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Training for Regional Business Ombudsmen on “Good practices on anti-corruption and functioning of Regional Business Ombudsmen’s Offices”

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Disclaimer:

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1 EXECUTIVE SUMMARY

This handbook was prepared within the framework of the joint project of the Council of Europe and European Union “Protection of Russian Entrepreneurs from Corruption Practices” PRECOP RF. The goal of the project is to implement anti-corruption mechanisms so as to prevent corruption practices in regard of entrepreneurs in Russian Federation.

The necessity for this training material is justified by the requirements for continuous improvement of the business ombudsmen activities considering the on-going changes in the legal and economic environment in the Russian Federation. Professional development is one of the key success factors of an organisation and a guarantee of satisfaction of consumers of its services, so constant training on key issues of the activities of the business-ombudsmen (hereinafter – the BO) contributes to maintaining and increasing the level of operational skills and knowledge of representatives of the Institution of the Business Ombudsmen in the Russian Federation.

The BO institution has been created in all 85 regions of the Russian Federation, a fact that implies the need for continuous dissemination of new skills and knowledge, conducting trainings for the business ombudsmen and their staff members and persons associated with the work of the business ombudsmen.

Moreover, it is often impossible to organise trainings for all members of the BO in the Central office; therefore it is advisable to teach the ombudsmen themselves the training methods to let them to perform the trainings for the staff and other interested persons independently. The ombudsmen, thus, need to understand the purpose of the training and the target group, the training methodology, the used tools, requirements for participants, the teaching methods, approaches to training, the key rules of training, methods of training evaluation, i.e. to have a training handbook.

The activity of the Federal Business Ombudsman (hereinafter - FBO) is based on practical work, therefore, one of the main methods of study proposed for this training is interactive training with active participation of the trainees in exercises which are built in way that requires the students to analyse and review specific examples/cases (success stories and case studies) of protecting the rights of entrepreneurs and on development of concrete solutions for restoration of rights in the groups.

The main types of such situations are violations of the rights of entrepreneurs:

- during inspections by regulatory authorities,
- failure of the authorities to fulfil obligations under government contracts,
- unlawful criminal prosecution of entrepreneurs,
- failure of the authorities to comply with government requirements,
- laws and regulations, non-execution of court decisions,
- unlawful restriction of competition,
- failure to perform obligations on compensation payments to entrepreneurs,
- inaccuracies in the interpretation of regulations and legislation made by government bodies,
- administrative barriers including corruption,
- corporate conflicts,
- abuse of power by public authorities,
- a violation of the requirements of the legislative acts,
- the unsubstantiated claims of government agencies,
- systemic problems in the field of entrepreneurship.

At that, there are cases when the mentioned situations are linked to corruption, so the business ombudsmen should have an idea on how to proceed in such situations.

The need for the handbook is predetermined by the importance of having a single approach and procedures for framing the activity of regional ombudsmen. The handbook will allow to organise

trainings to enhance the capacity of the staff based on single standards and can be used as a reference book in everyday work of ombudsmen's staff, providing assistance to ombudsmen in their work.

The target audience for trainings would be regional ombudsmen, their key staff members, representatives of judicial, business and expert communities, that influence the functioning of the institute of business ombudsman. These trainings can also be of interest to governmental officials who cooperate with the institute of business ombudsman and would like to get a better knowledge of the principals and procedures that they abide by in their work.

The handbook was prepared jointly by two Russian experts. It is divided into 14 chapters and is supplemented by appendices. Chapters 4 to 13 and appendix 3 of the handbook are a contribution from Ms Dina V. Krylova, Council of Europe expert, while chapter 3 and appendices 1, 2 and 4 are contribution from Mr Anton Sviridenko, Council of Europe expert.

2 INTRODUCTION

This handbook was prepared within the framework of the joint project of the Council of Europe and European Union «Protection of Russian Entrepreneurs from Corruption Practices » PRECOP RF.

The handbook explains the modern notions of corruption and presents the international standards of anti-corruption policy and mechanisms of pursuing these policies (those developed by the Council of Europe in the first place) as well as plans and strategies of corruption control implemented in Russia. Bearing in mind that the project is aimed at protecting entrepreneurs' rights, special attention was given to the phenomenon of corruption specifically in business and anti-corruption policy protecting the rights of businessman that in most cases are violated due to corruption factor.

There is a great variety of types, forms and levels of corruption which have an impact in the work of the entrepreneurs. To ensure efficient processing of corruption-related claims filed by entrepreneurs to the business ombudsmen, it is important that the representatives of the business ombudsman at Federal but also regional level have a thorough understanding of what corruption is. When considering claims from entrepreneurs, it is crucial that the business ombudsman understands the problem and how much it damages public interests, economic interest, entrepreneurship, but also to understand what are the tools that are available to the business ombudsmen when taking action and considering these claims.

In the Handbook much attention is paid to business corruption. **Business corruption** is a type of corruption that involves any economic entities acting at least as one of its parties. An account of the extent of corruption in the country is very important for decision-making on state regulation in various areas of public relations. Unfortunately, the systemic nature of corruption in Russia is not taken into account when making such decisions. Institutional nature of corruption in Russia is another characteristic feature.

The main feature of corruption in today's Russia is the prevalence of corrupt extortion, when only one party of corrupt relations is a beneficiary (in contrast to classical corruption in which all participants receive improper benefits), including officials representing public authorities, infrastructure monopolies, or organisations that are authorised to provide public/municipal service(s) specified in mandatory regulatory requirements. Another party (business entities and citizens) often are victims of such corrupt relations associated with substantial costs and no improper benefits. A Russian businessman in many cases has to enter into corrupt relations not for the purpose of obtaining illegal benefits, but in order to stop administrative pressure or overcome administrative hurdles threatening to the development of their business.

Combating corruption is a true challenge for all countries. Most states implement the anticorruption policy based on both their domestic law and basic principles enshrined in the international instruments. There has been a whole set of tools set up at the level of the Council of Europe to combat corruption at all levels, including in the business environment that are considered in this handbook.

Russia has enacted a number of important documents that define certain areas of anticorruption policy to be taken into account when considering claims from entrepreneurs.

Anticorruption laws fail to account for the level of development of Russian institutions. Norms that are successful in countries with strong legal institutions, well-established law enforcement and developed legal consciousness seem to be rather vaguely defined in Russia and do not ensure the principle of inevitability of prosecution, that is, they do not create serious threats and risks for corruptionists.

Russian Federation has taken a step further to strengthen the capacity of the institutions to fight corruption and protect the rights of entrepreneurs by introducing the institution of Federal Business Ombudsman.

One of the functions of the Business Ombudsman with the active participation of the civil society represented by the business, legal and expert community, is strengthening of legal institutions. This function is crucial in a situation when current institutions fail to cope with the current level of corruption.

To the extent of his/her authority the ombudsman must ensure guarantees of state protection of rights and lawful interests of business entities. He/she ensures that, among other things, through control over respect of such rights by state power bodies, local self-government bodies and officers. When considering claims filed by business entities in Russia on corruption grounds, an ombudsman shall take into account the conceptual framework formed by the Russian legislation. Thus, the regional ombudsman must interact with relevant state power bodies for the purpose of examination of appeals.

For interaction with business associations and other NGOs under the Federal Ombudsman's Institution established The Public Council, the Expert Council and the Coordination Council.

Information support of the Ombudsman's activities is a tool of informing and improving legal literacy of business entities. The main objectives of information support of the ombudsman's activities are as follows:

- Providing for information transparency with a view of exercising business entities' rights to full and objective information,
- Interaction with civil society institutions and informing them of the situation with protection of entrepreneurs' rights,
- Creation of efficient tools for the BO's interaction with mass media,
- Contributing to improvement of the level of mutual trust between the business community and state power bodies,
- Creation of a positive image of the BO's institution in general.

The special role of role of the Ombudsman in the Russian Federation is determined by the Federal Law "On Business Ombudsmen in the Russian Federation" #78-FZ was approved on May7 2013, which establishes the legal framework for the activities authorised by the federal and regional levels.

3 WHY A TRAINING HANDBOOK

Aim: Considering the fact that the Business Ombudsman institution in the Russian Federation there is a need among the Regional Business Ombudsmen (RBO) and public business-ombudsmen to share the best practices and discuss the general methodology of the business-ombudsmen activities among its staff specialists, public experts, municipal representatives and other stakeholders of the business-ombudsmen institution. The aim of this chapter is to support the future trainers on how to deliver the training on the protection from the corrupt practices and basics of the functioning of an Business ombudsman institution in the Russian Federation.

Objectives: At the end of the session the participants will know:

- how to deliver the training themselves
- training tools
- methodology of delivering the training, the training tactics.

The institution of the business ombudsmen in the Russian Federation was established in 2012, aiming to ensure the implementation of state guaranties on protecting the rights and legal interests of the entrepreneurs.

The FBO was nominated by the decree of the President of the Russian Federation. It operates on the basis of the law "On the Commissioners for the protection of the rights of entrepreneurs in the Russian Federation".

After being nominated the FBO in its turn nominated public representatives in different subject fields. The system spreads also on the level of the subjects of the Russian Federation (regions), where the regional business ombudsmen (further – RBO) shall be nominated by the regional authorities, with at the same time obligatory concordance of the federal ombudsman for each candidature. To the moment the RBOs have been established in more than 80 regions of the Russian Federation.

The BO is a new initiative established with a goal to create an alternative tool for the protection of the rights of entrepreneurs. In addition to the existing tools - the activities of state bodies to improve the business environment, functions of public prosecution on the law enforcement, self-control of the government bodies and business associations activities-, the institution should identify the violations which have not been found and resolved with the mentioned tools, and to react in order to restore the rights and legitimate interests of entrepreneurs.

In this regard, the implementation of training programs for the immediate representatives of the institution is a factor of increase of efficiency of work of the institution and allows the members of the institution to acquire new skills and techniques to perform their functions.

For this reason an audience of the training are the RBO and public representatives of the FBO and the employees of their offices, and also other interested person linked with the work of the BO.

In the course of its work the FBO's office will deal with cases of corruption, and, in this regard, the understanding of the specific tools and capabilities for combating corruption on the basis of Russian, European, and international experience is vital. Training on anti-corruption will provide for effective combating of corruption and for the avoidance of the negative consequences of making poor decisions when responding to cases of corruption in the sphere of competence of the BO.

Thus, the purpose of this training for regional and public business Ombudsmen is to obtain practical knowledge and skills on the issues of protection of legitimate rights and interests of entrepreneurs, in particular on the protection of the rights of entrepreneurs from the corrupt practices which the entrepreneurs face in business activities.

At the end of the trainings the regional/public business Ombudsmen should be ready to carry out tasks for the protection of the rights of entrepreneurs, in particular: to review the complaints and to successfully resolve the mentioned problems, to know the procedure of action in case of receipt of the information about corruption manifestations, to know the basic mechanisms of combating corruption in international and European experience, to have information about the approaches to the resolving system problems in the sphere of entrepreneurial activity, approaches to the organisation of the office of a business Ombudsman, the basic principles and forms of interaction with the state authorities, the legal status of the business ombudsmen in the Russian Federation, principles and forms of interaction with legal, business associations and other non-profit organisations, the principles for the protection of business reputation, ways to avoid material damage, a framework for action in case of conflicts of interests, the principles of promotion of the institution in the social environment.

The training meets the goals and legislative powers of the regional/public business Ombudsmen and is aimed at increasing efficiency and streamlining their operations.

Expected results of the training - improving the effectiveness of regional/public business Ombudsmen measured as the following indicators: a ratio of positive cases of the complaints processing to the total number of complaints, increase in the entrepreneurs satisfaction of the relevant region/field legal business environment, reduce of the number of facts of reputational conflicts, the number of eliminated corruption manifestations.

These figures cannot be estimated in a short period, they require long-term monitoring. So at least one year period is required to make a conclusion about the effectiveness of training.

3.1 Approach to the training by trainers

3.1.1 Methodology of delivering the training

The training is conducted over two days by two trainers. The two trainers have divided tasks and will coach on a pre-selected section of the program as main trainers, while the second trainer helps the other, and answers the questions from the audience.

An adequate room with enough seats for all participants should be prepared for the training. The room shall contain the required number of seats for students with tables, tables and chairs for coaches, computers for trainers with the possibility of the projecting of the presentation materials, screen, projector (if needed), 4 flip charts, markers for all flip-charts. Below is a sketch of the seating arrangements for the training:

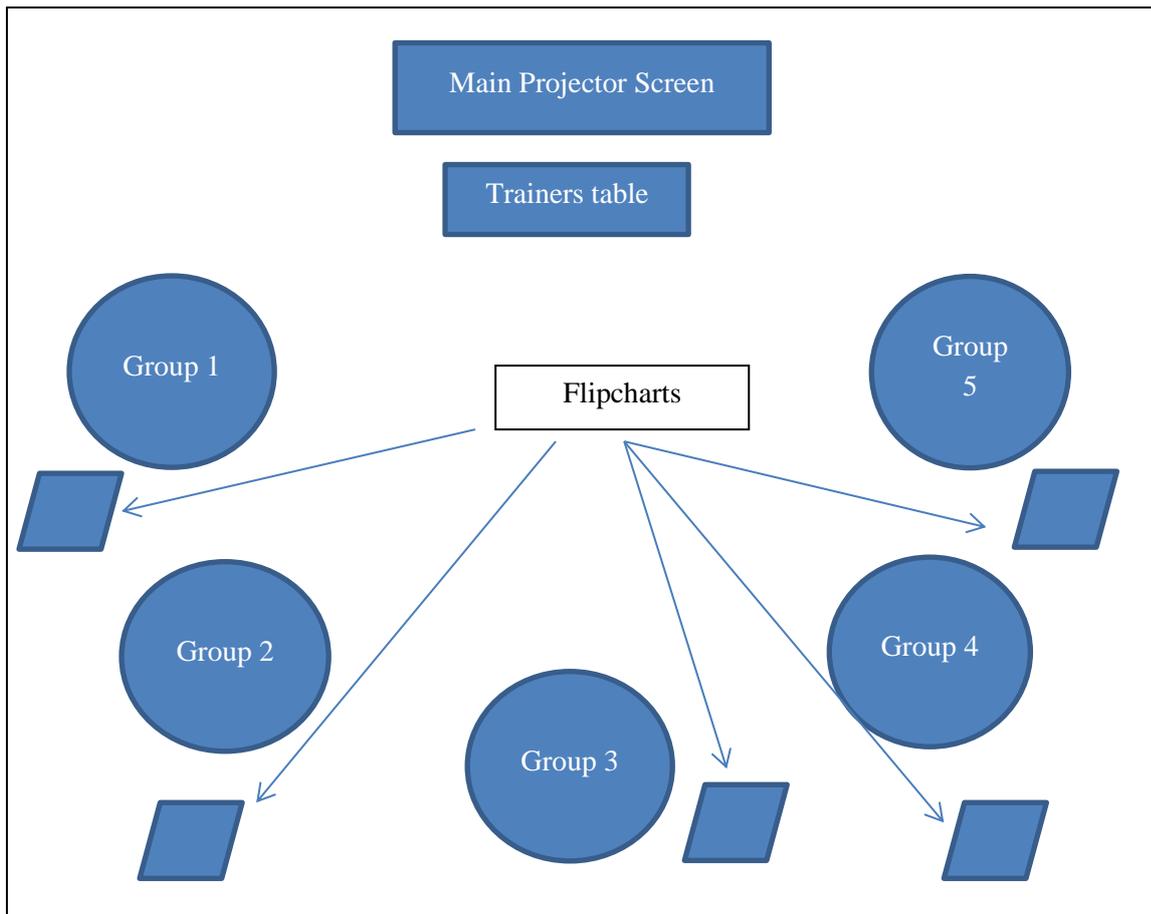


Figure 1. Sketch of the arrangement of the training room

Each of the groups in the training should consist of 4 or maximum 5 members, to provide for enough time for discussion and contribution to the tasks by each of the team members.

The trainers must ensure that they have readily available at the beginning of the training all the presentations, handouts and study materials, including training materials, checklists, tasks and questionnaires; some of these materials will be distributed to the participants at the beginning of the training, the others will be handed to the participants at the time of the specific exercises for which the hand-outs or the task materials were prepared.

The trainings are conducted in accordance with the program which is attached in this handbook. It is foreseen that each of the training days is 9 hours with a break for lunch and two coffee breaks per day.

The main contents of the training are the presentation, lectures of training materials, answers to the questions, group practical exercises, tests for knowledge of course materials (checklists), case studies, assessment of satisfaction of the trainees of the training presented materials.

3.1.2 Training tools

During the training the following basic tools are used:

- 1) Lecture – two trainers will make a presentation of the training materials.
- 2) Presentation – visual presentation of the materials on the subject of training using audio-visual means. Coach (teacher) displays the presentation of the thematic material on the screen and explains it to the audience. Most often, the lecture goes simultaneously with the presentation.
- 3) Answers to the questions – coach advises the students on issues which require additional explanation/clarification after presentation of materials.
- 4) Discussion - support of the discussions that attracted the greatest interest by coach.

- 5) Group work (quests) - aimed at increasing the effect of learning of the training topics, at the formation of position in students, at consolidation of the acquired knowledge skills. Group work is carried out by dividing the students of the training into the groups, which are provided with the training task (case study). The result of group work is the performed task which is presented by the groups to the trainer in written form or in the form of a presentation.
- 6) Checklists - are the closed lists of questions on the training topics which need answers. Checklists are a way to increase the motivation of students training to learning, checking absorption by the students of the training materials and simultaneously measuring the quality of training. According to the results of execution of checklists trainer scores a listener on a scale of 1-5. When examining the performance of all control tasks trainer forms opinion on the effectiveness of training and the level of assimilation of the material by the students.
- 7) Situation analysis (case study) - simulation of the entrepreneurs complaints review and processing.

3.1.3 Pre-conditions for participants

Participants of the training are public or regional business ombudsmen or the members of their staff, and other stakeholders who contribute to the work of the FBO or RBO. Participants should know the basics of legal regulation of entrepreneurial activity in Russia, have skills in organisation and management and know the basic provisions of the law “On the business-ombudsmen in Russia”.

3.2 Training of trainers guide

3.2.1 How to deliver the course

In many countries it is usual to have a refresher training every five years. Many companies and organisations are practicing continuous qualification training of the employees, performing those more often.

This is reasoned by to the following factors:

- when learning, specialists adapt more confidently to the changing economic and legal conditions, that increases the value of human resources of the organisation;
- training of employees lets to solve the problems of the organisation's activities and perform its tasks quicker;
- professional development increases the commitment of employees to self-organisation and reduces employee turnover;
- when training the core values and priorities of an organisational culture apply among staff and the, new approaches and behaviours that are designed to support organisational strategy are advocated.

The learning process brings to the staff:

- growth career prospects in the organisation and outside it;
- increased job satisfaction;
- increased self-esteem;
- improvement of skills and professional competence.

Protection of the rights of entrepreneurs, including from corrupt practices, is a complex subject, which is based on a multidisciplinary approach and requires a fairly high legal and economic competence. Professional development in this area is necessary because, first, the subject knowledge is constantly updating, secondly, the representatives of the Ombudsmen have a high responsibility to the entrepreneurs who address to them.

In his work, an Ombudsman or his representative is subjected to a strong external pressure, both from the applicant and from other parties of relationships, so the possession of practical, regulated

knowledge of acting in a particular situation improves the efficiency and speeds up a reaction of the representatives of the Institute on emerging situations and problems.

Professional development promotes the development of skills, the acquisition of practical knowledge for organisational work, familiarity with the practical approaches of combating corruption and legal frameworks and innovations in activities for the protection of the rights of entrepreneurs in Russia and in the world.

When training the business ombudsmen and their staff members, it is important to take into account that the audience is divided into two key groups. The first group is represented mainly by highly qualified professionals who have considerable skills and experience in their work with the formed approaches to solving the challenges facing them, have their own system of views on the economic reality and values (business ombudsmen), the second group represents employees of their staffs, who are qualified professionals, however, who may not have significant broad experience in protecting the rights of entrepreneurs and may concentrate only on specialised professional areas.

In this regard, when training, a trainer should take into account the following features of the learning process for the first group:

- 1) The audience thinks that it does not need to know the basics of scientific approaches
- 2) Members of the audience give a high value to its time
- 3) Members of the audience are critical to teacher
- 4) The audience needs to understand how it practically will apply the learning outcomes

For training of the second group:

- 1) Students are interested in the material
- 2) The presentation can require significant clarification
- 3) The audience appreciates any knowledge obtained from the teacher

These factors affect the choice of methods of teaching and learning audience.

For both groups, training is a professional development, but part of the audience has initially high expectations, is focused on obtaining practical knowledge and is interested both in fixing basic knowledge about the protection of the rights of entrepreneurs and corruption, and in clarifying specific points that were not clear in a particular work.

Another part of the audience is interested in large-scale learning, its training will require significant effort to clarify the material, performance of practical tasks can reveal difficulties, which will show the current level of staff qualifications.

At the same time, the purpose of education is the acquisition of skills and knowledge retention for both groups.

These factors suggest creating a special atmosphere of learning in a mixed group and were considered during the creation of the training material. It covers the basic fundamentals of protection of the rights of entrepreneurs, and specific aspects that will be of interest to the business ombudsmen which already have a high level of competence.

Therefore, the training program is designed to take into account the interests of the both groups, it has is a significant amount of practical tasks, which will allow both the development of new skills, and to facilitate the memorisation of theoretical foundations on the subject.

Performing practical tasks not only reveals the internal potential of listeners, but also stimulates them to make independent decisions, lets a self-check in the practical conditions, and gives, using a team

approach, a taste of himself in the adoption of specific solutions to those students who do not have significant practical skills.

Depending on the audience, the coaches while performing an independent training can adapt it to the audience, basing on the information, contained in the training materials.

3.2.2 Teaching methods

Teaching methods in general are divided into monologue (passive), dialog (active) and interactive. The monologue one includes, for example, lectures and presentations, that is, those methods in which the coach is the main protagonist of the course.

The dialog ones are those which presume an active dialogue between students and coach. These include, for example, the discussion on the training materials.

Online (interactive) are those that involve active dialogue both between the trainer and trainees and between trainees with dominating of students or groups of students in the learning process. Examples of such a method may include the case studies. Online method is considered to be the most relevant method of teaching.

When conducting trainings for representatives of the institution, it is logical to combine all 3 methods, with an emphasis on the case studies of the practical situations in relation to the lecture material, as well as initiating a discussion on the most pressing issues.

When conducting lectures coach should cover the material in detail, thus answering to the occurring questions from the attendants. The trainers must ensure that the participants have ample time to ask questions during the lectures.

To maintain the activity of the trainees, a trainer should strive to make training not an ordinary occupation, but an event. As the implementation of an active method, the coach supports the emerging debate between the audiences and manages it.

In particular, the coach may dilute the training programme by the provocative questions set for the discussion:

- And have you faced corruption?
- Is it possible to defeat corruption?
- What do you think, what kind of economy is more efficient, corrupt or not?
- What do you think about entrepreneurs after complaints and understanding of the principles of entrepreneurial behaviour?
- Is it necessary to protect the rights of entrepreneurs or they can do this themselves?
- What is an end result of the work of a business Ombudsman?

In addition, a coach can organise a discussion on the sections of the course, which will cause the greatest interest of the listeners, as well as the largest number of questions.

This issue remains at the discretion of the coach. The coach determines the questions that he will ask the audience to create an atmosphere of engagement.

One of the main objectives of the training is to develop the specific skills in an audience. The work of the Institute is based on the performance of practical tasks. The trainees usually obtain skills only in practice, when performing any task that means the interactive method. During the training, then the trainer performs the transfer of skills to the students, first and foremost using practical exercises.

For this purpose, in the process of training students should be involved in the review of concrete situations. Case studies which suppose their review by the trainees themselves permit not only to

perform professional activities, but also to receive feedback from the trainer and other students with a comment, what is impossible in real conditions and helps to upgrade the skills. Practical tasks are associated with the definite case studies of violation of rights of entrepreneurs. When performing such tasks, it is advisable to combine students into groups to perform them. Students are given approximately 10-15 minutes of time to make a job. 2-3 minutes are provided to the groups to present the results.

When reviewing the situations it is advisable to stimulate competition between groups and allow each group to speak. An effective method of interaction between trainer and trainees is a comment of a coach, as a more experienced professional, on the validity of the steps used to perform practical tasks.

3.2.3 The training tactics

During the course it is necessary to maximise the mastering of the materials by students.

It is necessary to create an environment of high attention and interest to the course materials, of the encouragement of the students by ideas of the course, citing the positive impact of the business Ombudsmen work for entrepreneurial activities, and stressing an importance of the development of the Institution.

A trainer should arrive at the location of the training 45 minutes before training and to organise a preparation of training, check availability of all materials and technical means for the training.

Before the course, it is necessary to ensure that all course materials and technical means of training are ready, the room allows perceiving equally well the course materials by all participants, all participants are provided with the technical means of training and handouts, the seats for trainers and trainees of the training are ready.

The training requires the following technical means - a computer, a projector, a screen, on which information is displayed, and the flip charts.

Before training, it is important to care about the badges, indicating the names, as well as the organisation and positions of the participants, for trainers and training participants.

Hand-outs for the participants of the training in the required amount are placed on a special table, where the trainees can take them.

It is necessary to welcome the trainees before the training, as they arrive at the training room, to answer their questions and receive the suggestions about the training which are not associated with the general predefined program. If possible, it's useful to implement the suggestions of the participants (on the seating, time breaks, installation of the presentation equipment).

It is necessary to ensure the registration of participants.

First impressions are very important. A favourable first impression can seriously help to configure listeners on training and set the tone for the rest of the course. For a positive start of training it is important:

- to create a positive, educational, friendly and trusting atmosphere. Participants must feel safe to be able to learn and think about new ideas. Game rules should be established and agreed upon. The objectives and the programme of the course can be discussed to create a comfortable environment for the training.
- to attract the audience's attention and interest, particularly if you are faced with a group that shows a negative or dismissive attitude towards training. Such a discussion should be to interrupted or a trainer himself can join it to create a more positive perception.

- to understand the needs and expectations of participants. During the opening try to get an idea of who are your participants, in order to adapt to their needs and expectations, and by using this information to adjust the training.
- to outline a clear programme of training. A trainer conducts the participants through the course. Therefore, it is important to show a clear view of what is to be done during the training and to ensure that all participants understand the purpose of the training. If there is doubt on how to train students, this can lead to confusion and impede learning.

The training should be opened by an introductory speech (10-15 minutes), in which the main training objectives, the expected results of the training, the importance of training for skills improvement and future improvement of the business environment and the economy in general in the specified region, the overall training program, the substantiation of the effectiveness of the training, plan of the training, the basic tools used during the training, the expected results of the training, as well as other essential points concerning the training program are highlighted.

A trainer should announce the break times, information about coffee-breaks, and also ask the audience to turn off the volume of mobile phones.

If the number of listeners of the training is up to 30, it is necessary to ask everyone to introduce themselves. If there are more than 30 listeners, a trainer should announce the general information about the audience of the workshop and to invite participants to get acquainted on their own.

Observe the following rules during the course.

