

Unclassified

DAF/WGB(2013)29/FINAL

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

22-Oct-2013

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

RUSSIAN FEDERATION PHASE 2: FINAL REPORT

**FINAL REPORT ON THE IMPLEMENTATION AND APPLICATION OF THE CONVENTION ON
COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN
INTERNATIONAL BUSINESS TRANSACTIONS AND THE 2009 RECOMMENDATION OF THE
COUNCIL FOR FURTHER COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN
INTERNATIONAL TRANSACTIONS**

The Working Group adopted this report on 11 October 2013.

For further information, please contact Mr. Frédéric Wehrle (Tel: +33145241787,
E-mail: frederic.wehrle@oecd.org).

JT03346921

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

DAF/WGB(2013)29/FINAL
Unclassified

English - Or. English

TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
A. INTRODUCTION	6
1. The On-Site Visit	6
2. General Observations	7
(a) Economic background and international economic relations	7
(b) Political and Legal Systems	8
(c) Implementation of the Convention and the 2009 Recommendations	9
3. Overview of corruption trends and recent measures	9
(a) Corruption overview	9
(b) Cases Involving the Bribery of Foreign Public Officials	10
4. Outline of the Report	11
B. PREVENTION, DETECTION AND AWARENESS OF FOREIGN BRIBERY	11
1. General Efforts to Raise Awareness	11
(a) Government initiatives	11
(b) Private Sector Initiatives to Raise Awareness	14
2. Reporting and whistleblowing	16
(a) Reporting of suspicions of transnational bribery by public employees	16
(b) Reporting of suspicions of transnational bribery by whistle-blowers in the private sector	17
3. Officially Supported Export Credits	19
(a) Awareness-Raising Efforts	19
(b) Detection and Reporting of Foreign Bribery	19
4. Official Development Assistance (ODA)	20
5. Defence Exports	21
(a) Awareness-Raising Efforts	22
(b) Detection and Reporting of Foreign Bribery	22
6. Foreign Diplomatic Representations	23
(a) Awareness-Raising Efforts	23
(b) Detection and Reporting of Foreign Bribery	23
7. Tax Authorities	24
(a) Non-Deductibility of Bribes	24
(b) Awareness, training and detection	24
(c) Mechanisms to facilitate reporting to law enforcement	25
(d) Sharing of Information	26
8. Accounting and Auditing	27
(a) Awareness and Training	27
(b) Accounting and Auditing Standards	28
(c) Internal controls, corporate codes and audit committees	28
(d) External Auditing	30
(e) Duty to Report Foreign Bribery	31
9. Detection through Anti-Money Laundering mechanisms	34
(a) Suspicious transactions reporting and customer due diligence measures	34

(b)	Resources and training.....	36
(c)	Awareness and exchange of information.....	36
C.	INVESTIGATION, PROSECUTION AND SANCTIONING OF FOREIGN BRIBERY AND RELATED OFFENCES	38
1.	Investigation and Prosecution	38
(a)	Institutional Framework.....	38
(b)	The Conduct of Criminal Investigations and Prosecutions.....	47
(c)	Principles of investigation and prosecution	52
(d)	Jurisdiction.....	54
(e)	Statute of limitations	56
(f)	Mutual Legal Assistance and Extradition	58
2.	The Offence of Foreign Bribery.....	62
(a)	Background.....	62
(b)	Elements of the Offence.....	63
3.	Liability of legal persons.....	74
(a)	The legal basis for liability of legal persons in Russia.....	74
(b)	Investigation and prosecution of corruption offences committed by legal persons.....	78
4.	Adjudication and sanction of the foreign bribery offence.....	80
(a)	Sanctions against natural persons	80
(b)	Sanctions against legal persons.....	82
(c)	Confiscation	83
5.	The Offence of Money Laundering.....	85
(a)	Scope of the Money Laundering Offence	85
(b)	Sanctions for Money Laundering and enforcement of the Money Laundering Offence	86
6.	Accounting offences.....	87
7.	Sanctions in relation to public advantages	88
D.	RECOMMENDATIONS OF THE WORKING GROUP AND FOLLOW-UP.....	89
	ANNEX 1 – LIST OF PARTICIPANTS TO THE ON-SITE	98
	ANNEX 2 – LIST OF ACRONYMS	103
	ANNEX 3 – RELEVANT LEGISLATION	104

EXECUTIVE SUMMARY

The Phase 2 Report on Russia by the OECD Working Group on Bribery evaluates and makes recommendations on Russia's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. While Russia has undertaken efforts to implement the Convention, the Working Group remains concerned that Russia has not responded to key Phase 1 recommendations. These recommendations relate to the foreign bribery offence, the defence of effective regret and confiscation. In particular, provisions on the foreign bribery offence must be expeditiously expanded to address the Group's concerns. While recognising that the Convention entered relatively recently into force in Russia, in April 2012, Russia must step up its efforts to raise awareness of and enforce the foreign bribery offence within both the public and private sector, as highlighted in this Report.

The report describes several areas in which Russia's implementation of the Convention and related instruments falls short. The Working Group is particularly concerned by the deficiencies in Russian law on the foreign bribery offence and urges Russia to adopt appropriate legislation as a matter of high priority. Russia should in particular ensure that individuals are held liable for foreign bribery including in cases of offer and promise of a bribe, when the bribe takes the form of non-material advantages and in situations where the payment of the bribe is made to third party beneficiaries. As stated in the Phase 1 report, Russia should also eliminate the defence of "effective regret" as it applies to foreign bribery. With regard to liability of legal persons, Russia should strengthen its legal framework and ensure implementation of Article 2 of the Convention.

In addition to the areas enumerated above, the Phase 2 report also notably recommends that Russia review its legal framework and implementation in relation to seizure and confiscation against natural and legal persons in order to comply with Article 3 of the Convention. Further, Russia should ensure that the false accounting offences cover all of the activities described in the Convention and are subject to effective, proportionate and dissuasive sanctions. The Working Group will also follow-up on whether the current bases for territorial and nationality jurisdiction are sufficiently broad to cover cases of bribery through intermediaries (including related legal persons) as well as instances of bribery occurring abroad. The report also notes that Russia has to adopt and implement further appropriate measures to protect whistle-blowers in both the public and private sectors from discriminatory or disciplinary action for reporting suspected acts of foreign bribery.

Thus far no cases of foreign bribery have been detected, investigated or prosecuted. The Working Group believes this inadequacy could be addressed if Russia devoted sufficient resources specifically to the enforcement of foreign bribery and adopted a more proactive approach to its detection and investigation. In this regard, the Working Group recommends that Russia consider specifically tasking specialised units with detecting and investigating foreign bribery, and enhance coordination between investigators and prosecutors. The Working Group further recommends that Russia provide regular focused training to investigators and prosecutors, including reminders of the importance of actively looking into all possible sources of detection of foreign bribery and related accounting offenses. Russia should also enhance coordination between investigative, operational and prosecutorial bodies, in addition to other state institutions such as foreign embassies, the tax administration and the Financial Intelligence Unit, with respect to these cases. Russia should also strengthen safeguards to ensure that investigations and

prosecutorial and judicial decisions cannot be affected by the considerations prohibited under Article 5 of the Convention.

The report notes some positive aspects of Russia's implementation of the Convention and related instruments, amongst which is the explicit disallowance of the tax deductibility of bribes to foreign public officials; the introduction by the Ministry of Foreign Affairs and Ministry of Economic Development of a requirement for diplomatic representatives and trade officials abroad to report suspected foreign bribery; and the recent statutory requirement for companies in Russia to have anti-corruption measures in place. Moreover, Russia has assisted other Parties to the Anti-Bribery Convention in their investigations of foreign bribery allegations.

The report and the recommendations therein, which reflect findings of experts from Slovenia and the United States, were adopted by the OECD Working Group on 11 October 2013. Russia will make a special written follow-up report on its implementation of the recommendations before the end of 2014. The report is based on the laws, regulations and other materials supplied by Russia. It is also based on information obtained by the evaluation team during its five-day on-site visit to Moscow in May 2013, during which the team met with representatives of the Russian public administration, the private sector, civil society and the media.

A. INTRODUCTION

1. The On-Site Visit

1. On 13–17 May 2013, a team from the OECD Working Group on Bribery in International Business Transactions (the Working Group) visited Moscow as part of the Phase 2 peer evaluation of Russia’s implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention), the 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business (the 2009 Recommendation) and the Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions (the 2009 Tax Recommendation). The purpose of the visit was to evaluate Russia’s enforcement of its legislation implementing the Convention and compliance with the 2009 Recommendations.

2. The evaluation team was composed of lead examiners from Slovenia and the United States as well as members of the OECD Secretariat¹. Prior to the visit, Russia provided written responses to the Phase 2 questionnaires, as well as translations of relevant legislation and additional materials requested by the evaluation team. Following the visit, the Russian authorities answered clarification requests. This Phase 2 report reflects the Russian authorities’ written responses to the general and supplementary Phase 2 questionnaires, interviews with experts during the on-site visit and review of relevant legislation and independent analyses conducted by the lead examiners and the Secretariat. The lead examiners are grateful to Russia for its co-operation throughout the evaluation process.

3. The on-site visit² was attended by Russian officials from various ministries and governmental agencies, as well as judges from the Russian Federation (RF) Supreme Court and other courts with experience in domestic bribery cases. Although the General Prosecutor’s Office (GPO) was present at the beginning of the on-site, they did not participate the entire week. Non-governmental representatives were also invited, but in general, the lead examiners were disappointed by the failure of the Russian authorities to draw private sector and civil society participants to the on-site visit. Only two companies attended the discussions; no small- or medium-sized enterprises (SMEs) were represented (although the business association “Support of Russia”, whose membership comprises SMEs, was present). The lead examiners were also unable to meet with representatives of the defence industry as none attended the on-site. The underrepresentation of accountants and auditors also presented a challenge to the evaluation process as it did not allow for a sufficiently diverse expression of views. Finally, civil society participation was also very low. As allowed by the Phase 2 procedure, representatives of Russia attended meetings with non-governmental representatives³. They were overly represented in several of these panels, which may have had a chilling effect on some of the discussions. The lead examiners are nevertheless grateful to all the participants for their goodwill during the discussions.

¹ Slovenia was represented by Mr. Goran Klemencic, Head of Delegation, Chief Commissioner, Commission for the Prevention of Corruption; Ms. Liljana Selinšek, Deputy Chief Commissioner, Commission for the Prevention of Corruption, and Ms. Maja Veber Šajn, State Prosecutor, Office of State Prosecutor General. The United States were represented by Mr. Mark Bocchetti, Head of Delegation, U.S. Department of State; Mr. James Koukios, U.S. Department of Justice; Ms. Kathryn Nickerson, U.S. Department of Commerce; and Ms. Tracy Price, U.S. Securities and Exchange Commission. The OECD Secretariat was represented by Mr. Patrick Moulette, Head of the Anti-Corruption Division, Directorate for Financial and Enterprises Affairs; Mr. Nicola Bonucci, Head of Legal Department; Dr. Frederic Wehrle, Phase 2 Evaluation Coordinator, Anti-Corruption Division; Ms. Kathleen Kao, Legal Analyst, Anti-Corruption Division; Ms. Tanya Khavanska, Legal Analyst, Anti-Corruption Division; and Mrs. Catherine Marty, Legal Analyst, Anti-Corruption Division.

² See Annex 1 for the list of participants.

³ See Section V.B.6 of the Revised Guidelines for Phase 2 Reviews, which states that representatives of the examined country’s government may be present as observers at all non-governmental panels but not participate in the discussions.

2. General Observations

4. Russia (having a population of nearly 143 million people as of 2013) is located in northern Eurasia. Russia has international borders with 14 States. It borders several EU countries to the West; China, Kazakhstan, Mongolia and North Korea to the South; and the United States to the East.

(a) *Economic background and international economic relations*

5. Russia has undergone significant changes since the collapse of the Soviet Union, moving from a centrally planned economy to a more market-based and globally integrated economy⁴. Russia has the 11th largest economy in the world by nominal GDP; it also has the highest per capita GDP of the BRIC countries⁵. In 2011-12, Russia continued to recover from the financial crisis and demonstrated some positive results. Due to high oil prices, growing consumer demand and government investment, GDP grew by 4.3% in 2011 and 3.5% in 2012, while industrial production increased by 4.7% in 2011.

6. In the area of international trade, Russia is the world's largest oil producer and the biggest exporter of natural gas, nickel and palladium. Metals and energy make up more than 80% of Russia's exports (two-thirds of Russia's exports come from oil and gas). Russia also ranks as the world's second largest arms exporter after the United States, with EUR 10.3 billion worth of exports in 2012⁶, which account for over 16 % of all international arms supplies. According to the Stockholm International Peace Research Institute (SIPRI), 11 Russian firms are among the world's largest arms-producing companies⁷. Russia exports weaponry to over 100 countries, with India, Algeria, China, Venezuela, Malaysia and Syria as main customers⁸. Overall, without making a distinction between industrial sectors, Russia's main trading partners are: the European Union (accounting for almost half of total exports), China (in 2011, Russia's largest trading partner in crude oil and natural-resource products), Turkey and Ukraine.

7. The progressive integration of Russia into the global economy is also shown by flows of capital⁹. In 2012, the majority of FDI inflows went into the Russian manufacturing system. The EU is by far the most important investor for Russia: up to 75% of FDI in Russia came from EU member countries in 2012. Russian investors have also increased their investment abroad. According to OECD statistics, Russia investment abroad totalled EUR 36.7 billion in 2012, accounting for 2.9% of world total FDI.¹⁰ The geography of Russian corporate expansion is diverse. Russian companies operate in their traditional markets – former Soviet republics, now the members of the CIS. Russian companies have expanded their presence in the EU as well, primarily in The Netherlands, the UK, Italy, Germany and France in Western Europe, and Romania, Latvia and Czech Republic in Eastern Europe. Among non-EU European countries, Switzerland is the prime target for Russian acquisitions. The Northern American market, consisting of USA and Canada, represents another destination for Russian companies.

8. Many SMEs are now represented in Russia alongside large, well-established multinational companies. According to data of Federal State Statistics Service there were over one million SMEs registered in Russia in 2009¹¹. In addition, of about a total of 4.8 million registered businesses, the State

⁴ For detailed economic data, see *Economic Survey of the Russian Federation 2011* (OECD, December 2011).

⁵ In economics, BRIC is a grouping acronym that refers to the countries of Brazil, Russia, India and China, which are all deemed to be at a similar stage of newly advanced economic development. It is typically rendered as "the BRIC countries"

⁶ See http://en.rian.ru/military_news/20121217/178216645.html

⁷ See <http://www.sipri.org/>

⁸ See http://en.rian.ru/mlitary_news/20120215/171331930.html

⁹ Source: "FDI in Figures", OECD/DAF Investment Division Annual Quarterly.

¹⁰ *Ibid.* (April 2013)

¹¹ www.gks.ru/bgd/regl/b08_47/Main.htm

owns almost 120,000 and a further 240,000 are owned by municipalities according to official estimates¹². Further, there exist many vertically integrated structures where the State owns or controls the parent company, which holds shares in companies lower down the structure. Examples include Rosoboronexport (defence industry) and Gazprom (one of Russia's leading energy companies, holding world's largest natural gas reserves). Businesses owned or controlled by the State tend to operate in strategic sectors such as nuclear, military, and energy. Calculations put the size of the state-owned sector in Russia at around 40% of GDP¹³. This illustrates the important role the State plays in the economy.

(b) Political and Legal Systems

9. Russia is a federal state. The federal legislative branch consists of the State Duma (the Lower House of Parliament) and the Federation Council (the Upper House). The President is Russia's Head of State. Russia consists of 83 Federal Subjects that differ in degree of autonomy, depending on their status (republic, territory, oblast, autonomous oblast, autonomous region or federal city). Nonetheless, all Federal Subjects are equally represented in the upper house of the Russian parliament. Federal Subjects are subject to the federal level and its legal and policy framework. Additionally, there are seven Federal Districts to ensure implementation of federal decisions in all 83 Federal Subjects. The laws of the Russian Federation are embodied in the Constitution, federal laws enacted by the federal legislature, presidential decrees, government regulations issued by agencies and the laws of the Russian Federation constituent entities, e.g. the republics. Criminal and administrative law and procedure, and international relations are within the competence of the Russian Federation.

10. Russia is a civil law country. The judicial branch involves different courts. The Supreme Court is the ultimate judicial body for courts of general jurisdiction (civil, criminal and administrative cases). Those courts, including the Supreme Court, are competent to consider foreign bribery cases. According to Article 126 of the Constitution, one of the duties of the Supreme Court is to "provide explanations on the issues of court practice" through Resolutions, which provide recommendations on the interpretation of particular provisions of law¹⁴. The Supreme State Arbitrazh Court is the highest instance for economic disputes appealed from the lower level arbitration courts; these courts do not have jurisdiction over foreign bribery.

