exchange for a benefit in kind (such as free product deliveries).

The risks:

- Creating misunderstandings concerning the different types of benefits that may properly be offered and creating a situation of personal dependence that may affect the execution of current or future contacts; and
- Agreeing to an unlawful request.

Remind them, immediately that the original discount was offered for commercial reasons based on a specific contractual framework.
Explain that the benefits must be received by the company and under no circumstances can it take the form of a personal reward or benefit.
Determine whether the request is legitimate.
Assess with the Legal Department the possibility of exchanging one type of commercial benefit to another.

7.9 Rules established by a Code of Conduct on business partners

To increase our chances of acquiring a plant being sold by the government you are strongly encouraged to team up with a specific local business partner

The risks:

- Being accused of having won the contract with influence peddling of corruption of national or foreign public officials: such actions wherever they take place are punished by national and international laws. This can have serious consequences: harming the company's reputation,
- being banned from bidding for public contracts, high litigation costs, fines or other penalties.

Analyse with your compliance officer the risks of this association with the local partner by following the "Joint and venture and Business procedure".
Ensure that the proposed business partner does not have any special or family ties with the decisions makers involved and stipulate that under no circumstances should the local partner exercise undue influence.
Prepare a contract with the help of lawyers including clauses whereby the business partner undertakes to comply with our Code of conduct and warrants that he or she will not engage in any influence peddling or corrupt practices

Checklist on good practices for business partners[71]

Good Practices for business partners	Yes	No	In progress
- All business partners are made aware of the company's anti-corruption policies and procedures. - Subsidiaries over which a parent company has effective control are required to implement an equivalent anti-corruption programme. - Affiliates are encouraged to implement an equivalent anti-corruption programme and mitigation options for the remaining risks are defined including exit scenarios. - The company should seek to apply its own or similar anti-corruption standards to the joint venture. Mitigation options for the remaining risks are defined including exit scenarios. - Agents and intermediaries are addressed by specific policies and procedures. - Contractors and suppliers are addressed by specific policies and procedures. - Due diligence is applied when a new business partner is selected. - The scope and intensity of the due diligence is determined by the company's overall risk assessment as well as relationship-specific risk areas. - Business partners are continuously monitored with the extent, frequency and approach to this monitoring being determined by the risk assessment. - Business partners are motivated to adhere for the company's standards by commercial, legal and reputational incentives and sanctions. - The company publicly reports on the application of the anti-corruption programme to business partners			

7.10 Rules established by a Code of conduct on public procurement

When shortlisting companies that have responded to an invitation to tender, a partner insists on adding and selecting a company that does not fulfil the qualification criteria, stating that he guarantees the company's performance.

The risks:

- Resorting to unfair or discriminatory practices.
- Triggering a dispute.
- Incurring the partnership's liability.
- Not obtaining the desired standard of quality.
- Giving into blackmail.

Select the best candidate based on independent and objective criteria and conduct a risk analysis by following the Group "Purchasing and Sales" procedure.
Remind the partner that the choice of the company must be based solely on the pre-determined criteria, which must be applied to all candidates without exception.

[71] UNODC (2013), *An Anti-Corruption Ethics and Compliance Programme for Business, A practical guide*, op.cit.

Determine whether there are legitimate reasons for giving preference to the recommended company and assess the value of the partner's guarantee.
Assess whether there are circumstances where this type of consideration could be taken into account in the future on a fully transparent.
Stress the importance of protecting the interests of both Total and the partner by making informed decisions.
Encourage communication of the Code of conduct.

7.11 Check List on Internal controls and record keeping[72]

Internal controls and record keeping	**Yes**	**No**	**In progress**
A system of internal control is put in place - The objectives of the system of internal controls are communicated to employees and business partners. - The system of internal controls is based on the company's individual risk profile and business circumstances. - The system of internal controls strikes a balance, avoiding either excessive or insufficient controls. - The system of internal controls consists of organisational measures and prevention, detection, manual and automated controls. - The system of internal controls includes organisational measures and controls that are integrated into the underlying business processes and those are applied to the overall company and business partners. - The system of internal controls is designed, implemented and maintained by the company's senior management. - The system of internal controls is evaluated by internal and external auditors on a regular basis. - The effectiveness of the system of internal controls is assessed by the Board of Directors or a similar body. - The elements of the system of internal controls, the determination of those responsible for its implementation and the information obtained during the execution of the system are documented. - A formal policy outlines procedures to maintain accurate books and records. - The company publicly reports on its system of internal controls and its practices in maintaining books and records.			