3.2.4 Respect

During the training a trainer is responsible for the respectful attitude towards all the students, even if discussions become strained, what can happen when discussing various aspects of the protection of the rights of entrepreneurs. At the beginning of the training, all participants should agree that respect is a basic rule that will give to a trainer the opportunity just to remind about it during the course. Respect does not mean that the audience should agree with each other, this means that they should treat each other with respect and patience. Give assurance to the students that their personal experiences and stories about the protection of the rights of entrepreneurs will not be used outside the group training and discussed somewhere else. It is very important for representatives of the BO, who work with confidential information. This creates an atmosphere of trust. In addition, stop listeners which allow invalid or hate speech.

To do this, declare the rules of conducting a training, which include:

- not to interrupt each other
- the time limit for speeches
- keep the discussion respectful, to avoid increasing the tone
- the principle of partner communication. The rule of benevolence
- each participant may participate in the discussion
- to avoid third-party conversations not related to the topic of the training
- participants try to keep the discussion on interesting questions
- if you want to ask a question, raise your hand

You can work together with students to develop other basic rules by agreement.

3.2.5 Involvement

It is necessary to build the training around the following statement: rules for the protection of corrupt practices and the basis of a business ombudsman's activities have a practical value to representatives of Institution at their work. Knowledge, attitudes and skills are key dimensions of the training. Just

knowledge of the rules of fight against corruption and framework for the protection of the rights of entrepreneurs is insufficient, one must have one's own position and attitude, and skills to apply the anti-corruption and protection of entrepreneurs ' rights standards in practice. Work on all three areas allows involving the listener in the learning process.

3.2.6 Moderation of training

Interactive teaching methods, which are used in the training, often require that the coach takes a role of a moderator. You will start the discussion, raise the critical questions, work with different expectations and experiences of participants, add a discussion with the missing knowledge, draw conclusions and explain the necessary moments to the listeners.

To effectively moderate the training, try to create an atmosphere of friendliness and mutual support. Please ensure that all the participants had the opportunity to hear stories and ask questions.

Together with the students determine the questions that will be asked by the audience - in the course of the training or in a designated time.

In the process of training with a large number of listeners for the submission of questions you can divide the participants into groups, whose leaders will ask questions from group members.

Keep training according to the training program. Try to stick to the schedule of the training. You cannot exclude a part of the training program due to lack of time.

3.2.7 Flexibility

Despite the fact that the training should be conducted according to the training programme the deviations may arise when conducting it. Be flexible. Working with the group on the questions of the protection of entrepreneurs ' rights and protection against corrupt practices is a dynamic process, which requires adaptation of the methodology and content to the needs of the group. Firmly follow the learning objectives, however, be prepared to be flexible when the program is run. It is better to have "spare" tasks and situations, if the audience will ask for something to change.

Ask the students to speak on the topic of the training, on how do they perceive the program and the training topics, what proposals do they have on changes in the training program.

In the case of proposals for minor changes, try to make changes to the training program in accordance with the wishes of the majority of listeners.

During the training, use all the previously described methods of teaching. The creation of a "live" environment with interested listeners will most easily facilitate training and will help to achieve maximum results for mastering practical skills.

In the case of a large number of questions from the students ask to formulate them in a written form and answer them after the training.

Remember that you have a great influence on formation of student's approaches to perform activities for the protection of the rights of entrepreneurs.

Upon completion of the training, ask the participants to evaluate the effectiveness of training with a closed questionnaire form. Additionally, you may ask the trainees to evaluate the training in oral form at the end of the training, and to record the results.

3.2.8 Objectives of the training

Objectives of the training:

- to raise the attention of the representatives of the BO Institution to the legal possibilities and techniques to respond corruption in the sphere of entrepreneurial activity
- to form among the business ombudsmen an approach to the organisation and functioning of the business Ombudsman's office
- team building
- exchange of views
- development of personal potential in the sphere of competence of the training
- organisational development of the Institute
- development of corporate culture
- the acquisition of skills that will help to increase efficiency
- to teach the business Ombudsmen to conduct the independent trainings

3.2.9 Programme and plan for the delivering of the trainings

1st day	
9:00 – 9:30	Registration of participants
9:30 – 9:45	Opening session: <ul style="list-style-type: none"> ▪ Council of Europe ▪ European Union Delegation to the Russian Federation ▪ Federal Business Ombudsman Office Secretariat
9:45 – 10:15	Methodology for the delivering of the training – <i>Anton Sviridenko, Council of Europe Expert</i> <i>Presentation and Q & A with participants</i>
10:15 – 11:30	Presentation – Basic anti-corruption concepts – <i>Dina Krylova, Council of Europe Expert</i> <ul style="list-style-type: none"> - Notion and typology of corruption - Corruption in business sector - The main characteristics of corrupt practices in Russia <i>Q & A with participants</i>
11:30-11:50	Coffee break
11:50 – 13:15	Exercise 1 – <i>Dina Krylova</i> Prevalent types of corruption handled in professional practice by Business Ombudsman institutions <i>5-10 min presentations by participants</i>
13:15 – 14:00	Lunch
14:00 – 14:45	International Standards in the fight against corruption – <i>Mustafa Ferati, Economic Crime and Cooperation Unit, Council of Europe</i> <ul style="list-style-type: none"> - The Council of Europe approach to fighting corruption; - Other international standards in fighting corruption <i>Q & A with participants</i>
14:45 – 15:30	Basic anti-corruption concepts – <i>Dina Krylova</i>

	<ul style="list-style-type: none"> - Mechanisms of anti-corruption policy in Russia - Role of the Federal Business Ombudsman in combating corruption <p><i>Discussion and Q & A with participants</i></p>
15:30 – 16:15	<p>Group work 1:</p> <p>Review of corruption cases handled by Business Ombudsman – <i>Presentation from each group on the proposed action by the Ombudsman;</i></p>
16:15 – 16:30	Coffee break
16:30 – 17:30	Individual task activity – Basics of anti-corruption concepts and presentation of corruption cases encountered by regional business ombudsmen
17:30 – 18:00	Evaluation of day 1

2nd day	
9:30 – 10:15	<p>Presentation – Basics of the functioning of the business ombudsman institution – <i>Anton Sviridenko</i></p> <ul style="list-style-type: none"> - How to set-up an ombudsman office - Compliance with confidentiality - Coordination with other federal bodies - Cooperation with legal, business associations and other organizations that support business ombudsman institution <p><i>Q & A with participants</i></p>
10:15 – 11:00	<p>Group work 2:</p> <p>Examination of cases presented by regional business ombudsmen; Each group presents one case with a step by step description of actions taken in practice <i>Presentation and discussion by participants</i></p>
11:00 – 11:15	Coffee break
11:15 – 12:00	<p>Legal Basis for the set-up and functioning of an ombudsman institution in various regions – <i>Dina Krylova</i> <i>(5-10 minute presentations by representatives of regional Business Ombudsmen Offices)</i> <i>Discussion and Q & A with participants</i></p>
12:00-12:45	<p>Presentation – Specific role of the business ombudsmen institution in the Russian Federation – <i>Anton Sviridenko</i></p> <ul style="list-style-type: none"> - Goals - Competences - Procedure of handling complains by the Federal Ombudsman - Role of consultation councils and other pro-bono experts in supporting business ombudsman <p><i>Discussion and Q & A with participants</i></p>
12:45 – 13:45	Lunch
13:45 – 14:30	<p>Exercise: Procedure for handling of applications by the regional business ombudsman institutions – <i>Anton Sviridenko</i> <i>(5-10 minute presentations by representatives of regional Business Ombudsmen Offices)</i></p>

14:30 – 15:15	<p>Presentation – Basics of the functioning of the business ombudsman institution – <i>Anton Sviridenko</i></p> <ul style="list-style-type: none"> - How to examine complaints - Protection of regional ombudsmen from pecuniary and non-pecuniary damage - How to promote the significant role of the business ombudsmen institution <p><i>Discussion and Q & A with participants</i></p>
15:15 – 16:45	Group work 3:
<i>16:15 – 16:30 coffee break</i>	<i>Examination of cases by regional ombudsmen – group will present their recommendations after reviewing three cases provided by trainers</i>
16:45 – 17:30	<p>Situational analysis of different types of violations of the rights of entrepreneurs Examples of positive solutions – <i>Anton Sviridenko</i></p> <p><i>Q & A with participants</i></p>
17:30 – 18:30	Evaluation session – Discussion of the results of the training programme
18:30	Closure of the second training day

4 BASIC ANTI-CORRUPTION CONCEPTS

Aim: The majority of cases of infringement of the entrepreneur's rights that are handled by the Federal Business Ombudsman and the Regional Business Ombudsmen have an element of corrupt behaviour. Public officials often for their own or the benefit of someone they are related to become involved in corrupt activities. The objective of this session is to provide an introduction of the basic anti-corruption concepts to the participants.

Objectives: At the end of the session the participants will:

- Be able to identify corrupt behaviour; and
- Have an understanding of the various typologies of corruption;
- Have an understanding of the Impact of Corruption on entrepreneurial climate

When referring to BO, entrepreneurs often complain about infringement of rights arising from corrupt practices. They appeal against decisions, actions (inactions) of either public authorities, or other institutions vested with certain state or other public authorities, as well as officials that violate the rights and legitimate interests of businesses. Some claims also relate to the fact that, according to claimants, officials representing public authorities tend to get unofficially engaged by a third party (another business entity) into pressurizing an entrepreneur in a corporate dispute in order to remove him from a competitive market or to misappropriate his business/property (i.e. for raiding purposes).

The BO's role in examining corruption claims is either to identify factors suggesting an act of corruption and to provide a well-grounded statement in favour of the claimant/entrepreneur or to prove his claim unjustified.

To ensure efficient processing by ombudsmen of corruption-related claims filed by entrepreneurs, we need a thorough understanding of what corruption is, and how much it damages public interests, economy, entrepreneurship, and what opportunities ombudsmen hold when considering the claims.

4.1 The notion and typologies of corruption

In 1999, the Council of Europe adopted the Criminal Law Convention on Corruption. The Convention highlights that corruption 'undermines good governance, distorts hinders competition, economic development and endangers the stability of democratic institutions'¹.

Corruption has a wide range of corrosive effects on public relations, by way of destroying mechanisms applied to exercise property rights, ensure political and economic competition, it leads to deviation from the principle of equality of citizens before the law, deformation of the judiciary system, underperformance of national programs. Irrespective of its type and form, corruption in all of its aspects undermines the fundamentals of democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish².

In business sphere, corruption leads to higher transaction costs, economic losses, reduced prospects of entrepreneurship and lower investment attractiveness of the country – consequently incentives for *bona fide* entrepreneurship plummet, while capital outflow and human capital flight soar. Corruption can be struggled against, but never fought due to its high latency, unwillingness of the parties to disclose their involvement into corrupt relations³.

¹ [Criminal Law Convention on Corruption](#), Strasbourg, January 27, 1999 / Ratified by Federal Law of the Russian Federation No. 125-FZ of July 25, 2006.

² Kofi A. Annan. Foreword to the United Nations Convention against Corruption, UN, New York, 2004.

³ S. Rose-Ackerman. Corruption and Government: Causes, Consequences, and Reform. Cambridge University Press, 1999.

4.2 Definition of Corruption

Neither the academic community nor regulatory documents have given a single definition of corruption. Economists, lawyers and sociologists distinguish between different characteristics and features of ‘corruption’.

The UN Background Paper on International Action against Corruption gives the following definition: **corruption is the abuse of public power for private gain**⁴.

Definition of corruption by Transparency International, an international non-governmental organisation leading the fight against corruption and conducting investigations into the level of corruption worldwide, somewhat expands this concept without limiting it to public power only: **corruption is the abuse of entrusted power for private gain**⁵. This definition reflects cases of corruption occurring not only in the public/municipal sector, but in the private sector as well.

It is important to understand that if a citizen is involved in corrupt relations as an individual, i.e. does not use HIS official position to make profit, he is not considered a corruptionist, since there is no misuse of power entrusted to him. Being a party to corrupt relations, he can act as a briber, a mediator, an accomplice, etc., he can tempt or bribe a public official, assist him in committing an act of corruption, but a corruptionist is always the one who uses the power entrusted to him for his own profit.

Besides, not every official representing a public authority, commercial or non-profit organisation may be corrupt, but only a person, who takes relevant authoritative / managerial decisions, manages some property or other resources, appoints personnel, etc. Thus, not all powers can be unduly exercised for mercenary purposes, but only decision-making powers related to allocation of some limited resources or powers that provide valuable and profitable opportunities to third parties who would not get such opportunities on their own or at least with ease.

Russia has enacted a framework legislative act – Federal Law No. 273-FZ ‘On Combating Corruption’ of December 25, 2008, in which such unlawful acts as giving bribe and taking bribe are clearly differentiated and are just among many other acts of corruption. **Under Russian law corruption is:**

- abuse of office
- giving bribe
- taking bribe
- abuse of power
- commercial bribery
- or other illegitimate use by an individual of his official status against legal interests of society and the State to get profit in the form of money, valuables, other property or services involving property, and other property rights for himself or for third parties, or illegal provision of such a benefit to the said individual by other individuals.

From the definition of corruption given, it follows that the above list of particular crimes referred to corruption is not complete.

It shall be always borne in mind that in Russian public opinion, there is a well-established idea of corruption as bribery only; moreover a similar understanding of corruption is often shared by law enforcers.

⁴ Background Paper on International Action Against Corruption prepared by the UN Secretariat. A/CONF. 169/14. 1995. 13 Apr.

⁵ <http://www.transparency.org/whatwedo>.

4.3 Types of Corruption

There is a great variety of types, forms and levels of corruption. Below we will present the main types of corruption:

I. By degree of occurrence:

- occasional,
- frequent,
- systemic corruption.

II. By geographical spreading:

- **International corruption**
- **National corruption**, which can be split into types by levels:
 - ✓ Local
 - ✓ Regional
 - ✓ Central.

III. By the status of the person who commits the corruption act:

- 1) Petty
- 2) Grand

IV. By vector direction:

- **Vertical:**
 - ✓ Ascending
 - ✓ Descending
- **Horizontal:**
 - ✓ Interdepartmental / inter-corporate
 - ✓ Intradepartmental / intra-corporate.

V. By ultimate beneficiaries from corrupt relations:

- **mutually beneficial corruption**
- **corruption as a form of corrupt extortion**
 - institutional
 - Non-institutional.

VI. By the sphere of spread of corrupt relations, corruption is divided into the following types:

- **Political corruption** – is related to political processes (such as elections, lobbying, etc.) that illegally offer advantages to the parties of the election process or illegally use public resources during elections, abuse political leverage in favour of lobbyists, etc.
- **Everyday corruption** – one of the parties to corrupt relations includes individuals only (various exactions borne by the population in the sphere of education, health care, housing and public utilities; bribes offered by citizens to public officials, bribes offered by citizens to officials of the commercial sector, such as insurance companies, etc.).
- **Business corruption** – is related to interaction of business entities of any type of ownership and public authorities, other business entities or citizens:
 - ✓ representatives of the private sector
 - ✓ business entities controlled by the state (state corporations, state monopolies, state/municipal unitary enterprises, public funds, etc.);
 - ✓ business entities of the non-profit sector (NGOs);
- **Corruption of public authorities** (state/municipal, judiciary) – at least one of the participants of the act of corruption represents public authorities:
 - ✓ a. in the field of administrative control;
 - ✓ b. in the field of criminal law;

- ✓ c. corruption in appointment to office (nepotism) and favoritism;
- ✓ d. a variety of criminal forms of statehood – kleptocracy (‘rule by thieves’), lootocracy (‘rule by robbers’).

Let us discuss every type of corruption mentioned above in more detail.

- I. Corruption may be *occasional*, *frequent*, and *systemic* in nature. Any country is characterised by at least *occasional* corruption when it occurs on a sporadic basis. Such episodic corruption can occur even in countries with the highest anticorruption ratings.

Frequent corruption is the one that occurs in certain domains of public relations or territories of the country.

Corruption is *systemic* in nature in the countries where this phenomenon is observed with varying degree of manifestation throughout the country and is identified in most areas. At the same time most citizens are aware of corruption, have an idea of what corrupt relations are and how to behave if there is a need to enter such relations⁶.

- II. ***By geographical spread*** corruption is identified at the *national* and *international* level. The latter may encompass bribery of foreign officials, patronage extended to international criminal business and terrorist activities – drug trafficking, slave trade, illegal trade in arms, explosives and radioactive substances, etc. However, these topics are beyond the scope of this guidance manual, which deals with corruption at the national level.

At the national level corruption can be divided into three levels:

local – the parties in the corrupt relations may be represented by an official of the local authority, municipal unitary enterprise, district hospital, agricultural market, etc.;

regional – the parties to corrupt relations may be represented by an official of the regional authority, regional organisation;

central - the parties to corrupt relations may be represented by a federal entity.

- III. ***By the status of the commissioner of*** corruption can be petty and grand.

Petty corruption refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens or businessmen (traffic police, officials authorised to issue permits and approvals, to conduct regulatory and supervisory activities, etc.).

Grand corruption is defined as ‘big corruption’ occurring in the upper echelons of power that is generally associated with decision-making that suggests high costs regarding the matter in dispute (in business terms – corrupt lobbying, receipt of large state orders and property resources, participation under preferential conditions in privatisation, large-scale national programs, projects, etc.), as well as decision-making related to appointments to top positions in public agencies or organisations controlled by public authorities, etc. – the list is extensive). This kind of corruption is beyond the scope of this manual.

- IV. ***In terms of vector direction corruption may be vertical or horizontal.*** *Vertical corruption* is characterised by redistribution of benefits (e.g. bribes) between a superior official and his subordinates, vertical corruption can be either *ascending* (a superior official gets a share to cover the acts of corruption committed by his subordinates) and *descending* (a superior official shares the benefits with his subordinate executives). *Horizontal* corruption is characterised by involvement of representatives from different departments or officials of one department who are not subordinate to

⁶ On everyday corruption in the Russian Federation: Report by the Ministry of Economic Development of the Russian Federation. – Moscow, 2011:
http://www.economy.gov.ru/wps/wcm/connect/116f09004739f0c7a2a4eeb4415291f1/doklad_kor.pdf?MOD=AJPERES&CACHEID=116f09004739f0c7a2a4eeb4415291f1

each other (sort of '*esprit de corps*'). Sometimes a claim proves that in case of attempted appeal against officials' illegal actions in higher administrative level or courts such actions were recognised as legitimate, thus revealing a case of vertical corruption. A lack of adequate response in case of attempted appeal against illegal actions with law enforcement agencies or courts may indicate horizontal corruption – this is particularly true for officials of one municipality or region. However, '*esprit de corps*' is often associated not just with immediate involvement of third party officials in the corruption case, but with solidarity of the ruling elite and provision of return service

- V. Characterisation of corruption *by its ultimate beneficiaries* is highly topical. Classical corrupt relations suggest their being *mutually beneficial*, i.e. all parties engaged in corrupt relations are dishonest and seek improper benefits or wish to receive due results ahead of other members of society. This type of corruption is found everywhere, but it is most typical in developed countries, and many international conventions and national laws are aimed at combating it. However, the major problem in transit and developing countries is *corruption as a form of corrupt extortion*, i.e. *under pressure*, forced corruption. It does not bring improper benefits, and in most cases results from either violation of the rights of an entity (imposition of excessive, illegal requirements, unbearable costs generated through incorrect state regulation), or inability to exercise legitimate rights due to red tape and administrative barriers (which impede delivery of adequate public services, health care and social services, access to educational institutions, etc.). Such corruption is an institutional corrupt extortion (as part of the "rules of the game"), a way of obtaining an administrative markup, it also creates serious social and economic threats, thus hindering further development of countries affected by it. In some cases, corrupt extortion of non-institutional by its nature, i.e. not typical for a particular situation - it is a personal initiative of the official. Corruption impairs development of entrepreneurship, as it causes additional legal risks and substantial costs making business uncompetitive in foreign markets. The term 'corruption pressure on business' is very common in these countries, including Russia. When considering claims from entrepreneurs regarding officials' actions corrupt in nature, it is important to get an idea of what kind of corruption to combat. This will help to work out the right strategy to protect entrepreneurs' rights and provide for measures against any attempts to put it across those persons referred to in the claim.
- VI. Corruption in different spheres varies by participants in the corrupt relations. We shall bear in mind that any case of corruption depending on the focus of attention embracing certain participants of corrupt relations can be classified as political, every day, business corruption, or corruption found with public authorities.

Thus, in everyday corruption a citizen is one party to corrupt relations. The other party is either an official representing public authorities or a business entity. Most common corrupt relations include bribing by a citizen of an official representing public authorities or budget organisations, for instance in the social sector (education, health care, etc.). A representative of a commercial entity may also be a party to everyday corruption (for example, a citizen bribes an official representing a housing and public utilities company, an insurance company, or a supplier of works or services – thus he pays less, as it is done 'under the counter' sidestepping on the company cash office, etc.), yet such situations are less common.

It shall be borne in mind that certain characteristics considered as one of the above alternatives are both inherent in the same case of corruption: corruption may at the same time be business and relate to the private sector, however, it may be found with public authorities, be vertical (e.g. ascending), relate to criminal law and belong within national corruption of a certain level (e.g. local).

- VII. **Business corruption** – is a type of corruption that involves any business/economic entities acting at least as one of its parties. They can be both representatives of the private sector and business entities with state participation (state corporations, joint stock companies controlled by the state), non-governmental and non-profit organisations engaged in economic activities.

Business corruption associated with *private enterprise* often occurs in relations between business and public/municipal sector or natural (local) infrastructure monopolies, less often – in relations between the entities of the private sector (this can be the case of commercial bribery to obtain insider information, disclose trade secrets, or advantages for the supply one’s products to retail chains, etc.). Thus, one party involved in business corruption is always an official representing a business entity or an entrepreneur himself (as a briber, a mediator, an accomplice – but not as a corruptionist). At the same time, the other party can be either an official representing a business entity or public authorities, or a citizen.

It shall be noted that an entrepreneur may act only as an active party to corrupt relations associated with bribery, i.e. act as a briber, or bribe an official in the private sector (in case of commercial bribery), a mediator, an accomplice, etc. A business owner or an individual entrepreneur cannot be considered a corruptionist, i.e. a person getting bribes as a form of profit.

The ultimate goal of business is to make profit, so any actions of an entrepreneur associated with generation of profit – receipt of funds, securities, property, property-related services, etc. – are considered to be aimed at achieving this goal – deriving profit. And any of the actions outlined above will be seen as a transaction (agreement), the freedom of which is guaranteed by the civil law. A businessman who receives the said benefits is free to enter into transactions; he is solely responsible for economic consequences of closing them, even though economic consequences that may affect his business appear to be adverse. He may be guilty of any other unlawful act in connection with received benefit (like fraud and other crimes in the economic sphere), but he cannot be a bribe taker, as he is the ultimate beneficiary in the business.

However, those employed in the business sector and engaged in activities for mercenary purposes (for their own benefit or for the benefit of third parties) that are detrimental to the employer can be both active (briber) and passive parties to corrupt relations (recipient of commercial bribery). At the same time not all employees can potentially act as parties to corrupt relations.

They may be:

- employees taking managerial decisions;
- employees authorised to manage property or assets of a legal entity (individual entrepreneur), who have access to sensitive business information, customer base, etc.;
- employees interacting with the other party to corrupt relations (e.g. another legal entity or citizen, whom they offer to pay for services ‘under the counter’ at discount prices).

Corruptionists may also include representatives of legal entities who are not basically considered to be employees (e.g. eligible directors of companies, as they have access to sensitive business data and may influence a decision-making process).

VIII. **The Impact of Corruption on Entrepreneurial Climate**

Corruption poses certain risks both to national security and the country’s economy in general (macro level), and to specific companies (micro level).

Most often business entities have to face the following forms of corruption:

- state overregulation triggering high transaction costs payable to comply with mandatory legal requirements to business;
- complexity of exercising legitimate rights due to intentional procrastinating of bureaucratic procedures aimed at forcing a bribe;
- violated competition in favour of third parties;
- chances of being held liable without being responsible for any violations due to illegal requirements to doing business or illegal prosecution;
- problems of property rights protection.

Officials characterised by corrupt behaviour as a rule pursue the following objectives:

- extortion of money and property;
- destruction of business (in favour of competitors);

- seizure of business (resources, real estate) or market share;
- retaliation for complaints about state agencies;
- satisfying a request of third parties for a consideration, on a quid pro quo basis, or due to friendship or family relations.

One of the most challenging areas where corruption poses greatest risks to the private sector is the field of criminal law.

Signs of this type of corruption are illegal prosecution of business representatives (or citizens), patronage extended to criminal organisations and persons detrimental to business. Representatives of law enforcement agencies either independently initiate illegal prosecution against business representatives in order to exercise corruption pressure and get ‘kickbacks’ from the business entity, or are commissioned by business competitors, raider structures or any third parties for a reward or return service. In this case, an BO shall pay special attention to identification of unlawful acts committed during prosecution of business representatives, as it is often hardly possible to prove the mind-set or involvement of third parties.

Bona fide business invariably associates corruption with costs, risks and challenges, but at the same time corruption allows unscrupulous representatives of public authorities to get an administrative mark-up, and unfair businesses – to obtain bonuses, benefits, privileges, others’ property and escape penalties for non-compliance with costly regulatory requirements as to entrepreneurial activities that should be safe for the citizens and the environment.

Bona fide business finds effective state anticorruption policy beneficial, as it helps to reduce transaction costs associated with the need to enter into corrupt relations, and creates a foreseeable environment for doing business.

Corruption adversely affects entrepreneurial and investment climate and consequently the economic growth, not just because corrupt deals as such give rise to significant losses for the business, but because they also have a dampening effect on the economic growth.

As a result of institutional corruption, private sector institutions emerge and function under the domination of informal practices of doing business over formal ones. It means that entering into corrupt relations for business entities sometimes seems more profitable than *bona fide* behavior and compliance with all the required standards, despite the risks to be held criminally liability for corruption. Thus, institutional corruption fails to generate demand for fair business.

Corruption is perceived as an additional form of business taxation, a para-fiscal system⁷. The effects of intensified corruption for business are similar to the effects of increased tax burden. In both cases it leads to faltering marketability of new products, services and technologies, and a slump in business activity of citizens.

A person exercising his authoritative powers is always tempted to abuse them in respect of an entity engaged in profit-related activities, i.e. to join the world of big money. Therefore, the effectiveness of anticorruption policy is characterised by the extent to which it provides for real threats and high risks that could be a serious deterrent to the temptations of corrupt enrichment.

⁷ Kaufmann, Daniel (1997), ‘The Missing of a Growth Strategy for Ukraine: Institutional and Policy Reforms for Private Sector Development’, in Peter K. Cornelius and Patrick Lenain (eds.), Ukraine: Accelerating the Transition to Market, Washington D.C.: International Monetary Fund.

Wei, Shang-Jin (1997b), ‘Why Is Corruption So Much More Taxing Than Tax? Arbitrariness Kills’, NBER Working Paper Series.

5 SPECIFIC FEATURES OF CORRUPTION IN RUSSIA

Aim: In their work the Regional Business Ombudsmen handle various cases which have elements of corruption (bribery) of public officials. Knowledge and understanding of the characteristics and the specific features of corruption in the Russian will help business ombudsmen:

- in the selection of instruments for the protection of entrepreneurs' rights, in relation to complaints of corruption pressure,
- in the formulation of anti-corruption policy measures that will eliminate the negative impact of corruption on the business environment.