11. The law enforcement system comprises various bodies, including the Investigative Committee, which has exclusive investigative jurisdiction over foreign bribery offences committed by natural persons. The Prosecutor General's office is responsible for administrative investigations conducted against legal persons. Other law enforcement bodies, such as the Ministry of Internal Affairs (MIA) and the Federal Security Service (FSS), also may be involved in the conduct of investigations in connection with foreign bribery as directed by the Investigative Committee or the GPO, particularly to conduct special operations. They may also be instrumental in detecting foreign bribery.

12. The Constitution recognizes the norms of international law and international conventions to which Russia is a signatory as part of the domestic legal system. Treaties to which Russia is a party prevail over domestic law in case of conflict. In addition to being a Party to the Anti-Bribery Convention (hereinafter referred to as the Convention), Russia ratified the UN Convention against Corruption

¹² From a legal perspective, many SOEs have the same status as private companies. There are, however, some statutory corporations with a distinct legal status provided by their enabling legislation. Statutory corporations include State corporations that are government-funded enterprises tasked with promoting public objective. Russia furthermore has unitary enterprises, which are entirely controlled by public authorities and all their assets are owned by the state at the federal, regional or municipal level. See: "State-Owned Enterprises. Trade Effects and Policy Implications", *OECD Trade Policy Papers* No. 147.

¹³ See *OECD Corporate Governance of State-Owned Sector in the Russian Federation* (October 2012).

¹⁴ According to the Statute "On the Judicial System of the RSFSR" (Article 56), still in force, explanations introduced by the Plenary Meeting of the Supreme Court are binding for both the courts of law and other State bodies, as well as for State officials who apply the law. Courts must strictly follow such recommendations; otherwise, decisions contrary to the recommendations of the Supreme Court might be reversed.

(UNCAC) in 2006. Russia is also a party to the Council of Europe Criminal Law Convention on Corruption (ratified in 2006), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratified in 2001) and the UN Convention against Transnational Organized Crime (ratified in 2004). Additionally, Russia is a member of the APEC Anti-Corruption Task Force, the G20 Anti-Corruption Working Group, the Council of Europe's Group of States Against Corruption (GRECO) and the OECD-hosted regional Anti-Corruption Network for Transition Economies (ACN). Finally, Russia is also a member of both the Financial Action Task Force (FATF) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

(c) Implementation of the Convention and the 2009 Recommendations

13. Russia deposited its instrument of accession to the Convention on 17 February 2012. The Convention entered into force for Russia on 17 April 2012. On 16 May 2011, Russia entered into force its implementing legislation in the form of "Amendments to the Criminal Code and the Code of Administrative Offences of the Russian Federation in Relation to the Enhancement of Public Governance in the Area of Counteraction to Corruption" (Federal law N° 97-FL), which created liability for both natural and legal persons for the offence of foreign bribery.

3. Overview of corruption trends and recent measures

(a) Corruption overview

14. Russia has experienced a number of high profile corruption cases in public sector agencies, and in the regions. These have produced considerable publicity and debate. According to various national and international reports, corruption is a serious and persistent national problem, although such reports recognise that Russia has made progress in its anti-corruption efforts. The level of corruption in Russia today has been well documented. According to the Global Corruption Barometer survey commissioned by Transparency International covering the period from September 2012 and March 2013, 37 % of Russian citizens believe that corruption has increased "significantly" in the last two years, while another 13 % are of the opinion that the situation has deteriorated, and 39 % believe that the level of corruption has not changed. The same survey shows that Russian citizens still seem to view Russia's public and law enforcement agencies as affected by corruption. In 2012, an overwhelming 92% perceived their public servants in the state and government agencies as corrupt, followed by the police, at 89%, the parliament (84%), and the judiciary (83%)¹⁵.

15. The uneven application of law in some instances, corruption with law enforcement and weak judicial system have attracted fierce criticism from Russian and international observers, and were also mentioned during the on-site visit. Instances of reported selective or predatory enforcement of the law for political or undue special interests raise legitimate concerns with respect to Article 5 of the Convention¹⁶. In particular, concerns have been expressed about an impression of tolerance for predatory use of law against business. Commissioned criminal investigations and inspections of the target business, or purchased judicial orders, have been described by analysts as common tactics¹⁷.

16. In recognition of the business community's concerns over enforcement, in June 2012 Boris Titov, former head of the business organization "Delovaya Russia", was appointed by the Head of State as

¹⁵ Transparency International Global Corruption Barometer 2013

¹⁶ See below the section of the report on the judiciary

¹⁷ One analyst, based on a survey of Russian media from 1999-2010, cited 312 cases of raiding that "ranged from restaurants, hotels and tourist centres over car dealers, smaller supermarkets and specialized shops to agricultural companies, local housing service providers, transport companies or scientific research institutes." M. Rochlitz, *Corporate Raiding and the Role of the State in Russia*, IMT Institute for Advanced Studies Lucca (Italy), 31 October 2012.

Ombudsman for the business community to engage in a dialogue with the Russian authorities on possible solutions. The Ombudsman, arguing that as many as 100,000 entrepreneurs were found criminally liable, pushed for an amnesty that passed the State Duma on July 2, 2013¹⁸. Business representatives at the on-site voiced support for the ombudsman's efforts, and were encouraged that the government was addressing the issue. Lawyers interviewed at the on-site, however, were generally more skeptical of the legal basis and arbitrary nature of such broad amnesty programs, although a few lauded the recognition of the problem by the Ombudsman's office.

17. In response to the corruption challenges, a number of actions have been taken. An Executive Order on the National Anti-Corruption Plan for 2012-2013¹⁹ included a series of measures to fight corruption in Russia by: providing training to public servants on how to combat corruption; restricting contracts between government and commercial organizations in which state officials and major shareholders are close relatives; creating a feedback system for improvement of the anti-corruption plan, and other measures²⁰. As noted above, the position of Federal Business Ombudsman (with forthcoming regional ombudsmen) was created in June 2012 to protect business people from administrative and legal abuse by state agencies. Earlier, in 2010, a Centre for Public Procedures "Business Against Corruption" – bringing together representatives of federal government agencies, Russia's business community, experts in the field of law and economics – was established to examine claims of entrepreneurs related to situations of corruption and raiding. The Russian Government has also created an Anti-Corruption Council as well as a Working Group on cooperation between the government and business groups along with an Anticorruption Charter to improve anticorruption efforts in the business community²¹. The continuous adoption of amendments to the domestic legal anti-corruption framework, the establishment of liability of legal persons for corruption offences, as well as several state-led anti-corruption initiatives also have aimed to tackle the scourge of corruption.

18. Many of these reforms illustrate willingness on the part of the Russian government to acknowledge the problem of widespread corruption in Russia and to take practical measures to address it. This appears to be a worthwhile goal which, in time, could have an indirect influence on foreign bribery investigations and prosecutions. Legal and business representatives at the on-site visit seemed hopeful that the judicial environment was improving. They also cited an unprecedented amount of cooperation and communication between the Russian government, including law enforcement, and the private sector at recent conferences and through government established working groups. The examiners note that the government's efforts nevertheless mainly address the issue of domestic corruption, while the fight against transnational bribery necessitates that resources and attention be given to the investigation and enforcement of foreign bribery measures as well. The lead examiners note in this context that, although the Russian authorities have committed to combat corruption at the international level through accession to the Convention and other international legal anticorruption instruments and initiatives, Russia's attention has thus far mainly focused on its implementation in respect of bribes given by foreign companies to Russian public officials.

(b) Cases Involving the Bribery of Foreign Public Officials

19. Russia, at the time of the on-site visit, had not recorded any investigations or convictions for the offence of bribery of foreign public officials in the context of international business transactions investigations. According to the officials met at the on-site, Russia has not even detected any instances of foreign bribery. By contrast, Russian authorities have been active in the investigation and prosecution of domestic bribery. In 2012, the Prosecutor General's Office recorded a 25% year-on-year increase in the

¹⁸ *Ria Novosti*, 7 July 2013

¹⁹ Office of the President, Russia. 13 March 2012.

²⁰ Office of the President, Russia. 30 December 2012

²¹ See Section B.1.a) of the report for further detail

number of corruption-related cases²². While recognizing that combating domestic corruption is crucial, the lead examiners are of the view that Russia should also be dedicating resources to detecting and investigating the foreign bribery offence, particularly as Russia becomes a larger exporter and its companies engage more frequently in international business transactions.

4. Outline of the Report

20. This report is structured as follows: Part B examines Russia's efforts to prevent, detect and raise awareness of foreign bribery; Part C looks at the investigation, prosecution and sanctioning of foreign bribery and related offences; and Part D sets out the Working Group's recommendations and issues for follow-up.

B. PREVENTION, DETECTION AND AWARENESS OF FOREIGN BRIBERY

1. General Efforts to Raise Awareness

21. Section III of the 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions recommends that each Party to the Convention "take concrete and meaningful steps in conformity with its jurisdictional and other basic legal principles to examine or further examine awareness-raising initiatives in the public and private sector for the purpose of detecting foreign bribery".

(a) Government initiatives

(i) General awareness of the public

22. Corruption generally is an important topic of public debate in Russia, in the government, civil society and the media. Over the past years, the Russian authorities have established institutional mechanisms to increase the ability of citizens to participate in the anti-corruption debate. One example of such a mechanism is the Anti-Corruption Council, established in 2008²³. The main objective of the Council is to develop a common anti-corruption policy. Chaired by the Head of State, it consists of representatives of key public bodies (Presidential Administration, Prosecutor General's Office, Investigative Committee, Ministry of Justice, etc.) as well as representatives of the civil society and the scientific community. The Council has been given various missions: to elaborate proposals for the state policy to counteract corruption (the national anti-corruption plans), to coordinate activities of executive bodies at federal, regional and local level in the implementation of the national plans and to monitor their implementation. In the framework of the latest Plan adopted by presidential decree on 13 March 2012, one of the tasks given to the Council is to arrange meetings to discuss a number of issues, including monitoring of Russia's implementation of the Convention²⁴.

²² Ria Novosti, 17 April 2013

²³ The Presidential Anti-Corruption Council was established by Presidential Decree No. 815 on "Measures Against Corruption," dated May 19, 2008, to "create an anti-corruption system in Russia and to eliminate the root causes of corruption".

²⁴ *National anti-corruption plan for 2012-2013*, section 3 a), annexed to Russia's Replies to the Questionnaire

23. Such initiatives have been regarded by NGOs who attended the on-site discussions as a positive sign. In particular, work at the federal level with ministries such as the Ministry of Economic Development on issues related to business and corruption was described by NGOs as “proactive”. However, against this background, the laws adopted in 2012 by the Russian Federation on criminalisation of defamation, protests, and foreign-funded NGOs were described by civil society organisations during the on-site visit as a step backward²⁵. Specifically the law on “foreign agents” that was passed in July 2012 requires all non-government organisations that are involved in broadly defined political activities²⁶ and receive directly or indirectly any financing from abroad to register as a “foreign agent” with the Ministry of Justice and to file reports to authorities on a quarterly basis. Legal actions have been undertaken against those that have failed to carry out such registration, including the Russian chapter of leading anti-corruption group Transparency International, and several prominent NGOs announced they might be forced to close down²⁷. After the on-site visit, Russia explained that the purpose of the law is to provide adequate control of funding for non-for-profit organisations and transparency in this process, and stressed that this law is not aimed to curb the anti-corruption activities of NGOs.

24. The lead examiners believe that, given the critical role that an active civil society can play in raising awareness about corruption and transparency, it is important that NGOs in Russia can continue to be freely engaged in *bona fide* anti-corruption activities and that no undue burden be placed on them in carrying out such activities. This is even more relevant given that the team found little evidence of awareness among the participants of the foreign bribery offence under Russian law. As stated by media representatives at the on-site, foreign bribery is not the most urgent priority facing Russian citizens, who are more concerned about domestic corruption, and most are unaware of Russia’s foreign bribery regime.

(ii) *Awareness of public officials*

25. Russian public officials as well as business and civil society representatives participating in the on-site visit all appeared broadly aware of the Convention and the criminalisation of foreign bribery under Russia’s law. However, while Russia has undertaken a range of measures to raise awareness of domestic corruption and established various working groups and committees designed to place corruption squarely at the centre of interagency debate, government-led initiatives *specifically focusing on foreign bribery* have been very limited in comparison with such efforts, as discussed later in the report. In the lead examiners’ opinion, transnational bribery should be more closely integrated into the existing anti-corruption work and current training of public officials at the federal and also regional and municipal levels.

(iii) *Awareness-raising of businesses and assistance to companies*

26. The federal authorities have recently increased their efforts to raise awareness on corruption among companies. The main vehicle for such awareness-raising efforts and involvement of the business sector has been, since 2012, a working group on cooperation of business community and government bodies in combating corruption. Headed by the Ministry of Economic Development and made up of representatives of other federal state agencies and of leaders of the “big four” associations of Russia’s business community – the RF Chamber of Commerce and Industry, the Russian Union of Industrialists and

²⁵ See, for example, the Council of Europe and the EU as well as the Russian Human Rights Council (“*Open Address of the Russian Human Rights Council to the Parliamentary Assembly of the Council of Europe*”, 5 September 2012) on this matter.

²⁶ According to the Russian authorities’ explanation of the law, an NGO is deemed to be engaged in political activities when, regardless of the goals stated in its charter documents, the NGO organizes and participates in political acts aimed at influencing decision-making by public authorities, intended to change government policy, or intended to shape public opinion with respect to government decision-making or policy. Political activity does not include activity in the following fields: science, culture, art, health, social support, defence of motherhood/children, support for the disabled, environmental protection, philanthropy, and volunteerism.

²⁷ See the 14 June 2013 [Joint Statement from the G20 Civil Society Summit in Russia](#); see also an article in the New York Times, “Raids in Russia Target ‘Foreign Agents’” (29 March 2013) linked [here](#)

Entrepreneurs, the national organisation “Business Russia” and the national organisation of SMEs “Support of Russia” – the group’s purpose is to provide for the practical participation of businesses in Russia’s anti-corruption efforts. A significant development that took place in the context of this group is the recent adoption of an “Anti-Corruption Charter” for businesses. Signed in September 2012 by Russia’s above-mentioned business associations, it is open for signing by companies, including foreign companies carrying out their activities in Russia, and by business organisations and professional associations.

27. Although signing the Charter is voluntary, it provides a model for prevention as it introduces to the business community general features of an effective anti-corruption program. In particular, the Charter recognizes the importance for companies to have programmes or measures for preventing and detecting corruption in their business operations (Sections 1 and 2), the need for a system of financial procedures, including a system of internal controls, to ensure the maintenance of fair accounts (Section 3), and the need for measures designed to ensure training for the company’s employees on the company’s anti-corruption policy as well as public disclosure of its policy (Sections 4 and 5). Other hallmarks include measures applicable to third parties, including due diligence procedures (Section 7). The Charter intends to address all forms of corruption. Specifically on foreign bribery, it contains one provision in Section 12 based on the basic offence in Article 1 of the Convention; it provides that “companies shall abstain from promising, offering or giving any undue benefits to a foreign public official or an official of an international public organization, directly or through intermediaries, for this official or other natural or legal person, so that this official act or refrain from acting while exercising his/her official duties, in order to obtain or retain business or other improper advantage”²⁸.

28. At the on-site, Russian authorities also presented the new legal requirement for companies to take anti-corruption measures as an additional tool for, and further contributing to awareness-raising of Russia’s business community. This requirement, established under a new Article 13.3 of the Federal Law on Combating Corruption, entered into force in January 2013. Its practical effect is that the development of anti-corruption measures is now a statutory requirement for all organisations that do business in Russia. Although Article 13.3 does not obligate them to implement any specific measure, it provides for a list of six suggestions for what anti-corruption measures may include²⁹.

29. Information exchange and participation in joint events with private organisations have since then taken place with the view to raise awareness about both the Charter and Article 13.3. For example, businesses were informed about the Charter and Article 13.3 at a conference organised in March 2013 by the Russian Union of Industrialists and Entrepreneurs in the framework of the annual Russian Business Week on the topic “Government and Business in the Fight Against Corruption: International Standards and Russian Experience”. Instructions have also been given to the Ministry of Foreign Affairs and the Ministry of Economic Development to promote the Charter as widely as possible. Legal and business representatives at the on-site cited growing cooperation and communication between the Russian government, including law enforcement, and the business sector at recent conferences such as the one mentioned above, as well as through government established working groups.

