



Q&A IN RELATION TO BRIBERY OFFENCES IN RUSSIA

Content Provided by DLA Piper

1. Legal Framework

What is the legal framework governing bribery in Russia?

- The Federal Law No. 273 On Fighting Corruption (2008, the Anticorruption Law) is the principal law on bribery in Russia. However, to date relevant legislation is not consolidated, so applicable provisions are found in a number of legal acts that directly or indirectly address matters related to corruption.
- For instance, the following federal laws address bribery matters: Russian Criminal Code (1996, the Criminal Code); Russian Code on Administrative Offences (2001, the Code on Administrative Offences), Law No. 2202-1 On Public Prosecution (1992), Law No. 3 On Police (2011), Law No. 79-FZ On Public Civil Service (2004), as well as a number of laws setting various limitations and restrictions on state officials and their assets; decrees of the president, the federal government and other executive bodies adopted between 2008 and 2013.
- The legislation in this area also includes a number of international treaties ratified by Russia: 2003 United Nations Convention against Corruption; 1999 Criminal Law Convention on Corruption No. 173 by the Council of Europe; and 1997 OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions.
- Laws of other states may also be applicable to certain situations in Russia. For instance, the UK Bribery Act (2010) and the US Foreign Corrupt Practices Act (1977) have a wide extraterritorial reach.

2. What Constitutes a Bribe?

What constitutes a bribe?

- Under the Criminal Code, bribery consists of two separate crimes that are committed simultaneously: giving a bribe and taking a bribe.
- The Anticorruption Law provides that a bribe involving money and other assets may be a property-related benefit, service or a favor, and must have a monetary value. Property-related services may include the transfer of property at a lower value, a reduction of lease payments or loan interest rates. If these benefits are provided to family members or friends of the official, with the official's approval or consent, and the official has used their official powers to the benefit of the briber, this also constitutes bribery.
- Commercial bribery is the illegal transfer of material assets to a legal entity's manager in connection with manager's position as well as the unlawful rendering of property related services, or the granting of other property rights to such manager for taking action (or refraining from action) in the interest of the bribe giver.

What are the principal offences under this legal framework?

- Receiving of a bribe (Article 290 of the Criminal Code);
- Giving of a bribe (Article 291 of the Criminal Code);
- Commercial bribery (Article 204 of the Criminal Code);
- Abuse of authority (Article 285 of the Criminal Code); and
- Unlawful participation in business activities (Article 289 of the Criminal Code).

3. Jurisdictional Reach

What is the jurisdictional reach of the legal framework?

- Any individual, regardless of their citizenship status, who conducts a bribery offence listed in the Criminal Code on the territory of the Russian Federation is subject to criminal liability under the Criminal Code.
- A Russian citizen who conducts a bribery offence listed in the Criminal Code, but outside of Russia, is subject to criminal liability under the Criminal Code in the absence of a foreign state court ruling in relation to such bribery offence.
- Foreign citizens are subject to criminal liability under the Criminal Code for bribery offences conducted outside of Russia, should (i) these offences be against interests of the Russian Federation and/or Russian citizens and (ii) these foreign citizens have not been held liable for the conduct in their states.
- Legal entities can be subject to administrative liability under the Code on Administrative Offences for bribery offences conducted on the territory of Russia. Legal entities are also subject to administrative liability under the Code on Administrative Offences for bribery offences conducted outside of Russia, should these offences be against the interests of Russia and such legal entity was not subject to criminal or administrative liability for the conduct in the foreign state.

4. Who may be liable?

Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

- Under the Criminal Code, only individuals (i.e. public officials and private individuals) may be held liable for crimes specified in the Criminal Code (including bribery offences).
- The Criminal Code does not set criminal liability for legal entities. However, the latter may be punished for corrupt activities under the Code on Administrative Offences.
- The liability of a legal entity does not exempt a culpable individual from liability, and vice versa.

Can a parent company be liable for its subsidiary's involvement in bribery?

- With regard to question 5 above, the potential administrative liability of a parent company would depend on the circumstances of the particular bribery case.

5. High Risk Areas

Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

- Yes, provided they meet the criteria set by law, facilitation payments are considered bribery, no matter how small the amount.

Does the legal framework restrict political and charitable contributions?

- A political or charitable contribution could be considered a bribe if it is given or received contrary to the order and procedure set by law or with the intention of inducing a person to act improperly, or as a reward for having done so.
- Political contributions to public officials will be considered bribes if they meet the criteria described in this note.

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Does the legal framework place restrictions on corporate hospitality?