Objectives:

- Identification of features of systemic nature of corruption in Russia
- The features of corruption as Quasi-Business;
- Ability to correctly identify corruption-related Offences

5.1 Systemic Character of Corruption in Russia

Systemic corruption is typical for many transit and developing countries, and in the private sector various aspects of business management and control can be transformed by some officials of public authorities who are vested with relevant powers into some sort of business, i.e. activities aimed at regular profit making through building relevant corruption schemes, and in some cases – corruption networks. The situation described is absolutely typical of business corruption in Russia, as evidenced by various Russian and foreign surveys, and is an indication of the fact that corruption in Russia is systemic.

According to a study by Transparency International, Russia has a Corruption Perceptions Index (CPI 2013) score of 28 out of 100. This means that corruption in this country is rampant, and drastic measures shall be taken urgently⁸.

Account of the extent of corruption in the country is very important for decision-making on state regulation in various areas of public relations. Unfortunately, the systemic nature of corruption in Russia is not taken into account when making such decisions. Thus, authorities often suggest introduction of regulatory measures coupled with high corruption risks at the same time either referring to the experience of countries with low corruption rate in certain fields, or stating that ‘the majority of officials representing public authorities in this country are honest people, conscientious in their duties...’, i.e. practice demagoguery and talk round real threats of further growth of already high systemic corruption.

Another common way of ignoring systemic corruption in Russia that occurs during decision-making on state regulation – mostly in the field of business – is speculating on the need to ensure safety of products or the business environment. As a result, public authorities concerned are lobbying such regulation norms that are associated with significant costs and corruption risks for the business, although developed countries characterised by relatively high level of safety in these areas have no such regulation.

Case 1:

In the field of veterinary and phytosanitary control, regulatory decisions related to the introduction of multiple production controls – as products are moved through the territory of the country in any amount of the parcel that has already undergone rigorous control – cause high costs and risks for the

⁸ <http://www.transparency.org.ru/indeks-vospriiatiiia-korruptcii/zastriali>.

business up to the total loss of products due to red tape. This regulation is established not only in the Russian legislation, but is expanded to the Customs Union, although business openly declares that these measures are unacceptable and support corruptibility.

According to a study ‘Small Business and Corrupt Relations’ conducted by a non-governmental organisation OPORA ROSSIA, two thirds of entrepreneurs are victims of corruption, whereas initiators constitute not more than a third⁹.

SUPPORT OF RUSSIA Index 2012 runs as follows¹⁰:

- companies that have never come across corruption in their region constitute only 10%;
- activities of regulatory bodies and law enforcement agencies are seen by business as more harmful than dealing with crime.

According to the Russian Union of Industrialists and Entrepreneurs, in 2013, corruption when dealing with public authorities was considered a key challenge for the business by one third of the respondents, whereas in 2010, the proportion of those who came up with the same answer exceeded 50%¹¹. Obviously, this problem is gradually losing its significance for the business, although corruption is still among top five major constraints of doing business in Russia.

5.2 Corruption as Part of the ‘Game Rules’

Institutional nature of corruption in Russia is another characteristic feature. Douglass North, one of the founders of new institutionalism, defines institutions as humanly devised constraints that can be formal (laws, constitutions) and informal (contracts and voluntarily adopted codes of conduct), as well as factors of coercion that structure their interaction¹².

Institutional nature of corruption in Russia means that corruption is part of the ‘game rules’ in society. The country has a ‘rooted’ corruption affecting all existing institutions, as well as relations between citizens and the government at all the levels – political, social and economic. Corruption is becoming a specific feature of the country as it permeates into all spheres of the state and society.

Institutionalisation of corruption in interaction between businesses and public authorities has led to transformation of certain corrupt practices into strict ‘game rules’ imposed on the business, departure from which is fraught with threats and risks that appear to be even greater than adherence to such practices. Part of corrupt payments has become a legitimate payment for services provided to business, which is eventually borne by customers as ultimate consumers of goods and services, as corruption costs are included in pricing. This is due to excessive legislative regulatory standards imposed under the pretext of ensuring safety of products, rendered services and the business environment.

Institutional nature of corruption in Russia is evidenced by the following features¹³:

- information about corruption (whom to call, how much to ‘pay’) is available to the population long before personal contact with the representatives of public authorities;
- respondents are growing more experienced in corrupt relations, the percentage of respondents referring to their incompetence or inability to ‘come to terms’ with bribe takers is declining year on year;

⁹ The collection of materials of the public hearings of the Civil chamber of the Russian Federation "Empirical studies of civil society". Moscow, 2008.

¹⁰ Entrepreneurial Climate in Russia: SUPPORT OF RUSSIA Index 2012.

¹¹ RUIE Report on Business Climate in 2010-2013. Moscow, 2014.

¹² Douglass North. Institutions, Institutional Change and Economic Performance. Cambridge University Press, 1990.

¹³ On everyday corruption in the Russian Federation: Report by the Ministry of Economic Development of the Russian Federation. – Moscow, 2011:

http://www.economy.gov.ru/wps/wcm/connect/116f09004739f0c7a2a4eeb4415291f1/doklad_kor.pdf?MOD=AJPERES&CACHEID=116f09004739f0c7a2a4eeb4415291f1.

- chances of legal consequences seem insignificant (both for citizens and government officials).

5.3 Corruption as Quasi-Business

Corruption as a kind of quasi-business, although having some resemblance to legitimate business, heavily damages the business environment, because it creates unfair advantages for corruptionists as compared to those who are engaged in real business:

- public resources are provided for free (office space, paid working hours, means of communication, etc.), while in real business public resources are provided on a fee-paying basis, or private resources are used;
- commercial risks are almost down to the zero, as corrupt business is based on imperative powers and often provides no alternative for the consumers of corruption services;
- no added value – on the contrary, corruption revenues are obtained through transaction costs borne by real business and citizens' personal finances.

The main ways of establishing corruption as a form of business can be the following:

- incorporation of corruption provisions implying administrative discretion of an official into legislative acts;
- establishment of excessive requirements for the business;
- adoption of conflicting regulations that exclude full compliance with them;
- adoption of imperfect administrative procedures and soft administrative regulations, etc.

5.4 Prevalence of corruption as the form of corrupt extortion

Classical corruption suggests that both parties to corrupt relations pursue unlawful and mercenary objectives and derive benefit. It is traditionally assumed that those who are responsible for corruption are unscrupulous businessmen or dishonest citizens who want to buy illegal benefits, advantages and privileges, and create irresistible temptations for power holders.

However, the main challenge of society in today's Russia is the prevalence of a different type of corruption that exists in the form of corrupt extortion committed by persons vested with some authority, and is a manifestation of a targeted capitalization of their powers.

In contrast to classical corruption, there is only one party to corrupt relations that is a beneficiary here – officials representing public authorities, infrastructure monopolies, or organisations that are authorised to provide public/municipal service(s) specified in mandatory regulatory requirements. The other party (a business entity) is a victim of such corrupt relations, because it receives no benefits, but on the contrary, bears the burden of corruption costs and risks and is unable to avoid coming into corrupt relations.

A Russian businessman in most cases has to enter into corrupt relations not for the purpose of obtaining illegal benefits, but in order to stop administrative pressure or overcome administrative hurdles threatening further development of their business.

5.5 Corruption-related Offences

It is important to bear in mind that due to high latency of corruption, corrupt intent of a public official, i.e. his wish to obtain improper benefits, is difficult to prove, but as a rule his corrupt behaviour is expressed in formal administrative violations or essential components of criminal offenses.

Businessmen in Russia often face not the corruption itself, but its manifestations in the form of specific violations of their rights.

Corruption grounds give rise to violations of the law that are contained in separate crime components which are punishable under criminal law.

When considering claims filed by business entities in Russia on corruption grounds, an BO shall take into account the conceptual framework formed by the Russian legislation. Profile anticorruption law by corruption means a very limited range of acts. In business corruption, when participants include entrepreneurs and public authorities, only some crime components of the Russian Criminal Code are considered strongly corrupt.

When considering claims filed by business entities, it is essential to identify among provided facts and documents the evidence of an act found corrupt under the Criminal Code of the Russian Federation.

1. Bribe giving

Criminal responsibility for the act legislated as corruption is specified in Article 291 of the Criminal Code of the Russian Federation. Corrupt will be giving bribe to:

- an official;
- a foreign official;
- an official of a public international organisation.

It does not matter whether a bribe is given in person or through an intermediary – the act is found corrupt in any case. It shall be also taken into consideration whether a bribe is given for committing by an official of lawful or wittingly unlawful actions. In any case, the act is found corrupt, but the scope of liability will be different.

A person who has given a bribe shall be relieved from criminal liability if he has been active in assisting to the crime's clearing and (or) investigation, or this person has been subjected to extortion by an official, or if this person after committing the crime has voluntarily informed the body that has the right to institute criminal proceedings about giving the bribe.

Thus, to identify corruption in a particular act it is necessary to compare someone offered a bribe with a list specified in Article 291 of the Criminal Code of the Russian Federation.

It is also necessary to clarify details: whether a bribe was given in person or through an intermediary, for committing lawful or unlawful actions, whether there were grounds to relieve a bribe payer from liability.

Case 2:

Entrepreneur A. is in construction business. The municipal Ministry of Construction plans to build a new highway to the airport and is preparing tender documentation. Entrepreneur A. presents the Minister of Construction with a car, in return, the Minister prepares tender documents so that the company of entrepreneur A. fits tender conditions best of all. In this case, entrepreneur A. is guilty of bribe giving, and the Minister of Construction – of bribe taking.

2. Commercial bribery

Criminal responsibility for the act legislated as corruption is specified in Article 204 of the Criminal Code of the Russian Federation. The following actions are considered corrupt:

- illegal transfer of money, securities or any other assets to a person who discharges managerial functions in a profit-making or any other organisation;
- unlawful rendering of property-related services to such a person;
- granting other property rights to such a person for commission of actions (inaction) in the interests of the giver, in connection with the official position held by this person.

Responsibility shall be same for the briber and the bribe taker.

A person shall be relieved from criminal liability if he has been active in assisting to the crime's clearing and (or) investigation – similar to relieving from criminal liability for bribe giving.

Case 3:

A representative of company A is engaged in construction. Knowing that company B is going to compete in a tender to build a highway, the representative of company A pays to the Procurement Manager of company B to learn their tender price.

The representative of company A is responsible for commercial bribery, and the manager of company B – for getting illegal gratification.

3. Bribe taking

Criminal responsibility for the act legislated as corruption is specified in Article 290 of the Criminal Code of the Russian Federation. The following actions are considered corrupt:

- bribes in the form of money, securities or other assets or in the form of unlawful rendering thereto of property-related services, granting of other property rights.

According to this Article, a person taking bribe, i.e. bribe taker can be:

- an official;
- a foreign official;
- an official of a public international organisation.

Based on this Article, as well as general principles of economic activity, it is essential to bear in mind that an entrepreneur (an individual entrepreneur, a head of a legal entity) cannot be a bribe taker.

On the other hand, employees of an entrepreneur (hired or acting under another contract) may come under this article, i.e. be considered bribe takers. And it is possible to take procedural measures and adopt sanctions against them as set out in this Article.

5.6 Components of the Acts of Corruption

The components of corruption offences include the following acts prohibited by the Criminal Code of the Russian Federation under the threat of punishment:

- illegal use by an official of his official (duty) status;
- intent to make profit (mercenary motives);
- contradiction to public interests.

A corruption-related crime directly or indirectly involves a significant deal of acts referred to in Chapters 19, 21, 23, 30 of the Criminal Code of the Russian Federation:

- certain crimes against constitutional rights and freedoms of an individual and a citizen unrelated to protection of entrepreneurs' rights (obstruction of the exercise of electoral rights, falsification of election documents and other forms of 'buying' the power – political corruption);
- crimes against property committed through abuse of office (misappropriation, embezzlement, etc.);
- crimes against the interests of service in profit-making or other organisations (abuse of authority, commercial bribery, etc.);
- traditional crimes of officials against the state power, the interests of the civil service and the service in local self-government bodies (abuse of office, bribery, official forgery, etc.).

For a complete list of corruption-related crimes see the Annex hereto (the Annex contains Instructive Regulation of the Prosecutor General's Office of Russia No. 387-11, the Ministry of Internal Affairs

of Russia No. 2 of September 11, 2013 ‘On enactment of a list of articles of the Criminal Code of the Russian Federation used for statistical reporting’).

Most often claims cover the following components of crime discussed below.

5.6.1 Article 285 of the Criminal Code of the Russian Federation - Abuse of Official Powers

In case of abuse of office it is essential to prove the following:

- mercenary or any other personal interest of an official;
- substantial violation of the rights and legitimate interests of individuals or organisations, or legally-protected interests of the society or the state.

Only the following types of officials can be considered perpetrators of the crime:

- a representative of public authorities, i.e. a public officer of a law enforcement agency or controlling body, and also other public officials vested in accordance with the procedure established by law with regulatory powers in respect of persons who are not dependent on them by virtue of employment;
- an official duly authorised to exercise organisational and management functions in public authorities, local self-government bodies, state and municipal institutions, state corporations, Armed Forces of the Russian Federation, other forces or military formations of the Russian Federation;
- an official employed in the same office authorised to exercise administrative and economic functions.

5.6.2 Article 286 of the Criminal Code of the Russian Federation. Exceeding Official Powers

Exceeding official powers implies commission by an official of actions which transcend the limits of his powers and which involve a substantial violation of the rights and legitimate interests of individuals or organisations, or legally-protected interests of society and the state.

It is important to emphasize that in case of imputing this Article there is no need to prove the mindset and deliberate exceeding of powers – as opposed to abuse of official powers. Only an official can be considered a perpetrator of a crime (see Article 285 of the Criminal Code).

Thus, an BO when filing a claim based on an entrepreneur’s appeal may specify such components that shall not be proven.

Case 4:

The Minister of Construction dislikes entrepreneur A. engaged in construction. In this regard, he draws up tender documentation for the construction of a highway to the airport in such a way that entrepreneur A. could not win the tender.

In the given case, the Minister of Construction has not enriched himself or acted in the interests of any third party. But as the Minister exercises his authority not in the interests of service but in his own interests, such actions can be qualified as exceeding official powers.

Should tender documentation contain requirements for the participants that are clearly inconsistent with the law, such actions can be qualified as abuse of official powers. Unlawful requirements included in the documentation will serve a sufficient proof thereto.

5.6.3 Article 169 of the Criminal Code of the Russian Federation - Obstruction of Legal Business or Other Activity

Obstruction may occur due to corrupt intentions, but bringing an official to responsibility requires the following proofs:

- unlawful refusal to provide state registration of an individual entrepreneur or a legal entity, or avoiding their registration, unlawful refusal to issue a special permit (license) for a certain activity or avoiding its issuance, limitation of rights and legal interests of an individual entrepreneur or a legal entity depending on the type of ownership, as well as illegal limitation of independence or other illegal interference in the activities of an individual entrepreneur or a legal entity;
- abuse by an official of his official position.

5.6.4 Article 289 of the Criminal Code of the Russian Federation - Illegal Participation in Business Activity

The law prohibits an official representing public authorities to run a business in person or through a confidant, to participate in the management of business entities, irrespective of their legal forms.

Should, contrary to the above prohibition, an official act as a founder of a business entity or participate in its activities, as reflected in granting to such an organisation of benefits and advantages, or in patronage in a different form, such acts are considered a corruption-related crime punishable under Article 289 of the Criminal Code of the Russian Federation.

Bringing an official to responsibility requires the following proofs:

- establishment by an official of an organisation undertaking business activities
- or
- participation of an official in management of an organisation engaged in business activities;
 - an official through his official position provided benefits and advantages to a business organisation established by him or an organisations that he co-manages (tax benefits, customs privileges, preferential pricing, provision of facilities and land, etc.) or patronage in a different form (e.g. introduction of barriers for competitors, release from various supervisory inspections, licensing).

Case 5.

As a measure to fight corruption and conflict of interest, the law prohibits an official representing the public authorities to be involved in entrepreneurial activity for as long as they are holding office. Despite the legal ban, the Minister of Construction has decided to found a construction company, which competes in tenders put up by this Ministry.

In this case, the Minister is guilty of illegal participation in entrepreneurial activities.

5.6.5 Article 174 of the Criminal Code of the Russian Federation - Legalization (Laundering) of Funds or Other Property Acquired by Other Persons Illegally

Should an official use his official position in order to accomplish financial transactions and other transactions in monetary funds or other property knowingly acquired by other persons illegally for the purpose of bringing them the appearance of legality (laundering), he is considered to have committed a corruption-related crime.

Bringing an official to responsibility requires the following proofs:

- performance of financial transactions (laundering);

- use by an official of his official position.

Case 6:

In addition to his salary the Minister raises money from bribes and kickbacks for contracts. He never declares his illegal funds and keeps them in a safe. Fearing inspections by law enforcers, the Minister wants to withdraw illegally gained funds to a safer place. To do this, he uses his friend's law firm that has an office abroad. The money is transferred to this company under the guise of payments for consulting services, which are then transferred as a fee to a company, the beneficiary of which is the Minister.

In this case, both the Minister and his friend will be guilty of legalization (laundering) of funds.

5.6.6 Article 294 of the Criminal Code of the Russian Federation - Obstruction of Carrying out of Justice and of Preliminary Investigations

Interference in any form by an official in the functioning of the court in order to obstruct carrying out of justice is considered a corruption-related crime.

Interference of an official can take the forms of requests, persuasions, requirements, advice, promises to provide services directly addressed to the judge or the investigating authority.

The crime is found corrupt-related from the moment of interfering in the work of the court that is considering a particular case irrespective of whether it caused miscarriage of justice or another judicial decision.

5.6.7 Article 170 of the Criminal Code of the Russian Federation. Registration of Illegal Land Transactions

Knowing registration of unlawful land transactions, distortion of data in the state real estate cadastre, as well as deliberate understatement of land payments are considered corruption-related crimes. But in order to bring an official to responsibility it is essential to prove his mercenary interests.

Case 7:

Head of the Regional Department of the Federal Service for State Registration, Cadastre and Cartography underestimated the cadastral value of land owned by his friend – entrepreneur A. Entrepreneur A. is consequently paying an understated land tax.

Head of the Regional Department is guilty of misrepresenting data of the state real estate cadastre.

5.6.8 Article 305 of the Criminal Code of the Russian Federation. Delivery of a Knowingly Unjust Judgment, Decision, or any Other Juridical Act

Delivery by a judge of a knowingly unjust judgment, decision, or any other juridical act is also considered a corruption-related crime.

Only a judge can be a perpetrator of the crime. Bringing a judge to responsibility requires the following proofs:

- delivery of a knowingly unlawful custodial sentence;
- occurrence of serious consequences.

5.6.9 Article 201 of the Criminal Code of the Russian Federation. Abuse of Authority

Under **Article 201 of the Criminal Code of the Russian Federation ‘Abuse of Authority’** corrupt will be using of authority by a person discharging managerial functions in a profit-making organisation in defiance of lawful interests of this organisation or for the purpose of deriving benefits and advantages for himself or for other persons or for the purpose of inflicting harm on other persons.

The given set of components is similar to that of **Article 285 of the Criminal Code of the Russian Federation ‘Abuse of Official Powers’**.

However, the following persons may be found guilty:

- authorised to exercise the functions of a single executive body, member of the board of directors or another collegial body;
- permanently, temporarily or under special power authorised to exercise organisational and management or administrative and economic functions imposed on him in accordance with the established procedure in a profit-making organisation irrespective of the type of ownership or a non-profit organisation that is not a state, municipal body or institution.

In order to bring an official to responsibility it is essential to prove a direct intent and a specific purpose – deriving profit and advantages for oneself and other persons (relatives, friends, business partners, etc.) or causing damage to other persons.

6 COUNCIL OF EUROPE AND OTHER INTERNATIONAL MECHANISMS AGAINST CORRUPTION

Aim: In its efforts to fight corruption the Russian Federation has ratified the Council of Europe Criminal Law Convention on Corruption. In February 2007, Russia joined the Council of Europe's Group of States against Corruption (GRECO) and subsequently, in April 2007, took part in the Joint 1st and 2nd round of evaluations. It is essential that the Business Ombudsmen have an understanding of these instruments and the approaches in the fight against corruption by International Organisations.

Objectives:

- To get acquainted with the main anti-corruption instruments of the Council of Europe
- To get acquainted with the other international anti-corruption instruments
- To learn more about specialised anti-corruption bodies

6.1 Council of Europe approach to fighting corruption

The Council of Europe is pursuing a comprehensive approach against corruption (AC) by setting standards in the form of conventions and "soft law" instruments (recommendations and resolutions), and by monitoring their compliance with Council of Europe standards through its monitoring mechanisms: the Group of States against Corruption ([GRECO](#)). This approach is often supported through the implementation of technical assistance and co-operation projects or/and programmes.

The Council of Europe legal framework against corruption covers the following legal instruments:

- 1) Resolution 97(24) of November 6, 1997 'On Twenty Guiding Principles for the Fight against Corruption'

These guiding principles imply adoption of a wide range of anticorruption measures, including:

- development of effective measures for the prevention of corruption; criminalization of national and international corruption, as well as adoption of civil norms and principles to fight corruption;
- adoption of measures for the seizure and deprivation of the proceeds of corruption offences;
- limitation of immunity from investigation, prosecution or adjudication of corruption offences;
- a guarantee that rules and procedures relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary measures, including in the field of public procurement and auditing procedures for the public sector;
- development of a system of public liability or accountability for public officials responsible for corrupt behavior.

- 2) Council of Europe Criminal Law Convention on Corruption (adopted January 27, 1999), ratified by the Russian Federation on July 25, 2006.

The Criminal Law Convention on Corruption is an ambitious instrument aiming at the co-ordinated criminalisation of a large number of corrupt practices. It also provides for complementary criminal law measures and for improved international co-operation in the prosecution of corruption offences. The Convention is open to the accession of non-member States. Its implementation will be monitored by the "Group of States against Corruption - GRECO", which started functioning on 1st May 1999.

The Convention is wide-ranging in scope, and complements existing legal instruments.

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

- active and passive bribery of domestic and foreign public officials;
- active and passive bribery of national and foreign parliamentarians and of members of international parliamentary assemblies;
- active and passive bribery in the private sector;
- active and passive bribery of international civil servants;
- active and passive bribery of domestic, foreign and international judges and officials of international courts
- active and passive trading in influence;
- money-laundering of proceeds from corruption offences;
- accounting offences (invoices, accounting documents, etc.) connected with corruption offences.

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

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

It provides for enhanced international co-operation (mutual assistance, extradition and the provision of information) in the investigation and prosecution of corruption offences.

As soon as they ratify it, States which do not already belong to GRECO will automatically become members.

3) Additional Protocol to the Criminal Law Convention on Corruption

This Protocol extends the scope of the Convention to arbitrators in commercial, civil and other matters, as well as to jurors, thus complementing the Convention's provisions aimed at protecting judicial authorities from corruption. Parties to the Convention will have to adopt the necessary measures to establish, as criminal offences, the active and passive bribery of domestic and foreign arbitrators and jurors.

4) Council of Europe Civil Law Convention on Corruption (entered into force on November 1, 2003), still not ratified in the Russian Federation.

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

The Civil Law Convention on Corruption deals with:

- right to civil action in order to obtain compensation for damage caused by corrupt act;
- conditions for liability;
- State liability for acts of corruption committed by public officials;
- contributory negligence: reduction or disallowance of compensation, depending on the circumstances;
- validity of contracts: contractual clause providing for corruption to be null and void;

- protection of employees who report in good faith their suspicions of corruption;
- clarity and accuracy of accounts and audits;
- effective procedures of acquisition of evidence in civil proceedings;
- court orders to preserve the assets necessary for the execution of the final judgment and for the maintenance of the status quo pending resolution of the points at issue (interim measures);
- international co-operation in civil matters related to corruption.

The document specifies the following: ‘For the purpose of this Convention, ‘corruption’ means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof’. It is thus underlined that a certain narrowing of the definition responds to the content of the Convention and shall not be considered comprehensive.

- 5) The Council of Europe’s Group of States against Corruption (GRECO) (established on May 1, 1999), Russia has joined it subsequently.

The Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor States’ compliance with the organisation’s anti-corruption standards.

GRECO’s **objective** is to improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. It helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms. GRECO also provides a platform for the sharing of best practice in the prevention and detection of corruption.

Membership in GRECO, which is an enlarged agreement, is not limited to Council of Europe member States. Any State which took part in the elaboration of the enlarged partial agreement, may join by notifying the Secretary General of the Council of Europe. Moreover, any State which becomes Party to the Criminal or Civil Law Conventions on Corruption automatically accedes to GRECO and its evaluation procedures. **Currently, GRECO comprises 49 member States** (48 European States and the United States of America).

The **functioning** of GRECO is governed by its Statute and Rules of Procedure. Each member State appoints up to two representatives who participate in GRECO plenary meetings with a right to vote; each member also provides GRECO with a list of experts available for taking part in GRECO’s evaluations. Other Council of Europe bodies may also appoint representatives (e.g. the Parliamentary Assembly of the Council of Europe). GRECO has granted observer status to the Organisation for Economic Cooperation and Development ([OECD](#)) and the United Nations – represented by the United Nations Office on Drugs and Crime ([UNODC](#)). GRECO elects its President, Vice-President and members of its Bureau who play an important role in designing GRECO’s work programme and supervising the evaluation procedures.

GRECO’s Statutory Committee is composed of representatives on the Committee of Ministers of member States which have joined GRECO and of representatives specifically designated by other members of GRECO. It is competent for adopting GRECO’s **budget**. It is also empowered to issue a public statement if it considers that a member takes insufficient action in respect of the recommendations addressed to it.

In its first round of evaluation the GRECO focused on the review of independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption. According to GRECO, one of the measures for successfully combating corruption, lately almost fixed as an

international standard, is the establishment and functioning of the national specialised anticorruption institutions¹⁴.

Major strengths of specialised anticorruption institutions are the following:

- high level of specialization and multidisciplinary approaches;
- concentration of skills and resources, as well as anticorruption experience within a single body;
- fast and efficient action against corruption;
- pro-active and intelligence-led activities;
- capabilities for long-term corruption investigations.

Typical cases of specialised anticorruption institutions in the Member States of the Council of Europe are as follows:

- Central Office for the Repression of Corruption, Belgium;
- National Anti-corruption Prosecutor's Office (NAPO), Romania;
- Bureau for Combating Corruption and Organised Crime, Croatia (attached to State attorney office);
- Special Attorney General's Office for the Repression of Economic Offences related with Corruption in Spain, etc.

Such organisations have all the necessary operational powers to investigate corruption offenses. Existence and functioning of specialised anticorruption institutions in the Council of Europe Member States is the most visible and easily accessible sign on their real readiness to fight corruption and of the existence of a real political will to suppress this phenomenon.

6.2 International standards against corruption

Combating corruption is a true challenge for all countries. Most states implement the anticorruption policy based on both their domestic law and basic principles enshrined in the international instruments.

6.3 International Conventions against Corruption

It is important that the majority of states understand corruption as behavior and actions set forth in basic international instruments. Basic conventions effective at the international level or at the continent level include:

- United Nations Convention against Corruption (October 31, 2003);
- Council of Europe Criminal Law Convention on Corruption (January 27, 1999);
- Inter-American Convention against Corruption of the Organisation of the American States (enforced on June 3, 1997);
- African Union Convention on Preventing and Combating Corruption (enforced on August 5, 2006);
- European Union Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union (enforced on May 26, 1997).