30. These initiatives bear witness to the attention the government is devoting to engage Russia’s businesses in the fight against corruption. It nevertheless appeared at the on-site that none of them so far had specifically targeted foreign bribery risks and the OECD anti-bribery instruments. During the on-site visit, the authorities expressly acknowledged that government initiatives to raise awareness of foreign

²⁸ The Charter translated into English by Russia can be found [here](#).

²⁹ According to this Article, the corruption-preventive measures may include: (i) establishment of units or officials responsible for the prevention of corruption; (ii) cooperation with law enforcement authorities; (iii) development of anti-corruption standards and procedures; (iv) adoption of a code of conduct; (v) prevention of conflict of interest; (vi) prevention of the creation and use of forged documents. An analysis of Article 13.3 from the perspective of administrative liability of companies is provided in section C.3 of the report.

bribery require strengthening. They, together with representatives of businesses, confirmed that internal discussions were currently underway as to how to raise awareness. They outlined future plans, including the development of sector-specific guidelines and recommendations on the application of the Charter as part of the working group mentioned above, and the development by the Ministry of Labour and Social Protection, together with other relevant federal agencies and Russia's four big business associations, of guidelines on the basis of international good practices in relation to Article 13.3³⁰. According to information provided by Russia after the on-site, the guidelines will include a description of the measures recommended in Article 13.3, a set of model documents for the practical implementation of these measures, as well as information about existing anti-corruption regulations and liability for corruption-related offences. In addition, the guidelines will draw attention to the need for training employees on anti-corruption compliance, business ethics and conflicts of interest. Other plans include the posting of information in relation to the Convention on the websites maintained by the ministries for economic development and foreign affairs and further awareness-raising campaigns with the business sector. At the time of the discussion of this Report by the Working Group, Russia reported that such guidelines had now been developed by the Ministry of Labour and should be soon distributed to business organisations and unions.

31. The Ministry of Foreign Affairs, the Ministry of Economic Development, and the Ministry of Labour and Social Protection should follow up and report to the Anti-Corruption Council on their progress and implementation of such plans. As suggested by the lead examiners to the representatives of the Presidential Administration at the on-site, Russia should also, as underlined in the 2009 Recommendation, raise awareness among and encourage companies to take into account the OECD *Good Practice Guidance on Internal Controls, Ethics and Compliance*.

(b) Private Sector Initiatives to Raise Awareness

(i) Corporations

32. Only two Russian companies attended the on-site visit, which included an SOE with investments and exposure abroad and one subsidiary of a Swiss company. While "Support of Russia", whose membership is composed of SMEs, was present during the on-site visit, no SMEs independently attended the panel discussions. The two companies appeared to be generally aware of the foreign bribery offence under Russia's legislation³¹. They reported that given their operations abroad, they were already very familiar with the US Foreign Corrupt Practice Act (FCPA) and the UK Bribery Act. Business sector panellists indicated that large Russian companies have been aware of the risk of foreign bribery for several years, even prior to the establishment of the offence under Russian law. For most of these firms, their policies in this area was described as taking into account the obligations imposed in countries other than Russia and the risk that the firm would incur liability abroad. However, companies appeared to be in accord that awareness of foreign bribery risks was likely not as high among SMEs, which are also susceptible to bribe solicitations by foreign officials. With regard to the SOEs that play a major role in Russia's economy, especially in the defence sector, lead examiners were unable to assess awareness of foreign bribery because of the decision of defence export regulators and defence companies not to attend the panel discussions.

³⁰ Mandate has been given to the Ministry of Labour to lead this work: Decree of the RF President No. 309 of April 2, 2013 "About measures to implement separate provisions of the Federal Law on Combating Corruption", paragraph 25 sub-paragraph "b" (in Russian). According to this provision, the Ministry of Labour and Social Protection, together with relevant federal executive bodies, the RF Chamber of Commerce and Industry, the Union of Industrialists and Entrepreneurs, Business Russia, and "Support of Russia", should prepare guidelines on matters relating to the prevention of corruption in accordance with Article 13.3 of the Federal Law on Combating Corruption.

³¹ The lead examiners note that the banking sector was generally more aware of issues of foreign bribery; for an in-depth discussion of the banking sector awareness, please see section B.9.

33. Generally speaking, non-governmental participants to the on-site visit recognised that the provisions as to internal anti-corruption policies introduced in January 2013 in Article 13.3 of the Federal Law on Combating Corruption now require companies to have preventive measures in place. However, they further said that they were unaware of any guidance from the government on such compliance programs or whether and to what extent such requirements would be enforced. Business sector representatives and lawyers indicated that recent enforcement of the liability of legal persons in the context of domestic bribery has also become an important factor in increased awareness. As a result, according to one corporate lawyer, Russian companies are increasingly seeking advice on how to design internal compliance programs. Representatives of the Presidential Administration told the examining team that companies are also increasingly approaching the government to obtain guidance. In this context, it was clear that compliance programs are less well understood among smaller companies, in particular among SMEs. Furthermore, it is probable that not all SMEs – given their limited resources – will have ready access to, or the resources to spend on, special outside counsel, and, as noted above, they are likely to be unfamiliar with Russia’s foreign bribery provisions. Thus in this regard, the government has a major role to play in developing guidance specifically targeting smaller Russian enterprises doing business abroad³²

(ii) *Business organisations*

34. Russia’s “leading quarter” of business associations (the RF Chamber of Commerce and Industry, Russian Union of Industrialists and Entrepreneurs, All-Russian Public Organisation “Business Russia” and All-Russian Public Organisation of SMES “Support of Russia”) have made efforts to raise awareness of foreign bribery, largely by way of promoting the Anti-Corruption Charter. The Charter was presented to regional businesses in Urals just a few weeks before the on-site – a presentation that resulted in the Charter’s ratification by five regional associations. Similarly, at the behest of the RF Chamber of Commerce and Industry³³, four leading Siberian plants signed the Charter at the 10th Krasnoyarsk Economic Forum, an annual event supported by the federal and local authorities. The Charter also has been posted online on Support of Russia’s and the Russian Union of Industrialists and Entrepreneurs’ websites and, according to Russia, plans to create a website specifically dedicated to the Charter (and that would include a consolidated Register of Parties to the Charter) are underway. Russia also reported after the on-site visit that the four founding sponsors of the Charter were already working on tools to draw the attention of companies with state participation to the Charter. During the on-site visit, the associations confirmed that they will soon be collaborating with the government to develop guidelines to increase the capacity of business sector to prevent and combat corruption, including, presumably, the bribery of foreign officials.

35. There has been also a recent trend to implement compliance policies in the Russian business environment influenced by laws such as the UK Bribery act and the US Foreign Corrupt Practices Act. Towards this end, the Chamber of Commerce and Industry organised a meeting with US prosecutors to discuss US practice in this area as it may relate to Russia’s liability of legal persons. Private sector panellists also referred to the anti-corruption compliance conference organised by the American Conference Institute in partnership with accounting and law firms, Russian legal associations and TI Russia, held in Moscow in March 2013. Private sector panellists indicated that as a result of these laws and types of events, which focus expressly on corruption, there was a growing awareness among Russian companies about the most recent legislative changes in the area of bribery.

Commentary

While the lead examiners note the recent anti-corruption initiatives undertaken by the Russian government and the business sector, they remain concerned about the lack of awareness-

³² The Russian delegation explained at the time of the adoption of this Report by the Working Group on Bribery that the Ministry of Labour in conjunction with others had now developed such guidance for distribution to business organisations and union.

³³ www.tpprf.ru/en/news/ccinews/printable.php?print=1&id_12=41108

raising and training initiatives focused specifically on the Russian foreign bribery offence and the Convention.

The lead examiners strongly encourage Russia to develop and implement on-going awareness-raising and training programmes for both the government and business sectors, in particular, with a focus on: (i) training public officials, in particular those working in Russian embassies and foreign trade representations, on the provisions of the foreign bribery offence under Russian law, so that they may be able to detect and report instances of foreign bribery committed by Russian companies and provide appropriate assistance when such companies are confronted with bribe solicitations; (ii) raising awareness among the business sector, particularly major Russian corporations and SMEs active abroad, in cooperation with business associations and other civil society stakeholders. The lead examiners also recommend that Russia engage civil society in raising awareness of and combating foreign bribery. In particular, the lead examiners are concerned that NGOs with which the Russian Federation has partnered in the fight against corruption are appearing to face undue burden in carrying out their anti-corruption activities.

In addition to instituting guidelines, the lead examiners also recommend that Russia encourage business associations to initiate measures to raise awareness of foreign bribery among the business community through the development of seminars and other forms of training. Particular attention should be paid to raising the awareness of, and providing support to, SMEs and industry sectors which are traditionally at high risk of bribe solicitation by foreign public officials.

2. Reporting and whistleblowing

(a) Reporting of suspicions of transnational bribery by public employees

36. Reporting of alleged cases of foreign corruption by civil servants can play a role in the detection of violations of Russia's foreign bribery legislation. The 2009 Recommendation calls for measures to facilitate reporting of suspected acts of foreign bribery by public officials, directly or indirectly through an internal mechanism, to law enforcement authorities, adding that such measures should be accompanied by protection from discriminatory or disciplinary action for public sector employees who in good faith report such suspicions of foreign bribery (Recommendation IX (ii) and (iii)).

37. In Russia, there is no legislation or any other rule establishing a general reporting obligation for public officials regarding suspected foreign bribery offences. The only reporting obligation imposed on public servants in relation to corruption concerns situations where the public official himself has been subject to an offer amounting to corruption or has been aware of corrupt offences committed by other state or municipal servants. Such duty is established by Article 9 of the Law on Combating Corruption³⁴. Recommendations regarding the procedure of notification by federal employees to their employer were approved by the Presidium of the RF Presidential Council for Anti-Corruption in 2010. Since then, according to Russian authorities present at the on-site, the results of the monitoring carried out by the Ministry of Labour show that the vast majority of federal government bodies have established their own procedures, including internal hotlines, reporting guidelines and mechanisms for sharing the information with law enforcement bodies. After the on-site visit, Russia indicated that work was now being carried out to establish similar mechanisms in SOEs, as well as in other entities. In addition, in April 2013, the President of the Russian Federation signed a Decree No. 309 "On Measures Aimed to Implement Certain Provisions of the Federal Law "On Combating Corruption", which provides for certain measures to legally protect public officials reporting the corruption cases having become known to them.

³⁴ See Article 9 in the Annex to this report.

38. The duty to report, along with the reporting and protection mechanisms recently developed as a result, are a positive feature of Russia's anti-corruption system. They nevertheless do not apply to instances of foreign bribery, as acknowledged by on-site participants, both private and governmental³⁵. However, one Ministry of Foreign Affairs official suggested that, given that almost all federal public authorities now have mechanisms in place to facilitate reporting of corruption by their employees, existing procedures applicable to reporting of domestic corruption will be easily adaptable to foreign bribery as well. This should be an area for follow-up.

(b) Reporting of suspicions of transnational bribery by whistle-blowers in the private sector

39. Reporting of alleged foreign bribery cases by corporate employees, subcontractors or competitors can also play a role in its detection. The 2009 Recommendation calls on Parties to the Convention to ensure that easily accessible channels are in place for the reporting of such suspected acts to law enforcement authorities, adding that, as for public sector employees, such measures should be accompanied by protection from discriminatory action against private sector employees who in good faith report to the competent authorities (Recommendation IX (i) and (iii)). Annex II of the Recommendation also calls on companies to ensure appropriate and confidential whistle-blower reporting channels and protection.

(i) Corporate employee whistle-blower protection

40. No comprehensive framework exists in Russia to regulate whistle-blower protection for corporate employees who would report corporate misconduct externally. One law that would be somewhat applicable in this case is called "On government protection of victims, witnesses and other participants of judicial proceedings on criminal cases" (Federal Law No. 119-FZ). As evident from its name, the law protects only those involved in judicial proceedings. In other words, to be covered by government protection, the whistle-blower must go public and participate in a trial; the law promises governmental assistance in finding another job. The Russian authorities at the on-site also referred to the presidential decree issued on 2 April 2013. Under this decree, individuals who report alleged cases of corruption should be protected if they are persecuted or pressured. The decree promises free legal assistance to these individuals³⁶. However, its applicability appears limited as its focus is on the disclosure of misconduct in Russia's public sector. As it extends to corruption offences committed by officials of SOEs, it could possibly cover situations where a person "blew the whistle" on a public enterprise suspected of foreign bribery. Unfortunately, the decree remains silent on this subject.

41. According to non-governmental participants who addressed the examining team, regardless of the scope of protections, the possibility that an employee, whether in the private or SOE or public sector, would decide to reveal irregularities to the authorities may be unlikely. One business representative explained that in Russia whistleblowing is traditionally perceived as "not a dignified thing to do", because in the past it was challenging to go to public authorities. Regional factors may also come into play. One NGO said that, depending on location, whistleblowing would be particularly discouraged as the result of the influence of powerful individuals in local business or government. Defamation laws and other legal provisions on "slander" may also, according to NGOs, preclude investigative journalism and consequently prevent the revelation of bribery cases, although law enforcement agencies said that the media plays a role in bringing to light corruption cases³⁷. NGOs also expressed some concerns as to situations where

³⁵ Personnel of the Ministry of Foreign Affairs have been instructed to monitor and notify Moscow with respect to cases of foreign bribery (presumably allegations involving Russian companies and others).

³⁶ Presidential Decree No. 309 of April 2, 2013 "About measures to implement separate provisions of the Federal Law on Combating Corruption, paragraph 21.

³⁷ The role of media as a source of detection is extensively discussed in section C.1 (b) of the report.

prominent bloggers have faced charges that, although unrelated to their anti-corruption activities, have been perceived as a form of pressure.

42. The perception that whistle-blowers in Russia reveal wrongdoing at great personal risk has been amplified by the handling of the case of Sergei Magnitsky, a corporate accountant and auditor who died in pre-trial detention and whose case has been widely covered by the media both within Russia and internationally³⁸. In response to concerns expressed as to whether Magnitsky's allegations had been subject of an investigation carried out in a manner consistent with protections for whistle-blowers in light of the 2009 Recommendation provision concerning reporting of foreign bribery allegations and protection of whistle-blower, the lead examiners were told by a representative of the Investigative Committee that they had been investigated thoroughly but had not been confirmed. While a complete account of this case is beyond the scope of this review, the lead examiners note that the death in pre-trial detention of an individual who "blew the whistle" on officials' wrongdoing is very troubling and could discourage bona fide whistle-blowing reports. Such cases, in addition to defamation legislation and weak trust in the law enforcement and judicial system, undoubtedly have a chilling effect on potential whistle-blowers.

(ii) *Corporate mechanisms*

43. Thus far, mainly large companies operating internationally have taken measures to create internal channels for reporting misconduct. Multinationals like the ones represented on the panel with business sector representatives do have systems in place, including hotlines, as a result of their own corporate governance policies, as well as to comply with provisions such as the FCPA and the UK Bribery Act. Generally, these systems allow for anonymity. Nonetheless, all indicated that whistle-blower mechanisms were not yet well understood in Russia, in particular among SMEs, but also among employees of large companies. Furthermore, as discussed above, the cultural perception of whistle-blowers in Russia constitutes a barrier to effective internal reporting. Generally speaking, all agreed that more information, guidance and training, including from the government, were needed. The lead examiners were told that the guidelines to be developed by the Ministry of Labour on matters relating to the prevention of corruption in accordance with Article 13.3 may address the establishment of such mechanisms.

Commentary

The lead examiners note the general obligation for civil servants to report suspicions of corruption they may come across, as well as the mechanisms put in place at the federal level to facilitate such reporting and to ensure protection to those who report alleged cases of corruption. However, they note that the focus of these mechanisms is on domestic corruption. They recommend therefore that Russia introduce clear rules/guidelines requiring civil servants to report suspicions of foreign bribery, in addition to the existing requirements to report instances in which the civil servants are directly solicited.

The lead examiners also note that there is no comprehensive framework in Russia to protect private sector employees from any discriminatory or disciplinary action when they report suspicions of bribery of foreign public officials in good faith and on reasonable grounds to law enforcement authorities, beyond witness protection. Russia should ensure that easily accessible channels are in place for such reporting and that appropriate measures are in place to protect whistleblowers. Further, they recommend that the Russian Federation consider ways to address the apparent reticence of the general public when it comes to bona fide whistleblowing given past negative perceptions of reporting, e.g. through further education efforts, awareness-

³⁸ For an extensive account of the case, see the Council of Europe Committee on Legal Affairs and Human Rights' *Draft Report* (dated 18 June 2013).

raising and guidance, or other appropriate means. Russia should also ensure effective investigations of suspicions of foreign bribery reported by whistle-blowers.