[72] UNODC (2013), *An Anti-Corruption Ethics and Compliance Programme for Business, A practical guide*, op.cit.

7.12 Rules on protection of whistleblowers established by Codes of conduct of companies

Airbus Industry
All Employees are strongly encouraged to report their concerns through the normal business channels, such as your manager, your Human Resources Business Partner (HRBP), or your Ethics & Compliance Team. Open Line is also available for use by all Employees. It is operated by an external provider. The use of Open Line is entirely voluntary, and conditions for use are available on the Group intranet and communicated broadly within EADS. An inquiry or concern can be submitted confidentially without fear of retaliation. EADS will not tolerate retaliation against employees making reports in good faith and/or assisting in investigations of suspected violations of the Standards of Business Conduct. Good faith means submitting a concern without malice and without consideration of personal benefit, and with plausible reason to believe it to be true.
Tesco[73]
Protector line allows you to report real concerns regarding misconducts at work. You must speak out if you. A help-line is available in each country where Tesco has its activities. Have concerns at work about anything you think may be unlawful, breaches the Code of company policy - Think there are unreported dangers to staff, customers or the general public. - Or think that information about these things is being deliberately concealed Protector Line is completely confidential and offers callers total anonymity. You will not be required to give your name in order to raise a concern. But if you leave your name we will be able to report back to you the results of any investigations or contact you to request further information. As long you are acting in good faith and your concerns are genuine, you are legally protected from victimisation and will not be at risk of losing your job or suffering any form of retribution as a result of raising a concern even if you are mistaken.
Thales Ethics Alert
Thales has put in place a global ethics alert (whistleblowing) facility as laid out in a guide describing the scope of the facility which was approved by the French national Commission for information and liberties in 2011. This ethics alert facility allows a Group employees to: - obtain information and advice in case of questions or doubts about the application or interpretation of the Code of Ethics. - raise ethics-related concerns that could impact the Group's business or seriously jeopardize its performance as a responsible operator with respect to accounting, financial and banking practice, corruption and fair trade. - The alert may reported by any means (letter, email, telephone or face-to-face conversation). It is based on the principles of confidentiality and respect for the rights of each person concerned

[73] Tesco is a British multinational grocery and general merchandises with a market capitalisation of £ 20 billion with 500 000 employees around the world and 300 000 employees in the United Kingdom.

throughout the procedures. The alert facility must be used in compliance with applicable law and rules in the country in which the employees lives or works. Some countries also have a national ethics alert facility in addition to the global facility The user guide on ethics alert is sent by email to all Group employees. The facility is also presented to employees during training sessions
Tyco[74]
If you have a question related to Tyco policies or if you observe or suspect something improper or unethical, Speak up. Raise the concern with your manager or Human Resources representative. If you are not comfortable speaking with your manager or Human Resources, other available resources include: Legal and Compliance teams, Tyco Concern Line, Ombudsman Office. A concern line is available in each country where Tesco is established.

7.13 Check List on detecting and reporting infringements[75]

Detecting and Reporting Infringements	**Yes**	**No**	**In progress**
- The Company provides a secure and easily accessible help hotline or a dedicated person/ department to support employees and business partners in the practical interpretation and implementation of the company's policies and procedures. - All possible internal and external sources are identified that can be used to detect violations. - Measures are put in place to ensure that disproportionate internal controls do not impede the maintenance of a trust-based culture. - The company provides a secure and easily accessible reporting hotline and/ or ombudsman to encourage the reporting of violations. - It is clearly stated that employees and business partners are expected to report violations of the anti-corruption programme. - It is clearly stated and communicate that employees and business partners do not suffer any discrimination or dismissal for reporting violations in good faith and on reasonable grounds. - Persons reporting as well as the persons who are the subject of allegations or concerns are treated with confidentiality and have access to legal advice. - The reporting of violations is addresses in trainings and communication. - Senior management receives periodic reports of detected violations or irregular practices. - The company publicly reports on its policies and procedures for seeking guidance, detecting and reporting violations.			

[74] Tyco whose headquarters are based in Ireland is a leader in global safety and security solutions. It has $ 10 billion in annual revenues and 57 000 employees.
[75] UNODC (2013), *An Anti-Corruption Ethics and Compliance Programme for Business, A practical guide*, op.cit.