The Conventions qualify the following actions as criminal offences:

- 1) bribery of national public officials, foreign public officials and officials of international organisations;
- 2) embezzlement, misappropriation or other misuse of property by a public official;
- 3) abuse of power for private gain;
- 4) abuse of official position;

¹⁴http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/rucola-2/RUCOLA2_final_report_en.pdf

- 5) bribery and embezzlement of property in the private sector;
- 6) laundering of illegal funds and obstruction of justice.

6.4 International Corporate Anticorruption Standards

Corporate practices of conduct for business entities in relations with public authorities or other companies have been formulated at the international level in order to eliminate corruption from business practices. At the forefront of the movement for compliance with anticorruption commercial practices is the International Chamber of Commerce (ICC).

In order to prevent the negative impact of any form of corruption on contractual relations, business entities are encouraged to incorporate ICC Rules on Combating Corruption into their contracts. These rules include the following:

- in their business practice companies shall prohibit bribery, extortion or solicitation, trading in influence, laundering the proceeds of the corrupt practices;
- companies shall instruct partners neither to engage in nor to tolerate any act of corruption;
- companies shall settle all the issues related to political and charitable contributions and sponsorships, gifts and facilitation payments, etc.
- companies shall regulate conflicts of interests – immediately disclose information, if such conflicts arise¹⁵.

Elements of an Efficient Corporate Compliance Programme constitute a crucial component of international anticorruption standards and include the following:

- corporate rules for combating corruption;
- periodical assessments of corruption risks in the company's business environment;
- prevention and detection of corruption and promotion of a culture of compliance with the rules of business ethics in the company.

6.5 International Cooperation against Corruption

International legal acts define corruption as one of the global challenges to the international law and order. Due to its universal nature and prevalence in countries with a different level of socio-economic development, corruption becomes transnational in form, which makes the international community join its efforts to prevent corruption and develop a common and well-coordinated anticorruption policy.

The framework for international cooperation in criminal law matters is laid down in the UN Convention against Corruption. Cooperation takes place in the following areas:

- surrender of a person in relation to any corruption offence;
- transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for corruption offences in order that they may complete their sentences there;
- mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to corruption offences (taking evidence or statements from persons, effecting service of judicial documents; executing searches and seizures and freezing; examining objects and sites, etc.);
- transfer of criminal proceedings for the prosecution of corruption offences;
- law enforcement cooperation, including exchange of information concerning specific means and methods used to combat corruption in different countries.

¹⁵ <http://www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/corporate-responsibility-and-anti-corruption/ICC-Rules-on-Combating-Corruption/>

6.6 Integrity

International experts have described a state of society and institutions which any country that is implementing anticorruption policies should seek. This state is called ‘integrity’ and is understood as a state of institutions functioning in accordance with moral values, rules and regulations under which powers of authority are exercised in accordance with the officially established and socially justifiable goals¹⁶.

Violated state of integrity leads to corruption in a most general sense: bribery, embezzlement, abuse of power, imposition of anti-competitive conditions, conflict of interest, nepotism, etc.

There are five components¹⁷ (features) of the state of integrity that characterize an efficient anticorruption policy:

- The first important principle is openness of power, i.e. ability of any member of society to obtain relevant information about the activities of the political elite, and public authorities in the first place, or officials; public accountability of the public sector, including both state institutions and certain officials who determine the ‘rules of the game’, distribute public goods and spend public funds.
- The second basic principle of integrity is the responsibility of power characterised by mechanisms available to encourage public officials to perform their duties in good faith in accordance with the current law.
- The third principle implies separation of powers, in the structure of public authorities in the first place.
- The fourth crucial principle of integrity is availability of effective instruments of coercion to encourage proper law enforcement.
- The fifth principle of integrity relates to the system of education and propaganda intended to foster standards of ethical conduct in both public officials and citizens, and to promote institutionalisation of values of fair conduct.

¹⁶ <http://www.transparency.org/whatwedo/nis>.

¹⁷ Dr. Anthony Lanyi and Dr. Omar Azfar. Tools for assessing corruption and integrity in institutions. IRIS Center, at the University of Maryland, 2005.

7 MECHANISMS OF ANTI-CORRUPTION POLICY IN RUSSIA

Aim: Provide to the business ombudsmen information on the principles and tools of anti-corruption policy in the Russian Federation, and explain the possibility and extent of use of these tools in their work.

Objectives:

- Learn about the stages of the construction of anti-corruption policy in the Russian Federation.
- To get acquainted with the basic provisions of the National Anti-Corruption Strategy and the National Anti-Corruption Plan (2014-2015).
- Learn about the evaluation results of applying the measures of anti-corruption policy.

Russia has been pro-actively engaged in developing anticorruption mechanisms since 2008 after ratification of core international instruments (the United Nations Convention against Corruption of October 31, 2003 and the Criminal Law Convention on Corruption of January 27, 1999).

According to the Federal Law ‘On Combating Corruption’, fight against corruption is activity carried out by federal authorities, regional authorities of the constituent entities of the Russian Federation, local self-government bodies, civil society institutions, organisations and individuals within their powers in order to:

- a) prevent corruption, including detection and subsequent eradication of causes of corruption (prevention of corruption);
- b) detect, prevent, suppress, disclose and investigate corruption offences (fight against corruption);
- c) minimise and (or) eliminate consequences of corruption offences.

Anticorruption policy is a set of complementary measures (legislative, economic, political, informational, organisational) undertaken by the state and the civil society in order to combat corruption.

Anticorruption policy is a combination of the following institutions:

- institute of anticorruption legislation;
- law enforcement;
- preventive measures, including anticorruption propaganda and raising awareness;
- impact of society as a ‘third party’ control.

Russia has enacted a number of important documents that define certain areas of anticorruption policy to be taken into account when considering claims from entrepreneurs.

Presidential Decree No. 460 of April 13, 2010 approved the National Anticorruption Strategy, which defines the main areas of anticorruption policy. An BO shall within its powers do his work based on the key areas of the strategy:

- ensuring the involvement of civil society institutions in combating corruption;
- eliminating corruption-generating factors that hamper the creation of favorable conditions to attract investments;
- improving the law enforcement practice of law enforcement agencies and courts in corruption-related cases;
- enhancing the efficiency of the execution of judgments.

In pursuance of the National Strategy national anticorruption plans have been adopted.

Presidential Decree No. 226 of April 11, 2014 ‘On the 2014 – 2015 National Anticorruption Plan’ is currently in force. Under this plan, the BO shall use measures taken as part of the plan to reduce the level of corruption pressure on business. In particular, the plan calls for:

- analysis of corruption risks in the housing and utilities sector, consumer market, construction sector, as well as while carrying out major infrastructure projects, introduction of a series of measures aimed at reducing the level of corruption in these areas. Thus, the plan has defined areas of activity which the state will focus on trying to reduce corruption. An BO shall inform competent authorities on claims coming from entrepreneurs working in these areas, on challenges associated with corrupt behaviour of officials, as well as suggestions for reducing corruption in these areas based on his own experience of examining claims;
- development of measures aimed to prevent a conflict of interest between employees of public corporations (companies) and organisations established to support the activities of federal authorities. When considering complaints an BO shall identify conflicts of interest between officials and offer comprehensive solutions in order to prevent conflicts of interest;
- development of practical recommendations on application of the legislation of the Russian Federation, ensuring alienation of objects of civil rights and other benefits derived by the briber or another person as a result of bribery;
- improvement of legal and organisational protection of persons who report about corruption from persecution and violation of their rights and legitimate interests by officials whose actions are appealed against.

In recent years the key areas of anticorruption policy have been improved through introducing the following changes:

- anticorruption examination of draft legislation;
- property confiscation as one of the criminal liabilities for corruption offenses;
- compliance commissions set up under federal executive authorities or other public bodies aimed to comply with the official conduct requirements for public officials and requirements for settlement of conflicts of interest;
- mechanisms of income disclosure for civil servants;
- procedure of regulatory impact assessment.

A series of measures have been adopted recently to improve public administration in certain industries, which actually helped to reduce a high level of corruption that earlier used to characterize these areas:

- increased anticorruption effectiveness of public procurement, mechanisms set up to prevent unscrupulous customers from placing orders, which enabled a significant number of enterprises to participate in these procedures;
- improved system of state control (supervision) in business in accordance with Federal Law 294-FZ;
- limited frequency of scheduled inspections;
- unscheduled inspections shall be agreed with prosecutors. This has become a significant barrier to the inspection bodies – about half of all the inspections are rejected by the prosecutor's office, and in some regions this figure approximates 90%;
- a notification procedure of starting business (hotel industry, consumer services, etc.).

The above examples show that the level of corruption in various spheres can be reduced subject to appropriate regulatory legal acts adopted and strict compliance control.

However, overall assessment of the effectiveness of anticorruption measures by Russian and foreign experts shows low involvement of the state in generating effective mechanisms for combating corruption.

Russia’s place in the CPI rating (Transparency International) has consistently decreased, and currently it is in 127th place out of 176, side by side with countries such as Pakistan and Bangladesh;

Russia's freedom rating in Freedom House's 2013 survey which assesses the level of corruption in post-socialist countries is 6.5 out of 7 (still worse corruption is found only in Turkmenistan and Tadjikistan).

The existing legal mechanisms and legal technologies so far fail to forestall rapidly improving, large-scale, transitioning to a higher 'quality' level forms of corruption¹⁸.

A classic example proving the inefficiency of legislative fight against corruption implemented as one of the measures of the anticorruption policy is Federal Law No. 172-FZ of July 17, 2009 'On Anticorruption Expert Evaluation of Regulatory Legal Acts and Draft Regulatory Legal Acts', which does not stipulate mandatory recordkeeping of anticorruption expert evaluation results, and that actually completely dilutes the essence of the law.

Anticorruption laws fail to account for the level of development of Russian institutions. Norms that are successful in countries with strong legal institutions, well-established law enforcement and developed legal consciousness seem to be rather vaguely defined in Russia and do not ensure the principle of inevitability of prosecution, that is, they do not create serious threats and risks for corruptionists.

Russia has no specialised independent anticorruption body authorised enough to efficiently address the challenges. An Anticorruption Department founded in the Administration of the President of the Russian Federation is not vested with investigative and search powers. In the OSCD Survey devoted to the Russian Federation for 2013 in the section "Improvement of Business Climate"¹⁹ it is mentioned : «Persistent corruption is believed to be one of the main obstacles for entering the market and providing sustainable growth especially in the regions ». At the same time the Survey mentions the following positive tendencies:

- substantial progress in fighting bribes to officials;
- a new law on public procurement providing more transparency and openness;
- corruption control measures in business and investments, promoting the implementation of the Anticorruption Charter;
- commissions analysing the cases of violation of the Code of ethics and conflict of interests in public sector;
- obligatory information about income, expenses, real estate and other property of state officials their spouses and under-aged children; and
- Presidential Decree on the approval of list of positions of civil servants with increased corruption risks

Council of Europe Group of States against Corruption (GRECO) also notes some progress in this field – Russia has fully implemented 15 out of 26 large-scale recommendations provided by the organisation, whereas 11 are partly implemented, establishment of an Anticorruption Working Group aimed at encouraging a dialogue between public authorities and the business community on corruption issues is welcomed.²⁰

¹⁸ T. Khabrieva 'Corruption and Law: Doctrinal Approaches to Problem Statement'. Russian Law Journal, No. 6, 2012.

¹⁹http://www.keepeek.com/Digital-Asset-Management/oecd/economics/oecd-economic-surveys-russian-federation-2013_eco_surveys-rus-2013-en#page1.

²⁰ GRECO (2012), Joint First and Second Evaluation Round, Addendum to the Compliance Report on the Russian Federation, Group of States against Corruption, Council of Europe, adopted by GRECO at its 58th Plenary Meeting, Strasbourg, 3-7 December 2012.

8 THE ROLE OF THE FEDERAL BUSINESS OMBUDSMAN IN COMBATING CORRUPTION

Aim: Regional Business Ombudsmen have a complete understanding of the legal instruments available to use in the fight against corruption.

Objectives:

- Better understand the principles of operation of Business Ombudsman in combating corruption when dealing with complaints.
- Get acquainted with features of corruption in the actions against business entities in the Russian practice.

One of the most important prerequisites for the transformation of institutions in Russia and improvement of law enforcement practice for the protection of businesses facing corruption pressure is creation of an institute of Business Ombudsman for Entrepreneurs' Rights Protection or Business Ombudsman established by Presidential Decree No. 879 of June 22, 2012.

The profile federal law has defined legal status, main tasks and competence of the Business Ombudsman under the President of the Russian Federation and authorised commissioners in the constituent entities of the Russian Federation.

One of the functions in addition to due law enforcement control implemented by the BO with the active participation of the civil society represented by the business, legal and expert community, is strengthening of legal institutions. This function is crucial in a situation when current institutions fail to cope with such a level of corruption.

In this case, an institution of commissioners strengthens business positions, ensures practical implementation of the principle of broad participation of the civil society in carrying out the anticorruption policy.

An institution of BO under the President of the Russian Federation established at the federal level has become a major tool for improving the business climate. The BO is always on the side of entrepreneurs, which increases business opportunities for the protection of their rights. In his work an BO shall rely on transparent and public procedures when deciding on entrepreneurs' claims. Expert evaluation and other activities intended to protect the rights of entrepreneurs shall involve civil institutions:

- public ombudsmen – representatives of the BO in various activities who are involved in expert evaluation and other functions;
- Centre for Public Procedures (CPP) 'Business against Corruption' engaged in legal review of business applications;
- Expert Council that brings together experts in the field of protection of entrepreneurs' rights (The Expert Council suggested an amnesty for entrepreneurs, in which nearly 2.5 thousand entrepreneurs were released from criminal prosecution);
- Public Council that provides interaction between public authorities and the civil society in the field of protection of entrepreneurs' rights.

Decisions on applications submitted to ombudsmen are taken based on a public verdict (opinions of public ombudsmen, business associations and other civil society representatives).

The job of the BO under the President of the Russian Federation among other things involves collaboration with leading Russian business associations, conditions are created to collect information about challenges facing the business, analytical work is carried out to identify systemic problems of entrepreneurship and develop solutions to protect the rights of business. For example, a thorough analysis is carried out to see how an existing judicial system in Russia affects the rights of entrepreneurs and the development of entrepreneurship in general, and how to improve the criminal

enforcement practice for the business. The results of an in-depth study into fundamental challenges affecting the business and the proposed solutions are presented to the society and public authorities in the form of a public document prepared through direct participation of the business and expert community – the Annual Report of the Business Ombudsman to the President of the Russian Federation.

The BO acting as a representative of public authorities shall also use his powers in order to achieve the objectives of the anticorruption policy outlined above.

One of the crucial functions of business ombudsmen is a qualified response to corruption-related claims from business entities.

When considering corruption claims, it is important to pay attention to the following factors of corruption.

Intent – a mercenary motive (objective) pursued by a public official. Corruption offenses are characterised by a substantive constituent element, i.e. suggest as a mandatory feature certain socially dangerous consequences, financial or physical harm. This follows from the definition of corruption specified by federal law.

For corruption offenses this means that in order to prosecute one should prove an intent – a mercenary motive (objective) of an official – in order to derive benefits in the form of money, valuables or other property or property-related services, other property rights for himself or third parties, or illegal provision of such benefits to a certain person by other individuals.

Proving an intent – a mercenary motive (objective) – is a difficult task, as an BO may lack sufficient evidence to prove, most frequently an intent can be proved only after thorough investigative activities using special tools and subject to special powers vested with law enforcers.

In this regard, when considering claims from entrepreneurs one should pay attention to other crime components which formally fail to meet the definition of corruption, but are classified as corruption-related crimes since they are characterised by the following features:

- availability of proper perpetrators of a criminal offense, including public officials, persons in charge of managerial functions in a profit-making or any other organisation acting on behalf of and in the interests of a legal entity, as well as in a non-profit organisation, which is not a public authority, a self-government body, or a public or municipal agency;
- links between an offence and an official position of a perpetrator, departure from his immediate rights and obligations;
- obligatory presence of a mercenary motive (the act is related to obtaining by a perpetrator of property rights and benefits for himself or third parties);
- crime committed only with a specific intent²¹. In this case the intent is not always necessary to prove.

Interest of a public official in the crime. With the majority of corruption-related crimes, it is essential to prove the interest of an official in a crime. Among the essential characteristics the law sees certain motives and objectives. Thus, an obligatory sign of abuse of office (Article 285 of the Criminal Code of the Russian Federation) and forgery (Article 292 of the Criminal Code of the Russian Federation) is a mercenary motive or other personal interest.

To prove a mercenary interest, it is necessary to collect evidence showing a public official's wish to get property or non-property benefits for oneself or others as a result of unlawful actions. They may include, for example, illegal benefits or loans, relief from any property costs, return of property,

²¹ Instructive Regulation of the Prosecutor General's Office of Russia No. 387-11, the Ministry of Internal Affairs of Russia No. 2 of September 11, 2013 'On enactment of a list of articles of the Criminal Code of the Russian Federation used for statistical reporting'.

repayment of debts, service fees, tax payments, etc. To prove another personal interest, one must prove a public official's wish to derive non-property benefits triggered by such motives as careerism, nepotism, wish to embellish the actual state of affairs, to get a return service, earn support in settling some issues, or hide one's incompetence, etc.

8.1 Identification of Conflict of Interest

When considering claims filed by entrepreneurs, one needs to establish presence (absence) of a conflict of interest in the activities of a public official accused of corruption.

According to Federal Law No. 79-FZ of July 27, 2004 'On State Civil Service of the Russian Federation', a conflict of interest is a situation in which a personal interest of a civil servant affects or may affect an unbiased performance of his official duties, and in which there is or may be a contradiction between a personal interest of a civil servant and legitimate interests of citizens, organisations, the society, a constituent entity of the Russian Federation or Russia as is, leading to possible damage of these legitimate interests of citizens, organisations, society, a constituent entity of the Russian Federation or Russia.

The signs of a conflict of interest may be the following:

- imposition of fee-based services for entrepreneurs and extortion of bribes from them through organisations and individuals affiliated with the public officials concerned;
- inclusion into technical regulations and legislation of requirements for obtaining paid public services which turn out to be provided by companies affiliated with governmental bodies. Thus, public officials lobbying such regulation are acting under a conflict of interest.
- Failure of civil servants acting as a party to a conflict of interest to adopt measures aimed at preventing or settling conflicts of interest is considered an offense entailing dismissal of a civil servant from civil service.

8.2 Identifying Features of a Corruption Offence

In every corruption-related crime it is crucial to elicit facts characterizing means, mechanisms or other features of a commission of an offence.

For bribery such features are as follows:

- specific character of bribe giving (through mediators or without them);
- presence or absence of associates: organisers, instigators, accomplices;
- presence or absence of pressure on an entrepreneur (with or without extortion);
- unlawful actions (inaction) in favour of a briber or legitimate actions; bribe taking by an official who although had no authority to take an action (or inaction) in favor of a briber or persons represented by him, but by virtue of his official position could contribute to such an action (inaction) committed by another official, etc.

For other types of corruption crimes unrelated to bribery, facts characterizing means or mechanisms, and other features of a commission of an offence may be:

- unjustified use of advantages for oneself and one's relatives;
- involvement in activities of profit-making companies as founders, directors;
- provision of monopoly power to a structure that corrupted a public official;
- contracting detrimental to the state;
- transfer of federal and municipal property at reduced prices to business structures;
- renting out land lots (with no cadastre entry, without coordination with state and municipal property management authorities, etc.).

9 BASICS OF THE FUNCTIONING OF A BUSINESS OMBUDSMAN INSTITUTION IN THE RUSSIAN FEDERATION

Aim: The aim of this session is to set the general standard of an RBO and public ombudsmen activity and organisation. All RBOs and some public business-ombudsmen have their own office. The principles of the office organisation, its basic functions, principles of cooperation with governmental bodies and public institutions are generally common.

Objectives: To provide for full-fledged activities of a RBO at the level of a constituent member of the Russian Federation a relevant law should be enacted to define the RBO's legal status, rights and duties, establishing BO's office at regional level.

At the end of the session the participants will know:

- how to set up a business-ombudsman office;
- procedure of complaints processing
- how to maintain confidentiality
- how to interact with public agencies and non-governmental organisations
- how to manage with a conflict
- how to protect an ombudsman against damage and how to promote the Ombudsman role and function

9.1 How to set up and operate an Ombudsman office:

Once the law is enacted some further procedures must be implemented:

- Appointment of an officer to the BO's position;
- Allocation of funds *to* support activities of the BO and his/her staff (the regional budget to contain an appropriate expense item).

The BO as a rule shall be appointed by the head of the constituent member of the Russian Federation after clearing the candidature with the FBO and taking into account the business community's opinion.

The BO examines complaints of business entities of decisions or actions (omissions) which infringe rights and lawful interests of business entities made by:

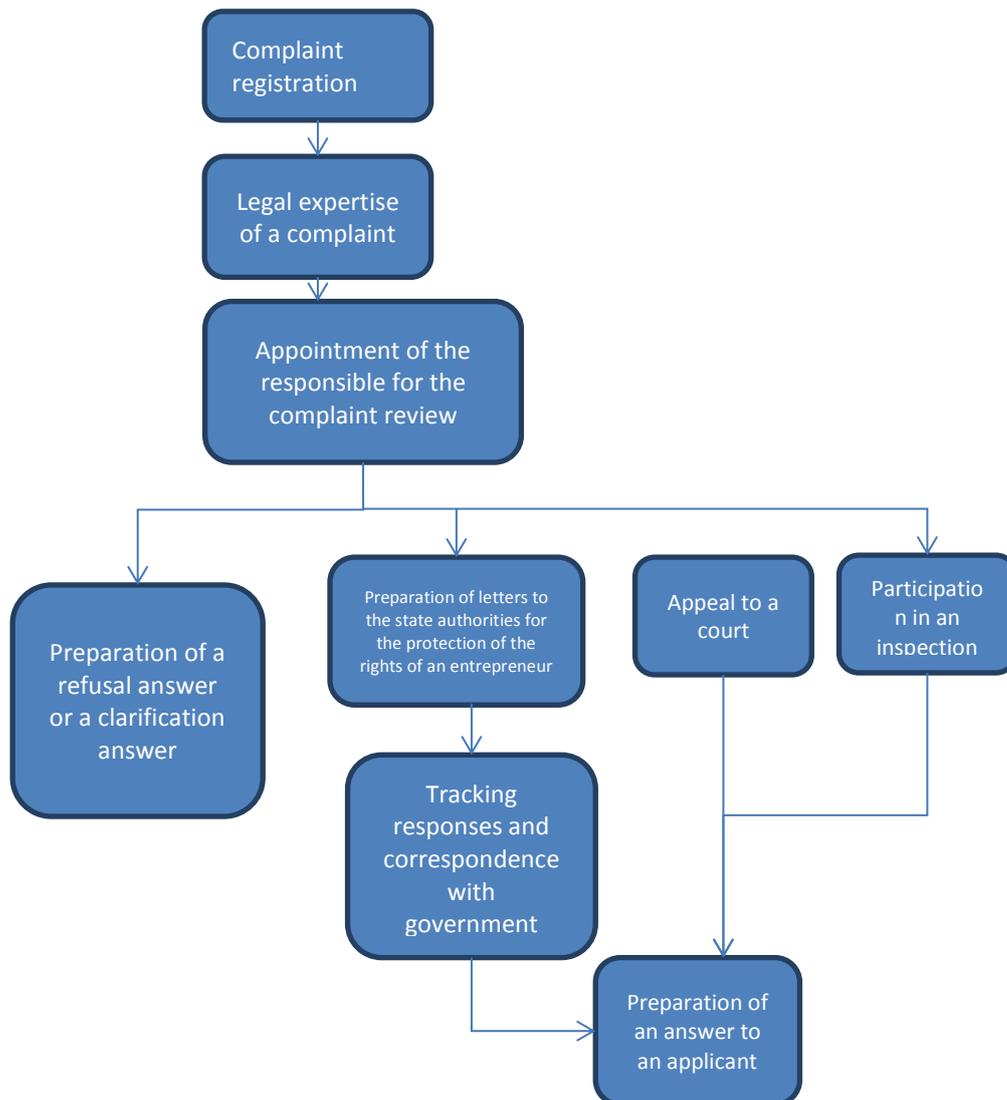
- Bodies of state power of a constituent member of the Russian Federation,
- Regional entities of federal executive authorities in a constituent member of the Russian Federation,
- Local self-government bodies,
- Other bodies and organisations vested by the federal law with specific state or other public powers.

The establishment of the regional office of an Ombudsman is largely determined by the place of a RBO in the system of public authorities of region that is defined by the regional law, as well as by an amount of annual funding. Unlike the Federal office of the Ombudsman, despite the same procedure of complaints review in the regions, a regional office has a small number of employees, what supposes a holding of several functions of complaints processing in each of employee.

When creating an office of the BO it is recommended primarily to assess the necessary functions which are required by the BO n to execute his powers and to describe them. It is also possible to describe the specific procedures needed to perform functions.

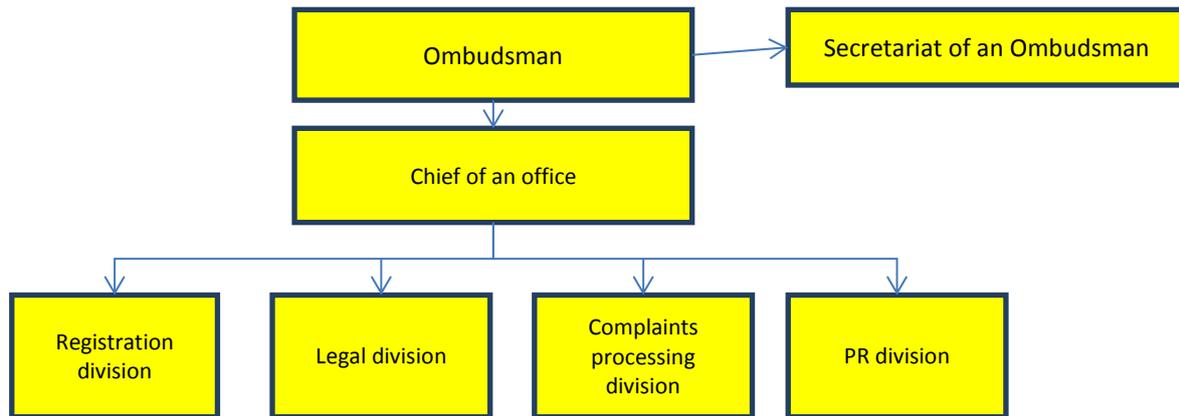
In particular, the main functions of the BO is to deal with applications of business entities, to conduct systematic work to improve the business environment in the region, cooperation with public authorities, promotion (PR) activities of the BO in the region, social work. Regional laws for RBO may provide additional functions.

The scheme of complaint review will be approximately the following:



For the implementation of these sub-functions it is reasonable to appoint a responsible person for each complaint, who would lead the process of an application processing from a beginning to an end. The necessity of registration of appeals assumes the need for complaints registration experts. The need for legal expertise and for going to a court requires the lawyers in the staff.

Thus, the approximate structure of an office will be as follows:



The structure may vary depending on the number of employees, on the workload of a BO and on the possibility of performing of various functions by the same employees. However, creation of an office of a public representative of the Federal ombudsman shall not require the adoption of the corresponding law, the creation of an office is on a decision of a public representative, the choice of procedures and working methods is an absolute competence of a public representative.