Finally, the lead examiners note the adoption of new legislation in Article 13.3 of Federal Law on Combating Corruption requiring companies to develop internal anti-corruption policies. They recommend that Russia provide guidance on internal whistle-blower mechanisms foreseen under this legislation. They further note that implementing the new legislation in practice will require an important cultural change and therefore recommend that steps are taken to raise awareness and educate companies' managers and employees about such mechanisms.

3. Officially Supported Export Credits

44. Export credit agencies deal with companies that are active internationally and thus could play a vital role in raising awareness of the Convention and detecting foreign bribery. Russia supports its exports via several instruments and programs. Russian Agency for Export Credit and Investment Insurance (EXIAR) was established in September 2011 with the aim to support exports of Russian products abroad by providing insurance against risk. Vnesheconombank (VEB), an institution used by the government to support and develop the Russian economy, as well as to manage Russian state debts and pension funds, receives funds directly from the state budget and can provide export credits, whether or not benefiting from EXIAR's guarantee. In addition, Russia's government can provide state-to-state loans (e.g. development loans) which enable, in turn, other governments to purchase Russian exports.

45. Russia is not a member of the OECD Working Party on Export Credit and Credit Guarantees (ECG), and, consequently, has not had to report within that Group on its compliance with the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits (2006 Recommendation) (including measures to disseminate information on the foreign bribery offence and to detect and sanction applicants involved in it). At the time of this review, no formal steps had been taken by Russia to implement the 2006 Recommendation. In the context of its negotiations for accession to the OECD, Russia has engaged into a regular dialogue with the ECG, and the ECG members have, *inter alia*, asked Russia to complete the Survey attached to the 2006 Recommendation in order to better evaluate the degree (or lack) of compliance with the 2006 Recommendations' provisions.

(a) Awareness-Raising Efforts

46. EXIAR has not yet undertaken awareness-raising of its staff on issues of foreign bribery. The lead examiners noted that some of the participants representing EXIAR at the on-site visit did not seem to be familiar with the 2006 Recommendation and that there was general confusion in regard to the requirements of the Working Group versus the requirements of the FATF. EXIAR staff explained that the training that has been conducted to date has focused on the issues related to anti-money laundering and illegal proceeds. They also informed the lead examiners that they are currently in the process of familiarizing themselves with various OECD standards. No information related to VEB's own awareness-raising efforts was provided.

(b) Detection and Reporting of Foreign Bribery

47. EXIAR has already entered into several insurance contracts and its customers include Russian businesses that export and Russian and foreign banks. The contracts cover transactions in Asia, CIS, and Latin America. A template application form for the export credit support was shared with the lead examiners shortly after the on-site visit and does not yet include any anti-corruption clauses or requirements for declaration on non-engagement in foreign bribery.

48. Representatives of EXIAR and VEB met at the on-site visit did not have a clear idea as to due diligence processes specific to foreign bribery. Neither did they have clear plans on what they will be covering in anti-corruption clauses and declarations, or the kind of mechanisms for reporting of foreign bribery that will be established within their agency. They generally agreed, however, that all such pending measures will be welcomed and, in the meantime, if instances of foreign bribery would come to their knowledge, they would report such suspicions to the appropriate law enforcement authorities.

49. The lead examiners note that the EXIAR is still modernizing and updating its regulations. In this regard the lead examiners underline that this is an appropriate time for incorporation of the requirements of the 2006 Recommendation and for introduction of appropriate measures to deter bribery in international business transactions benefiting from official export credit support.

Commentary

The lead examiners welcome the establishment of EXIAR and its plans to raise awareness of its staff and applicants on OECD standards generally. However, they are concerned that foreign bribery specifically has not yet been addressed even though EXIAR is already up and running. Given the important role that EXIAR and VEB plays in interacting with Russian companies exporting abroad, both in terms of awareness-raising as well as reporting of suspicions of foreign bribery, the lead examiners recommend that Russia:

(a) implement the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits and, as a preparatory/transition measure, complete the 2006 Recommendation Survey for both EXIAR and VEB and report them to the ECG;

(b) raise awareness of the foreign bribery offence among EXIAR and VEB staff and among applicants requesting export credit support;

(c) ensure that employees of EXIAR and VEB are provided adequate training on due diligence procedures to detect foreign bribery, and are fully aware of their obligation to report foreign bribery instances they may come across in the course of their work; and,

(d) consider inserting express references to the foreign bribery offence and its legal consequences under Russian law in EXIAR's and VEB's insurances, guarantees, loans, and contracts.

4. Official Development Assistance (ODA)

50. Agencies administering official development assistance (ODA) interact with companies that work with foreign officials of the country receiving assistance and thus play an important role in raising awareness of and detecting foreign bribery.

51. Until May 2013, several federal agencies were engaged in implementation of Russia's international development assistance programmes. Aid was distributed nearly exclusively via international organizations and has been granted above all to members of the Commonwealth of Independent States (CIS). Another of Russia's regional priorities was assistance to African countries in their fight with poverty and UN 2000 Declaration MDG achievement. Towards this end, Russia made substantial contributions into development of Sub-Saharan African countries providing humanitarian assistance. The scale of aid and mode of delivery, however, have not made Russia an important global actor. Although over the last five years Russia increased the funding allocated to development assistance several times, compared to other donors party to the Convention, Russia's aid is relatively low.

52. On 8 May 2013, shortly before the on-site visit, the Decree of the President No. 476 brought together various functions of aid administration under a single ODA agency: the Federal Agency for the Commonwealth of Independent States, Compatriots Living Abroad and International Humanitarian Cooperation (Rossotrudnichestvo)³⁹. With a staff of over 750 persons, it operates within the structure of the Ministry of Foreign Affairs and has officers stationed overseas. Representatives of Rossotrudnichestvo informed the lead examiners that its regulations and rules of conduct are still being updated, along with changes in the Doctrine on Russian Overseas Development Aid, and that they intend to incorporate the requirements of the DAC Recommendation on Anti-Corruption into these documents. They also informed the lead examiners of plans to raise awareness of their staff on foreign bribery.

Commentary

The lead examiners welcome the new role of the Rossotrudnichestvo and its plans to raise awareness of its staff and applicants on OECD standards and recommend that Russia promptly undertake awareness-raising activities, both internally and with regard to potential contractors, to inform and prevent occurrences of foreign bribery in its ODA funded contracts.

In addition to including anti-corruption clauses in its ODA-funded contracts, the lead examiners recommend that Russia put in place effective means for detecting instances of foreign bribery by contractors, establish procedures to be followed by employees of Rossotrudnichestvo for reporting credible information about foreign bribery offences that they may uncover in the course of performing their duties, and encourage and facilitate such reporting.

5. Defence Exports

53. As explained in the introduction to the Report, the defence industry of Russia is a strategically important sector. Starting from 2007, *Rosoboronexport* (which has been operating since 2011 as an open joint stock company under the supervision of the Russian government) has been the only Russian entity that holds the full license to export arms and military equipment. *Rosoboronexport* accounts for more than 80% of Russia's arms exports. A limited number of other companies (only 22) can export spare parts and components for weapons systems.

54. The system for the control and promotion of arms exports in Russia includes the Military-Industrial Commission, a steering body headed by the Deputy Prime Minister. The Federal Service of Military-Technical Cooperation (FSMTC) is in charge of controlling and issuing export licences after approval by the Executive branch. *Vneshtorgbank* is a state owned bank responsible for the financial aspects of military-technical cooperation⁴⁰.

55. The evaluation team was not able to assess the issues that should be addressed in this section of the report since Russia was not able to organise a panel with representatives (both public and private) from the defence industry during the on-site visit, as was requested, nor did it respond to the request made after the visit to provide written information on this subject. Given the scale of Russia's defence exports and the well-documented risk of foreign bribery in this sector, this topic will require follow up.

³⁹ Former Federal Agency for the CIS became the basis for the new structure and was granted additional functions that relate to administering of humanitarian aid, as well as implementation of cultural and educational cooperation.

⁴⁰ See <http://fmso.leavenworth.army.mil/documents/understanding-security-cooperation.pdf> and www.ifri.org/?page=detail-contribution&id=4840

(a) Awareness-Raising Efforts

56. The lead examiners are not aware of any steps taken by the authorities to raise awareness of the foreign bribery offence with registered defence exporters, including *Rosoboronexport*. They were not informed of any steps taken by the defence and military sector industry to raise awareness of their employees about the offence of foreign bribery in order to prevent and detect potential bribery, and none of the defence companies have signed the Business Anti-Corruption Charter.

(b) Detection and Reporting of Foreign Bribery

57. It remains unknown whether the FSMTC, in granting a licence to export arms (after validation by the Executive branch), takes into account information about the applicant company and its potential involvement in bribery, including the existence or absence of convictions or ongoing prosecutions involving bribery. It is also unclear whether the Russian authorities could refuse or revoke the right to export arms based on a criminal conviction. No training in relation to the risk of foreign bribery and the obligation to detect/report is available for the agents of the FSMTC or the personnel of other relevant agencies.

58. The Russian authorities indicated that exporters are required not to violate the laws of foreign countries in which they operate and that export contracts may include anti-corruption clauses at the request of foreign counterparts. However, the licensing of defence exporters does not currently include a requirement for exporters to declare that they and anyone acting on their behalf have not, and will not, engage in foreign bribery, nor does it require specifically that defence exporters have compliance policies. Further, there is no statutory requirement for the FSMTC or any other relevant authority to detect and report suspicions of foreign bribery by defence exporters. The Russian authorities did not provide any information on whether they have provided awareness-raising or information to the defence industry concerning Russia's foreign bribery law.

Commentary

The lead examiners regret that that they have been unable to properly assess the issue of defence exports because Russia was unable to arrange a meeting with representatives of the defence industry during the on-site visit and has not provided adequate and timely information at the time of drafting this report.

The lead examiners are well aware of the size of the defence industry in Russia, and the recognised vulnerability of the industry to bribe solicitation in international contracts involving foreign public officials. In order to address the risk of bribery in this sector, they recommend that Russia:

(i) ensure that its defence industry develops strong anti-corruption measures and engage in international anti-corruption initiatives concerning the defence sector;

(ii) ensure that, when providing licenses for exporting military equipment, the competent authorities consider whether applicants have been involved in bribery as well as the level of risk of corruption in relation to arms procurement in the destination country; and

(iii) consider the temporary or permanent disqualification of enterprises convicted of bribing foreign public officials from applying for export licenses.

Finally, the lead examiners recommend that Russia take steps to raise awareness in the defence sector, both among relevant government authorities and defence companies, about the foreign bribery offence, including its detection.

6. Foreign Diplomatic Representations

(a) Awareness-Raising Efforts

59. Annex I to the 2009 Recommendation says that countries should provide training to their public officials posted abroad on their laws implementing the Convention, so that such personnel can provide support to their companies when confronted with bribe solicitations. Foreign diplomatic representations play an important role in raising awareness of the foreign bribery offence when companies seek advice when considering investing or exporting abroad. They can also be an important source of support for companies facing bribe solicitations by foreign public officials. As part of their mission overseas, Russian diplomats and staff of trade missions abroad are in touch with Russian businesspersons in order to assist in promoting economic and trade ties with foreign countries.

60. During the on-site visit, it appeared that the Ministry of Economic Development, which is responsible for Russia's trade missions abroad, had not taken any meaningful steps to raise awareness of Russia's legislation prohibiting foreign bribery among staff and Russian companies operating abroad. Civil servants of trade missions have so far been acquainted with basic provisions that establish the legal and institutional framework for preventing and corruption in Russia. By contrast, the Ministry of Foreign Affairs (MFA) reported that, after an initial awareness-raising campaign of its staff coinciding with the introduction of the new foreign bribery offence into Russian law and Russia's adherence to the Convention, instructions were given to embassies about Russia's obligations under the Convention, in particular with regard to the importance of monitoring and notifying cases of foreign bribery. Instructions were also given to the MFA and the Ministry of Economic Development to promote the Business Anti-Corruption Charter adopted in September 2012. MFA officials confirmed that foreign bribery and its criminal and commercial implications had nevertheless not been dealt yet with specifically in training programs for diplomats. Future plans to raise awareness about foreign bribery among diplomatic staff and staff of trade missions were outlined, including: organisation of a stand-alone training for diplomats and future diplomats within the Diplomatic Academy of the MFA and Moscow State Institute for International Relations, issuance of a circular providing guidance to MFA staff posted abroad as to how to raise awareness about the OECD Convention, reshaping of the MFA and Ministry of Economic Development websites with the inclusion of information in relation to the OECD anti-bribery instruments for staff and the general public. At the October Plenary of the Working Group, Russia reported that following the on-site visit, the Ministry of Economic Development developed and disseminated a set of measures to increase the awareness of staff posted abroad about the offence of foreign bribery and its criminal and administrative consequences under Russian law, including instructions to monitor and notify cases of foreign bribery, as the MFA has done. However, the lead examiners believe the Working Group should continue to follow-up this area.

(b) Detection and Reporting of Foreign Bribery

61. Where reporting is concerned, a procedure developed by the MFA provides guidance on corruption issues. Despite the fact that presently the procedure focuses only on alleged corruption and other irregularities involving Russian public officials, officials of the Ministry indicated at the on-site that internal instructions had been given to adapt the mechanisms in place to facilitate reporting by diplomatic staff of alleged foreign bribery committed by Russian entrepreneurs and companies.

Commentary

The lead examiners welcome the efforts already undertaken and the plan of the Ministry of Foreign Affairs to raise awareness and develop training for personnel in foreign diplomatic representations on the foreign bribery offence, to disseminate information on its legal consequences under Russian law, and for establishing procedures to be followed by diplomatic personnel for reporting suspicions of foreign bribery to relevant law enforcement authorities. The examiners also note the recent development by the Ministry of Economic Development of similar measures with regard to Russia's trade missions abroad. The implementation of these measures should be followed-up by the Working Group.

7. Tax Authorities

(a) Non-Deductibility of Bribes

62. Section I (i) of the 2009 Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions (the 2009 Tax Recommendation) recommends that Parties to the Convention *explicitly* disallow the tax deductibility of bribes to foreign public officials and that “such disallowance should be established by law or by any other binding means which carry the same effect”. In Phase 1, Russia explained that, as bribes to foreign public officials are not listed in the Tax Code among deductible expenses, such payments are explicitly prohibited. The Working Group nevertheless held the view that there was no explicit disallowance of the tax deductibility of bribes to foreign officials and recommended remedial actions.

63. Since September 2012, the Ministry of Finance has issued a letter clarifying the non-tax deductibility of bribes in Russia, pursuant to Article 34.2.1 of the Tax Code, which instructs that “the Ministry of Finance shall give written explanations to taxpayers, levy payers and tax agents on issues relating to the application of the tax and levy legislation of the RF”. Referring to the Convention, the letter reminds tax officials and tax payers alike that “costs incurred as a result of commission of offences (including bribery, commercial bribery) are not considered for taxation purposes”⁴¹. The examining team was told that the letter, as any other official letter of the Ministry of Finance, is binding on tax authorities⁴². Russian tax officials, as well as private sector representatives, accounting professionals and lawyers met during the on-site visit, all seemed aware of the non-tax deductibility of bribes. The letter is accessible to tax officers and taxpayers on the Service's official website, www.nalog.ru.

(b) Awareness, training and detection

64. Section I (ii) of the 2009 Tax Recommendation provides that each Party to the Convention “review, on an on-going basis, the effectiveness of its legal, administrative and policy frameworks as well as practices for disallowing tax deductibility of bribes to foreign public officials. These reviews should assess whether adequate guidance is provided to taxpayers and tax authorities as to the types of expenses that are deemed to constitute bribes to foreign public officials, and whether such bribes are effectively detected by tax authorities”.

⁴¹ Letter of the Ministry of Finance of 3 September 2012 on “Tax Accounting of Bribes to Foreign Public Officials” (in Annex 3 to the report).

⁴² As explained at the on-site, the binding nature of the letter derives from Article 34.2.1 of the Tax Code. On the binding nature of official letters of the Ministry of finance, see also the Federal Tax Service's 2013 brochure, p. 29

(i) Detection

65. For the detection of tax offences, tax inspectors in Russia have tools that may assist the administration not only to identify and reject foreign bribes from deductible expenses but also to report suspicions of foreign bribery to law enforcement bodies. Nine inter-regional inspectorates are responsible for on-site tax audits of large corporations. In this respect, as acknowledged by tax officials during the on-site visit, they remain especially well placed for detecting payments in relation to foreign bribery. The inspectorates are organised according to business sector (e.g. oil, gas, power, telecommunications and trade) and possess specific knowledge of the tax risks related to each industry. Field audits are decided on the basis on tax risk criteria, which are publicly accessible on the Federal Tax Service's Internet site. As reported by tax and law enforcement officials at the on-site, information from Russia's law enforcement bodies as part of legal proceedings can also trigger field audits.