7.14 Check List on addressing infringements[76]

Detecting and Reporting Infringements	Yes	No	In progress
- A clear visible and accessible policy is in place addressing employees and business partners. - The disciplinary policy provides for a catalogue of sanctions, guidelines on procedures and responsibilities and opportunities to appeal. - Sanctions are relevant proportionate and applied in practice. - The Guideline on procedures and responsibilities supports a fair and transparent response to incidents. - A process is in place for notifying the relevant internal departments and external stakeholders in case of violations. - Violations are analysed to determine remedial actions to strengthen the anti-corruption programme. - The company discloses relevant information and evidence of actual or possible violations to authorities before allegations against the company or one of its representatives have been made. - The company expresses its cooperation with authorities after allegations against the company or one of its representative s have been made. - The specificities of national legislative and prosecutorial regimes are taken into account when considering cooperation with authorities. - The protection of reporting persons, witnesses, experts and victims is addressed when cooperating with authorities. - The company addresses potential violations of data privacy regulations. - The company publicly reports on its policies and procedures for addressing violations and cooperating with authorities.			

[76] UNODC (2013), *An Anti-Corruption Ethics and Compliance Programme for Business, A practical guide*, op.cit.

8 APPENDIX 2: GOOD PRACTICES ESTABLISHED BY BUSINESS IN THE RUSSIAN FEDERATION

8.1 TNK-BP and its uniform Business Ethics Standard

TNK-BP used to be one of Russia's most dynamic and open to change companies. Prior to its acquisition by Rosneft in 2013, TNK-BP developed its internal regulatory documents governing the issues of business ethics which produced the uniform Business Ethics Standard outlining basic mandatory guidelines. That new standard combined the three existing standards related to gifts and hospitality, conflicts of interest and principles of business operations and they became clearer and easier to understand. The document 'pyramid' has at the top the Code of Business Practices, which lays out the Company's values and basic business principles. The next level is the uniform Business Ethics Standard whose concept was made very clear and so it could be applied in day-to-day work by employees. The bottom level of the 'pyramid' has the Procedures that describe the processes and ensure compliance with the rules stated in the Standard. It should be noted that the Standard and the Procedures are binding for everyone - directors, top managers, and all those employed under labour, civil or agency contracts. Not only they but agents and consultants who represent the Company are also expected to follow the same rules and regulations.

TNK-BP successfully managed the issue of conflict of interest, following the Russian legislation that came into force in July 2011, because any confidential information disclosed could lead to changes in prices of the company's shares, bonds and commodities. One of the ingredients of success in addressing that issue was the high level of trust among TNK-BP employees. To demonstrate it, **a delegation of authority matrix** was put in place to allow greater autonomy for the company divisions. This is a good example of how the application of high standards of business ethics could support high levels of trust in a dynamic and challenging business environment. As a JV between BP and TNK, TNK-BP still was a Russian company that successfully developed, integrated and implemented most efficient business models that were underpinned by high professional and ethical standards of its employees. As a result TNK-BP was most sought after place to work for its high level of integrity.[77]

8.2 ОМК (United Metallurgical Company)

Private Company Corporate Ethics Declaration as a complete change in decision making model and the Board of Directors' full involvement and accountability for the Declaration's application

In June 2007, OMK Group adopted its Corporate Ethics Declaration. The document states: "The OMK Board of Directors has adopted the Corporate Ethics Declaration so that the Company Directors, executives and employees would adhere to the high standards of corporate ethics and the activities of the Company staff would serve the interests of the stockholders, investors and the Company as a whole." The provisions of the Declaration promote confidence between all the participants of the corporate relations based on honesty, integrity and responsibility.

The main purpose of the Declaration is to make the employees understand one of the basic principles of corporate behaviour "avoid conflicts of interest". The Declaration is generally aimed at the top and middle managers, the officers who make decisions which have a substantial impact on the company's performance.

The Board of Directors took upon themselves full responsibility for the Declaration's provisions and commitment. The implementation of the provisions and norms is coordinated by the Board and

[77] Anatoly Yakorev (2014), *TNK-BP: A Study of Culture and Change Management in Russia,* available at http://journalofbusinesscompliance.com/

enforced by departments and designated officers that directly report to the Board. Hence any conflicts of interest are first submitted and reviewed by the Company Secretary, then examined by the Security Directorate before being looked at by the Board. Also all the materials sent to the Board are initially discussed at the Management Board meetings. The feedback on claims and complaints are communicated through the Company Secretary. What is unique for Russia is that **the Declaration made it possible for any employee** who is aware of violation of the Declaration's provisions to inform the Board.[78]

8.3 Sakhalin Energy Investment Company

This company provided a best practice in Corporate Social Responsibility - Community Grievance Procedure (Implementation of Ruggie Principles[79])

Sakhalin Energy is the Sakhalin-2 project operator which is the world's biggest integrated oil and gas project implemented in the harsh environment of the Sakhalin Island. Implementation of such a challenging project would not be possible without strict observance of the best international standards in business ethics and corporate social responsibility (CSR). This at times leads to developing a new standard. Also the company is the UN Global Compact member and its most active participant in Russia which led to electing the company CEO as Steering Committee's Chairman of the Global Network in Russia.