Generally, an office of a public representative represents 3-4 employees with high legal or economic qualifications.

9.2 Regulation of processing of complaints

The BO examines complaints of business entities pursuant to a procedure established by the law²², procedures for examination of applications²³ and other acts²⁴.

Processing of complaints includes the following procedures:

- 1) Registration of a complaint, formal screening;
- 2) Primary legal expert review and dispatching of an appeal;
- 3) Examination of an appeal on its merits;
- 4) Acceptance of a project, implementation of measures to protect an applicant's rights;
- 5) Handling systemic problems.

9.2.1 Step 1) Registration of a complaint, formal screening

There are three ways to submit a complain to a RBO:

- Filing a complaint on-line;
- Submission in writing;
- Submission at a personal interview.

²²Federal Law of May 2, 2006, # 59-FZ "On Procedure for Examination of Submissions of Citizens of the Russian Federation"; Federal Law of May 7, 2013, # 78-FZ, Moscow "On Ombudsmen in the Russian Federation";

²³"Procedure for Processing of Submissions" (Approved by BO under the President of the Russian Federation on June 6, 2013)

²⁴Regulation for examination of submissions by the Center of Public Procedures "Business against Corruption" (approved by the Order of December 25, 2013, #1 of the Ombudsman under the President of the Russian Federation); Procedure for Examination by Ombudsmen in Constituent Members of the Russian Federation of Submissions forwarded by the Ombudsman under President of the Russian Federation (approved by Order dated 24.04.2013 # 2 of the Ombudsman under President of the Russian Federation)

The BO's reception office which may be styled as a document processing unit shall be responsible for registration of complaints.

Registration of a complaint made by a business entity irrespective of submission format of the same is compulsory. As a rule, registration deadline shall not exceed 3 days upon receipt of a complaint by the BO's staff.

In certain cases the BO may refuse to register a complaint. It happens when a complaint does not contain an indication as to where and to whom it is addressed.

9.2.2 Step 2) Primary legal expert review and dispatching of an appeal

A responsible unit of the BO's office (generally a legal department) takes the following actions for the purpose of a legal expert review:

- 1) acceptance of an appeal for examination (within 10 days upon receipt of a submission). An appeal shall be examined for compliance with statutory requirements.
- 2) primary legal expert review. The BO must produce a summary of the conflict with assessment of the situation and recommendations regarding examination of the appeal.

In case of any doubts as to correctness and (or) reliability of an applicant's position, the BO may organise a review of a complaint to clarify facts listed in the businessman's submission.

9.2.3 Step 3) Examination of an appeal on its merits

Examination of an appeal on its merits is provided by public experts: public ombudsmen, "Business against Corruption" Public Centers (with expert lawyers attracted pro bono), Expert, Public, and Coordination Council, if such support structures have been created.

If a RBO needs a thematic support he can appeal to the FBO asking to engage a federal public ombudsman.

Procedure and periods for examination are provided for in the Regulation. Following the ad rem examination of appeals, expert conclusions and draft answers to applicants are submitted to the BO.

With a goal of a review of an appeal a RBO can:

- appeal to the official public bodies;
- organise and hold the public hearings on the facts of the concrete complaints review;
- to engage the independent experts and (or) the expert centres ;
- to request data about the reputation of the applicants;
- meet with applicants in the course of examination of individual and collective complaints of entrepreneurs.

When the FBO forwards a request to the RBO to scrutinize a complaint following examination of a businessman's appeal, the can act the two ways:

A) An appeal does not require the intervention of the FBO, his appeal to the authorities or organisations. In this case, a RBO conducts a review of a complaint in accordance with the established procedure and independently sends replies to an applicant.

B) The intervention of the FBO for the implementation of measures on protection of the rights of the applicant required or the FBO asks to be informed about the proceedings. In this case a RBO shall produce and forward to the FBO:

- A motivated expert opinion drafted in an approved format, where with regard for applicable law provisions and based on results of the expert review of the case, one of the following conclusions is made:
 - "there is no breach",
 - "a breach has been identified"

- “a systemic problem related to imperfect legislation has been identified”;
- A draft response to the applicant or a request to a federal executive power authority on behalf of the BO;
- A cover letter to the BO with a request:
 - To approve the draft response and to forward the same to the applicant or a request to a federal executive power authority;
 - To close the case and lift control procedures.

9.2.4 Step 4) Acceptance of the project, implementation of applicant's protection measures

Having analysed the proposed complex of applicant's protection measures, the BO may accept it or report it out to the same expert or commission another expert assessment, or pass it to another expert for assessment.

Following the examination of the appeal the BO informs the applicant about the chosen form and methods of protection of his rights and lawful interests or sends a grounded refusal in protection.

To restore the infringed rights of the applicant the BO may:

- direct the appropriate appeals to a body of state authority, local self-government body, or to an official in whose competence is the ad rem examination of appeals. (it is prohibited by law to send the appeal for consideration to the official whose decision or action (lack of action) is appealed.
- submit to a body of state authority, local self-government body, or to an official, whose decision or action (lack of action) are seen as a violation of rights and lawful interests of business entities his conclusion specifying measures to restore the rights and lawful interests of the mentioned entities;
- turn to the court for annulment of normative legal acts, seeking invalidity of decision or action (lack of action) of a bodies of state authority;
- with the written consent of the applicant to participate in the onsite audit, conducted against the applicant under the state control (supervision) and municipal control.

9.2.5 Working with systemic problems.

Public experts together with the employees of the BO classify the appeals and sum them up, define systemic problems, develop a complex of measures to resolve them and submit them to discussion at Expert, Public and Coordination Council's meetings. In course of analyses of systemic problems they develop the information policy for public relations, for cooperation with bodies of state authority to do away with the detected problems and promote the proposed solutions.

Analytical materials and proposed measures to resolve systemic problems are directed to appropriate governmental bodies and are included in the annual report of the BO to the President of the RF.

To resolve the systemic problems a RBO can:

- send to the state authorities of a region of the Russian Federation, bodies of local governments motivated proposals for the adoption of regulations (amendments to normative legal acts or declaring them null and void), relating to the field of activity of a RBO in the Russian Federation;

- direct the Supreme official of a region of the Russian Federation (head of the higher Executive body of state power of a region of Russian Federation) motivated proposals to abolish or suspend acts of the Executive authorities of the respective region of the Russian Federation;

9.3 Why confidentiality is essential to the practice, how to maintain confidentiality

When considering the complaint the BO must guarantee confidentiality of data provided by entrepreneurs. Untimely disclosure of the data may cause damage to commercial interests of the legal entity and its business reputation.

On regional level it is often mentioned that the BO is not in a position to disclose data that he became aware of in cause of working with a complaint without a written permit of the person who has submitted the complaint.

Confidentiality issue is especially important when cases of corruption are declared. Protection of applicants against corruption is accentuated by the concern about negative consequence for himself and his business on behalf of the applicant.

Now that latent corruption is widely spread and entrepreneurs do not believe in corruptionists being hold liable, entrepreneurs do not consider complaints against corruption efficient.

In this connection the BO must insist that confidentiality is guaranteed by the court in course of proceedings:

- personal data of witnesses in protocols at the preliminary stage must be kept secret;
- closed judicial examination;
- interrogation of witnesses without disclosure of their personal data and interrogation that does not allow for other participants of the trail to visualize the witness.

The Federal Law of 20.08.2004 N 119-FZ "On state protection of complainants, witnesses and other participants of court trail " provides for protection measures for complainants, witnesses and informers about the offence.

One or several of the below listed protection measures can be applied to the protected person:

- 1) close protection, protection of house and property;
- 2) providing special individual protective equipment, communication and alarm devices;
- 3) confidentiality of data about the protected person;
- 4) changing address;
- 5) changing documents;
- 6) changing appearance;
- 7) changing job or educational establishment;
- 8) temporary transfer to a safe place;
- 9) applying additional safety measures in regard of a protected person taken into custody or in places of imprisonment, including transfer from one place of custody or imprisonment to another.

Thus most efficient protective measures are to be provided.

At the same time one has to bear in mind that the existing safety measures and procedures are not exhaustive. Protective measures today are to be applied only to the participants of the trail and only by the decision of the court, inquiry bodies or investigative authorities. That is why even if the informer is under a negative pressure he/she will not get protection unless a court proceeding is initiated and appropriate decision taken.

9.4 Interaction with public agencies

To the extent of his/her authority the BO must ensure guarantees of state protection of rights and lawful interests of business entities. He/she ensures that, among other things, through control over respect of such rights by state power bodies, local self-government bodies and officers.

Thus, the RBO must interact with relevant state power bodies for the purpose of examination of appeals. In particular the BO may:

- Issue clarification requests to state power bodies, local self-government bodies, other parties mentioned in a businessman's appeal and request such document and materials that may be necessary for review;
- Seek clarifications from officers of state power and local self-government bodies on matters subject to clarification for the purpose of examination of an appeal made by businessmen, including such officers who were assigned with responsibility for interaction with the BO in regional bodies of executive authorities.

When a complaint contains information about a wrongful act which is being prepared, perpetrated or has been committed, as well as about a person who prepares, perpetrates or has committed any such act, such complaint must be forwarded to an appropriate state (law-enforcement) body.

The authorities approached by the BO have a duty to assist the BO in resolving businesses' problems. In particular, the authorities (officers) must:

- Arrange a meeting with the BO should he/she request one;
- Send a written response to the BO's request as well as make available to the BO any requested information, documents and materials in a timely manner.

The BO shall receive information at his/her request within 15 days following receipt of the same by the authority; importantly, the response should be made by the particular officer whom the BO approached.

Interaction of the BO with the authorities is also achieved through the BO's involvement in activities of collegiate bodies established under any such authorities. The BO should provide for their inclusion on advisory boards under the governor on matters of raising investment, development of SME, other coordination (advisory) bodies whose sphere of powers includes development of entrepreneurship and protection of *business entities*.

The BO must participate in meetings of relevant committees of the legislative body and in meetings of executive authorities on matters of protection of *entrepreneurs' rights*.

In addition, a RBO can secure the nomination of a responsible for interaction with a RBO in each agency of administrative power.

9.5 Cooperation with legal, business associations and other NGOs which support the functioning of the Business Ombudsman Institution

Under the Federal Law interaction with business community is one of the main objectives of the BO. The law defines the basis for such interaction. The BO may set up expert, advisory and public councils, other advisory bodies operating as non-government institutions which engage representatives of the business community and NGOs.

Main areas of interaction of the BO with NGOs, including business associations are as follows:

- Consolidation of efforts to protect rights and interests of businesses while processing specific appeals;

- Protection and representation of interests of business associations before state power bodies and local self-government bodies;
- Analysis of systemic problems hindering development of entrepreneurship, generation of joint proposals to address the same.

For interaction with business associations and other NGOs under the FBO's Institution established The Public Council, the Expert Council and the Coordination Council.

Council under the BO is established to provide for involvement of representatives of civic society, first and foremost, of largest business associations in the BO's activities intended to improve efficiency of protection of entrepreneurs' rights. The Public Council arranges discussions of the most pressing problems of business community related to the BO's areas of activities, reviews problems of interaction between businesses and state authorities in the area of protection of entrepreneurs' rights, participates in drafting and discussion of the BO's Annual Report.

To take care of systemic problems of entrepreneurship and to generate comprehensive proposals for resolving the same, including for amendments to the regulatory framework, the BO may use the tool of the Coordination Council, comprised of public ombudsmen focusing on different areas of entrepreneurship and state regulation thereof.

The Expert Council looks into issues of strengthening of legal institutions and is composed of high-profile representatives of legal, expert and business communities.

9.6 How to manage and work with conflict

Complaints of entrepreneurs on the actions of the officials of the authorities, judicial decisions, and actions of bailiffs are often associated with the presence of a corporate conflict, in which authorities take part. The same time an action of a person who filed the complaint may be itself unfair in nature.

A decision about which of the parties is honest, is made in this case by the results of a public expertize, conducted by any public representative of the BO or the appropriate centre of public procedures. Currently the expertize procedure is most actively conducted by a centre of public procedures "Business against corruption" on the cases involving criminal prosecution. In addition, an BO may experience other types of conflicts: conflict with the applicant, the conflict with the opponent of the applicant, the conflict with the state body or official, conflict with law enforcement.

Besides a RBO can meet other types of conflicts:

- the conflict with the applicant;
- conflict with the opponent of the applicant;
- conflict with a government Agency or official;
- conflict with law enforcement agencies.

Often the conflict is related to a desire of some applicants to "push" through their interests with the help of the Institute, therefore, first of all, when analysing the conflict an BO must understand its causes.

The Institution is a system of state bodies, so those conflicts that could not be eliminated in the course of negotiations, shall be resolved through formal legal procedures.

Case «Damage»

Company 1 appealed to the FBO with a complaint on the actions of the bailiff in the interests of the company 2. The court act recognised the damage caused to the company 2 by the company 1. The

company 1 shall pay to the company 2 around 1 bln. of rubles. Because it had not paid the required money, company 2 was applied to bailiffs with a request for compulsory enforcement of judicial decisions. Company 1 has applied to a RBO with a request to assist in the suspension of enforcement proceedings, as after the arrest of its property the activity of a single property complex had been violated, which is prohibited by law. Company 2 also appealed to the RBO in connection with the company 1 did not ensure the implementation of their obligations.

The RBO has made an order for the preparation of expert conclusion on this question, the question was submitted for the consideration by the public Council under the RBO.

For the purpose of examining an appeal the RBO may:

- Approach state power bodies;
- Arrange and conduct public hearings on factual aspects of specific appeals;
- Engage third-party experts and (or) expert organisations;
- Request information about business reputation of applicants;
- Meet with applicants in the course of examination of class complaints of businessmen.

Where the FBO forwards a request to the RBO to scrutinize a complaint following examination of a businessman's appeal, the RBO shall produce and forward to the FBO:

- A motivated expert opinion drafted in an approved format, where with regard for applicable law provisions and based on results of the expert review of the case, one of the following conclusions is made:
 - "there is no breach",
 - "a breach has been identified"
 - "a systemic problem related to imperfect legislation has been identified";
- A draft response to the applicant or a request to a federal executive power authority on behalf of the BO;
- A cover letter to the BO with a request:
- To approve the draft response and to forward the same to the applicant or a request to a federal executive power authority ;
- To close the case and lift control procedures.

9.7 Protection against physical, material and reputational damage of a regional ombudsmen

Regional ombudsmen as a rule are state civil servants and thus are entitled to guarantees foreseen by the state laws on state civil service (Federal Law of 27.07.2004 № 79-FZ "On State Civil Service of the Russian Federation").

As for the personal injury the law guarantees protection of a civil servant and his family members from violence, threats and other offences caused by the performance of his obligations in the cases, procedures and on conditions provided for by the Federal Law,

The law guarantees similar protection for judges, officials from law enforcement and controlling bodies, State Guard officers. Regional ombudsmen do not belong to the above mentioned categories. Thus they are not entitled to special protective measures against personal injury.

In this connection regional ombudsmen are in a position to expect only reparation of injury to their health or property on common grounds as foreseen for by Russian law for all physical persons.

Reparation of injury to health presupposes compensation for the loss of earnings (income) one used to have. BO is also entitled to compensation of additional expenses caused by injury to health, including:

- expenses for rehabilitation;
- expenses for supplemental feeding, medicine, prosthesis;
- expenses for medical care, health resort treatment;
- expenses for acquisition of special transportation devices.
- Damage to property is to be fully compensated by the person who had caused the damage. In case the person who had caused the damage refuses to fully compensate it, the BO is in a position to use judicial remedy of his property rights.
- Reputational damage caused to the BO be compensated within the framework of compensation for non-pecuniary damage.
- Non-pecuniary damage shall be compensated regardless of whether damage to health and property was caused or not.
- Non-pecuniary damage shall be compensated regardless of the party-that-caused the damage's responsibility in following cases:
 - if damage to life or health was caused by the source of increased danger;
 - if damage was caused by unlawful criminal persecution, unlawful pre-trial restriction or undertaking not to leave, unlawful administrative penalty in form of arrest or correctional labour;
 - if damage was caused by spreading information discrediting honour, dignity and business reputation.

The amount of compensation for non-pecuniary damage is defined by the court depending on the nature of physical and moral suffering of the complainant as well as the degree of guilt of the party that has caused the damage in cases when the guilt was the reason for compensation. The amount of compensation should comply with requirements of reasonableness and justice.

9.8 How to promote the Ombudsman role and function

Information support of the BO's activities is a tool of informing and improving legal literacy of business entities. The main objectives of information support of the BO's activities are as follows:

- Providing for information transparency with a view of exercising business entities' rights to full and objective information,
- Interaction with civil society institutions and informing them of the situation with protection of entrepreneurs' rights,
- Creation of efficient tools for the BO's interaction with mass media,
- Contributing to improvement of the level of mutual trust between the business community and state power bodies,
- Creation of a positive image of the BO's institution in general.

The BO needs a positive image as a factor of his/her public weight and clout.

The BO must provide for public awareness of his/her activities through official public events, publications, covering submissions reviewed by the BO, including his/her success stories in assisting applicants.

To create and maintain the BO' positive image in the professional and public community, the BO enters into cooperation agreements with state power bodies, civic organisations, including those providing gratis legal assistance.

10 SPECIAL ROLE OF THE OMBUDSMAN IN THE RUSSIAN FEDERATION

Aim: Business-ombudsman institution was established with a federal law. This law defines a special legal status in the legal environment of the Russian Federation for the FBO, the RBOs and public business-ombudsmen. It defines the objectives, the scope of powers and legal competence of the BO, in which the largest competence has the FBO. The aim of this session is to review the objectives and a scope of powers of the FBO.

Objectives: At the end of the session the participants will know:

- the objectives of the BO and of the FBO particularly;
- scope of powers of the FBO (that is rather wider than a RBO's one).

10.1 Objectives

The Federal Law "On Business Ombudsmen in the Russian Federation" #78-FZ was approved on 7 May 2013 to define legal pillars of ombudsmen's activities at the federal and regional levels.

The Federal Law defines the main objectives of the FBO as follows:

- protection of rights and lawful interests of Russian and foreign business entities in the Russian Federation and those of Russian business entities in foreign countries;
- control of respect of rights and legal interests of business entities by federal and regional authorities and local self-government bodies;
- facilitating development of public institutions focusing on protection of rights and lawful interests of business entities;
- interaction with business community;
- participation in shaping and implementation of state policy in the area of development of entrepreneurship, protection of rights and lawful interests of business entities.

10.2 Scope of powers

The FBO's scope of authority is defined by the Federal Law. The powers of the FBO may be subdivided into groups as discussed below.

10.2.1 Powers to address law-enforcement bodies and receive information.

Pursuant to these powers the FBO may perform the following actions:

- 1) Request and receive from state power bodies, local self-government bodies and officers necessary information, documents and materials;
- 2) Visit without obstruction state power bodies, local self-government bodies upon presentation of service ID;
- 3) For the purpose of protection of rights of business entities suspected, accused and convicted in criminal cases provided under Articles 159 - 159⁶, 160 and 165 of the Criminal Code of the Russian Federation if such crimes were perpetrated in the area of entrepreneurship, as well as under Articles 171 - 172, 173¹ - 174¹, 176 - 178, 180, 181, 183, 185, 185² - 185⁴, 190 - 199² of the Criminal Code of the Russian Federation,
- 4) Visit without special permits institutions where persons suspected and accused of criminal offences are kept in custody as well as penitentiary institutions;

10.2.2 Instruction to suspend non-conformant by-laws

The FBO may – concurrently with appealing through court against any by-laws of local self-government that infringe rights and lawful interests of business entities – issue binding instructions to immediately suspend any such by-laws till such time when a court ruling awarded upon examination of the BO’s appeal takes effect.

10.2.3 Inspections

The FBO may - with a written consent of the applicant - participate in any field inspection performed in respect of the applicant for the purpose of state control (supervision) or municipal control.

10.2.4 Bring charges against and demand disqualification of public officers

The BO may file a request to bring disciplinary, administrative or criminal charges against officers of state power bodies, local self-governments (there is a special procedure for state officials²⁵, as well as for judges²⁶ and persecutors²⁷ due to their specific status) and organisations vested with public authorities who are guilty of breach of rights and lawful interests of business entities as well as file for disqualifying any such officers:

- for officers’ failure to carry out valid requirements of the BO;
- for officers’ failure to meet the deadline for provision of information (documents, materials, responses to applications) to the BO;
- for obstructing lawful activities of the BO.

10.2.5 Powers in judicial and administrative proceedings

The BO based on the current legislation has the following powers in judicial and administrative proceedings

- 1) File in court for:
 - For invalidation of by-laws;
 - For invalidation of resolutions and actions (omissions) of:
 - State power bodies (excluding bodies of Prosecution, Investigative Committee of the Russian Federation, judicial power bodies);
 - Local self-government bodies;
 - Other bodies, organisations vested by the Federal Law with certain state or other public powers;
 - Officers if a disputed by-law, resolution and action (omission):
 - Fails to comply with the law or other regulatory act
 - Infringes the rights and lawful interests of business entities in the sphere of entrepreneurship,
 - Illegally imposes certain obligations on them,
 - Creates other obstacles in the way of entrepreneurship,
- 2) File with court for protection of rights and lawful interests of other persons, including groups of business entities;
- 3) Appeal against entered into legal force judicial acts of arbitration courts taken against the applicant, in accordance with procedures provided by the legislation of the Russian Federation

²⁵ Decree of the President of the RF from 11 January 1995, N32 "Regarding public posts in the Russian Federation"

²⁶ Act of the RF from 26 June 1992, N 3132-I "Regarding status of judges in the Russian Federation"

²⁷ Federal Act from 17 January 1992, N 2202-I "Regarding Procuracy of the Russian Federation"

10.2.6 The right to submit opinions to bodies of state power

The BO is authorised to submit its opinions to various state bodies in relation to the protection of entrepreneurs rights. Within the scope of this right, the BO may:

- 1) Issue opinions compulsory for review on draft regulations (the BO should be notified in writing of results of any such review within 30 days of receipt of such opinion), touching upon rights and lawful interests of business entities
 - The Russian Government;
 - Federal executive authorities;
 - Regional executive authorities;
 - Local self-government bodies.
- 2) To forward opinions to state power bodies, local self-government bodies or an officer whose resolutions or actions (omissions) are deemed to be in breach of rights and lawful interests of business entities, citing measures to restore rights and observe lawful interests of any such business entities.

10.2.7 Proposal to suspend an act of government authorities

The BO under the President of the Russian Federation may:

- 1) Forward to the President of the Russian Federation motivated proposals:
 - To suspend acts issued by regional executive authorities;
 - To cancel ordinances and regulations of the Government of the Russian Federation;
- 2) Forward to the Government of the Russian Federation a motivated proposal for cancellation or suspension of regulatory act or certain provision of any such act approved by a federal executive authority which unreasonably impede entrepreneurship activities including investment activities;
- 3) Forward to the supreme official of a constituent member of the Russian Federation a motivated proposal for cancellation or suspension of acts issued by executive authorities of such constituent member of the Russian Federation;
- 4) Forward to official bodies and persons vested with the right to appeal to the Constitutional Court of Russia motivated proposals to the extent of the BO's powers to request the Constitutional Court to verify compliance of legal acts of the Russian Federation with the Constitution of the Russian Federation.

10.2.8 Law making powers

The BO has the right to submit proposals for approval of legal acts (for amendments to legal and regulatory acts or invalidation of any such acts), falling under the BO's jurisdiction to:

- a) State power bodies and local self-government bodies;
- b) Members of the Federal Council of the Federal Assembly of the Russian Federation;
- c) Deputies of the State Duma of the Federal Assembly of the Russian Federation.

11 PROCEDURES FOR THE REVIEWING OF CASES BY THE FEDERAL BUSINESS OMBUDSMAN

Aim: The FBO widely uses the support of public representatives and institutions when processing complaints. The use of support of public institutions provides the independent expertise in the specific fields of competence. The aim of the chapter is to highlight the basic public institutions contributing to the BO activities.

Objectives: At the end of the session the participants will have an understanding of:

- the role of public representatives and noncommercial organisations in complaints processing;
- status and scope of functions of the ombudsman’s public reception office.

Upon receipt of a complaint the FBO has extensive options and tools which can be utilised for the examining of the complaint. These include:

1. The examination of a complaint by the office of the FBO
2. Examination of a complaint with a help of an RBO
3. Examination of a complaint with a help of public expertise
4. Examination of a complaint with a joint participation of various institutions, supporting the FBO.

An expert and consultancy assistance institution was established at federal level for examination of complaints by the BO.

11.1 Public representatives of the Ombudsman

Public representatives of the BO (hereinafter referred to as public ombudsmen) work on the *pro bono* basis and act as the BO’s aids to examine appeals made by businessmen to the BO in different spheres of regulation of business.

Public ombudsmen are appointed by the BO from among high-profile and recognised experts in relevant areas to carry out expert and representative function.

Public ombudsmen by signing a public document – Memorandum – assume for a certain time frame an obligation to produce expert opinions on appeals received by the BO, organise and make substance contributions to public discussions on different issues and may act as mediators²⁸.

Center of Public Proceedings “Business against Corruption”

Center of public proceedings “Business against Corruption” (Hereinafter referred to as CPP) – is a non-profit entity bringing together representatives from Russian business community, government authorities, public organisations fighting corruption pressure on business and illegal takeovers.

Center of public proceedings “Business against Corruption” CPP:

- Examines appeals by businesses for cases relating to criminal prosecution, illegal takeovers and corruption submitted to CPP or to the BO (at the latter’s request),
- Conducts public hearings of such cases inviting parties to the conflict;
- Issues a public verdict upon examination of the case.

CPP is managed by its Presiding Council and Executive Director. In addition to its management bodies CPP has a Public Council and a Supervisory Council.

²⁸In accordance with requirements of the Federal Law of 27.07.2010 # 193-FZ “On an Alternative Dispute Settlement Procedure Involving a Mediator (Mediation Procedure)”

The Public Council of CPP comprises experts from communities of businessmen, politicians, professional lawyers and economists, as well as representatives of public organisations and mass media.

The Supervisory Council is made up of representatives of federal bodies of state power who are directly involved in anticorruption activities and have the authority to examine submissions on matters of corruption and illegal takeovers to the extent of their powers.

11.2 Ombudsman's Public reception office

The BO may establish public reception offices in the Russian Federation to provide advisory and information support to business entities on matters falling under the BO's jurisdiction, in particular, for the purpose of drafting appeals to the BO.

The public reception office addresses the following objectives:

- Organisation of consultations for business entities on matters raised in appeals to the BO;
- Organisation of primary expert review of materials of appeals;
- Organisation of short-term training courses on issues of protection of business entities;
- Dissemination of information on typical cases of breaches of rights of business entities and ways of resolving the same;
- Drafting materials (a conflict summary, expert opinion, etc.) for further submission to the RBO.

A public reception office may be a stand-alone legal entity, may form a part of the RBO's staff or operate as a public entity under the guidance of the RBO.

The BO's Staff provide guidance on methods of activities of the public reception office.

12 ROLE OF BUSINESS ADVISORY COUNCIL AND OTHER PRO-BONO ASSOCIATIONS IN SUPPORTING BUSINESS OMBUDSMAN

Aim: The special advisory bodies were established to support the FBO activities. Their main role is to be a discussion platform on the entrepreneurs rights protection activities and necessary initiatives. The aim of this session is to clarify the role of every advisory body.