66. When carrying out on-site controls, tax inspectors can check the presence of the mandatory accounting records and access all the company's commercial records and legal documentation. They also have access to bank account information of legal entities, individual entrepreneurs and – since recently – private individuals (Article 86 TC)⁴³. If the tax audit is expected to be complex, the administration is entitled to conduct field tax audits together with MIA employees. Examples of such joint field inspections were given at the on-site. Statistically, on average, 8 companies out of 1000 are audited every year⁴⁴. No irregularity relating to possible foreign bribery had been uncovered at the time of the one-site visit. This situation very likely relates to the fact that Russia has not – with the exception of the above-mentioned letter of the Ministry of Finance – expressly communicated to its tax inspectors (through guidelines, tax manuals or training programmes) the non-tax deductibility of bribes to foreign public officials.

(ii) Awareness and training

67. The on-site discussions confirmed that there is a need for an overall effort by the tax administration to provide guidance to its officials as to the types of expenses that are deemed to constitute bribes to foreign public officials. Tax officials indicated that, although no special course has been organised specifically on foreign bribery, corruption offences are dealt with in a specific training covering the prevention of corrupt activities. Nevertheless, discussions showed that specific training on the non-deductibility of hidden payments made to foreign public officials concealed as legitimate payments to third parties has been lacking. Further, it is notable that none of the officials who attended the panel discussions referred to the OECD Bribery Awareness Handbook for Tax Examiners⁴⁵. The authorities asserted that, because the payment of bribes is well understood by tax officials to constitute an illicit payment (and therefore cannot be lawfully deducted), a specific training course was unnecessary. In relation to guidelines, they also suggested that no specific treatment is required on this issue as the generally applicable procedures for checking taxpayers' expenses remain relevant and these are already the subject of periodic training courses and guidelines.

(c) Mechanisms to facilitate reporting to law enforcement

68. Section II (ii) of the 2009 Tax Recommendation recommends Parties to the Convention to establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery, arising out of the performance of their duties, to the appropriate domestic law enforcement authorities. In Phase 1, the Working Group recommended that Russia establish such framework and guidance.

⁴³ Law on combating illegal financial transactions adopted by the State Duma in June 2013.

⁴⁴ *Federal Tax Service of Russia 2010-2011*, pp. 14-15

⁴⁵ However, the lead examiners were notified that the Russian authorities had disseminated the Handbook to their Tax Examiners on 3 October 2013.

69. Russia's law does not establish a requirement for tax authorities to inform law enforcement authorities of suspicious of foreign bribery. Only tax criminal offences that cause serious harm to the administration (*i.e.* where there is tax evasion as defined in Articles 198 and 199 CC) must be reported but only for the purpose of initiating criminal proceedings (Article 32(3) TC). In fact, as reiterated by a letter from the Federal Tax Service dated 11 March 2010, this obligation applies only to situations where the tax payer fails to comply with a demand for the payment of tax adjustments by the administration⁴⁶. That being said, pursuant to Article 82 TC and an agreement signed with the Investigative Committee, the administration has a duty to inform investigative bodies of breaches of the tax legislation and other relevant information⁴⁷. The MoU recently signed with the Investigative Committee provides for such exchange in the area of tax violations and "corruption counteraction"⁴⁸. This duty thus co-exists with the obligation to report tax crimes only. It appeared at the on-site that the two rules were not an obstacle for tax officials to exchange information gathered while performing their duties with law enforcement bodies who decide how to handle them.

70. Data publicly released by the Finance Ministry show that large numbers of reports on tax violations are submitted by the tax administration and that the same happens with reported tax crimes⁴⁹. Practice in this area thus appears to be consistent with the explanation provided at the on-site with regard to the two concurrent duties described in the paragraph above. None of these reports, however, have concerned suspicions of bribery (domestic or foreign), as was claimed at the on-site. It became clear during the on-site visit that, in the absence of documented procedures between the tax and investigative bodies to underpin the vital exchange of information and the reporting of suspected foreign bribery, the focus of inspectors was primarily on tax avoidance and evasion. The overall system of inter-agency cooperation would benefit from the introduction of clearer processes as envisioned in the MoU between the Tax Service and the Investigative Committee⁵⁰.

(d) *Sharing of Information*

(i) Sharing of information internally

71. Under Russian law, tax authorities are obliged to disclose confidential information to law enforcement authorities upon request. As noted above, the administration can also share tax-related information with law enforcement authorities on its own initiative. The number of reports submitted is quite large; in 2012, 8 million tax evasion reports were forwarded, and this figure does not include reports on other tax violations. Nonetheless, these statistics also indicate poor results in generating criminal convictions. They show that in 2012 criminal cases were opened over only 1% of all reports filed on suspected fraudulent firms. For this reason, Russia's Finance Minister called upon the MIA and the Investigative Committee to pay more attention to financial crimes⁵¹.

(ii) Sharing of Information with foreign authorities

72. Under Section I of the 2009 Tax Recommendation, Parties to the Convention are invited to include in their bilateral tax treaties, the language of paragraph 3 of Article 26 of the OECD Model Tax Convention, which allows, under certain conditions, the sharing of tax information by tax authorities with

⁴⁶ Letter of the Federal Tax Service of March 11, 2010 "Concerning the Sending of Materials to Internal Affairs Bodies", annexed to Russia's replies to the Phase 2 Questionnaire.

⁴⁷ Article 82(3) TC, annexed to the present report.

⁴⁸ Agreement on Interaction between the Investigative Committee and the Federal Tax Service of February 13, 2012 No. 101-162-12/MMV-27-2/3, annexed to Russia's replies to the Phase 2 Questionnaire.

⁴⁹ Russian Legal Information Agency (RAPSI), 27/02/2013

⁵⁰ Art. 4.2 of the MoU provides that "procedures, forms and methods of interaction between the Parties shall be determined by separate protocols being integral parts hereof".

⁵¹ Russian Legal Information Agency (RAPSI), 27/02/2013

other law enforcement and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption, terrorism financing). Russia has signed some 80 double tax conventions (DTCs), of which 78 were in force at the beginning of 2013 (including DTCs with all 34 OECD member countries). Until recently, most of its DTCs did not include the language of Article 26.3.

73. The situation is expected however to change in the near future. Russia now includes in its new DTCs a provision on exchange of tax-related information, which includes the language of the OECD Model Tax Convention, as illustrated in the Protocol amending the DTC of 1995 between Russia and Switzerland (ratified in 2012). In November 2011, Russia also signed the amended Convention on Mutual Administrative Assistance in Tax Matters (already signed by 55 other countries)⁵², which contains a similar provision to the text in Article 26.3 of the OECD Model Convention. Once the multilateral Convention is brought into force by Russia, if a Party that provided information to Russia under the Convention gives its authorization, the Russian tax authorities will be in a position to pass on the information received to the law enforcement authorities to combat bribery and other financial crimes. This will be a step towards bringing Russia in line with the 2009 Tax Recommendation.

Commentary

The lead examiners welcome the Ministry of Finance's binding letter which provides legal clarifications to tax inspectors on the non-tax deductibility of bribes paid to foreign public officials. Specific guidance should be now provided to tax officials on how to detect bribe payments made to foreign officials, for example through training grounded on the new OECD Bribery Awareness Handbook for Tax Examiners to be issued shortly. Russia should also enhance the existing organizational enforcement infrastructure by introducing clearer processes between agencies to underpin the exchange of information and reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties to the appropriate domestic law enforcement authorities. Finally, Russia should also promptly ratify the Convention on Mutual Administrative Assistance in Tax Matters.

8. Accounting and Auditing

(a) Awareness and Training

74. Only two large foreign audit firms attended the on-site visit. While the audit profession in Russia is currently on self-regulation, none of the self-regulatory organizations (SROs) of auditors attended the panel discussions. None of the panels were attended by any representative of internal auditors' and accountants' associations. The two large audit firms present during the panel expressed broad knowledge and awareness of the foreign bribery offence under Russia's legislation, the Convention, the FCPA and the UK anti-bribery act. However, as acknowledged by the two audit firms themselves, this level of awareness may not be reflective of the wider situation in Russia, especially among smaller, domestic audit firms.

75. The examining team found limited evidence of efforts so far by professional associations to publicize or explain the foreign bribery offence within the profession, a finding which was supported by business participants to the on-site visit. The Ministry of Finance, the principal body that oversees the profession, issued in February 2013 guidelines for suggested training courses on foreign bribery to be provided by SROs. Training sessions on corruption have been organised directly by the SROs or through accredited educational institutions, but none have focused on foreign bribery or the related accounting

⁵² See the updated Chart of Signatures and Ratifications on oecd.org/ctp/eoi/mutual

offences⁵³. Russia should therefore encourage professional associations to conduct training specifically on foreign bribery. Similarly, the Institute of Internal Auditor's annual events have been mostly dedicated to fraud in general. All panel participants said the profession needed to be well-trained and obtain guidance to enforce Russia's accounting and auditing legislation in relation to foreign bribery.

(b) Accounting and Auditing Standards

76. The Convention and 2009 Recommendation both emphasise the importance of systems of accounting in the fight against foreign bribery. In particular, Article 8 of the Convention requires that within the framework of its laws regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, a Party prohibits the making of fraudulent accounts, creating statements and records for the purpose of bribing foreign officials or of hiding such bribery.

77. In Russia, the law on accounting (Federal Law No. 402-FZ), which entered into force in January 2013, contains provisions relating to the keeping of accounts. In particular the law determines the procedures for setting up and maintaining companies' accounts⁵⁴. Since its entry into force in January 2013, only a few entities are now exempt from keeping full statutory accounting records, namely only individual entrepreneurs and persons engaged in individual practice, upon the condition that they maintain their tax accounting records in conformity with the tax laws regulating their specific regimes. Furthermore, alongside the Russian Statutory Accounts, all companies, as well as branches and representative offices and permanent establishments of foreign companies, must keep separate accounting records for tax purposes.

78. Federal Law No. 208-FZ on Consolidated Financial Statements of July 2010 includes additional regulations for companies listed on a Russian Stock-Exchange. Pursuant to this law, the full IFRS are now compulsory for all such companies, as well as for other entities such as credit organisations and insurance companies. These companies are required to produce consolidated accounts covering their subsidiaries as explained by the authorities at the on-site. SOEs have to abide by the provisions of both the accounting law and the law on financial statements. Other non-listed businesses must comply with the accounting standards developed by the Ministry of Finance. The standards have been written on IFRS standards basis, standards that have been adapted to the Russian context on a standard-by-standard basis. They do not permit off the book transactions and prescribe requirements for material contingent liabilities (RAS 8/01 whose equivalent is IAS 37). At the time of the on-site visit, the authorities were working on a new reform of accounting aiming at further convergence of accounting rules in Russia with IFRS by 2015. Thus, in June 2013, the RF Ministry of Finance submitted to the Government a draft federal law according to which the full IFRS will become compulsory for other entities, including management companies of investment funds, mutual investment funds, and state unitary enterprises.

(c) Internal controls, corporate codes and audit committees

79. The 2009 Recommendation asks Parties to the Convention to encourage the development and adoption of adequate internal company controls and standards of conduct in companies (notably through the implementation of its Annex II — Good practice guidance on internal controls, ethics and compliance). An internal controls system can enhance the quality of financial reporting. As such, it has a potential for enhancing firms' capacity to internally detect and prevent fraud and false accounting that can be related to

⁵³ In their replies to the Phase 2 Questionnaire and after the on-site visit, the Russian authorities reported that the training programs established by the SROs include the identification of factors that may indicate corruption and are held in the form of case studies and evaluations of internal documents of audited companies.

⁵⁴ At the time of Russia's evaluation under Phase 2, revisions to the Accounting Law aimed at enhancing the quality of book-keeping, including measures concerning fictitious transactions, were being considered by the State Duma. For more details, see Section C.6 of the report.

foreign bribery. The 2009 Recommendation also asks Parties to encourage companies to create monitoring bodies that are independent of management, such as audit committees. A firm's bribery prevention strategy can potentially benefit from the presence of a focused and capable corporate monitoring body.

80. Until recently the prevention policies mentioned above were primarily implemented by large firms with regard to foreign laws that apply to their operations abroad, in particular the FCPA and UK anti-bribery act⁵⁵. Meanwhile, as discussed in the section of the report addressing awareness-raising efforts, amendments aimed at bolstering prevention of corruption in businesses were introduced in January 2013 through the adoption of Article 13.3 of the Federal Law on Combating Corruption. As a result, all entities that do business in Russia are now required to have measures in place to prevent corruption. Although at the time of the on-site visit, in the absence of guidelines, it was difficult to predict precisely how this requirement will be implemented in practice, private sector panellists saw the changes signalled in Article 13.3 as providing for a significant incentive for developing procedures designed to ensure ethical business conduct and compliance programs. A concern nevertheless emerged with regard to recent rulings which appear to run counter to the firmly-held position of the authorities to promote increased conformity to global standards of corporate practices. In September 2010, the Federal Antimonopoly Service (FAS) held a Danish company liable for delaying entry into contracts with prospective distributors until they satisfied a due diligence protocol, which included an anti-corruption review. Although the ruling was made three years ago, it was still referenced as carrying the weight of authority among members of the legal profession at the on-site⁵⁶. Shortly after the on-site visit, the Moscow Arbitration Court took a somewhat stronger approach by ordering German company Daimler to implement the contract it had terminated with a Russian distributor whom it suspected of corruption, on the ground that the company's anti-corruption policy was just a pretext for not working with the distributor's owner⁵⁷. This area requires follow-up.

81. With the entry into force of the new accounting law on 1 January 2013 (Law No. 402 FZ of 6 December 2011), all companies are now required to implement internal control of business operations. Furthermore, all companies subject to mandatory audit are also now required to institute internal accounting controls as confirmed at the on-site. This requirement coexists with the now express statutory duty mentioned above in Article 13.3 *for all companies* (i.e. including those which are not subject to external audit) to develop measures to prevent bribery, such as measures aimed at preventing forged documents. No further details are provided in both laws. In particular, although the accounting law creates the new position of "internal controller" in organisations, it does not specify his/her functions or his/her role vis-à-vis the company's chief accountant or the external auditors. Neither has guidance been provided as to the sanctions for non-compliance by companies or their managers or responsible persons. It is expected that further regulations will be issued by the Ministry of Finance⁵⁸. In the meantime, the new Law on the Accounts Chamber⁵⁹, which entered into force in April 2013 gives an express mandate to its auditors to check and control the performance and reporting of internal audit units in organisations that are subject to external government audit (which include state enterprises) and assess their compliance with

⁵⁵ See section B.1 (b) above.

⁵⁶ Although a settlement in favour of the Danish company was concluded with FAS in July 2011, it has been reported that the agency has continued to stress that a company occupying a dominant market position may not refuse to enter into contract with business partners based on subjective suspicions that the prospective partners have engaged in corrupt behaviour.

⁵⁷ See *Pravo*, 30 May 2013

⁵⁸ According to its "Plan for 2012-2015 of the Development of Accounting and Accounting Statements in the RF on the Basis of IFRS", the Ministry will provide recommendations for the implementation by business units of the internal control of accounting records and financial reporting as provided for by the accounting law. After the on-site visit, Russia reported that such recommendations regarding internal controls were being developed by the Ministry; work on these recommendations was expected to be completed by the end of 2013. In accordance with the Plan, proposals will also be developed to introduce amendments to the legislation with regards to liability for violating the accounting law (see Section C.6 of the report).

⁵⁹ Pursuant to Russia's legislation, the RF Accounts Chamber exercises external state audit (control) in respect of federal bodies and federal state institutions, the bodies of state extra-budgetary funds, the central bank of the Russian Federation, and federal state unitary enterprises, state corporations and state companies, business partnerships and companies with the participation of the Russian Federation in their authorized (share) capital.

internal audit standards. Based on the findings and analysis undertaken by its inspectors, the Chamber may issue recommendations for the purpose of internal audit improvement⁶⁰. This is an area of additional follow-up.

82. As for audit committees, regardless of their form of incorporation, company size, and public stock offering, all joint-stock companies in Russia are required to establish an audit committee. The Russian stock exchanges Micex and RTS rules also require listed companies to have an audit committee in most cases. As for the use of audit committees, it has increased both in the private sector and among SOEs. With respect to the latter, in their self-assessment undertaken in the context of OECD's accession review of Russia on corporate governance, the authorities have explained that audit committees are now present in about 60% of large SOEs and that the Government recommends all SOEs to establish an audit committee.