The company invested heavily in CSR and sustainable development activities in many areas. In 2009 Sakhalin Energy became one of the five companies worldwide to test Ruggie Principles as applied to corporate grievance-addressing mechanisms. They stipulate that the states should protect human rights; CSR is about respecting human rights; and the society, people who are harmed by business should have an access to judicial and non-judicial remedy mechanisms, including corporate. In 2010 the company and Sakhalin Indigenous Minorities created a Grievance Procedure as part of Sakhalin Indigenous Minorities Development Plan. This mechanism allows for timely documenting of any concerns and incorporating them into the company's management systems. The status and its progress are controlled by the company's top management, and audited externally and internally. Communities and other stakeholders have full access and are engaged. All grievance-related issues are addressed confidentially and the procedure is mandatory for all the company's functions and units, as well as contractors and subcontractors. All grievances filed with Sakhalin Energy are tracked and analysed. Based on such an analysis, recommendations are developed for the company's functions, contractors and subcontractors with respect to impact mitigation and preventive measures.[80]

[78] International Business Leaders Forum (2012), *Improving Business ethics and reducing risk of corruption* available at www.iblfrussia.org

[79] The *UN Guiding Principles on Business and Human Rights* were proposed by UN Special Representative on business & human rights John Ruggie, and endorsed by the UN Human Rights Council in June 2011.

[80] Corporate website of Sakhalin Energy, is available at http://www.sakhalinenergy.com/

9 APPENDIX 3: ROLE OF THE FEDERAL ANTI-MONOPOLY SERVICE (FAS) IN SUPPORTING GOOD GOVERNANCE

Federal Anti-monopoly Service (FAS)[81] is the federal-level executive governmental organ that controls the execution of the antitrust law and related areas.

One of the strengths of the agency is the continued feedback from companies which greatly reduced time periods for development and introduction of new changes. The FAS has signed agreements with the following organisations:

- Chamber of Industry and Commerce;
- OPORA Russia - All-Russian Non-Governmental Organisation of Small and Medium-Sized Business;
- Business Russia;
- Association of Russian Banks;
- Association of Regional Banks of Russia;
- National Association of Securities Market Participants;
- PARTAD, Professional Association of Registrars, Transfer - Agents and Depositories;
- National League Governing Russian Union of Insurers;
- Interregional Union of Health Insurers; and
- Non-profit partnership "Promoting Competition".

FAS takes advantage of various platforms like expert councils and working groups to develop its activities. In order to encourage professional market actors to address problems of competition in product markets, to maintain communication and seek feedback from these industries, FAS established the following working groups on: advertising, unfair competition to protect competition in the financial services market, the electricity industry; communication, agriculture, education and science, social and health sectors; retail sector, metallurgy, construction and building materials industry, housing sector, rail, transport, gas markets; information technology; defence industry, tourism, mechanical engineering, small and medium enterprises and funeral services.

The FAS Russia Order of 16 February 2006 №38 formed Community Advisory Council. In 2007-2009, this council was established in all territorial bodies of FAS Russia.

The FAS Russia Order of 28 July 2012 №447 on Public Advisory Council renamed the Competition Council of the Federal Antimonopoly Service. The Council is a standing advisory body of the FAS Russia. Its decisions have recommendatory character.

The Council's responsibilities include:

- Proposals in development and improvement of anti-monopoly law and practice;
- Ensuring NGOs involvement in monitoring violations of the anti-monopoly legislation;
- Communicating to the business community, NGOs and general public about FAS goals and objectives, tasks and authorities;
- Reporting on compliance regarding anti-trust and competition protection.

In accordance with the Federal Law of 25 December 2008 №273-FZ "On Countering Corruption", anti-corruption legal framework consists of the Constitution of the Russian Federation, federal constitutional laws, the generally recognised principles and rules of international law and international treaties of the Russian Federation, federal laws, normative legal acts of the President of the Russian Federation, as well as regulatory and legal acts of the Russian Federation, other normative legal acts of federal public authorities, regulations of public authorities of the Russian Federation and municipal legal acts.