Objectives: At the end of the session the participants will have an understanding of:

- the role of Public Council under the FBO;
- the role of Expert Council under the FBO;
- the role of Coordination Council under the FBO;
- the role of Pro-Bono support and other legal associations.

Under the Federal Law the BO may create expert, advisory and public councils, task forces and other advisory bodies operating on the *probono* basis and engage for participation in activities of the same:

- Representatives of state power bodies,
- Representatives of local self-government,
- Representatives of business community,
- Other public organisations.

12.1 Public Council

The Public Council under the FBO is established to ensure participation of representatives of civic society in the BO's activities and to improve efficiency of protection of entrepreneurs' rights by the BO. Composition of the Public Council and the Provisions "On Public Council" were approved on February 28, 2013.

The Council has the following main objectives:

- to provide for openness, transparency and publicity of procedures for examination of appeals received by the BO;
- to involve civic society in examination of businessmen's appeals made to the BO;
- to discuss the list of areas for which public representatives of the BO are assigned;
- to discuss candidatures of the BO's representatives for different areas;
- to discuss candidatures of regional business ombudsmen;
- to identify and analyse issues in interaction between business and government authorities in the sphere of protection businessmen's rights;
- to draft proposals for improvement of laws and enforcement practices in the area of protection of entrepreneurs' rights;
- to discuss the Annual Report to the President of Russia on observance of entrepreneurs' rights in the Russian Federation;
- to discuss the possibility and participation options for involvement of public organisations in expert reviews of appeals received by the FBO, RBO;
- to discuss decisions of the BO on issuance of instructions to suspend by-laws of local self-government bodies;
- to discuss decisions of the BO on issuance of instructions to suspend or disqualify officers for obstruction of business activities by officers (if such actions do not have attributes of a criminal offense).

12.2 Expert Council

The Expert Council is created to facilitate strengthening of legal institutions and is comprised of high-profile representatives of legal, expert and business communities whose professionalism, scientific achievements and qualifications correspond to the subject matter of the Council's activities.

The Provisions "On Expert Council" were approved on January 21, 2013.

The FBO has discretion over composition of the Council. Representatives of major business associations (Chamber of Industry and Commerce, Russian Union of Entrepreneurs and Industrialists, Business Russia, Pillar of Russia) propose a candidature of their representative.

The Council's main objectives are:

- drafting proposals for improvement of the legal framework and enforcement practices;
- identification and analysis of systemic problems and corruption practices resulting in infringement of entrepreneurs' rights;
- drafting reports on the situation with observance of entrepreneurs' rights, including the Annual report;
- summarising outcomes of businesses' appeals regarding infringement of entrepreneurs' rights,
- Analysis of enforcement practices and of draft legal and regulatory acts.

The following **task forces** were established and operate under the Expert Council:

- 1) Reform of the judicial system;
- 2) Improvement of existing laws in the sphere of economic and entrepreneurship activities;
- 3) Improvement of organisation and execution of court expert reviews;
- 4) Development of tribunals of arbitrations in Russia;
- 5) Development of procedures of settlement of economic disputes through intermediaries (mediation);
- 6) Elimination from Russian laws of provisions and bans preventing businesses from selection of Russian jurisdiction;
- 7) Improvement of parole procedures, places of confinement;
- 8) Practices of tax administration and tax control;
- 9) Identification of systemic problems that trigger infringement of entrepreneurs' rights.

12.3 Coordination Council

The Coordination Council under the FBO (hereinafter referred to as the Coordination Council) is established for the purpose of coordination of activities of representatives of the BO in different areas (hereinafter referred to as public ombudsmen).

Composition of the Coordination Council and the Provisions "On Coordination Council" were approved by the BO²⁹.

The Coordination Council is managed by the FBO jointly with the Co-chair of the Council. Public ombudsmen are members of the Coordination Council.

The Coordination Council under the BO addresses the following objectives:

- jointly with the BO's Staff systemises and summarises complaints and appeals of entrepreneurs identifying industries and agencies which create biggest issues from entrepreneurs' perspective;

²⁹The Order of the Ombudsman under the President of the Russian Federation #1, dated December 25, 2013.

- coordinates handling of problems, appeals of entrepreneurs associated with several areas (spheres) of entrepreneurship activities, including recommends measures to resolve any such problems;
- determines PR and GR policies to eliminate any identified problems and to promote proposed solutions;
- identifies the most problem-prone spheres of entrepreneurship, requiring appointment of a public BO;
- issues recommendations on candidatures of public ombudsmen proposed from high-profile and recognised experts in relevant areas;
- issues recommendations on areas of educational programs related to protection of entrepreneurs' rights;
- examines situations of conflict of interest in public ombudsmen's activities, proposes measures to eliminate the same.

12.4 Pro-bono legal assistance

Pro-bono legal assistance may be provided to the BO by professional lawyers knowledgeable in different area of regulation (hereinafter referred to as expert lawyers).

Expert legal assistance is provided for the purpose of legal assessment of appeals submitted by entrepreneurs to the BO and generation of legal advice for protection of entrepreneurs' rights. The BO provides for raising public awareness of the Expert Lawyer and his/her activities at official public thematic events, in publications dealing with appeals that are reviewed by the Expert Lawyer for the purpose of informing the public about the Expert Lawyer's assistance, creating and maintaining positive image of the Expert Lawyer in professional and public environments.

The BO's Staff provides methods guidance for *probono* legal assistance. Probono legal assistance is currently coordinated by CPP and the Coordination Department of public ombudsmen.

13 APPENDIX 1 – CONTROL TASKS - BASIC ANTI-CORRUPTION CONCEPTS

Control task 1 – Definition, typologies and international standards against corruption

1. The concept and typologies of corruption.
a. What is the generally accepted definition of corruption?
b. Why corruption is considered bad for the economy and the society in general?
c. List the types, forms and levels of corruption
d. What are the parties of corruption?
2. Corruption in the business environment
a. What is business corruption?
b. What is the impact of corruption on the business climate?
3. The main characteristic features of corrupt practices in Russia
a. How wide spread is corruption in Russia?

b. What main types of corruption can be distinguished in Russia?
c. Have you handled corruption relation cases, if yes please describe below?
4. What mechanisms of combating corruption are used by the Council of Europe?
a. List the basic tools for combating corruption in the EU
b. What are the recent trends in the organisation of the fight against corruption in the Council of Europe member states and the European Union?
5. International standards on combating corruption
a. What acts qualify as criminal according to the main international standards for combating corruption?

b. What are the main international principles of anti-corruption standards for corporations?
c. How is international cooperation against corruption regulated and implemented in practice?
d. List the basic components of the principle of "Integrity"
6. List the basic mechanisms of anti-corruption policy in Russia.
7. Describe the role of the Federal business Ombudsman in the fight against corruption.

14 APPENDIX 2 - CONTROL TASK – ROLE OF THE BUSINESS OMBUDSMAN INSTITUTION

Control task 2. The role of the Business Ombudsman in fighting corruption

1. What are the main reasons and preconditions for creation of institute of the business ombudsmen in Russia?
2. Describe please, the main legal acts regulating matters of protection of the rights of the entrepreneurs.
3. What are the main objectives of institute of the business ombudsmen in Russia?
4. List please the powers of institute of the business ombudsmen.
5. Describe please, procedure of the entrepreneurs complaints processing procedure by the federal business ombudsman.
6. What is the role of a voluntary legal aid in support of institute of the business ombudsmen?

Control task 3: Principles and procedures of functioning of Business Ombudsman Institution

1. List the basic principles of creation of an office of a business ombudsman.
2. Describe the procedure of processing of complaints by entrepreneurs followed by the public/regional business ombudsman.
3. What basic principles of interaction with state authorities should be used by a business ombudsman?
4. Which are the principles of interactions with legal and business associations.
5. Give the description of approaches to management of the conflicts.
6. Explain why the confidentiality is necessary in work of a business ombudsman and how to provide it in practice.
7. List, please, the principles of protection against a reputational, material and physical damage.
8. How to develop and promote the institute of a business ombudsman?

15 APPENDIX 3 - GOOD PRACTICE EXAMPLES (SUCCESS STORIES)

This section provides examples of situations on the protection of the rights of entrepreneurs for a review during the training. The selection of the typologies of the cases studies presented below is based on the fourteen types of abuse of public authority in the corporate conflicts, elimination of competition and forced takeovers as identified in the technical paper “Comparative analysis on preventing misuse of public authority in the corporate sector”.

These examples are divided into 2 key groups. The first is the success stories of the business ombudsmen in Russia. These are the examples of cases in which the rights of entrepreneurs were successfully defended. These situations do not require independent review, and shall be submitted by the trainer, as the knowledge base for the problem solving. The trainer may during the presentation of the material ask questions about how the audience members would act in a particular case, verifying the procedures used by trainees with the procedures that were applied in a particular case. This technique will allow a trainer to engage the audience and to give the students to test themselves in the case.

In addition, here are also examples of the success of the Small business ombudsman in the United States, which a trainer needs to compare the practical experience of the Russian and American institutions.

The second group of cases are the situations for an independent review, which are based on the real complaints of entrepreneurs. These situations are offered to an audience by the trainer for independent review in groups.

After the execution of tasks, teams present them to the entire audience. The coach may use the results of the examination to evaluate the effectiveness of the training along with the control tasks.

15.1 Success stories – the Russian experience

Type 1. Violation of the rights of entrepreneurs when implementing the state control (supervision)

The violations that took place during supervisory inspections in one of the regions of the Russian Federation.

The FBO received a petition from an entrepreneur, owner of an hotel on the illegality of the actions of the Supervisory bodies during the audit. Audits were conducted on several grounds at the initiative of the Prosecutor of the municipal district.

Contrary to the provisions of paragraph 2 of article 31 of the Federal law "On Prosecutor's office of the Russian Federation" the applicant was not provided with information about the grounds for the inspection, including the inspections in a planned manner, or with any information about violations of laws which required measures of prosecutorial response.

The supervisory documents were not properly executed, the applicant only received the requirement to provide documents on the issues of observance of the legislation on protection of atmospheric air and the environment.

The same time almost all aspects of the individual entrepreneur activities were inspected, including compliance with fire, environmental, sanitary, epidemiological, labor safety rules.

The actions of the prosecutors violated operating instructions of the General Prosecutor's office about the exception from the practice of prosecutorial supervision of unreasonable interference in the activities of bodies of state power, bodies of local self-government, other bodies and organisations,

according to which the inspections by prosecutors in the absence of reason, in order to substitute other government agencies and to duplicate their functions are unacceptable.

The inspection was attended only by specialists of fire safety control, the specialists in other areas of control were not present.

Thus, several provisions of the legislation were violated during inspections. The Prosecutor issued a decree that suspended the businessman activity pending decision by the courts.

The court decision later confirmed the correctness of the entrepreneur, the suspension was canceled. The FBO in order to inlaw the entrepreneur sent a letter to the Prosecutor of the region with a request to consider the arguments about violations and take measures of prosecutorial response for restoration of rights. The response was not received. Then, a similar letter was sent to the General Prosecutor.

Following a review by the General Prosecutor's office and by the ad hoc working group the General Prosecutor's office conducted the prosecution checks and took measures of response. It was found that checks of the activities of this entrepreneur had been conducted without sufficient grounds for their organisation, in the absence of specific information about the admitted violations of the law, the guilty officials of the regional Prosecutor's office were prosecuted. The rights of the entrepreneur were restored, the hotel is working.

The sanctions against the company taken on results of illegal inspections were lifted. The perpetrators were punished.

Waste collection company was following the rules and regulations on environmental and industrial standards. However, residents of nearby houses expressed claims to it thereupon the close proximity of facilities. Within 6 months 8 inspections with significant committed violations were held in the company.

The company was fined not in accordance with the law. As a response, the FBO appealed to the General Prosecutor with a request to check the validity and legality of the conduct of these audits in relation to the company.

The FBO was informed about the test results by the official letter from the General Prosecutor's office. It said that during inspections "separate violation of the requirements of Federal law" were made, and therefore the municipal district prosecutor's office made representations to the heads of territorial divisions of the Ministry for Civil Defense, Emergencies and Elimination of consequences of Natural Disasters (EMERCOM of Russia), Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing (Rosпотребнадзор) and Federal Environmental, Industrial and Nuclear Supervision Service (Rostekhnadzor) in the region.

The decision of Arbitration court of Moscow cancelled the sentences which did not comply with the law regulations. Officials in the city Prosecutor's office, which admitted the violations, were prosecuted.

Type 2. Failure to comply with obligations under government contracts

Compensation to the carriers were transferred

Entrepreneurs whose business was shipping, including transportation of preferential categories of citizens, appealed to an RBO with a complaint on the one of the state bodies of a region, which had not fulfilled its obligation to transfer funds for reimbursement of carriers costs.

The amount of debt was approximately 14 million rubles. Carriers were preparing claims in court with a requirement to recover unpaid compensation, but decided to begin the process with an appeal to the RBO.

After studying the situation, the RBO held several meetings with the leadership of the Ministry responsible for distributing compensation to carriers. With a staff of relevant ministries he was conducting a work on agreeing the size and grounds for compensation. In addition the RBO attracted the financial Department, to ensure that developed decision with the relevant Ministry also had been financially secured and could be implemented without delay.

Finally, as a result of the work, the decision on the compensation (in amount claimed by the carriers) was approved, after what the amount of more than 14 million rubles had been transferred to the accounts of the entrepreneurs.

Here, it should be noted that the conflict between entrepreneurs and state authorities and local self-government, after consulting the RBO, was resolved without special handling of legal proceedings.

Type 3. Unlawful criminal prosecution

Criminal proceedings against the entrepreneur discontinued

A criminal case under Art. 165 of the criminal code against the CEO of a company was initiated several years before its termination. The criminal case had been instituted at the request of a subcontractor, who believed that the entrepreneur had not been fully complied with obligations under the subcontract agreement, concluded between the company and the subcontractor, that caused a substantial damage to the subcontractor. Subcontractor did not address to the Arbitration court with a claim to the company.

Entrepreneur turned for help to the FBO. The appeal was reviewed by the Public Council of the Government-supported NGO in the field of protection of businessmen against corruption. The public council came to the conclusion about the presence in this case of violation of the current legislation.

In particular, the performed works of the subcontractor under the contested part of the contract were not confirmed, as well as the costs incurred in its implementation due to the lack of primary documentation, the works also have not been confirmed by Bank transfers.

In addition, an examination for detection of damage was carried out incompletely, and its results, which pointed to the innocence of the entrepreneur, have not been taken into consideration by the investigator. The case was prepared for transfer to the court.

The FBO sent a letter to General Prosecutor's office with a request to check the facts stated in the petition of the applicant, and to assess the reasonableness of the criminal prosecution of the entrepreneur. The appeal has been the subject of proceedings of the interdepartmental working group under the General Prosecutor's office for the protection of the rights of entrepreneurs.

By order of the General Prosecutor's office and as a result of the audits an additional examination was assigned, which revealed no damage to the subcontractor.

Investigation Department of the Ministry for the Interior in one of the districts adopted the decision on termination of criminal proceedings under Art. 165 of the criminal code against businessman due to lack of corpus delicti.

A criminal case before the closure was investigated for more than 3 years without any concrete results.

The verdict against the entrepreneur changed, entrepreneur pardoned.

The Prosecutor of the region issued a Decree freeing entrepreneur from criminal prosecution under Art. 159.4 of the Criminal Code in connection with the act of Amnesty. The businessman had earlier appealed to the FBO with a complaint on the unlawful criminal prosecution.

The entrepreneur had several contracts with customers for the construction of houses. Completion was planned for late 2011, much of the money was allocated through the state target program on building. Part of the funds were funds of the parent capital (state programme) and a part of the funds the customers transferred by themselves. Customers fully paid the construction. However, in August 2012, after the expiration of the contracts, the construction was not completed. Later houses were completed and delivered to the customers.

A criminal case was opened in respect of the entrepreneur on the fact of theft of money from customers under Art. 159 part 3 of the criminal code. Later it was decided to re-qualify the actions of the entrepreneur on Art. 160 part 3 of the criminal code. However, customers (victims) at different stages of criminal investigation said about no damage. At the same time none of the customers had implemented the right of early termination of contracts, obtaining of penalties or levy of damages. The investigation and the court did not take these facts into account. Given the economic nature of the contractual relationship, the dispute in accordance with the legislation could be solved within the framework of civil law.

The criminal case was an example of a situation where civil disputes are translated to a criminal prosecution field. The businessman was taken into custody. According to investigators, the entrepreneur, with the intent to theft of another's property by embezzlement, during the period of work as Director of the company, using his official position, has developed a plan to steal money from the company. The term of the investigation led to the suspension of operations of the company. A large number of land plots were arrested. The entrepreneur was artificially forced out of the construction industry in the region.

The investigation was accompanied by significant violations of the criminal procedure law. After an appeal of the Federal and regional ombudsmen to the Prosecutor of the region, the case was returned for further investigation. The businessman was convicted by a district court on 6 episodes including Art. 160 part 3 of the criminal code of the Russian Federation to 3 years and 6 months of imprisonment. Subsequently, the Prosecutor of the region has made a statement in court about the abolition of the sentence. By a definition of appeal court, the sentence was reversed. Vacating the sentence, the judicial Board, however, has extended the detention for one month.

According to the results of a new review by the court, the criminal case was reclassified to Art. 159.4 of the Criminal court, and, in accordance with the act of Amnesty, which included this article, the entrepreneur was pardoned.

Type 4. Failure to comply with the requirements of legislative acts

Criminal prosecution of an entrepreneur discontinued as part of the Amnesty

The General Director of a company appealed to the FBO in respect of the ongoing criminal prosecution. The company was engaged in manufacturing and supplying of mobile medical complexes. According to the investigation, from 2010 to 2012, when the entrepreneur was acting as a General Director of the company, he entered into a supply contract of medical complexes, without an appropriate license. In this regard, he was charged with committing an offence under part 2 of Art. 171 of the criminal code (illegal business).

The applicant appealed to the FBO with a complaint against the actions of the investigating authorities, believing that the license for the sale of mobile complexes was not required due to the uncertainty of regulatory requirements of Federal service on surveillance in healthcare (Roszdravnadzor) in part of the needs to obtain a license. In addition, the company has earlier obtained the registration certificate for manufacture of medical complexes.

Moreover, during the pendency of the appeal, a decree of the State Parliament on Amnesty of the entrepreneurs regarding individual articles of the criminal code, including article 171, was issued.

The investigation tried to deny granting Amnesty, citing on the unredeemed damage. However, subsequently the clarifications of the General Prosecutor's office and of the Supreme Court were issued, in which it was explained that a criminal case should be terminated due to an Amnesty in the absence of the victim or harm caused by the crime, as well as in cases when an income was extracted a result of the crime.

Upon request of the FBO to clarify the applicability of the Amnesty to the entrepreneur FBO's office was informed about the absence of obstacles to the application of Amnesty, the entrepreneur was pardoned.

Type 5. The execution of court decisions

Failure of a court decision enforcement

The head of the municipal district ruled in its decision to demolish the pharmacy owned by an applicant, without a court order. The court ruled that the demolition of the building was illegal. The court ordered to pay the applicant more than 3 million rubles.

However, under the pretext of various bureaucratic delays, the Executive authorities of the municipal district refused to execute the court decision.

The FBO sent a request to the region Head with an appeal to assist in the execution of court decisions.

Foreign company received the money that state owed to it

For more than 10 years foreign company could not enforce a court decision on transfer of funds that were transferred to the accounts of the bailiff by its contractor after the corresponding court decisions. The reasons of a situation in which money had not been returned to the owner were not been clarified. The company applied to the FBO in order to restore its rights. Letters were sent to the Director of the Federal bailiff service with a request to enforce the court decision, which according to the law is subject to strict implementation.

The work on the refund began. By this time the authorities of the lawyers representing the interests of the company had ended, after the new power of attorney was presented to a court the bailiffs service opened a special foreign currency account and a considerable amount of money was transferred to the entrepreneur according to the court decision.

Thanks to the work of the FBO and a number of letters to the bailiff service of Russia the problem of the company was closed.

Execution of a court decision on the cancellation of restrictions of activities of the company

An Arbitration court was reviewing a case on invalidation and cancellation of a decree of the administration of a municipal district on banning the trading activities of a company.

The arbitration court has granted the company's request for interim measures. By the mentioned decision the Arbitration court decided to suspend the decision of the administration of the municipal district on banning the trading activities of the company until the entry into force of the decision of another Arbitration court on the primary case.

Pursuant to part 1 and 2 of article 6 of the Federal constitutional law of 31.12.1996 No. 1-FKZ "On the judicial system of the Russian Federation" the acts of the Federal courts, magistrates and courts of subjects of the Russian Federation, entered into force, shall be binding on each and every body of state power, body of local self-government, public associations, officials and other natural and legal entities with no exception and shall be subject to strict implementation throughout the territory of the Russian Federation; Default on performance under a resolution of a court and equally any other manifestation of contempt of court shall give rise to accountability as provided in federal law.

In accordance with Art. 187 of the Arbitration procedural code of the Russian Federation, the determination made by the arbitration court, shall be implemented immediately, unless otherwise provided by this Code or by the arbitration court.

However, shortly before this, the company received notification from the district administration demanding an end of the activities of the company's market. The district administration also sent a letter to the head of the Municipal Department of internal Affairs of Russia informing that all the entrances and exits of the market had been locked with the concrete blocks and with a petition to organise round-the-clock staff of the road police for traffic control to the company's facility. The letter had a corresponding resolution of the road police on the necessity of the organisation of these actions.

Despite the court ruling, according to the applicant, after the acceptance by the bailiff service of a writ limitations on the market activities remained within a certain time.

The Federal and the regional ombudsmen sent letters to the district Prosecutor's office and to the Prosecutor of the subject of the Federation correspondingly, and also to the service of bailiffs. The prosecutor's office and the bailiff informed the ombudsmen the same time that the court ruling was executed, restrictions were lifted.

Type 6. Unreasonable restriction of competition established by the regulators

The court recognised the legitimate position of the FBO on the prevention of restriction of competition

Russia's Supreme court overturned the provisions of the Government Decision to permit the repair of gas equipment only to gas distribution companies.

The FBO received letters from gas equipment maintenance companies. According to the letters the Government issued a decision to permit the repair of gas equipment only to gas distribution companies, thus limiting competition and creating a threat to the activities of the independent service providers.

According to the results of the analysis the FBO noted the complex nature of the problem and its impact on the interests of small and medium business in the field of repair and maintenance of household gas equipment. The FBO submitted a petition to the Chairman of the Government of the Russian Federation with a proposal to consider a cancellation of this decision.

While the Government was reviewing an appeal the Supreme Court had repealed the provisions of Government Regulations in this part, thus confirming the correctness of the position of the FBO in this matter.

Type 7. Failure to comply with obligations on the mandatory compensatory payments to entrepreneurs

The rights of 800 entrepreneurs-depositors were protected

Revocation of a license from one of the largest banks in the region resulted in the loss of funds in the accounts of business-clients of the Bank, and in addition, entrepreneurs faced with difficulties in the relationship with the Pension Fund, tax office and the Social insurance fund. Employees of regional offices of the Pension Fund of Russia (PFR), the management of Federal tax service (FTS) and the Social insurance Fund of the Russian Federation (SIF) demanded the clients of the Bank, which completed the payments to these organisations prior to license revocation and in presence of documented bills, to repeat the payments, because the payments did not reach the recipients. Despite the fact that the money were already charged from the accounts of the entrepreneurs. It was contrary to the legislation of the Russian Federation, according to which the duty of a payer, if payment was made before the revocation of the license of the Bank, is recognised executed. The entrepreneurs were going to prepare a claim to a court.

However, the managers of local offices of PFR, FTS and SIF after the meeting with the RBO, said they are ready to reckon the payments of Bank customers in the pretrial order after necessary checks of transactions, without any further additional actions of entrepreneurs.

Success was achieved by the joint efforts of the Governor of region, representatives of the Executive authorities of the region, the chamber of Commerce of the region and of the Ombudsman in the region within the interagency working group on the issue. The fact that the legitimate interests of entrepreneurs triumphed, helped the region's economy and businesses-customers of the Bank to avoid large losses. The event is significant also with a fact that, for example, in several regions of the country there were precedents when the Management of FTS put a collection on new accounts of taxpayers and thus, legal entities and entrepreneurs were again levied with taxes which had already been listed.

All the payments were offset (183 million rubles) without additional bureaucracy and red tape. 90% of the tax payments did not exceed 100 thousand rubles, only 15 bills amounts were more than one million rubles. FSS, in its turn, reckoned the contributions of 436 payers of 478, who made transfers from Bank accounts in the disputed days. Others were forwarded for calculations verifying.

The interaction between the RBO, the business community of the region and the state authorities is a successful example of collaboration in the field of protection of legal rights of entrepreneurs.

Farms in a region have received state grants in full

Sixty three (63) agriculture farms (AF) received incompletely the amounts of the state grants, and 15 did not receive the amount provided by the grant of the Ministry of agriculture in the region.

The debt of state agencies arised. An RBO was involved to resolve the issue. Together with the Ministry of agriculture of the region and the Ministry of Finance of the region the proposals to the head of the subject of Federation, which called for repayment to KFH, were developed. The head of the region had adopted these proposals and the Government of the region had made changes in the regulatory legal acts of the region which changed the allocation of funds for repayment of debts to the farms.

In the result of joint work by the end of the year payables dues to 63 farmers (105 million rubles) were repaid.

Business Ombudsman helped small businesses to obtain the compensation associated with an infall of a meteorite

After the fall of the meteorite in the region entrepreneurs in exchange for the promise of local authorities to subsequently pay for work at the expense of subsidies from the Federal budget, as well as regional and local budgets, made work on the glassing of the buildings which had suffered from the fall of the meteorite.

However, the debt was not repaid in time, the largest amount of debt was from the Federal budget (169 million rubles).

The RBO analysed this situation. Although an agreement foresaw the payment of all funds within three months, the process dragged on for eight.

The RBO in cooperation with the FBO held several meetings with the federal, regional and local governments.

The federal government issued instructions on the acceleration of payments. Numerous additional documents were requested by the Federal center. The regional Governor pushed the issue in the Russian Government. The head of government of the region favored to the acceleration of the interdepartmental workflow.

In the end, the compensations to the entrepreneurs were paid, albeit late, but in full.

Type 8. Ambiguities in the interpretation of legal acts, leading to unreasonable rise of costs

Benefits for pharmacies on the payment of insurance premiums confirmed

The Ministry of Justice following the results of the consideration of the letters of the FBO on the Ministry of labor and social protection of the Russian Federation and the Ministry of health of the Russian Federation mutual order dated 21.06.2013 "On approval of clarification of the application of certain provisions of the Federal law of June 24, 2009 № 212-FZ "On insurance contributions to the Pension Fund of the Russian Federation, social insurance Fund of the Russian Federation, Federal Fund of obligatory medical insurance" informed that the order 26.08.2013 returned without state registration. According to the mentioned order it was planned to establish that the benefits for the payment of insurance contributions to the state extra-budgetary funds in respect of payments made for the benefit of its employees, may apply only to employees with the right to practice pharmaceutical activities.