(d) External Auditing

83. The 2009 Recommendation contains a series of recommendations concerning auditing requirements and independent external audit, the implementation of which are important to the overall effectiveness of the fight against bribery in international business.

(i) Auditing requirements

84. Pursuant to Federal law No. 307-FZ of December 30, 2008 on Auditing, the largest industries and most medium and large businesses are under the auditors' purview. Audit is mandatory for open joint stock companies, companies with securities traded on stock exchanges, companies with annual revenue and total assets exceeding a certain amount, and all entities which publish their financial-accounting report to the public. Publicly-traded companies and companies owned more than 25% by the State must be audited by an audit firm, rather than by an individual auditor. State corporations, unitary enterprises and business partnerships and companies with the participation of the Russian Federation in their authorized (share) capital are subject to an external audit by Russia's Accounts Chamber. With the new Law on the Accounts Chamber, taking measures on combating corruption within the limits of its competence has become another aspect of the Chamber's work. To this end, Russia reported after the on-site visit that plans are under way to give special attention to the issue of foreign bribery.

85. Audits are conducted in accordance with the Federal Auditing Standards (FAS), which are based on International Standards on Auditing (ISA). Audit standards are the same for all companies (including SOEs). In relation to the Convention and 2009 Recommendation requirements, two of them appear to be particularly relevant. Where fraud is concerned, FAS 5/2010 requires auditors to examine deliberate fraudulent acts by the audited company or third parties. On its part, FAS 6/2010 on "Auditors' obligations to oversee compliance by the audited entity with the requirements of laws and regulations in the course of an audit" requires auditors to include procedures designed to provide reasonable assurance of detecting acts that would not comply with legal/regulatory requirements and that would have a direct and material, significant effect on the entity's financial statements. FAS 6/2010 further states that, if the legislation provides for the duty of the auditor to verify the audited companies' compliance with the requirements of a specific piece of legislation, external auditors are then required to include special tests. Section 9 of the Standards refers to corruption offences, albeit not explicitly to foreign bribery.

(ii) Independence

86. With regard to auditor independence, the law on auditing establishes professional standards for auditors and, as such, contains a specific provision on their independence. Russia also refers to the Ethics Code for Auditors, approved in March 2012, which regulates the conduct of auditors in relation to the

⁶⁰ Federal Law of 5 April 2013 No 41-FZ "On the Accounts Chamber of the Russian Federation", Article 15.

auditing of companies. For example, it provides that measures should be in place to help auditors detect violations of ethical principles by a client company, estimate their scale and take actions in response. Although the Code does not have a binding status, Article 9 of the auditing law states that the Code “must be observed by audit firms and auditors when engaging in auditing”.

87. Such standards can nevertheless achieve credibility only if an adequate supervisory mechanism is in place to enforce them effectively. Given the underrepresentation of auditors at the on-site, as well as the absence of participants from SROs – which perform external quality control of audit activities conducted by auditors in Russia – their effectiveness could not be discussed. It has nevertheless been widely reported that audit quality in Russia remain sometimes tenuous, especially with regard to the work done by domestic firms⁶¹. Quality control conducted by SROs has also been described as a problem with situations publicly disclosed where audit firms did not get any punishment even if there had been suspicious in the quality of the audit performed. Aware of these problems, the authorities were working at the time of the on-site visit on a reform which would create new penalties on auditors for serious violations of ethical principles like breaking auditing standards⁶². New rules have also been issued by the Finance Ministry to address external quality control exercised by SROs; it has also developed rules for mandatory audit firm rotation⁶³. These areas will require follow-up.

88. With regard to inspector independence, the Accounts Chamber has its own code of ethics. To further prevent conflict of interest and corruption, it has established an internal security system, which includes a subdivision for prevention of corruption and other offences. A Commission is also specifically responsible for ensuring adherence of staff to the code and, more generally, to the rules of professional ethics and obligations and prohibitions stipulated for public servants in Russia’s laws and regulations. Furthermore, a hotline – opened to any Russian citizen – helps in the detection of possible instances of corruption practices in the Chamber.

(e) Duty to Report Foreign Bribery

89. The 2009 Recommendation notes the role external auditors can play in detecting and reporting evidence of bribery by asking Parties to the Convention to require that auditors inform directors and, if need be, the governance bodies of the company of such evidence, and to consider requiring auditors to report suspected acts of transnational bribery to the competent authorities, independent of the company. In Russia, the reporting requirements are not the same for the whole auditing profession. Rules are more stringent for inspectors of the Accounts Chamber, who are public officials, than for private auditors.

(i) Reporting obligations for external auditors

90. The rules governing the reporting of suspicions of bribery by auditors did not appear clear to either auditing firms or government representatives with whom the examiners met. After the on-site, Russia referred to the law on accounting as the legal ground on the basis of which external auditors would be obliged to report foreign bribery to law enforcement authorities. However, the law does not contain any provision in this respect. On the contrary, the legal and regulatory framework that applies to private auditors requires confidentiality to be maintained, unless the management of the client company gives its authorization to report the discovery to the relevant authorities or there is a legal duty to disclose as it is the case under the AML legislation.

⁶¹ See <http://gaap-ifs.com/articles/129382/>

⁶² According to the proposal, for breaking professional ethical standards auditors would pay up to RUB 700,000 (approximately EUR 18,000). The fine would be decided by the SROs: GAAP-IFRS.com, 4 June 2013

⁶³ At present, there is a federal rule (a standard on auditing №34) for quality control in audit companies, which provides rotation in respect to employees *in charge* of audit inspection of one and the same publicly significant economic entity. A similar provision is contained in the Code of professional ethics for auditors.

91. Russia also referred to FAS 5/2010 and FAS 6/2010 as the legal basis for the duty for auditors to report foreign bribery externally. However, clause 69 of FAS 5/2010 only provides that whenever an auditor has identified or suspects a fraud, he/she should determine whether he/she is obliged to report on the case or suspicion to an external party, including an authorized State body. On its part, section 9 of FAS 6/2010 provides that, whenever an auditor is obliged by Russia's legislation to check the audited company's compliance with the requirements of a certain regulatory legal act, he has to add a special test to the audit plan and inform the regulator when either the company fails the test or in case of suspicions; in case of doubt, he should consider the need for obtaining legal advice. According to Russia's replies to the Questionnaire, a foreign bribery payment would be covered under section 9 of FAS 6/2010, which explicitly refers to money-laundering and corruption offences as examples of information that may be reported, and, more generally, as a result of the rule according to which international treaties to which Russia is a signatory, such as the Convention, are part of Russia's domestic legal system⁶⁴. In the absence of specific guidelines provided to auditors clarifying that under FAS 6/2010 auditors have an obligation to report foreign bribery externally, it is not certain that external reporting will occur. In fact, Russia reported that there have not been any known cases of private auditors disclosing suspicions of bribery committed by the audited company to law enforcement or supervising authorities.

92. Notwithstanding the absence of specific obligations to externally report suspected foreign bribery, auditors must report fraud or serious violations of the law to the company's management and, in some cases, to the company's governance bodies, as provided under FAS 5/2010 and FAS 6/2010⁶⁵. According to Russia's replies to the Questionnaire, a foreign bribery payment would likely fall under acts of misappropriation of the audited entity's assets as encompassed by clause 7 of FAS 5/2010. It refers to "payments for non-existent products or services and to fictitious suppliers". Foreign bribery would also be covered under clauses 24 and 25 of FAS 6/2010, which require auditors to inform the company's management in case of non-compliance with laws and regulations⁶⁶. Given the underrepresentation of auditors at the on-site, this question could not be properly addressed. This area will thus require follow-up to ensure that foreign bribery payments would fall under acts of misappropriation.

(ii) Reporting obligations for Account Chamber's inspectors

93. By contrast with the situation that prevails in the auditing profession, inspectors of the Accounts Chamber, when their audits reveal serious wrongdoings, are required to immediately pass on to law enforcement agencies the results of their audits. The law on accounting requires law enforcement agencies to inform the Chamber about any decision taken on the basis thereof. In the course of its controls, the Chamber can obtain all the necessary documentation from audited enterprises. With the new Law on the Accounts Chamber, Russia's law enforcement and tax authorities are also required, upon request, to provide any information to the Chamber to carry out its tasks (Article 30). The examiners were also told that, as a result of cooperation agreements, audits are often conducted with law enforcement bodies. Cooperation also occurs in the framework of joint working groups. Training on anti-corruption legislation, which brings together lawyers and law enforcement representatives, is provided to staff on a regular basis. Inspectors benefit also from practical courses with specialists from the tax administration which address risk areas.

94. Audits conducted by the Chamber have proved to be effective. In 2011, it sent materials from 176 audits to law enforcement agencies, including 63 to the Prosecutor's Office and 31 to the Investigative

⁶⁴ Russia's Response to the Phase 2 Questionnaire 3.2.

⁶⁵ FAS 5/2010 and FAS 6/2010 specify the route that the auditor should take in cases of fraud or serious violations of the law. In case of fraud, the auditors must advise the company's management; in case of serious violations of the law, the company's management and, if there would be reasons to believe that the management is involved in the violations, the company's superior body (or owner). In the event that the entities' bodies, after being duly advised, refrain from taking action, the auditor has likely no choice to resign, as provided in the Code of Ethics of Auditors.

⁶⁶ Russia's Replies to the Questionnaire 3.2.

Committee⁶⁷. Based on these materials, 72 criminal cases and 23 cases on administrative violations were initiated. In 2012, according to statistical data provided by Russia after the on-site visit, based on the materials sent by the Chamber, 78 criminal cases were initiated. So far, its controls have not brought to light wrongdoings in relation to foreign bribery. Chamber representatives at the on-site nevertheless indicated that audits have helped detect fraudulent activities in relation to domestic bribery. The Methodological Recommendations issued to assist prosecutors in initiating proceedings against companies suggest, however, that prosecutors should pay particular attention to such materials⁶⁸. This is somewhat confirmed by the Chamber's enforcement data: only one third of its materials resulted in proceedings for administrative violations in 2011. In the lead examiners' opinion, unless investigative authorities are made aware of the need to pay more attention to materials received from the Chamber, there is a risk that they would not initiate investigations of foreign bribery or related accounting offences when appropriate. After the on-site visit, Russia reported that, as a result of closer interaction between the Chamber and law enforcement agencies, more attention was now given by the latter to the Chamber's materials: in 2012, 716 administrative sanctions were imposed based on the submissions of the Accounts Chamber.

Commentary

The lead examiners welcome Russia's efforts to reform its accounting legislation and align accounting standards applicable in Russia with international accounting standards. They recommend follow-up on the implementation of the new Accounting Law, which entered into force on 1 January 2013 and proposals aimed at strengthening some of its provisions in relation to accounting requirements, and the reforms envisioned in the Ministry of Finance's Plan for 2012-2015 of the Development of Accounting and Accounting Statements in the Russian Federation on the Basis of IFRS.

The lead examiners recommend that Russia:

(a) should encourage Russian companies, including SMEs, to develop adequate internal controls, ethics and compliance programs and measures, for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance in Annex II of the 2009 Recommendation; and provide guidance on the liability of companies and their managers and responsible persons on the sanctions for non-compliance;

b) take steps, in consultation with relevant professional associations and self-regulatory organisations, to encourage detection and reporting of suspected foreign bribery by accountants and internal and external auditors, in particular through guidance and training for these professionals, including specific training on foreign bribery risk factors and methods to test for false documents used to conceal foreign bribery and related accounting offences;

c) consider establishing an express obligation for external auditors to report to law enforcement bodies any evidence of possible foreign bribery practices by the entities whose accounts they audit in the event that the entities' bodies, after being duly advised, refrain from taking action;

d) take remedial actions to create clear liability of companies, their managers and responsible persons including audit firms for the inaccuracy of accounting. Russia should clarify the liability of such companies and persons, and increase the sanctions that apply to accounting offences related to the act of foreign bribery. Russia should also encourage supervisory

⁶⁷ The RF Accounts Chamber, *Results of the Work in 2011*, p. 17-19.

⁶⁸ RF Prosecutor General's Office, *Liability of Legal Persons for Corruption Offenses– Methodological Recommendations* (2012)

organizations to use the full range of sanctions available to them to take action against any failure by auditors to comply with audit standards and ethics principles; and,

The lead examiners also welcome the role of the Accounts Chamber in detecting and reporting fraudulent activities in relation to corruption committed by state-owned enterprises. They recommend that Russia invite the Chamber to raise awareness of the foreign bribery offence among its staff as well as SOEs, especially those companies that are major exporters and investors abroad, e.g. defence contractors or extractive industries.

9. Detection through Anti-Money Laundering mechanisms

95. An effective system designed to detect and deter money laundering (ML) may uncover underlying predicate offences such as foreign bribery. In Russia, money laundering is criminalised under the Criminal Code (see below). In addition, the Federal Financial Monitoring Service or *Rosfinmonitoring* was established in 2001 as Russia's Financial Intelligence Unit (FIU). Russia is a member of the FATF, MONEYVAL, EAG (Eurasian Group on Combating Money Laundering and Terrorist Financing) and has the status of observer in the APG (Asia/Pacific Group on Money Laundering). In June 2008, the FATF adopted its Third Mutual Evaluation Report on Anti-Money Laundering *and the Financing of Terrorism* in the RF. Russia's anti-money laundering regime is extensively described therein⁶⁹. In October 2012, *Rosfinmonitoring* set forth a draft law, introducing amendments to a number of legal acts and aimed at strengthening anti-money laundering measures in Russia. This law was finally adopted by the Duma on 28 June 2013⁷⁰ while the evaluation team was drafting this report. The lead examiners have not been in a position to review this new legislation⁷¹ that the Working Group should reconsider in subsequent evaluations of Russia. The evaluation team also faced challenges in assessing detection through anti-money laundering mechanisms. Despite several requests throughout the drafting process, almost no statistics were provided by the FIU to the lead examiners. All data related to the FIU provided in this section of the report have been extracted from FATF reports.

(a) Suspicious transactions reporting and customer due diligence measures

96. The obligation to report suspicious transactions to *Rosfinmonitoring* is established in the Federal Law No. 115-FZ dated 7 August 2001 "On countering the legalization of illegal earnings (money laundering) and the financing of terrorism" (the AML Law). The AML Law requires the reporting of suspicious transactions in money laundering cases. The law explicitly refers to "proceeds of crime", which includes all crimes as stated in the CC, including foreign bribery. The reporting obligation applies not only to suspicious transactions, but also to cash or non-cash transactions equal to or exceeding RUB 600,000 (approximately EUR 14,000), and immovable property transactions equal to or exceeding RUB 3 million (approximately EUR 69,000) or the equivalent of such amounts in any other currency (so-called "mandatory reporting" or "reports on obligatory control"). The FATF report noted that the reporting requirements to *Rosfinmonitoring* do not cover attempted transactions of occasional customers. Changes made to the AML law in June 2013 seem to have addressed this issue. Reporting entities include various financial institutions, as well as non-financial professions such as lawyers and auditors. Figures available indicate that 5,504,987 suspicious transaction reports were sent to *Rosfinmonitoring* in 2011 (4,508,701 in 2010), 99.06% of which emanated from credit institutions. Twenty-two STRs were sent by lawyers, notaries and accountants to *Rosfinmonitoring* in 2011. Although these professions are covered by the

⁶⁹ See the report.

⁷⁰ Federal Law of 28 June 2013 No. 134-FZ 110 "On amendments to certain legislative acts of the Russian Federation with regard to combating illegal financial transactions"

⁷¹ The Russian authorities did not provide an English translation of the law. Only extracts translated into English were provided by the FATF that were not sufficient to assess the level of progress made by Russia in complying with the FATF standards.

general duty to report STRs, the figures for reporting raise some concerns over the effectiveness of the provisions; however, the Working Group should continue to follow-up this area as practice develops.

97. All the reporting entities are subject to a set of additional requirements under the AML Law, although lawyers, auditors and notaries were subject at the time of the on-site visit to less strict requirements than financial institutions, including in relation to customer's identification (the only requirement was the application of identification requirements regarding the customer)⁷². The FATF identified several serious gaps in Russia's system for customer's identification and monitoring transactions. In particular, its 2008 Report pointed out that the AML Law does not contain a provision which expressly requires reporting entities to pay special attention to transactions based on complexity, size or unusual patterns, or to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations⁷³. The requirements for reporting entities to carry out CDD measures were not in line with the FATF standards either. The Russian delegation indicated that the amendments to the AML law adopted in June 2013 address these shortcomings although this issue will require continued follow-up. Furthermore, in 2009, Russia passed new legislation (Federal Law No. 121-FZ) in order to implement stronger requirements concerning the identification of politically-exposed persons (PEPs) that are applicable to all reporting entities.

