

Playing by the rules

The changing face of anti-corruption legislation in Russia



RUSSIA offers business opportunities on an unrivalled scale: 140 million consumers in the largest country in the world, rich in natural resources and with a population showing an appetite for quality goods, services and international expertise.

Since 2010, UK exports to Russia have grown by 80%, making it our fastest-growing export market. The UK Trade & Investment government department estimates that there are 600 British companies operating in Russia, including names such as BP, Shell, GSK, AstraZeneca, Marks & Spencer and Debenhams.

Doing business in Russia can be a challenge; the country still has a long way to go to improve the commercial climate. Russia acceded to the World Trade Organisation in 2012, which is expected to open the market further. Progress is likely to be gradual, but it nonetheless sends a strong signal about Russia's willingness to play by global trading rules. President Putin is also ambitious for Russia to climb the ranks of the World Bank's Ease of doing business index, aiming for a top 20 position. At 112, Russia still has a long way to go, but is up from 120 the previous year.

When it comes to corruption Russia fares less well. Despite an ambitious anti-corruption campaign launched in 2010 and changes to Russian anti-bribery laws, the country still languishes towards the bottom of the Transparency International Corruption

Perceptions Index (127th out of 176) and the lowest of the BRIC nations. In the most recent Transparency International Bribe Payers Index, Russia was ranked as the country most likely to pay bribes abroad.

Bribery is endemic in Russia; an estimated \$300 billion is paid out for corrupt activity each year, with the average bribe for business-related matters over \$10,000. A World Bank report estimates that the level of bribes in Russia is as much as 48% of GDP.

According to the Institute of Modern Russia, the top five areas for corruption are:

- government contracts and purchases
- issuance of permits and certificates
- law-enforcement agencies
- land distribution and land relations
- construction

The legal position

In 2010, then President Medvedev launched the National Strategy for Countering Corruption, which proposed new legislation including transparency laws covering gifts to public officials and a new anti-bribery law. Changes to Russia's Criminal Code and the Code of Administrative Offenses came into effect in May 2011. Under these changes, bribery of both foreign and Russian government officials is illegal, as

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is commercial bribery. The rules also provide for higher fines, longer periods of imprisonment and introduce criminal liability for acting as an intermediary in a bribery scheme. Russia's bribery laws largely track the Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act, however, under Russian law there is no corporate defence for maintaining adequate procedures to prevent bribery. There is also no requirement to prove that an individual has acted corruptly for a company to be found guilty.

As a result of an amendment on combating corruption that came into effect in January 2013, Russian law requires organisations operating in Russia to implement measures to prevent corruption. On paper, this makes Russia's anti-corruption laws the strongest in the world, as this surpasses the requirements of both the FCPA and the Bribery Act. However, there is uncertainty as to whether Russian officials will robustly enforce these laws. According to Transparency International, 92% of Russians perceive public officials to be corrupt, believing that many view bribery payments as a means of supplementing meagre salaries. This is not unfounded; at the end of last year, it was reported that more than 1,600 lawmakers and local government officials had been prosecuted for corruption between 2012 and 2013, as well as 16 judges and 216 lawyers. That said, there are signs that this is being tackled; other sources reveal that corruption is being taken very seriously with a reported 8,500 convictions for corruption-related matters in 2013 alone. The new legislation states that measures to prevent corruption may include the following:

- Designating anti-corruption compliance officers
- Establishing clear mechanisms for conducting internal investigations and cooperating with law enforcement agencies
- Adopting a corporate code of ethics
- Establishing a system to identify, prevent, and resolve conflicts of interest
- Preventing the creation and use of false or altered documents

Companies doing business in Russia or with Russian third parties should ensure that these compliance requirements are met. Not only are there signs that Russian authorities are increasingly likely to prosecute, the extra-territorial reach of both the FCPA and the Bribery Act means that a failure to prevent bribery in Russia could lead to prosecution at home. Already, the US has brought significant actions against Daimler, Pfizer, Siemens, Eli Lilly and Baker Hughes as a result of bribery allegations in Russia. As with operations anywhere in the world, risk assessments, robust due diligence and regular auditing and monitoring of anti-corruption compliance should be considered essential.

Risk assessment

This should be conducted prior to entering the country. Businesses need to understand the sectors and activities that would place them most at risk from

corruption and identify where these risks are likely to occur. In Russia high-risk industries include oil and gas, mining, construction, heavy industry, utilities, healthcare and pharmaceuticals.

This does not mean to say that operating outside these sectors carries a reduced risk, as many business practices are open to corruption, particularly those requiring interaction with government or public officials. Demands for facilitation payments are routine, making simple transactions risky activities. Working with 'must have' third parties also poses a significant risk, particularly when acting on your behalf to obtain licences, permits, contracts and certificates. Third parties and business partners should be included in the risk assessment process.

Businesses must assess the strength of their own anti-bribery procedures and take measures to mitigate such risks to ensure they are properly protected. Consider whether terms and conditions can be specified, if a training and communication programme can be put in place and how employees will report suspected violations. Risk assessments should also cover the company's business partners and any other third parties, as this is often where the greatest risk lies.

Due diligence

Once the decision has been taken to enter the market, robust due diligence in all the high-risk areas is essential. Evaluating all third party relationships is a must, ensuring that all evidence is appropriately documented to meet compliance requirements. Ownership of companies should also be investigated, including a review of documents relating to ultimate beneficial ownership. A review of contracts should be carried out before signing to identify any non-standard demands for payment.

Consider the accuracy of claims relating to reputation and business performance, seeking verification where possible. Investigate any possible relationships with government officials and any prior history of bribery or other crimes. Review the culture of third party organisations and analyse the conduct of key executives; this could uncover links to organised crime, corruption or money laundering. Businesses should also scrutinise the nature of the services being provided by third parties and be very clear about compensation and payment methods. Written contracts with appropriate terms and conditions should be insisted upon, including warranties on compliance, the right to inspect audit books and records, and the right to terminate on reasonable suspicion of a violation.

Audit and monitoring

With compliance falling under Russia's anti-bribery legislation, ensuring effective processes and procedures are in place is crucial, irrespective of any likely enforcement. Establishing a clear anti-corruption policy with a strong commitment from senior management underpinned by an effective code of conduct is the starting point. This should be followed by regular staff and third party training, with enforced



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disciplinary measures and incentives for good conduct.

Internal and external systems for monitoring should be established from the outset and a confidential reporting process set up to act as an early warning system. Senior management must ensure that all national and international anti-bribery laws are adhered to and that a system is in place to deal with actual or suspected bribery. The compliance function should have a reporting line to independent directors and a system in place for reviewing procedures.

Russia is undoubtedly a market that presents tremendous opportunities yet significant corruption risks. Many businesses have successfully navigated this environment without recourse to corrupt activity and there are very many Russian business leaders equally determined to act in the same way. For firms that are prepared to develop relationships and ensure that tight procedures can be implemented, the returns can be rewarding.

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