The results of the legal analysis of the Draft order by the FBO conducted with the involvement of the expert community, revealed that subject to the provisions of the law on insurance contributions to the state extra-budgetary funds, as well as to the court practice, the Draft order violates the rights of entrepreneurs. In particular, it was emphasized that in accordance with part 1 of article 5 of the Federal law № 212-FZ "On insurance contributions to the Pension Fund of the Russian Federation, social insurance Fund of the Russian Federation, Federal Fund of obligatory medical insurance and territorial funds of obligatory medical insurance" insurance payers are organisations and individual entrepreneurs. Thus, Federal law No. 212-FZ does not emit payers depending on the specialization of workers. Accordingly, the exemption from the payment of insurance premiums in respect of pharmaceutical organisations relates in General to the pharmacy organisations and not individual workers. Thus, through the intervention of the business community with the support of the FBO and thanks to the legal position of the Russian Ministry of justice, pharmacy organisations received a base for defending their rights in a court with a more steady position.

Subsequently, on the facts of the repeated practice of collecting arrears from entrepreneurs, FBO sent letters to the Pension Fund for clarification.

According to the information of the Pension Fund, the state parliament adopted explanations to the law No. 212-FZ, which clearly defined the application of the benefits on insurance contributions to pharmacy organisations and reduced the volume of their use, however, thus, removing legal uncertainty.

Type 9. Administrative barriers

A dispute between a public company and the private operator of shopping malls was resolved

A private company which owned shopping centres and a state energy company concluded a contract on connection to an electrical network. Under the specified contract the mutual obligations were not executed, also as the deadlines of certain phases of work.

Thus, according to unofficial information delays in the connection of the company were caused by the collusion of the private operator of the power equipment with the state company in order to extend a private contract for temporary connection of the company.

The competent authority to consider appeals of entrepreneurs (hereinafter – Authorised agency) initiated negotiations between the parties. During negotiations, agreements were reached on the phased implementation of the made commitments. The company was connection to the network. Thus, the intervention of the Authorised Agency helped to prevent a case of corruption at the corporate level.

Help in putting a commercial complex into operation.

The company, which was building a shopping complex appealed to assist with going into operation. It turned out that construction and installation works had been carried out by the company on the design decisions that were developed by foreign standards. An adaptation to local requirements was required.

The company started the construction process prior to the completion of adaptation on a verbal agreement with the local administration. Only when the construction of the center had been almost completed all sections of the project were formed by General project organisation and the project was accepted for examination in the bodies of the state inspection of architecture and construction supervision (SIACS). As a result of examination, it was noted the necessity of making the project documentation changes related to space-planning decisions, ensuring the sustainability of the building of the shopping center and its fire safety. This way the object existed as the "unauthorised construction" and land plot for construction was not formed.

As a result, the inspection authorities forbade the putting of trade complex into operation until the violations would be rectified.

The Authorised agency conducted a situation analysis. The violations of the company have been recognised, as also, the need to facilitate the putting of the building into operation, what was of great socio-economic importance for the region.

The Authorised agency initiated the meeting with the Governor of the region with the participation of regulatory authorities and company's management.

As a result, the company had recognised violations, and a schedule for elimination of the revealed violations was approved and agreed by all parties.

Within 2 years the violations were resolved and the company received the necessary permissions.

The complex was put into operation. Thus, it was found a mutually acceptable solution for both parties.

The company was assisted in resolving issues which were within the competence of the Administration of a region

The company implementing an investment project on construction of a recycling plant experienced problems while cooperating with the regional administration.

In particular, the registration of rights for land plots for construction of the waste recycling plant and receiving priority status of the project subject of the region were denied. A dialogue with the leadership of the regional Administration was tight and unproductive.

In order to discuss the issues and possible solutions the Authorised agency initiated a trilateral meeting with the Head of the region and the company's management.

It was decided that the company would provide additional documents, allowing to relate the project to the priority status.

Denial of registration of ownership rights on land plots was considered unreasonable.

According to the results of the overall work an investment agreement was concluded, the project was recognised as a priority one, the decision on the allocation of land for construction of waste recycling plant was taken.

Time of customs clearance was accelerated

Eight (8) cars with cargo (corrugated boxes) addressed to the Company arrived at the customs post. The company applied to the Department of Federal Service for Veterinary and Phytosanitary Surveillance (Rosselkhoznadzor) at the customs post, presenting necessary documents for registration of the act of phytosanitary control (in accordance with the letter № FS-AC-3/10359 dated 23 September 2009). But was refused due to the changed requirements of Rosselkhoznadzor.

The company was informed on the necessity to issue an Import quarantine permit (IQP) in the Administration of the Rosselkhoznadzor for the reason that the Czech Republic was the country of spread of dung beetles. Due to the fact that the period of registration of the IQP is 1 week the company was forced to stop production.

The company appealed for assistance to the Authorised agency. Negotiations of all parties led to modification of the procedure of issue of IQP - it had been reduced in time from 1 week to 1 day, the cargo of the company successfully passed the customs.

Refusal to issue a building permit by the city administration

The company basing on the promises of the administration of the city built a shopping complex without a building permit. During an investigation of this matter by a new administration of the city the situation was studied and the administration approved the use of the land plot for the construction. However, the construction permit was not issued.

According to the company, representatives of the new Administration covertly hinted at the possibility of issuing a building permit for a bribe.

The Authorised agency held negotiations with the administrations of the region and of the city to achieve an acceptable solution for the company. Construction permit was issued owing to the compliance of the building with all required building rules.

Type 10. Corporate conflicts and assisting in mediation

The dispute of the two companies led to the failure of an investment contract implementation in time. Authorised agency assisted in the renewal of the investment contract with a city.

Two owners of a new shopping mall in construction could not negotiate the terms of the continuation of an investment project. During their dispute, the period of the investment contract with the city expired. After reaching an agreement, the companies asked to assist in negotiating with the city on the renewal of the investment contract.

Authorizes agency organised negotiations, the city administration decided to extend the contract for 39 months.

Disputes of an international company and a Russian group of companies ended

International company (IC) has applied to the FBO with a request to assist in resolving issues related to the disputes on trademarks. Given the nature of the dispute (the dispute of legal entities), the FBO could not directly participate in its resolution. At the same time he took an active part in the conciliation procedures.

Although at first the companies were not ready to dialogue, pointing on the fact that the defeat of a dispute by each of the companies may result in significant losses contributed to the conclusion of a settlement agreement between the companies.

IC sent to the FBO the letters of thanks for the personal participation in the settlement of the disputes between companies.

Type 11. Abuse of power by public authorities

The illegal refusal in excitation of criminal case cancelled

The Authorised agency received a petition from the company which lost the automotive technology center. CEO of the company by signing a document that he had no right to sign as well as with the help of falsification of documents (Charter) transferred the assets of the automotive technical center to the “one-day” company. Subsequently, the company filed a petition for institution of criminal proceedings against the former CEO.

The case was initiated, then stopped, but the company did not receive answers about the progress of criminal proceedings and the reasons for its termination.

The company has repeatedly stated that the fugitive within the criminal case is in a particular place, but with no result. Measures to attract him to the criminal case investigation were not taken.

The Authorised agency sent a letter to the Minister of internal Affairs with a request to check the facts and take the case under control. After the checking the facts were confirmed, the case was taken under personal control of the Minister.

Assisting companies in reducing rental rates

The company was implementing an investment project for construction of wood processing facility on the territory of a region. Estimated cost - \$ 20 million (600 million rubles).

To ensure the profitability of the project the provision of resource base, located in the area of transport accessibility, was necessary for the investor.

In accordance with the decree of the Government of the Russian Federation dated June 30, 2007 No. 419 "On priority investment projects in the field of forest development" a project, which received a priority status, may qualify for a reduced rent rate for the forest plots. A project may be recognised as a priority one if the total volume of capital investments is not less than 300 million rubles.

The company filed an application to the administration of the region for inclusion of this project in the list of priority investment projects in the field of forest development. However, despite compliance with the criteria established for such projects, it was not satisfied. Inclusion into the list would allow the company to develop production on a cost effective basis.

The company managed to obtain the right to use the selected forest area at the auction, but the rent was high and amounted to about 3 million USD per year that reduced the profitability of the project. The company asked for assistance in solving their problems to the Authorised Agency.

The Authorised agency discussed the situation with the first Deputy Chairman of the Government of the region. As a result the situation was taken into consideration.

Following consultations a meeting with the head of the region was scheduled.

The results of the meeting: application on the inclusion of the project into the list of priority investment projects in the field of forest development of the region was approved.

The company was assisted in the restoration of the rights in connection with the illegal decision of the investigating authorities

Public investigative actions in respect of a company were held within a suspicion in violations of tax laws and tax evasion.

The investigating authorities had seized financial and accounting documents of the company, without which the maintenance of activity was not possible. At the same time, the investigating authorities did not sent in a due time a certified copy of the documents or their originals to the company, as it is required by the law on investigative activity.

The company applied to the Authorised agency. A meeting was organised on the level of Deputy of the Governor of the region with the participation of all stakeholders. Following the meeting the legal requirements were completed, copies of the documents were sent.

Type 12. Violation of normative-legal acts requirements

Assistance in the implementation of established procedures by state body rendered

The company - investor in the construction of warehouses received from the municipal branch of the "Federal Cadastral Chamber" a denial on the registration in the cadastre of seven plots. The refusal failed to comply with the deadlines stipulated by the Federal law "On state real estate cadastre". The reason of the denial was the disparity between the number of sheets in the composition of the survey plan and the number of sheets indicated on the title page and on the reverse of the last page.

In the explanations given by the Central office of the Federal Cadastral chamber to the company it was clarified that in accordance with the law "On state real estate cadastre" and the procedure for conducting the state cadastre of real estate when verifying the documents it is reasonable to not take into account the comments of a formal nature, not affecting the content of information introduced into the state cadastre of real estate.

Thus, the discrepancy between the number of sheets of the survey plan, listed on the title page and on the reverse of the last sheet, is not a justified base for denial.

The company has resubmitted the documents for registration of land plots with these explanations. However, municipal branch of the Federal Cadastral chamber made no reply within the specified period.

The Authorised agency letters were sent to the local Department of of the Camber with the requirement to enforce the law procedures. According to the results of letters, parcels were registered in the cadastral records.

Violation of the deadlines for work permissions approval for foreign citizens

By the legislation, the issuance of work permits to foreign nationals - qualified professionals accounted for 14 days. However, companies were never able to get permission in time in a region.

The company appealed to the Authorised Agency. The agency clarified the situation in the field. It turned out that functions for issuing work permits for highly qualified specialists were transferred to a private company, which capacities could not cope with the flow of applications.

Meetings on the implementation of organisational changes in the company were held. Work on the permits issue normalized. Complaints began to come less frequently.

Type 13. Unsubstantiated claims of tax authorities

Negotiations helped to cancel a decision of the tax inspection

The company's faced tax authority claims on the non-payment of income tax and illicit VAT refunds totalling 100 million \$ (delivery of equipment through the “one-night” firms) that was tantamount to bankruptcy, and also hindered investment plans of the company in Russia - construction of a large plant.

The company had put the claims in issue, however, the consideration of the suit dragged on, the uncertainty led to the freezing of the company's plans.

The company appealed to the Authorised Agency with a request to assist in negotiating with the Tax service.

The abovementioned negotiations were organised, in the course of joint work and of the meetings, the company managed to prove the absence of arrears in the payment of 42 million rubles of VAT and to solve this issue in the pretrial order.

Although further trials were lost by the company, the intervention of the Authorised Agency helped to reduce claims against the company with a substantial amount.

The fines and penalties of a businessman were removed in the amount of 276 million roubles

The company appealed to the FBO with a complaint against the actions of officials of the Interdistrict Inspectorate of the Federal tax service. The company appealed against the illegal actions of the Inspection during the field audit, by the results of which it was charged with taxes, penalties and interest in the inadequate size (276,3 million rubles), that threatened the existence of the business and the execution of regional projects.

As a result of intervention of the FBO the decision on taxes, fines and penalties in the amount of

276,3 million rubles was afterwards cancelled. Negotiations were held with representatives of the regional tax service with a request to examine the validity of the audit and to take into account the arguments of the company.

Type 14. Work on improving Federal legislation

The risk of increasing the tax burden decreased

The largest business associations appealed to the FBO in respect of increasing the tax burden on small business, which was caused by the adoption of amendments to the Tax code.

The amendment obliged the businesses which used special tax regimes - the simplified taxation system and the single tax on imputed income - to pay the tax on property of organisations (which previously were not paid by them) in respect of the real estate properties, tax base on which is determined by the cadastral value (in accordance with article 378.2 of the Tax code). Such real estate objects were shopping facilities, household enterprises and alimentation enterprises.

In most cases, the payers were small businesses. The same time, the cadastral value was usually several times higher than book value, which was previously used as the tax base for regular tax payers. Thus, a real risk of increasing the tax burden for socially-oriented enterprises arised.

The FBO sent letters to the President with proposals to initiate discussion and revision of the law to establish benefits for the most vulnerable categories of taxpayers.

At the same time, the establishment of features of the tax levy and assessment, tax rates, specific list of the taxed objects belonged now to the regional authorities.

While the work on the analysis of the proposals of the FBO was carried out in central Government, he sent letters to all heads of the regions with a request to consider the risks of an increase in the tax burden and to form a temporary team to prepare proposals for adopting the related regional laws and the provision of benefits.

Eventually, the work was organised in most of the regions. At present, some regions have already introduced incentives for specified tax. In many regions the special work on developing solutions to prevent a sharp rise in the tax burden is conducted jointly with the business community.

15.2 Success stories from the National Ombudsman in the Small Business Administration in the USA

The examples of success from the annual report of the Ombudsman for small business in the USA (ONO) are included into the handbook for comparison with the Russian practice. The comparison shows that, both the Russian institution and the one of the USA are going through similar issues. At the same time, in view of a wider range of powers, the practice of the Russian Institute of Ombudsmen is slightly broader.

Review an amount of the fine

A commenter received a large fine from the Department of Transportation (DOT) for shipping hazardous material. The company had never before shipped any hazardous material in its regular course of business and sought assistance through ONO because of the size of the fine equal to its yearly business income. A fin of that amount not only would have devastated the commenter's business, but also would have put his family in financial hardship.

DOT reviewed the investigation report and opened communication with the Pipeline and Hazardous Materials Safety Administration's investigator and the commenter. After careful review, it was

determined that the hazardous material had been shipped by the commenter in a personal capacity and not through the company's regular business operations or as inventory. The commenter further demonstrated that both he and his business had since been trained to recognize hazardous materials and understood how to ship them properly in the future. The notice and fine were withdrawn, replaced with a warning letter to the commenter individually, and the commenter's business was able to continue.

Contradictions in the rules of direct cost accounting

A sub-recipient of a grant from the National Oceanic and Atmospheric Administration (NOAA) filed a comment about a conflict between NOAA policy and an Office of Management and Budget (OMB) memo. NOAA's Federal Assistance Law Division advised that sub-recipients must have a Federally approved indirect cost rate to recover indirect costs, but the commenter produced an OMB memo to the contrary.

The Office of the General Counsel within the Department of Commerce stated that as a sub-recipient the commenter should list administrative costs as direct costs and submit those for reimbursement. Commenter was reimbursed.

A penalty of an entrepreneur cancelled

The commenter was fined \$2,400 by an OSHA investigator for a worker not wearing a safety belt. At the time of the incident the commenter's son, who was not an employee of the business, was helping and was fined \$1,800 for not wearing a hard hat.

OSHA reviewed the matter and citations were waived due to the employer's agreement to obtain safety training.

The penalty of an entrepreneur

Reduced OSHA fined the commenter, a small subcontractor, \$5,100. Due to the small size of the business, the commenter's business operations were in jeopardy.

OSHA met with the commenter and offered a reduction in penalty as well as construction related safety and health training for the commenter and its employees. The commenter signed an informal settlement agreement paid a reduced fine of \$2,800, and the case was closed.

Delay in payment of compensation

Commenter identified delays by a CMS contractor processing its health-care reimbursement claims. Due to a delay in payment for over nine months, the commenter sought interest on the late paid claims. CMS reviewed the comment and approved the commenter's request that the contractor pay interest on the claims.

Non-payment of funds under the contract

Commenter contacted ONO because the company was owed money on a General Services Administration (GSA) contract for work completed. The commenter explained that the GSA Contracting Officer disallowed any payments.

ONO facilitated communications and negotiations between GSA and the contractor. The contractor ultimately was paid for the work completed.

16 APPENDIX 4 – CASE STUDIES

Below there are the concrete complaints which should be reviewed during the exercises (business games) within the training. The aim of these exercises (business games) is to consolidate and develop the practical skills of the participants in the protection of the rights of entrepreneurs.

The participants are divided into 5 groups; each group will be given 2-3 complaints for review. The group shall upon receipt of a complaint to conduct analysis, to give a legal opinion, to take the decision to support the applicant or to refuse him.

In the case of support it needs to determine the sequence of actions to restore the violated rights of an entrepreneur and to prepare the necessary documents.

There are cases among these situations when the complaint is not necessarily justified, or its reasoning is doubtful. A trainer can assess an effectiveness of the group work, clarifying whether the groups managed to figure the situation out.

Complaint for violation of the entrepreneur's rights by the Federal migration service (FMS)

The FBO received a complaint on the actions of the Interregional Department for control over the stay of foreign citizens of the FMS (Department).

As follows from the materials of the complaint, the company entered into a contract No. 163 (hereinafter "Agreement") with a contractor under which the latter undertook to send their employees (foreigners) to the industrial complex of the first company. The employees commenced to perform work at the production facility of the company. However, according to item 3 of the Contract, the contractor's employees, were not employees of the company and could not be taken under an employment contract.

Management of Department conducted an onsite inspection at the manufacturing facility of the company. According to the results of the test violations were found (the absence of a work permit for foreign citizens).

These violations had been recorded in the relevant minutes of the examination, the protocols on administrative offences, provided by part 4 of art. 18.15 of the RF Code of administrative offences, were prepared. By the opinion of the Department the violations were committed by the company. At the same time the Department decided to cancel previously filed administrative proceedings on the same basis in respect of the contractor, liquidated to the date the inspection had been made.

The department motivated its decision with a reason that the company had not shown due diligence and had not checked the contractor "on the websites egrul.ru and nalog.ru". The Department concluded that the parties had entered into the "fictitious agreement", which provided for the company the way to escape responsibility for committing administrative violations.

Task: Based on the review of the text above give your opinion about this situation and your recommendation for next action

A threat for the demolition of a hotel

The applicant owns the land plot and on the building located in this plot.

In 2010 the applicant appealed to the district administration (hereinafter - Administration) for a permit

for hotel renovation by means of the extension by a 2 floor brick building. The administration informed the applicant about the impossibility of issuing a construction permit, because at the time of submission of the application the object had already been under construction, finishing works had been carried out. The decision of the Arbitration court denied claims for recognition of the refusal of the Administration to issue a building permit illegal.

Notwithstanding the above, the applicant has erected at his own expense an extension to the hotel, consisting of two floors and attic.

The administration appealed to the arbitration court for the recognition of an extension to the hotel an unauthorised building and for demolishing the unauthorised construction. During the trial, construction and technical expertise was held, which allowed to the court to conclude that the erected wing of the hotel had signs of unauthorised construction, because it had not meet the requirements of the town planning norms and rules of fire safety and had entailed the threat to the life and health of citizens. The arbitration court satisfied the requirements of the Administration. The superior court upheld the decision of the court without changes. The decision entered into legal force. Enforcement proceedings were instituted.

In the appeal, the applicant indicates that the elected way to protect by the Administration (the demolition of the extension) is clearly disproportionate to the violations made during construction. Currently, all violations are eliminated, as evidenced by a Technical report compiled by the LLC "Engineering center". Thus, according to the applicant, at present, the extension to the hotel is not the property which threatens the life and health of citizens. Basing on this fact, the applicant has addressed in Arbitration court for reconsideration of the above decision of the court in view of newly discovered circumstances. Denying the claim, the court stated that the existence of circumstances arising after the issuance of a judicial act on the revision of which the application is made, and the presentation of new evidence on these circumstances, may not be invoked as a ground for judicial review.

The applicant indicates that according to the illegal decision of the court, she must demolish the building, which according to numerous experts meets all building, fire and health standards and does not pose a threat to the life and health of citizens.

The applicant asks the FBO to appeal the decision of the Arbitration court in the order of supervision, as well as to file a petition to the Supreme Arbitration to suspend the execution of the court decision on the demolition of the building.

In addition to the complaint the FBO received a letter from the Deputy of the Parliament, who asked to assist if possible the applicant and to notify the applicant about the decision.

Task: Please give your assessment of the situation and proposed follow up action.
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Seizure of property of the company

The company operates in the market of intercity bus transportation. According to the information of the company more than two dozen armed men burst on its territory.

The people did not identify themselves and did not show any documents. As it later became known to the applicant, these persons were representatives of the Ministry of the Interior, city prosecutor's office and of the city Department of transportation.

The above-mentioned persons have stopped the work of the enterprise, has blocked all entrances/exits, seized system units and computers, as well as passports and driver's licenses of the employees of the

company. Although all vehicles had been evacuated from the territory of the company any relevant procedural documents were not made.

Currently walkways/driveways to the company area are blocked by the traffic police.

The applicant indicates that during these events, employees of the company repeatedly contacted by phone the Prosecutor General office of Russia, the Federal security service of Russia, Ministry of the interior of Russia, however, but they were left without proper attention. No response measures were taken.

Buses have been withdrawn and up to the present time are in a special parking lot.

Subsequently, it have been found out that this way the employees of the Ministry of Internal Affairs carried out an audit of the company on the basis of a report.

Incompleteness of the passive security systems of 10 buses was suspected. The buses were seized for carrying out research of their passive safety. In addition, during the examination of the location 5 computers with signs of unlicensed software were taken. The computers were directed for a study.

The applicant asks an Ombudsman to deal with the situation.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

Request for judicial intervention

As a result of accidental oil spill parts of belonging to a LLC water bodies forming a system of its economic water reservoirs were damaged.

As stated in the complaint of a JSC, the owners of the LLC falsified data about the scale of the disaster, the real extent of damage, committed a series of deliberate actions aimed at concealing the actual data on the consequences of the accident and on the extent of actual adverse effects on the environment. The court decisions which decreed to pay actual damages in the amount of 931 million rubles, lost profits in the amount of 60 million rubles in favour of the LLC, had been taken. Enforcing the judgment a bailiff arrested the movable and immovable property of the JSC, organised and conducted the auction for the sale of a part of immovable property and property rights. The results of the auction are currently being appealed in court, also there is the decision of the Federal Antimonopoly service by which the bailiff's actions are recognised as violating the requirements of the legislation on enforcement proceedings and the Civil code of the Russian Federation.

In the complaint it is indicated that the disposing of the arrested property of the applicant actually caused the fragmentation of an integrated production-technology complex, what implies a risk of termination of operation of the pipeline system.

The applicant is asking to review the submitted materials of the civil case and to determine the presence or absence of grounds for appeal to the Supreme arbitration court of the Russian Federation with an application for revision of judicial acts by way of supervision and to submit an application to the court.

The denial of access to networks

An RBO received a complaint of an entrepreneur who is the owner of the on-site café, adjacent to the city beach, on the illegal actions of the Director of the municipal unitary enterprise (MUE).

In the complaint it is indicated that the Director of the MUE illegally refused the conclusion of the contract on connection of the specified Object to water supply and sanitation networks.

In particular, 25 December 2013 MUE issued the technical conditions for connection of the cafe to water supply and Sewerage systems. In this regard, the applicant appealed to the MUE with a statement on the conclusion of the contract on connection to water supply and sanitation networks. MUE informed the applicant on the suspension of the application review, because the applicant has not provided the documents listed in the item 6 of the "Rules of connection of the capital construction object to the network of engineering and technical support", approved by decree of the Government of the Russian Federation dated February 13, 2006 # 83 (hereinafter the Rules).

At the same time, according the government of the Russian Federation decree of 30 December 2013 # 1314 "About approval of rules of connection (technological connection) of capital construction objects to the distribution networks, as well as about the change and repealing certain acts of the Government of the Russian Federation" the abovementioned Rules ceased to be in force from 1 March 2014.

Thus, the requirements of the Director of the MUE are currently illegal. According to item 4 of Art. 18 of the Federal law of December 7, 2011 № 416-FZ "On the water supply and water removal", when the connection to the Central system of cold water supply and sanitation is technically possible (hereinafter - technical connectivity) and there is a free capacity for the cold water supply and / or sanitation, an organisation, responsible for cold water supply and / or wastewater management has not a right to refuse the applicant the conclusion of the contract on connection.

The entrepreneur has the approved technical conditions that by virtue of part 1 Art. 10 of the Federal law of 7 December 2011 "On water supply and water removal", is a sufficient basis for the conclusion of the contract on connection to water supply and sanitation.

In violation of the above requirements MUE prevents the realization of the legitimate rights and interests of the applicant, which consist in joining the networks of water supply and sanitation and their use.

Improper performance of the requirements of the current legislation by the MUE entails an unjustified violation of rights and lawful interests of the applicant.

Currently, the contract for supply and sewerage is not signed by the MUE.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

Illegal actions during the search

A commenter owns a shop. The goods totalling 7 million rubles were seized by the police in the shop, without presenting any legal documents. The police explained that the mentioned action had been taken by instructions of head of the regional Department of the Interior.

According to the applicant, up to the present time, the seized goods have not been returned, law enforcement officials have not provided procedural documents goods for confiscation.

The applicant asks an RBO to organise a review of the case.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

Failure to comply with a court decision on reduction of the cadastral value

An applicant owns a land plot. By the cadastral passport of the land plot the cadastral value of the land is 150 818 037 rubles.

Assuming that the cadastral value of the land exceeds its market value, the applicant appealed to the arbitration court with a claim to the "Federal cadastral chamber" regional division (hereinafter - FCCR) on the establishment of the cadastral value of land owned by the Applicant, that would be equal to its market value, namely 70 million. The court satisfied the application in full. 12.10.2013 a court decision entered into legal force.

The writ issued by the Arbitration court was produced to FCCR. However, the applicant indicates that the court's decision to the moment has not been executed by FCCR, and therefore the applicant shall bear the losses due to obligation to pay the land tax on the basis of the cadastral value of land of 150 million rubles.

The applicant submitted a request to the Ombudsman to help to execute the court decision.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

Complaint for limitation of competition by a normative regulation

The applicant have submitted a complaint to the FBO with a request to pay attention to the existing discrimination and infringement of small businesses engaged in the provision of services for maintenance and repair of motor vehicles.

So, based on the conditions laid by dealers in contracts of sale of cars, independent service stations cannot participate in tenders for the provision of services for maintenance of the vehicles within the warranty period, as the contracts of sale of new cars from all authorised dealers provide the condition under which the warranty is voided in the event of a planned maintenance of a vehicle during the warranty period not from an authorised dealer.

According to the applicant, the Code of conduct for manufacturers and dealers in the markets of sales of new cars and spare parts to them is contrary to the individual articles of the Federal law "On protection of competition", and in addition it legitimizes the abuse by manufacturers and authorised dealers of its dominant position in the market of rendering services for vehicles within the warranty period, as well as in the markets of sale of original spare parts, equipment, tools and databases. The adopted Code does not contain conditions allowing the independent service centers to fulfil the planned maintenance of vehicles within the warranty period.

Also, the applicant asks to pay attention to a draft amendment to the Decree of the RF Government dated 16.07.2009 No. 583 "General exceptions in respect of agreements between economic entities, the object of which is to organise the sale and service of vehicles", prepared by the FAS of Russia. The introduction of these changes will enable automakers and dealers to enter into agreements allowing to carry out routine maintenance of vehicles and maintenance work during the warranty period only to authorised dealers.