[81] Website of FAS is available at www.fas.gov.ru

1. The Federal Anti-monopoly Service of Russia carries out prevention of corruption through the following activities:
   - monitoring compliance with federal and departmental documents relating to anti-corruption activities within the Service;
   - building public intolerance towards corrupt behaviour;
   - participating in the development of institutions of public control over observance of the legislation of the Russian Federation on countering corruption.

2. The Federal Law of 26 July 2006 №135-FZ "On Protection of Competition" (hereinafter - the Law on Protection of Competition) contains provisions aimed at eliminating or reducing factors of corruption risks. These provisions may include the following:
   - prohibition of anti-competitive acts and actions (inaction) of the federal executive authorities, public authorities of the Russian Federation, local authorities, exercising the functions of these other bodies, bodies or organisations as well as state funds, the Central Bank of the Russian Federation (Article 15 of the Law on Protection of Competition);
   - ban on combining functions of the federal executive bodies, executive bodies of subjects of the Russian Federation, other authorities, local authorities and functions of economic entities, except for cases established by federal laws, decrees of the President of the Russian Federation, Resolutions of the Government of the Russian Federation, as well as granting of economic entities by functions and powers of these bodies, including the functions and rights of state control and supervision (Article 15 of the Law on Protection of Competition);
   - prohibition on anti-competitive agreements or concerted actions of the federal bodies of executive power, bodies of state power of subjects of the Russian Federation, local authorities and other bodies exercising functions of the above bodies or organisations as well as state funds, the Central Bank of the Russian Federation (Article 16 of the Law on Protection of Competition);
   - an interdiction on allotting federal executive bodies, executive bodies of subjects of the Russian Federation, local authorities, other bodies exercising the functions of these bodies or agencies of the state or municipal aid (defined as advantage which provides some economic entities compared to other market participants more favourable conditions for the activities of the relevant product market, by transferring assets and (or) other objects of civil rights, rights of access to information in priority order) without preliminary approval of the antimonopoly authority (Article 21 of the Law on Protection of Competition).

The Federal Anti-monopoly Service is not an agency that directly deals with corrupt activities of public officials and local authorities. However, according to the laws that regulate FAS activities, prohibition of action or inaction of state authorities and local self-regulatory authorities and execution by FAS its authority to prevent and stop such violations reduce corruption risks.

Commercial entities – legal persons and physical persons (individuals) must comply with the requirements of anti-monopoly legislation – the federal law №135-FZ (of December 2011) "On Protection of Competition".

This law applies to Russian and foreign legal persons (entity), organisations, federal executive agencies, state authorities of subjects of the Russian Federation, local authorities, other entities that function as authorities, also the state non-budgetary funds, Central Bank of the Russian Federation, physical person (natural) including entrepreneurs.

Article 15 - Prohibition of Acts and Actions (Inactions) of Federal executive authorities, Public Authorities of the Subjects of the Russian Federation, Bodies of Local Self-Government, Other Bodies or Organisations Exercising the Functions of the Above-Mentioned Bodies, as well as Public Extra-budgetary Funds, the Central Bank of the Russian Federation that Restrict Competition.

3. It is forbidden to combine functions of the federal executive authorities, the authorities of the constituent territories of the Russian Federation of the Russian Federation, other authorities and local self-government bodies, and functions of economic entities, except the cases provided for by Federal Laws, Decrees of the President of the Russian Federation, Regulations of the Government of the Russian Federation, as well as granting economic entities with functions and rights of the above-mentioned bodies, including the functions and the rights of the bodies of state control and supervision.

Article 16 - Prohibition of Competition-Restrictive Agreements or Concerted Practices of the Federal Executive Authorities, the Authorities of the Constituent Territories of the Russian Federation, Local Self-Government Bodies, Other Bodies or Organisations Exercising the Functions of the Above-Mentioned Bodies, as well as Public Extra-Budgetary Funds, the Central Bank of the Russian Federation.

Article 17- Antimonopoly Requirements for Tenders, Requests for Price Quotations for the Goods

i. The actions that lead can lead to prevention, restriction or elimination of competition in the course of tender, requests for price quotations for the goods (further on referred to as a request for quotations) are prohibited.