98. It transpired from the on-site visit that more efforts need to be done to raise awareness among reporting entities on their AML obligations, particularly in the non-banking sector. The auditors that the lead examiners met were unaware of their obligation to report suspicious transactions to *Rosfinmonitoring*. They highlighted the lack of proper guidance by competent authorities. After the visit, the authorities indicated that *Rosfinmonitoring* and the Ministry of Finance in particular have launched initiatives to improve the dialogue with the business sector. The level of knowledge of AML obligations seems however better in the banking sector (although the lead examiners note with regret that the over-representation of the public authorities in the panel with the banking sector could have affected the frankness with which banking sector representatives addressed these issues). The lead examiners positively note the initiative from the Russian banking association that issued guidance in 2010 on the AML requirements, including in relation to the obligation to identify politically-exposed persons. Banks have also been encouraged to develop comprehensive AML training programs for their staff.

99. Violations of AML/CFT requirements entail low sanctions, i.e. up to RUB 1 million (approximately EUR 23,000) and administrative suspension of activity up to 90 days for legal persons and up to RUB 50,000 (approximately EUR 1,100) for natural persons. The 2008 FATF Report raised some concerns as regards the level of sanctions available. The FATF also criticized the powers of sanctions of the financial supervisor. During the on-site visit, the authorities described some of the measures that have been taken since 2008 to improve the effectiveness of the supervision of the financial sector. *Rosfinmonitoring* seems to have played an important role to support more effective supervision, for example through the provision of relevant AML information to the supervisors. In particular, Russia indicated that supervision has been co-ordinated, detailed guidelines have been published, more supervisory inspections have been undertaken, licences have been revoked, and the number of STRs from supervised entities has also improved over the past years. The examiners were told that, in 2012, the Bank of Russia issued 259 decisions against credit institutions under Article 15.27 CAO. The authorities also indicated that 556 non-credit institutions were sanctioned in 2012 for failing to implement their AML requirements. However, concerns in regard to sanctions still remain.

100. The level of supervisory activity for non-financial professions, including lawyers and auditors continue however to raise some concerns. Their respective supervision concentrates on matters relating to

⁷² See the FATF 2008 Report, para. 608 and 615.

⁷³ See the FATF 2008 Report, para. 438 and 629.

professional practice and observance of federal legislation, including, in theory, the AML Law. However, there is no evidence that such controls focus on monitoring the implementation of AML requirements⁷⁴.

(b) Resources and training

101. To perform its task, *Rosfinmonitoring* benefits from the support of some 435 staff at the headquarters in Moscow, in addition to over 460 staff in regional offices. In its 2008 evaluation, the FATF noted that *Rosfinmonitoring* is a well-structured, funded, and staffed FIU. The FATF report stated that the co-operation between the headquarters and the regional offices appeared to be good. *Rosfinmonitoring* is in particular equipped with a central database of STRs that all regional offices can access to carry out their analytical work. As a member of the Egmont Group, it has access to a wide range of financial, administrative and law enforcement information to enhance its ability to analyse STRs. With regard to training, although *Rosfinmonitoring* has published useful guidelines on a series of topics and provides training to its staff (including on corruption related issues), no specific training on the predicate offence of foreign bribery has been provided so far. The same holds true for the annual training program for supervisors of the Bank of Russia. The lead examiners are concerned that this lack of specific training may result in a failure to identify transactions in relation to foreign bribery.

(c) Awareness and exchange of information

102. As concerns interaction with Russian law enforcement authorities, *Rosfinmonitoring* forwards material to law enforcement bodies as soon as there is enough evidence of the existence of a suspicious criminal activity. Agreements have been entered with all AML supervisors and all relevant law enforcement agencies for the purpose of information sharing. Cases are referred to various law enforcement agencies depending on the predicate offence. Although the authorities stated that corruption cases are forwarded to the Investigative Committee, it seems that such cases can also be sent to the GPO.

103. The FSS indicated that, in 2012, out of 1,412 cases received by the FIU, 821 cases were initiated. Furthermore, materials forwarded do include suspicions of corruption. At the on-site, the GPO stated that, in 2012, out of the 42,052 reports received from the FIU, 20,437 related to corruption and that 50% of cases were initiated. The Investigative Committee also stated that there have been instances where it started an investigation related to corruption on the basis of information forwarded by *Rosfinmonitoring*. No exact figure was provided on the number of these cases. This being said, although these figures seem to suggest that the FIU actually contributes to identify corruption cases, it is worth noting that spontaneous dissemination of information by *Rosfinmonitoring* to law enforcement authorities is extremely limited in volume. In 2011, *Rosfinmonitoring* passed on 59,581 analysed reports to law enforcement agencies, i.e. 1.08 % of the total number of STRs received (46,321 reports were transfers to law enforcement authorities in 2010 i.e. 1.02 % of the total number of STRs). The lead examiners were told that *Rosfinmonitoring* can share information with the law enforcement agencies upon request; however, the lead examiners were also told that such reports are forwarded to law enforcement. In the former scenario, the information retained by the FIU could contribute to an existing investigation, but it is less likely that it would serve to initiate a corruption case. The lead examiners note that, so far, the AML system does not appear to be generating any investigations into foreign bribery.

104. At the on-site law enforcement authorities expressed general satisfaction with the quality of the reports they receive from *Rosfinmonitoring*. They indicated that they regularly discuss the quality of reporting with the FIU. They further highlighted that they are obliged to provide feedback to the FIU on any case they receive from *Rosfinmonitoring*. Representatives of *Rosfinmonitoring* confirmed they get such feedback, although it is unclear whether they obtain information about the outcome of specific cases generated by information transmitted by the FIU.

⁷⁴ This issue was also raised in the FATF 2008 Report, para. 664.

105. The 2008 FATF Report notes that feedback and guidance related to STRs is limited to: i) designing reporting forms and instructions; ii) sending an acknowledgement of the receipt of a report; and, iii) publishing annual reports on activities of the FIU, as well as statistical data and typologies. This was confirmed during the on-site visit with the Russian banks that were interviewed. The legislation does not indeed require *Rosfinmonitoring* to provide feedback on how STRs are used. Thus an important tool for helping reporting entities to refine and improve the quality of STRs is not being used to its fullest extent. *Rosfinmonitoring* is publishing useful guidelines on a series of topics (such as beneficial ownership's identification). However, the issue of foreign bribery (or even corruption more broadly) as a predicate offence has not been the subject of any specific communication to reporting institutions.

106. During the on-site visit, the representatives from banks welcomed the guidance they receive from their supervisory authority, the Bank of Russia, including on internal controls and customer's identification. The panellists seemed familiar with the identification requirements applicable to PEPs and the relevance of these requirements for detecting bribery. In their response to the Phase 2 Questionnaire, the Russian authorities stated that, in the first half of 2012, in accordance with Federal Law No. 115-FZ, credit and non-credit institutions submitted a combined total of 142 suspicious transaction reports involving foreign public officials. However, it was not clear from the written response or responses to questions asked during the on-site visit whether these STRs, or FIUs reports including the relevant information, were forwarded to any law enforcement or investigative authority and, if they were, what use was made of them. Nor did it appear that the Investigative Committee had any strategy to proactively use such reports in its enforcement efforts.

Commentary

The lead examiners recommend that Russia take the following steps to improve the detection of the foreign bribery offence through its anti-money laundering system:

(a) Ensure that the non-compliance with CDD requirements and the failure to report are sanctioned in an appropriate and dissuasive manner;

(b) Ensure that all reporting entities, including lawyers, auditors and accountants are subject to the full range of requirements under the AML Law; and,

(c) Maintain ongoing efforts for the improvement of the anti-money laundering regime, and, in this context: (i) ensure that non-financial professions required to report suspicious transactions receive timely and appropriate directives and training (including typologies) on their reporting obligation; (ii) take all necessary measures to ensure that all stakeholders involved in fighting money laundering be adequately made aware that bribery of foreign public officials is a predicate offence to money laundering; and (iii) take appropriate steps to improve the flow of information and feedback between the relevant actors in the anti-money laundering system, in particular, the flow of FIU's reports indicating possible foreign bribery to law enforcement agencies.

The lead examiners recommend that the Working Group follow up on the issues below, as practice develops, in order to assess:

(a) The capacity of the FIU to detect corruption cases;

(b) The implementation of domestic legislation, including with respect to the application of sanctions for failure to report; and,

(c) The level of feedback from the FIU to reporting entities.

C. INVESTIGATION, PROSECUTION AND SANCTIONING OF FOREIGN BRIBERY AND RELATED OFFENCES

1. Investigation and Prosecution

107. According to officials met at the on-site, despite the availability of various indicators and investigative tools, such as media reports, STRs generated by Russia's Financial Intelligence Unit and tax audits, Russia has not detected any instances of foreign bribery since the enactment of its foreign bribery law. As a result, Russia has not investigated or prosecuted any cases involving foreign bribery. In the opinion of the lead examiners, law enforcement agencies do not appear to be focused on detecting, investigating and prosecuting foreign bribery, even though many Russian companies operate in what are typically high-risk sectors – defence, oil and natural gas, mining and others – and in high-risk markets. This issue should be followed-up on.

(a) Institutional Framework

108. In Russia, two types of investigations can be conducted in the context of a foreign bribery case: criminal and administrative. Criminal investigations are conducted against natural persons and administrative investigations are conducted against legal persons involved in foreign bribery. Proceedings in these investigations are governed by the CPC and CAO, respectively.

109. Instances of foreign bribery can be detected by any institution with law enforcement powers, including, for example, the Ministry of Internal Affairs (MIA) and the Federal Security Service (FSB), or through the receipt of information from other state institutions, citizens, and other sources. However, if detected, allegations of foreign bribery by natural persons must be referred to the Investigative Committee, which has exclusive investigative jurisdiction over such offences⁷⁵. Nevertheless, the Investigative Committee could involve other law enforcement agencies in foreign bribery investigations by forming investigative teams, by issuing mandatory instructions to operative officers to carry out operational and search activities⁷⁶, and through investigations involving both foreign bribery and related offences, such as money laundering, fraud, and accounting offences.

110. The Prosecutor's Office would serve several functions in the context of a foreign bribery case. In criminal proceedings, the prosecutors would be responsible for the prosecution of foreign bribery offences. They would also be responsible for overseeing the legality of actions taken by investigators and operative officers, ensuring that the operational and search activities were conducted in accordance with the law, and that the correct procedures were upheld, all with the main purpose of ensuring that the collected evidence would be admissible in court. In administrative proceedings, the prosecutors (separate from the prosecutors handling criminal investigations) would be responsible for both investigating and prosecuting foreign bribery allegations involving a legal person. Neither the Investigative Committee nor any other law enforcement authority would be directly involved in administrative investigations. However, prosecutors could use any evidence collected during a criminal investigation as part of their investigation and prosecution of a legal entity for an administrative offence.

111. International cooperation in the form of direct law enforcement (police-level) cooperation, including exchange of intelligence, is performed by criminal investigators; international cooperation in the form of the mutual legal assistance (MLA) is carried out via one of the Central Authorities – namely, the

⁷⁵ Article 151 of the CPC

⁷⁶ The term refers to the set of measures defined in the Law on Operational and Search Activity 144-FZ.

GPO, in the course of the investigations, and the Ministry of Justice (MoJ) at the stage of the court proceedings.

(i) *Investigative Committee*

112. The Investigative Committee in its current form became operational on January 15, 2011. The powers, organization and legal status of the Investigative Committee are defined in the Federal Law on the Investigative Committee of the RF 403-FZ. The Phase 1 report described its history of transformation from the Investigative Committee of the Prosecutor of the Russian Federation into a purely investigative body subordinate to the President of Russian Federation. This institutional change separated preliminary investigative functions from prosecutorial supervisory ones⁷⁷. At the on-site visit, the authorities further explained that such restructuring was done in order, among other things, to strengthen the independence and integrity of this institution.

113. The Investigative Committee is a centralised, hierarchical system of investigative authorities⁷⁸ and institutions led by the Chairperson of the Investigative Committee⁷⁹. The investigative authorities are comprised of the Headquarters and regional offices. The Headquarters consist of seven Directorates that are further divided into departments, divisions and other structural units. The institutions of the Investigative Committee include scientific and educational institutions, such as the Committee's Professional Development Institute.

114. Within the Investigative Committee, there are no specialised divisions or persons responsible for detecting or investigating foreign bribery. Foreign bribery can be investigated both centrally and in the regions⁸⁰, and would fall under the competence of the departments and divisions on investigation of crimes committed by public officials. These departments are responsible for investigations of complex corruption crimes generally. Such units have been created in all regional Investigative Directorates and within the Main Investigative Directorate of the Headquarters. They are staffed with the most experienced investigators and supported by special departments on procedural control in combating corruption created in the Headquarters and in the regions to provide methodological support to the conduct of complex corruption investigations, including foreign bribery. International police-level cooperation in foreign bribery cases would be handled by the Directorate of the International Legal Cooperation at the central level.

115. At on-site visit Russian authorities assured the lead examiners that they have all necessary resources, both in terms of finances and expertise to conduct thorough and effective investigations. In total 22,000 people are employed by the Investigative Committee, and, according to its representatives at the on-site visit, about 11,000 of them are investigators who could take up a foreign bribery investigation at any time. However, given that neither the Investigative Committee nor any other investigative, operational, or prosecutorial entity has detected any instances of foreign bribery to date, the lead examiners question whether the current approach is working. Indeed, multiple participants in the on-site visit stated that passive bribery is a much greater evil than active bribery, suggesting that generalised anti-corruption investigators are focusing on domestic passive bribery to the exclusion of active foreign bribery. This is, of course, corroborated by the large disparity in the number of domestic bribery investigations and

⁷⁷ Phase 1 Report, p.21.

⁷⁸ The term "investigative authorities" refers to the structural units of the Investigative Committee with the functions to investigate, as opposed to those structural units that carry out non-investigatory functions. It is defined in the Law on Investigative Committee and is used in various legal acts of RF.

⁷⁹ Article 5 of the Law on Investigative Committee

⁸⁰ According to Article 152 CPC, preliminary investigations are conducted at the place where the criminal act was committed. In cases when the crime was committed in multiple locations, the investigation will be conducted at the place where most episodes of the crime took place. The investigation can also be conducted where the accused or most witnesses are located.

prosecutions relative to the number of foreign bribery investigations and prosecutions, which are non-existent. Simply stated, foreign bribery seems to be a low priority for the Russian investigative agencies.

116. The lead examiners are furthermore concerned that the current approach can lead to fragmentation of efforts and lack of specialised expertise because when competence over foreign bribery is distributed over a number of structural units, each of these units is less likely to develop expertise on the crime. It is also more difficult to ensure that foreign bribery training targets the right personnel. Moreover, although it is true that there is some subject matter overlap between domestic and foreign corruption, it is also true that foreign corruption cases are often more difficult and time-consuming, given that key evidence and witnesses are often located abroad, requiring different investigative techniques and methods of proof. Many countries have responded to this challenge by establishing specialized units or sets of investigators focused on detecting and investigation foreign bribery.

117. The President of RF “administers the activity of the Investigative Committee, approves the Decrees on Investigative Committee, and establishes the staff numbers of the Investigative Committee”⁸¹. The Chairman of the Investigative Committee is appointed and dismissed by the President and reports to him annually on implementation of the state policy in his/her field, the state of investigative activities and the work done to improve the Committee’s efficiency. S/he is held personally liable for the performance of the Investigative Committee’s tasks. It appears that the Law on Investigative Committee does not specify the grounds for dismissal of the Chairman and his deputies⁸², leaving this decision to the full discretion of the President, nor does the Chairman serve a fixed term. The lead examiners are of the opinion that this institutional framework should be improved to ensure the independence of the Investigative Committee⁸³.

118. Different observers, both Russian and foreign, have openly criticized use of the law enforcement system to pursue individuals for politically-motivated reasons⁸⁴. Such cases were highlighted during the on-site visit. Civil society panellists referred in particular to a well-publicized case of an anti-corruption blogger, lawyer Alexei Navalny, who faced a trial on charges of leading an organized crime group that stole materials worth EUR 400,000 from a state-controlled company while working as an adviser to the regional governor in 2009.⁸⁵ Shortly after the on-site visit, he was sentenced to five years in prison for theft and embezzlement⁸⁶.