The applicant believes that the FAS protects the interests exceptionally of authorised dealers.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

The dispute with the tax authorities

In the period from 19.07.2011 to 12.07.2012 the Interregional Inspectorate for major taxpayers (IIMT) conducted on-site tax inspection of a company for 2010. By the results of the inspection the requalification of the company's commission agreements with the organisations of farmers to the

supply contracts was made on the basis of the actual relationship between the parties. The tax authority concluded that the Company received an unjustified tax benefit, expressed in the calculation and payment of tax on profit and VAT only from amounts of Commission. As a result of reclassification of contracts the company was charged with VAT in the amount of 148 million roubles.

The applicant, considering the decision of the tax authority to be unlawful, appealed to the Arbitration court of a region. The court of first instance and appellate court have recognised the decision of the inspection invalid, indicating that the company confirmed conducting business operations within the Commission contracts, in its turn, the tax authority has not proved circumstances that indicate the violation of the norms of the civil and tax legislation on transactions of sale of food products within the Commission contracts. However, the court of cassation quashed the decision of the lower courts and sent the case for retrial.

The applicant does not agree with the specified decision of the court, therefore, asks the FBO to consider joining the lawsuit as a third party.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

The threat of demolition of the bus station

Company in the city N at its own expense built a Mini Bus station, which today is the only one in the city, on a land plot leased from a city Hall. By an order of a mayor the company was allowed to design a Mini Bus station within the boundaries of the assigned territory. By an order of the mayor the company was granted with a permit for the construction of Mini Bus station within the boundaries of the assigned territory.

According to the Urban opinion on the land plot "Given the existence of design and estimate documentation, developed in accordance with applicable rules and regulations, and positive conclusions of inspecting organisations:

- Center for state non-departmental examination
- Centre of state sanitary surveillance of the city
- Department of natural resources and environmental protection of the Ministry of natural resources of the Russian Federation in the region
- Department of the state fire supervision of the city
- Mini Bus station was recommended for the construction.

The resolution of the mayor assigned the address to the building. 06 March 2007 the permits issue and commissioning of objects of the city urban district department, in accordance with article 55 of the town planning code of the Russian Federation, allowed the commissioning of the constructed object of capital construction: Mini Bus station.

The construction of the disputed property was conducted on the basis of permits, and therefore may not be an unauthorised construction. These acts and resolutions of the Executive authority of the local government have not been contested and not been recognised invalid.

Registering body by a communication, dated 19 August 2008, rejected the state registration of property rights of the company on the basis of paragraph 10 of part 1 of article 20 of the Law on state registration, since the relevant documents about the allocation of land plots for construction of non-residential building - Mini Bus station registration has not been granted for the registration. The decision of the arbitration court of cassation instance recognised the refusal of the registration authority as legitimate.

As stated in the motivation part of the decision of the Arbitration court on the Case the judicial act on the basis of which entry in the unified state register of Mini Bus station building was made, had been cancelled, reasons for the emergence of company's property rights for Mini Bus station building are missing.

The Arbitration court of the region is considering the claim of the company to the Municipality for recognition of the ownership building of total area sq.m. 480,8.

Currently, the company knows that the City hall and the Municipal transportation enterprise intend to fully sell the land plot and the on-site located buildings.

Building of the Mini Bus station is an only one that is not currently in a municipal property, and therefore, the municipality has filed a lawsuit for the demolition of the Mini Bus station, without resolution of the dispute on the rights. Consideration of the claim on the demolition is suspended until the resolution of the dispute on the rights.

In its turn, the company has a fear that the authorities may put pressure on the judge for resolution of the dispute on the rights.

The applicant asks to take the complaint under personal control, as well as to participate in the protection of the rights of the organisation in the judicial process.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

Hostile takeover

Part of the real estate of a company was acquired by small enterprises operating on the territory of the company at a public auction in 2005. Later a new Chairman of the Board of Directors of the company asked to return the abovementioned property. The arbitration court of the region, having considered the claims of the Deputy Prosecutor of the city and of the company on the recognition of open trades of 2005 invalid, refused to satisfy the stated requirements. The superior court confirmed the legality of the decision.

Later criminal proceedings in respect of the Directors of the trade winning companies were initiated under part 4 Art. 159 of the criminal code (appeal does not specify on what basis they were instituted).

In addition, by an order of the new Director of the company the owners were disconnected from electricity, as well as several attacks were made on the heads of the enterprises operating on the territory of the company. According to the facts more than 360 appeals were directed to the law enforcement agencies, however, no response was not taken.

In 2008, the company entered into bankruptcy proceedings. In 2013. the remaining property of the plant, put up for sale, was bought by LLC. Managing Director is the Mr. N, who, according to the applicant, together with senior public officials does a hostile takeover of the plant and hinders from the business activities of the other owners of premises located on the territory of the plant.

The applicant asks an RBO to specify the state body, which will be able to objectively investigate:

- bringing company to the bankruptcy in 2008-2010.
- attacks on businessmen
- the validity of the winning of LLC in electronic trading.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

Violations of tendering

A notice about a request for quotations for the supply of metal shelving was posted on the official website of the Russian Federation www.zakupki.gov.ru.

Client: the Main administrative and transportation services Centre of a Ministry (CAT). Applications were to be accepted in a paper form.

The company's application, electronically signed, was sent to a specified mail at 13.40, as evidenced by a scree-shot from mail. In addition, since that time and up to 15 hours with intervals of 10 minutes, the company made calls at the indicated telephone number with the purpose of obtaining confirmation of the application. However the phone was silent. The company did not received confirmation in writing.

On 30th of April the Protocol of review and assessment of bids was posted on the website. The company learned from it that its quoted bid was not registered in the register of receipt of bids and will not be considered by the Commission. However, the price offered by the company had been a best offer.

The company believes that its proposal was not purposely considered by the Commission, that violated its rights as a participant of the placement of state orders.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

Collusion and violations during inspections

A company owns the largest entertainment complex in a major city. Since some time, the company became a subject for more frequent inspections of fire legislation. However, in some cases, the company has not been notified of inspections.

Checks have not revealed violations by the company, which could require a suspension of operations. However, the head of the district in a private conversation indicated that after the inspection he will close the complex. The company is hosting the prom and balls of school graduates. The head of the district held a teleconference meeting, during which he recommended to the Directors of the schools not to carry out cultural activities in the complex in connection with violations of fire laws.

Following compliance inspection must take place in the company next week. The company believes that the audits are used by the head of the district for extrusion from the market.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

Refusal in registration of the lease

An applicant in 2010 became the owner of a modular demountable pavilion on the land. Since 1999, this plot was leased to another entrepreneur. In this regard, the applicant appealed to the Ministry of property relations of the region for the renewal of lease rights.

However, registration did not occur due to the fact that the owner of land was in the property of the Russian Federal Property Management Agency. The applicant appealed to the Agency with the application for the provision of land for rent. After 9 months the applicant received the reply on that the area was used without duly document that constitutes an administrative offence specified by the Art. 7.1 the Administrative code. The amount of arrears and penalties amounted to 756 418 RUB.

The applicant had sent a letter to the Prosecutor's office regarding the issue, however, according to the applicant, the Prosecutor's office reacted formally to this issue and recommended to go to court. In addition, the applicant requested clarification as to whether there could be this land plot put out by the government to auction.

The applicant asked an RBO to take action to protect the rights of the entrepreneur and to assist in the conclusion of the lease agreement for the land plot.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

Case studies related with corruption

Demolition of a café

LLC owns a temporary construction. This building had been constructed by the LLC and located at the specified address, on the basis of the land lease agreement between the city administration and LLC and since then, over 20 years, was always used as a café. The Governor of the region, according to the applicant, decided to rob the company's leased land and to transfer it to another developer. For this reason the Governor asked the head of the city administration to demolish the café.

The city administration issued a Resolution on dismantling the café. The applicant believes that these illegal actions of the Governor and the head of the city administration violate the law.

He says that according to the Federal law "On General principles of organization of local self-government in the Russian Federation" the competence of local authorities does not presume the right to make decisions about the legality of posting on its territory of real estate and to force their removal. When making this Decision, the Head of the city administration and the Governor abused his official powers established by Federal laws.

The decision about the legality of hosting real estate and dismantling referred by the Federal law to the competence of the Federal courts and the Federal service of court bailiffs. The Resolution violates the rights of LLC ownership on the specified building and to conduct its business activities, resulting in a loss of business. The same time the developers built the building in the immediate vicinity.

Basing on the above, the applicant requests:

1. To protect the company from trying to seize his property and his rights from the side;
2. To prosecute the officials for abuse of power.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

Complaint for violations of the procurement

A director complained on corruption in a public procurement institution. Upon his data the responsible employees of the public body for bidding entered into an agreement with commercial structures at the stage of preparation of the auction documentation to ensure the victory of a specific legal entity, which entered with them into the conspiracy. Additionally, officials in collusion with commercial companies, provided equipment acceptance with noncompliant characteristics. Data about the corrupt activities of employees of the public body were obtained on the example of the auction for the right to supply a "complex" in which the LLC had planned to participate. When carrying out calculations to participate in the auction, it was found that the initial cost of the auction is significantly below the purchase price of the equipment specified in the technical specifications. The maximum (initial) contract price was 1.7 million, and the estimated cost to purchase the equipment and software was approximately 2.1 million. After the calculations, the company decided not to participate in this auction. Moreover, the company was confident that, at these conditions, the auction could not have taken place. But according to information received from the electronic trading platform the auction was held and the winner was LLC2.

Due to the fact that there is an obvious restriction of competition and there are signs of embezzlement of budget funds, specialists of LLC performed an analysis of the entire auction, since its announcement prior to the date of execution of the state contract by the vendor. The following has been discovered.

For the preparation of the auction the offers of the absolutely non-core businesses were used by the Customer with the identical list of proposed equipment and with the difference in offer size of 2% what the existing practice is impossible. The actual difference between the price various business entities offers typically ranges from 5% to 20%. Therefore the collection of bids was conducted formally, with the intent to announce the upcoming auction among as little specialized enterprises as possible. One of the firms specified by the Customer under the auction documentation was LLC2. The winner of the auction is LLC2, and the second participant is controlled by the auction winner, as the company won the auction with a minimum price fall of 0.5%. Not only the city's specialized enterprises (for example JSC1, JSC2) took not part in the auction, but the companies from other regions also. This is due to the inclusion in to the price of the auction of the goods certainly not implied for the supply, but which have significantly risen the cost of the equipment up to the value exceeding the starting amount of the auction. Negotiations with the manufacturer of specialized software revealed that it has not representatives in the city, has not information on the conducted auctions, and supplied the software to the region. The retail cost of one license of software (which was not supplied) is 500 thousand rubles. The customer, in the person of Deputy head of the state authority signed a contract with the winner of the auction LLC2 with violations, according to part 2 art. 41.12 of the Federal law of 21.07.2005 № 94-FZ "On placement of orders for deliveries of goods, performance of works, rendering of services

for state and municipal needs" (hereinafter - the Federal law № 94). With a collusion of employees of the state authority and LLC2 a number of positions has been modified in the contract specifications that have allowed to produce the supply of cheaper equipment.

After the execution of the state contract by the Supplier and acceptance of the equipment by the Customer, the documents for this auction have been posted on the Internet on the official website of public procurement www.zakupki.gov.ru. From the invoice posted in Internet there is a clear noncompliance of the specifications of the state contract and actually supplied equipment. Invoice, inappropriate to the government contract, to receive equipment from LLC2 has been signed by the materially responsible person of a state body. The amount of damage to the state from the invoice amounted to more than 400 000,00 rubles.

The supplier is in breach of the conditions of the state contract supplied, and the Customer received the wrong expensive software, according to the act of transfer and acceptance of rights (a simple non-exclusive license to use the software). This license specified in the terms of reference of the auction and specifications of the state contract is missing in the invoice and not actually delivered. In addition, sublicense act on the software has no name and reference to the copyrighter. Despite the clear evidence of forgery on the part of LLC2, the act of acceptance of non-existent rights for non-existent software was signed. The act says the cost of this software is 60 000,00 RUB, but the Real price is not less than 500 000,00 RUB. The mentioned way the Customer under the agreement with the Supplier damaged the Federal budget for more than 400 000,00 rubles (Supplying non-compliant software in accordance with the act of acceptance-transfer of the right to use the software). The complainter informed the higher state body about the situation with this auction, even before the conclusion of the state contract between LLC2 and state authority. Despite this, the measures to prevent the implementation of criminal corruption schemes have been adopted. The made machinations of the replacement equipment and the shortage of software led to the theft of funds from the Federal budget more than for 1 million rubles.

Given that the public body in this period held another three similar auctions with a similar specification total damage inflicted to the budget from these auctions is more than 3.5 million rubles. Based on the above, the Complainant requests:

1. To take measures for the observance by employees of the state authority of the provisions of the current legislation in the field of procurement for the needs of government customers and ensuring healthy competition in the field of public procurement;
2. To bring to justice members of the public body;
3. To check for compliance the hardware and software supplied to the LLC2 to the requirements of the technical specifications of the auction;
4. To prevent corrupt activities of individual employees and representatives of the authority in the bidding and in the supply of equipment and software;
5. To ensure compliance with applicable law by the state authority when executing trades.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

An attempt to assign a greenhouse complex

An enterprise owns a greenhouse complex for growing vegetables on the territory of the municipal district.

Due to significant wear of the individual structural elements of the complex, JSC made their dismantling, and then organized the development of a modernization project (contract for the implementation of the main project works with LLC).

However, simultaneously with the measures taken by the JSC to improve the production qualities of the greenhouse complex, the interest from the part of the administration of the municipal district of region to the complex increased. So, starting in 2012, members of the administration have taken steps to unlawfully seize the land and real estate.

Administration officials have repeatedly, in various forms, offered to the Director of the company, to convey the complex free of charge to the property of the district, and received a refusal. In response to a reasonable position of the enterprise, the district administration, actively using the administrative resource, methodically moves towards the implementation of the unlawful intent to deprive the enterprise of the right of ownership and of the prospects for the use of land and located property by appointment.

On the initiative of administration of the urban settlement Branch of the "Federal cadastral chamber " without consulting with the enterprise, took off from cadastral registration the land plot, which is a greenhouse complex, "The Regional Bureau of technical inventory" without enterprise's consent, as an owner, entered the administrative building of the greenhouse complex and produced it's technical passport for the administration of urban settlements. The above technical passport was approved by the Head of the urban settlements.

In 2013, employees of the Department of land use and land control of urban settlement had illegally entered the territory of the JSC and a report was made about the state of the greenhouse complex, according to which in their opinion it was revealed that "the visual characteristics of the structure of OJSC are not used for purpose more than 15 years, the Main building and outbuildings are in derelict condition. The greenhouse complex is destroyed and completely absent",

In 2014, also at the initiative of the Administration of urban settlements cadastral engineer, without the participation of the representatives of the JSC a survey of the greenhouse complex was illegally produced and a report on the state of the greenhouse complex was compiled. After that, the administration of Lyubertsy district and the administration of the urban settlement appealed to the Arbitration court on the recognition of missing property rights of JSC for a property of the greenhouse complex. Consideration of the claim up to the present time has not been completed.

The practice of taking ownership, interesting of the district authority, is put in the area on stream, an instruments that are false documents, false testimonies, evidences and unscrupulous officials are used.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

Putting pressure on the organization to capture a market

The applicant asks to consider the application on the prevention of the use of the legal method in the framework of the procedures of the antimonopoly service for artificial deprivation of the status of heat supplier in the district from an LLC.

After the launch of the new boiler room in the city by the LLC in 2011 and the profitable conclusion of business season at the end of the heating season in 2012, under the auspices of the now former Vice-Governor for housing areas the "work" on the interception of the business organized by the group of the former officials began.

LLC "received" for the last 3 years more than 80 lawsuits, blocking of all payments for the heat, depending on the officials and two attempts of artificial bankruptcy. The cause, according to the applicant - refusal to pay compensation or to transfer the share in the business. The company managed with all, including group night raids on boilers of the LLC. In litigation the applicant defended the company from the hostile takeover and in a number of courts confirmed all the rights of property.

Thus, the group of former officials, according to entrepreneur, want to deprive LLC of status of heat supplier, and substitute his company by their own within 4 heating seasons, but their attempts failed.

The group began to implement their plans through the antimonopoly service procedures.

Now basing on the article of the RF Government decree No. 808 on the possibility of deprivation of the status of the heat supplier in the event of a breach of the Antimonopoly legislation, they began to prepare a "non-compliance" of LLC.

Once again they blocked the payments for the consumed heat from state and municipal enterprises and institutions, and the gas industry for a debt of 6.5 million rubles stopped the gas supply to the LLC.

Thus, the officials conducted a "job" on full unpayment for thermal energy to the LLC in the total amount of more than 70 million over the past heating season and stopping the gas. Turning off the gas, "Gas" company, of course requires money, which in turn are hold by the officials, and which also initiate the prosecution of the LLC, and not their municipal enterprises in the violation of the Antimonopoly legislation.

Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.

Administrative barriers in the field of operation of sports complex

The Commissioner received a complaint from an investor of a sports complex. The construction project started in 2005 by agreement with the administration of the region the most capital-intensive part of the complex was built.

Also the entrepreneur provided all the resources of the complex for training athletes of the region free of charge.

The administration of the region promised to the investor full administrative support and financial assistance in the form of subsidies for compensation of the infrastructure costs incurred. But at the end of the implementation of the first, anchor, phase of the project, the project began to experience difficulties: first, the regional Administration has raised the cost of renting of land more than 30 times, and at the end of the lease term land the region transferred the land to the Municipal formation of the city that refused to renew the land lease contract as the new owner with investor. All development initiatives of the project, the construction of the commercial zones of the second stage has received opposition from regional and city officials, the project could not agree the construction of the commercial zones of the second stage. Simultaneously, the project has undergone the pressure of various control structures: the Prosecutor's office, fire control, emergency Committee, created at the initiative of the Governments of the region, which have issued regulations banning the use of the complex. Later, the investor appealed in court for decisions of the control structures.

The administration of the region offered to buy complex for 20 % of the cost. The investor does not agree with this proposal and believes the actions of the administration are an attempt to reduce the price.

Last winter season, the complex was not working, which caused widespread discontent of local residents.

The regional administration openly offers to sell complex at a low price and does not respond on the proposals of the investor on the negotiations.

The applicant requests assistance in overcoming administrative barriers, skilfully, according to him, placed by officials for ransom of the complex at low cost.

<p>Task: Please provide your assessment of the situation and your recommendation to the business ombudsman.</p>
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17 APPENDIX 5 – GROUP EXERCISES

The possible group tasks that the trainer would give to the students of the course are listed below.

Group exercise 1 - Development of proposals on the application of international standards to combat corruption in the sphere of entrepreneurial activity in Russia

Within the task, the facilitator asks the participants to divide into 4-5 groups (depending on number of students) in order to submit proposals on the same subject “How your group sees the application of international standards to combat corruption in Russia. Does a group consider whether their use will be effective in Russia, what background and legislative changes are needed for this.

After a 5-10 minutes discussion each group reports their proposals, preliminary placing them on a flip chart.

The goal is to encourage a creative approach to the implementation of anti-corruption practices

Group exercise 2 – Taking action in cases of reported corruption

Within this task the participants are divided into four group. Each of 4 groups needs to develop of an action plan for the prevention of this corruption.

Group 1: You are a business Ombudsman, who learned that a plotter extorts a bribe from the entrepreneur for obtaining a building permit. Also there is an information that the extortionist has a senior patron in executive authorities.

Group 2: You are an entrepreneur who has learned that his competitors have a tacit agreement with the local authorities in accordance with which all customers who want to pass freely surveillance regulators checks are directed to this company to buy services

Group 3: You are a business-ombudsman, who learned that an official distributes contracts in the framework of the state order for kickbacks, the same time he has accomplices in the prosecution

Group 4: You are a business ombudsman who has receipt a complaint on that the local suppliers of transport services entered into a cartel, while local management of Antimonopoly service "does not notice it."

Group 5: You are a business-ombudsman, which have received a complaint on that the denial to lease the land to the entrepreneur is illegal and associated with actions of a competitor is a large trading network, influencing officials to obtain this land plot

Group 6: You are a business ombudsman, who received a complaint on that the representatives of consumer surveillance conducted numerous checks of his farm on the "request" of competitors, when the checks of competitors are not conducted. Meanwhile the inspections were fruitless in discovering violations.

Group exercise 3. Establish an Ombudsman office

4-5 groups (depending on number of participants) are proposed to determine the main functions of an Ombudsman and his staff, to distribute the functions between roles/employees and to build the organisational structure of the staff of the regional or public Ombudsman.

18 APPENDIX 6 - LIST OF CORRUPTION RELATED CRIMES IN THE RUSSIAN FEDERATION

PROSECUTOR GENERAL'S OFFICE OF THE RUSSIAN FEDERATION
NO. 387-11
MINISTRY OF INTERNAL AFFAIRS OF THE RUSSIAN FEDERATION
NO. 2
INSTRUCTIVE REGULATION
of September 11, 2013
ON ENACTMENT OF A LIST OF ARTICLES OF THE CRIMINAL CODE OF THE RUSSIAN
FEDERATION USED FOR STATISTICAL REPORTING
LIST
of corruption-related crimes <*>

<*> Here and below, crimes are listed as consistent with the Articles (clauses, subclauses) of the Criminal Code of the Russian Federation, which they are covered by:

1. Corruption-related crimes are unlawful acts having all the features described below: availability of proper perpetrators of a criminal offense, including public officials specified in the notes to Article 285 of the Criminal Code of the Russian Federation, persons in charge of managerial functions in a profit-making or any other organisation acting on behalf of and in the interests of a legal entity, as well as in a non-profit organisation, which is not a public authority, a self-government body, or a public or municipal agency specified in the notes to Article 201 of the Criminal Code of the Russian Federation;

- link between an offence and an official position of a perpetrator, a departure from his immediate rights and obligations;
- obligatory presence of a mercenary motive (the act is related to obtaining by a perpetrator of property rights and benefits for himself or third parties);
- commission of a crime with a specific intent.

An exception applies to crimes, which do not meet these requirements, but are considered corruption-related in accordance with international legal instruments ratified by the Russian Federation and national legislation, as well as associated with arranging conditions for an official, civil servant or municipal official, as well as a person in charge of managerial functions in a profit-making or any other organisation to derive benefits in the form of money, valuables, other property or property-related services, other property rights, or illegal provision of such benefits.

2. Offences relating to the list without extra conditions:

Art. 141.1, 184, 204, subpar. 'a' par. 2 Art. 226.1, subpar. 'b' par. 2 Art. 229.1, Art. 289, 290, 291, 291.1.

2.1. Offences to be related to the list depending on the date of instituting criminal proceedings subpar. 'b' par. 3 Art. 188 (date < December 8, 2011).

3. Offences relating to the list under certain conditions:

3.1. Offences relating to the list subject to a corruption-related note in the statistical card of a substantive offence:

Art. 174, 174.1, 175, par. 3 Art. 210.

3.2. Offences relating to the list in accordance with international instruments subject to a corruption-related note in the statistical card of a substantive offence:

Art. 294, 295, 296, 302, 307, 309.

3.3 Offences relating to the list subject to a note in the statistical card confirming commission of an offence for mercenary motives:

subpar. 'a and 'b' par. 2 Art. 141, par. 2 Art. 142, Art. 170, 201, 202, 285, 285.1, 285.2, 285.3, par. 1, 2 and subpar. 'c' par. 3 Art. 286, Art. 292, par. 2 and 4 Art. 303, Art. 305.

3.4. Offences relating to the list subject to a note in the statistical card confirming commission of an offence by an official, civil servant or municipal official, as well as a person in charge of managerial functions in a profit-making or any other organisation:

subpar. 'c' par. 3 Art. 226, par. 3 Art. 226.1, par. 2 Art. 228.2, subpar. 'c' par. 2 Art. 229, par. 3 and 4 Art. 229.1.

3.4.1. Offences to be related to the list depending on the date of instituting criminal proceedings subject to a note in the statistical card confirming commission of an offence by an official, civil servant or municipal official, as well as a person in charge of managerial functions in a profit-making or any other organisation:

par. 4 Art. 188 (date < December 8, 2011).

3.5. Offences relating to the list subject to a note in the statistical card confirming commission of an offence by an official, civil servant or municipal official, as well as a person in charge of managerial functions in a profit-making or any other organisation for mercenary motives:

par. 3 and 4 Art. 183, subpar. 'b' par. 4 Art. 228.1, subpar. 'b' par. 2 Art. 228.4, par. 1 and 3 Art. 303.

3.5.1. Offences to be related to the list depending on the date of instituting criminal proceedings subject to a note in the statistical card confirming commission of an offence by an official, civil servant or municipal official, as well as a person in charge of managerial functions in a profit-making or any other organisation for mercenary motives:

subpar. 'b' par. 3 Art. 228.1 (date < January 1, 2013).

3.6. Offences relating to the list subject to a corruption-related note in the statistical card, a note confirming commission of an offence by an official, civil servant or municipal official, as well as a person in charge of managerial functions in a profit-making or any other organisation for mercenary motives:

par. 3 and 4 Art. 159, par. 3 and 4 Art. 159.1, par. 3 and 4 Art. 159.2, par. 3 and 4 Art. 159.3, 159.4, par. 3 and 4 Art. 159.5, par. 3 and 4 Art. 159.6, par. 3 and 4 Art. 160, par. 3 and 4 Art. 229.

3.7. Offences relating to the list subject to a note in the statistical card confirming commission of an offence by an official, civil servant or municipal official, as well as a person in charge of managerial functions in a profit-making or any other organisation using his official position for mercenary motives:

par. 5 Art. 228.1.

4. Offences that may possibly contribute to commission of corruption-related offences by an official, civil servant or municipal official, as well as a person in charge of managerial functions in a profit-making or any other organisation.

4.1. Offences relating to the list subject to availability of data in the statistical card confirming commission associated with arranging, including alleged arranging of conditions for an official, civil servant or municipal official, as well as a person in charge of managerial functions in a profit-making or any other organisation to derive benefits in the form of money, valuables, other property, or to illegally provide such benefits:

Art. 159, 159.1, 159.2, 159.3, 159.4, 159.5, 159.6 (excluding cases specified in par. 3.6), Art. 169, 178, 179.

19 APPENDIX 7 – EVALUATION FORM



“Protection of Entrepreneurs Rights in the Russian Federation from Corrupt Practices”

Evaluation Form

“Training for Regional Business Ombudsmen and their staff”

Please mark the appropriate

1. How relevant are the materials to the work you do:

Materials need great revision	Minor revisions required	Neutral	Material is good	Material is very good

2. The content was organised and easy to follow:

Strongly disagree	Disagree	Neutral	Agree	Strongly agree

3. Participation and interaction encouraged

Strongly disagree	Disagree	Neutral	Agree	Strongly agree

4. The trainers were well prepared

Strongly disagree	Disagree	Neutral	Agree	Strongly agree

5. The training objectives were met

Strongly disagree	Disagree	Neutral	Agree	Strongly agree

6. Organisation of the training and the venue were appropriate:

Strongly disagree	Disagree	Neutral	Agree	Strongly agree

7. Would you recommend this training to other colleagues:

Strongly opposed	Neutral	Strongly recommend

8. Recommendation for improvement of the training:

9. How will this training affect your work in practice

Thank you for your feedback