Article 18 - Specifics of Concluding Contracts with Financial Organisations

i. Federal executive bodies, executive bodies of the constituent territories of the Russian Federation, local self-government bodies, state extra-budgetary funds shall conclude contracts with financial organisations regardless of the sum of transaction only upon the outcome of an open tender or an open auction, organised in accordance with the federal law on state and municipal procurement of goods, works and services, for rendering the following financial services:
    - Attracting deposits;
    - Opening and keeping bank accounts, payment settlements in these accounts;
    - Services to keep the register of securities' owners;
    - Securities' management; and
    - Non-state pension provision.

Article 20 Procedure of Granting of State or Municipal Preferences

i. A federal executive body, authority of a constituent territory of the Russian Federation, a local self-government body, other agencies or organisations intending to grant a state or municipal preference, should file an application to an antimonopoly body for consent for granting the preference in the form, determined by the federal antimonopoly body.

In Articles 5-8 of the law on protection of competition, the main rules for entrepreneurs' market behaviour are defined through prohibition to perform certain activities. Violation of these rules invokes administrative responsibility. Chapters 2 and 7 cover these rules in more detail.

For example, Chapter 2 envisages: a) prohibition on abusing the dominant market position; b) the prohibition of agreements that curb competition and coordinated actions of commercial entities; and c) prohibition on unfair competition.

At the same time, the law envisages allowing certain actions that would not be considered as violations (Art. 12-13).

Chapter 7 describes state control over economic concentration. Under this Chapter, subject to state control are transactions, other actions with assets of Russian financial organisations and located in the Russian Federation fixed production-related assets and (or) intangible assets, or with regard to voting stocks (shares), the rights regarding Russian commercial and non-commercial organisations, as well as foreign persons and (or) organisations supplying goods to the Russian Federation for over one

billion Rubles within a year preceding the date of the transaction, another action subject to state control.
Chapter 8 describes the responsibility for violation of the anti-monopoly legislation. It could be both administrative and fall under the Criminal Law.
Chapter 9 talks in detail about considering cases on violation of the anti-monopoly legislation: grounds for opening a case, examination of the case and consequences of identifying an administrative offence and ways to appealing the violations.

9.1 New anti-corruption role of FAS

Article 39 (1) - Warning on Stopping Actions (Omissions) that Have Signs of Violating the Antimonopoly Law:
1. To suppress actions (omissions) that lead or can lead to preventing, restricting, eliminating competition, the antimonopoly authority shall issue a written warning to an economic entity that has dominant position to stop actions (omissions) have signs of violating the antimonopoly law, to eliminate the causes and conditions facilitating emergence of the violation and to take measures towards eliminating the consequences of the violation (further on referred to as a warning).

2. A warning shall be issued to an economic entity that has dominant position if signs are revealed of violating Clauses 3 and 5 Part 1 Article 10 of this Federal Law. The antimonopoly authority is not allowed to make a decision to initiate a case on violating Clauses 3 and 5 Part 1 Article 10 of this Federal Law without issuing a warning and before expiry of the period for its execution.

Article 10 - Prohibition of Abuse of Dominant Position by an Economic Entity
To prevent discriminatory conditions, a federal law or a normative legal act of the Government of the Russian Federation can establish the rules of non-discriminatory access to the goods markets and (or) the goods produced or sold by holders of natural monopolies, whose activities are regulated in accordance with №147-FZ Federal Law "On Natural Monopolies" of the 17 August 1995, as well as infrastructure facilities used by these holders of natural monopolies directly for providing services in the field of activities of natural monopolies.

Article 39.1 says what a warning from FAS should contain:
1. conclusions on the grounds for issuing the warning;
2. norms of the antimonopoly law that were violated by actions (omissions) of the person to whom the warning is issued;
3. list of actions aimed at stopping the violation of the antimonopoly law, eliminating the causes and conditions that facilitated emerging of the violation, eliminating the consequences of the violation and a reasonable period for their execution.

9.2 Anti-corruption clauses in contracts

Another aspect having to do with corruption risks but having a broader application is anti-corruption clauses in contracts and practice of their use in Russia. This aspect is of a lot of importance for FAS from the viewpoint of its anti-corruption role.

Many Russian and international research findings prove that the Russian economy is permeated with corrupt relations. This situation is not only about Russia's unfavourable position in international corruption rankings (macroeconomics). The problem is that many Russian companies (microeconomics) directly or indirectly are connected with shadow or corrupt activities which prevent natural competition from developing inside the country and expanding into external markets. The latter may have to do with economic barriers – relatively low outside liquidity and high risks of shadow assets. Also has to do with contractual barriers that stipulate that anti-corruption provisions should be included in contracts. That increases risks for corruption prone counterparties.