- The Anticorruption Law and other applicable laws do not expressly recognize the term corporate hospitality as applied in other jurisdictions. Nevertheless, the law obliges Russian companies as well as representative offices and branches of foreign companies to develop and implement internal rules in the form of codes of ethics and policies for all employees to prevent bribery. Such internal anti-corruption rules have to comply with the Anticorruption Law as well as other applicable legislation and generally accepted rules.
- In addition to that the law sets a general restriction for public officials to receive remuneration from legal entities or individuals in cash or non-cash gifts (except for gifts with a value of up to RUB3,000 (USD45)).
- Whether hospitality amounts to a bribe would depend whether it falls within the criteria set by law in defining what constitutes bribery, commercial bribery or other bribery offences under the Criminal Code.

6. Legal Defences

Are there any defenses for bribery offences?

- There are no specific statutory defenses from liability set by the Criminal Code for receipt of bribe (Article 290 of the Criminal Code) or receipt of commercial bribe (Article 204 of the Criminal Code).
- However, an individual giving a bribe (Article 291 of the Criminal Code), giving a commercial bribe (Article 204 of the Criminal Code) or facilitating bribery (Article 291.1 of the Criminal Code) can be exempt from liability if (i) there was an extortion of bribe or (ii) such individual voluntarily informed the enforcement bodies about the given bribe or (iii) such individual actively contributed to investigation of the committed crime.

7. Regulatory and Enforcement Bodies

What are the key regulatory or enforcement bodies with regard to bribery?

- The general law enforcement authorities of Russia, such as the police, the Investigating Committee, the Federal Security Service, the Public Prosecution, the Customs Service etc. detect, investigate and prevent bribery offences.
- In addition to the above, certain state agencies are responsible for enforcement of anti-corruption measures, such as the President's Council on Counteracting Corruption (as a general supervising body) and the Ministry of Justice (conducts the anti-corruption screening of draft legal acts). Special parliamentary committees monitor the income and assets of the members of Russian Parliament.

8. Legal Consequences

What are the legal consequences of being found guilty of bribery offences?

- Individuals are subject to the following legal consequences of being involved in bribery offences:
 - liability to reimburse losses in full (under the Russian Civil Code);
 - disciplinary actions resulting in the termination of employment (under the Russian Labour Code);
 - up to ten years' imprisonment for abuse of authority;
 - up to eight years' imprisonment for commercial bribery (for the bribe giver);
 - up to 12 years' imprisonment for abuse of authority in conjunction with commercial bribery;

- up to 15 years' imprisonment for a public official who receives a bribe;
 - up to 15 years' imprisonment for bribe giving;
 - disqualification of a bribed public official from holding public office for up to 15 years;
 - up to seven years' imprisonment for facilitating bribery in commercial and other organizations; and/or
 - up to 12 years' imprisonment for facilitating bribery of public officials.
- In addition to or instead of the abovementioned liability, those giving or receiving bribes (including commercial bribes) may be fined 10 to 100 times the amount of the bribe offered/received.
 - Legal entities face no criminal liability, but may be prosecuted for:
 - the illegal employment of a current or former public official, carrying a fine up to RUB500,000 (USD7 570); and
 - the illegal payment of a bribe on behalf of a legal entity, carrying a fine of at least RUB1 million (USD15,150) plus seizure of the amount paid.

9. Deferred Prosecution Agreements

Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

- Russian law provides for bribery offences to be to some extent resolved by a number of settlement mechanisms, though with certain limitations and exclusions:
 - Special order of criminal case adjudication can be applied by the court with the prosecutor's agreement if the accused agrees to plead guilty, and the penalty for the crime such individual is accused of does not exceed ten years' imprisonment. If such special order is applied, a ruling holding the accused liable is rendered without opening court proceedings and investigating the case by the court. The applied penalty cannot exceed two-thirds of the maximum penalty set by the Criminal Code for the respective offence.
 - The abovementioned special order of criminal case adjudication can also be applied to any bribery offences (irrespective to the ten years' imprisonment general limitation) if the suspect/the accused enters into a pre-trial agreement with the state prosecutor and undertakes to actively contribute to case investigation, uncover their accomplices and seek property gained as a result of the conducted offense. Should such agreement be entered into and the suspect/the accused diligently contributes to case investigation, the court adjudicates the case in the special order and can at its sole discretion apply (i) a lesser sentence than that set by law, (ii) a conditional sentence or (iii) even release from serving a penalty.
 - In the event of limited reasonable excuses, the court can at its discretion postpone imprisonment for a certain period of time. The court can also provide the convicted person with an option to pay an imposed fine with installments or with an up-to-five years deferral, should immediate payment of the fine be impossible for the convicted.

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Content Correct as of June 2019.

Cover Image: Transparency International Corruptions Perception Index 2018