119. In response to these concerns, the Russian authorities argue that no undue interference or pressure can be exerted on criminal investigators. Officials of the Investigative Committee, as well as of other law enforcement institutions, argued that their officers work independently in accordance with laws, internal rules and regulations, and without regard to any improper external influences, and that any such influence with the purpose of affecting the conduct of investigations is punishable by law⁸⁷. They noted that all of the instructions from supervisory investigators must be properly explained in writing and that the actions of the head of the investigative body can be appealed⁸⁸. Furthermore, Russian officials emphasised that criminal investigations are conducted pursuant to the CPC which requires an investigator to file a

⁸¹ Article 1 of the Law on Investigative Committee

⁸² Dismissal procedure for employees of the Investigative Committee is defined in the Article 30 of the Law on Investigative Committee and covers only investigators and heads of the investigative structural units.

⁸³ See also Introduction section of the report.

⁸⁴ See for example, a column by the president of Freedom House in *The Washington Post*.

⁸⁵ Navalny’s blog regularly criticizes Russia’s highest level officials for corruption, including the chairman of the Investigative Committee for owning property abroad and Russia’s Head of State.

⁸⁶ See BBC report.

⁸⁷ Article 6 of the Federal Law On the Investigative Committee states that any form of influence by federal bodies of state power, bodies of state power of subjects of the Russian Federation, bodies of local self-government, public associations and entities, other agencies, mass media, their representatives, and officials on an official of the Investigative Committee for the purpose of affecting his or her procedural resolution or for the purpose of getting in the way of his or her procedural activity leads to responsibility established by Russia’s legislation.

⁸⁸ Responses to Phase 2 Questionnaire, question 6.5.

report of the most significant investigative actions affecting the fate of the case with the competent prosecutor. On receipt of these reports, the prosecutor is empowered to assess whether the investigator has carried out all the necessary investigative and procedural actions required by law, and can require other measures be taken⁸⁹. The Russian authorities argued that this procedure is in accordance with Article 5 of the Convention. While recognizing the existence of those basic legal safeguards and the current institutional framework, the lead examiners remain concerned that investigations of foreign bribery might be improperly influenced by considerations prohibited under Article 5 of the Convention and conclude that further steps and reforms need to be taken to strengthen the independence of criminal investigations and ensure the equal and objective application of the criminal law.

120. The lead examiners found that although representatives of the Investigative Committee appear to be aware of the Convention, the general level of awareness and training of investigators in relation to the Convention, and the specific offence of foreign bribery, is low. As noted above, multiple on-site participants stated that domestic, passive bribery was a much greater evil than foreign bribery, and no instances of foreign bribery have been detected, investigated or prosecuted.

121. Finally, the lead examiners re-emphasize that the foreign bribery offence does not appear to have high law enforcement priority. This may reflect the more recent enactment of the offence; more significantly, however, it appears to be due to a much greater emphasis given to combating domestic corruption. Given the seriousness of Russia's domestic corruption issues, many of which are discussed elsewhere in this report, the lead examiners do not in any way wish to question Russia's emphasis on fighting domestic corruption. To the contrary, this appears to be a worthwhile goal, which, in time, could have an indirect, positive influence on foreign bribery investigations and prosecutions. However, in the context of assessing Russia's enforcement of its foreign bribery laws and its compliance with the Convention, Russia must place more priority on detecting, investigating, and prosecuting foreign bribery cases and must take concrete steps to improve its level of enforcement. Although there are many ways to accomplish this goal, some of which are discussed in section on the conduct of investigation and prosecution, this must be followed up by the Working Group.

(ii) *Prosecution authorities*

122. The structure of prosecution authorities, as well as their powers, organisation and working procedures are governed by the Law on Prosecutor's Office of the RF 2202-I. Prosecution authorities are organized following the same logic as that of the Investigative Committee. The system consists of the central apparatus – the General Prosecutor's Office (GPO) – and the regional offices, as well as scientific and educational institutions. The GPO consists of 31 Directorates and Departments; they are further divided into departments, divisions and other structural units.

123. The Russian authorities provided very little information in regard to the prosecution authorities in response to the Phase 2 questionnaire. This situation was not greatly improved during the on-site visit, as many of the representatives of the prosecution authorities at the on-site visit often could not provide necessary clarifications to the lead examiners. This made it impossible to verify the relevance of various structural units during the on-site visit. Russia also provided no information on the number of prosecutors and other personnel available for the investigation and prosecution of foreign bribery, as well as on material and technical support, including availability of basic and special equipment and specialised expertise. In the absence, of any actual examples of foreign bribery prosecutions, the lead examiners could not make any meaningful conclusions on whether the prosecutors are well equipped to seriously investigate and prosecute administrative and criminal cases of foreign bribery.

⁸⁹ Articles 146, 148, 156, 172, 208, 211, and 213 of the CPC.

124. Russian officials, met at the on-site visit, explained that prosecutors are specialised according to the various types of crime, such as, for example, public corruption, but they are also divided based on the procedural functions they performed. Accordingly, separate structural units deal with (i) the oversight over the legality of investigative and operative activities of law enforcement bodies; (ii) support of the state accusation in the court; and (iii) MLA and extradition. It was not possible during the on-site visit to explore how such “dual-specialisation” is implemented organisationally, and whether it could have negative impact on: (i) continuity in a foreign bribery case; (ii) ownership of the case by each of these procedural prosecutors, and (iii) intimate knowledge of the case detail by each of the procedural prosecutors. This can raise a number of challenges discussed further in the next section of the report and needs to be followed up.

125. It was also not possible to determine from the response to the Phase 2 questionnaire, the legislation provided by the Russian authorities, or the on-site visit which structural units or persons are responsible for administrative investigations, including investigations of foreign bribery by legal entities.

126. Moreover, during the on-site, it was explained that, if both a natural person and a legal person were alleged to have engaged in the same foreign bribery schemes, different prosecutors will be assigned to the criminal and administrative proceedings. When asked about coordination between such parallel proceedings, prosecutors met at the on-site visit expressed scepticism and said that, in theory, cases could be coordinated but it is more difficult in practice “due to the workloads and procedural time constraints”. Further, if an investigation or prosecution of a natural person was underway, it is unclear whether any system is in place to ensure that a referral of the legal person’s conduct in the foreign bribery scheme would be made to the prosecutors handling administrative proceedings, or vice versa. In addition to the extra resources required for such coordination, the examiners concluded that the current system could result in the loss of efficiencies that otherwise could be achieved were the same prosecutor assigned to both the criminal and administrative proceedings. This is especially aggravated in the foreign bribery context, which, as described above, presents unique and complex investigative and prosecutorial challenges. The examiners, therefore, underline the importance of prosecutorial specialisation, referral, and coordination within both criminal and administrative proceedings, as well as their ability to work together effectively in light of the possibility of establishment of parallel investigations. This is an area for follow-up.

127. In regard to prosecutorial independence, procedures for appointment, promotion, demotion, and dismissal of prosecutors include some safeguards from political influence. The Russian Parliament appoints and dismisses the Prosecutor General (PG) on recommendation from the President. His/her deputies are also appointed and dismissed by the Parliament but based on the PG’s own recommendation. The PG appoints all other prosecutors for an indefinite term. The only exception is PG him/herself, who is appointed to a five-year term. The lead examiners noted that this procedure is different from the one used for the Investigative Committee as it involves both the executive and legislative branches, as well as a fixed term of office, therefore affording the PG a higher level of independence.

128. Independence of the prosecutor is also formally safeguarded in the Law on Prosecution which states that “any influence whatsoever exercised by the federal state authorities, the state authorities of the subjects of the Russian Federation, local self-government bodies, public associations, the media, representatives, as well as official persons thereof on a prosecutor with a view to influencing his decisions or any hindering whatsoever of his activities shall entail responsibility established by law.” The Law also stipulated that a prosecutor is not obliged to provide any explanations concerning the merits of the cases and materials in his/her files, or make them available for inspection.

129. Nevertheless, under Russian law, senior prosecutors under Russian law may intervene in the prosecution process and review a decision to prosecute. The lead examiners note that there are various circumstances in which such actions could be justifiable and necessary. However, the absence of clear guidance on such interventions can create room for undue influence. In addition, procedures for

distribution of cases, their withdrawal from one prosecutor and transfer to another, and the role of supervising prosecutors in these processes raise similar concerns.

130. With regard to awareness on foreign bribery among prosecutors, some training efforts have been mentioned by Russia in its responses to the Phase 2 questionnaire. The GPO has also developed Methodological Recommendations on investigation of corruption offences committed by legal persons⁹⁰. These guidelines explicitly cover foreign bribery and identify a number of deficiencies in the existing proceedings that will be discussed later in the report. The lead examiners welcome this initiative and note that it would be particularly important to ensure that these guidelines are put to practical use and that prosecutors are made aware of the specifics of the administrative proceedings involving legal persons that have committed foreign bribery.

(iii) *The Judiciary*

131. Both foreign bribery criminal and administrative cases will be considered by courts of general jurisdiction (i.e., justices of the peace, district (city) courts, courts of the RF constituent entities, and the RF Supreme Court), and not arbitration courts. A foreign bribery criminal case, as a rule, would be filed in the appropriate court that has territorial jurisdiction over the place where the investigation was completed and forwarded for prosecution⁹¹. The on-site visit revealed, however, that there is no clarity as to such jurisdiction for a court hearing the administrative case of foreign bribery would be determined. Discussion among the representatives of the judiciary, the executive, and the prosecutors followed this question at the on-site visit, and in the end it was stated that the issue has not been resolved and that there are plans to clarify this within the next few years. The lead examiners express serious concern over this lack of clarity as it indicates that even if foreign bribery cases involving legal persons are successfully detected and investigated in Russia, the issues with the venue of their adjudication may preclude them from being prosecuted.

132. Article 5 of the Convention requires that Parties should be vigilant in ensuring that prosecutions of foreign bribery are not influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved; the judges have a key role to play in this. The establishment of a judiciary free of undue influence has been an important challenge to Russian authorities over the past decade⁹². As a legal matter, the independence of the judiciary is enshrined within the Constitution⁹³. To this end, particular safeguards have been put in place, such as: immunity, life tenure, salaries regulated by law, abolishment of the three-year limit for the initial appointment. Notwithstanding all these measures, it is widely recognised, not only among civil society and the public, but also at Russia's executive level that judiciary remains vulnerable to undue influence, including the risks of corruption.

133. Not only survey results, but also expert reports, point to broad concerns about both the integrity and independence of the judiciary. The International Commission of Jurists (ICJ), in their 2010 report on the State of the Judiciary, points out many of the shortcomings of judicial independence in Russia: the system fails to protect judges from undue influence from state and private actors⁹⁴; judges are dismissed for

⁹⁰ Methodological Recommendations on liability of legal persons for corruption offenses, General Prosecutors Office, 2012.

⁹¹ CPC defines some exceptions and describes the circumstances when these exceptions are made.

⁹² See The State of the Judiciary in Russia, report of the ICJ Research mission on judicial reform to the Russian Federation, November 2010 (pp. 5-7).

⁹³ Article 120 of the Constitution

⁹⁴ The report gives an example of the First Deputy Chair of the Supreme Arbitration Court of Russia, Elena Valyavina, testifying in court that during her time presiding over the Togliattiazot case which dealt with the corporate raiding of the largest ammonia producing plant in Russia, Valery Boyev, an official in the Presidential Administration, had approached her with instructions on how to decide a high-profile case. In the event of non-compliance, he threatened her with career problems.

improper and arbitrary reasons⁹⁵; and court presidents have excessively broad powers regarding the distribution of cases, promotion of judges, disciplinary proceedings and material benefits that yield inordinate influence over their regional branches. The low acquittal rate by judges in Russia can also be seen as further indication of the problem of judicial independence⁹⁶. Acquittal rates normally fall under one percent compared to an average acquittal rate of 20 percent for jury trials⁹⁷. In the judicial statistics provided by Russia for Article 291, in 2012, courts convicted 2093 persons and acquitted five.

134. Per the ICJ report, “on average, some 40 to 50 judges are dismissed each year following disciplinary proceedings. Russia is a large country, but the ICJ team found this dismissal rate “surprisingly high”. Many European States, for example, will typically dismiss no judges at all in any given year and often go for decades without removing a member of the judiciary”⁹⁸. Despite the relatively high frequency of dismissals by disciplinary process, relatively few judges are charged with corruption offences. One explanation put forward by the ICJ and other observers is the purpose of the dismissals is to discipline judges who do not render the expected verdicts.

135. Yet Russian authorities have sought to address this perception. For instance, a new judicial body, the Disciplinary Judicial Presence (DJP), was established in 2010 to hear appeals against the decisions of the High Qualification Collegium of Judges (HQCJ) and Qualification Collegiums of Judges (QCJs) on dismissals of judges. It considers appeals of dismissed judges, as well as applications relating to decisions of the HQCJ or a QCJ by the Presidents of the Supreme Court or High Arbitration Court, not to terminate the powers of a judge. In 2010, the DJP considered 147 applications, and, in 2011, 208 applications. In 2010, approximately one third (34.4%) were reversed, and in 2011, the rate of reversals – based on a secret ballot - reached 41.7%. While this latest innovation is encouraging, the lead examiners believe that the issue of independence of the judiciary should be closely monitored as foreign bribery case law develops.

136. Regarding awareness and training of judges, it was evident to the lead examiners that innovations in the law, such as the liability of legal persons for corruption, have seen a sharp rise in investigations and indictments, and require further trainings for all parties of the criminal process, including the judges. Some complaints were also voiced by prosecutors and legal academics about the lack of consistency and certainty in the application and interpretation of the law by courts. Although these problems cannot be solely blamed on the courts, measures to enhance the training offered to judges may assist them in addressing some of the procedural difficulties and issues of legal inconsistency that have arisen in the past. In relation to specifically raising awareness about the Convention and Russian foreign bribery legislation, as well as assisting judges in adjudicating cases of foreign bribery, the lead examiners were informed that some judges had taken part in expert consultations, meetings and conferences dedicated to various aspects of corruption and economic crime. The authorities confirmed, however, that foreign bribery was not explicitly covered at any of these events.

(iv) *Other law enforcement agencies*

137. Russian officials at the on-site explained that MIA and FSS operative officers would be involved in the conduct of operational and search activities and may be included in the investigative team in the course of a foreign bribery investigation. MIA and FSS operational units exist both centrally and in the regions. Related offences, as discussed earlier, are investigated by investigators from the investigative units of these agencies, also at the centre or in the regions. Officials, representing MIA and FSS at the on-site

⁹⁵ During the on-site, lawyers pointed to the dismissal of Judge Kudeshkina of the Moscow City Court for public criticism of political pressure on judges by executive branch agencies, such as prosecutors, and to her subsequent victory at the European Court of Human Rights for violation of her right to free expression.

⁹⁶ In another report by the ICJ, one former judge said that he had been dismissed for a high rate of acquittals, which had amounted to five or six per 300 cases.

⁹⁷ International Commission of Jurists (ICJ). *State of the Judiciary in Russia*. June 20, 2010.

⁹⁸ *Ibid.*

visit, appeared to be least familiar with the requirements of the Convention and elements of the new foreign bribery offences. This is understandable considering the investigations of these crimes fall mostly outside of their mandate. However, they should be able to detect foreign bribery and refer incidents to the Investigative Committee, including when information indicating foreign bribery is uncovered in the course of their own investigations or intelligence gathering. The operative officers and criminal investigators should therefore receive training and awareness-raising on foreign bribery.

(v) *Interagency coordination and cooperation*

138. Procedurally it is the role of the PG and other prosecutors to ensure coordination of the activities of the bodies of MIA, FSS, and other law enforcement agencies in the area of combating crime, including corruption⁹⁹. In order to do so, the prosecutor can call coordination meetings, organize working groups, and request statistical and other relevant information. It is also the role of the prosecutor to resolve any disputes arising regarding jurisdiction of the case. If the case involves several offences that fall under the jurisdiction of different institutions, the prosecutor will decide which agency will investigate this case.

139. At the on-site visit, Russian authorities shared that in most instances such cases are handed over to the Investigative Committee and reported good levels of coordination. The lead examiners nevertheless remain concerned about the level of communication between various criminal investigators, especially given their high numbers, and the possibility for the cases to be investigated in parallel or with allegations of foreign bribery being overlooked. At the on-site visit law enforcement representatives confirmed that multiple investigations may arise when a case involves both foreign bribery and a related offence such as false accounting, money laundering or tax evasion. It is therefore conceivable that, since there is no centralised database of the on-going and closed investigations or another mechanism for tracking of the cases, concurrent investigations may go unnoticed, especially, if they are taking place in different regions of the country. It is also conceivable that one investigative authority may close a case because it erroneously believes that another agency has already opened a criminal case on the same set of facts. It remains to be seen how such coordination will unfold in practice between the Investigative Committee in charge of initiating foreign bribery investigations and the MIA and FSS in charge of investigating other related offences.

140. In regard to cooperation on individual cases, CPC Article 163 expressly provides for a possibility of the multi-disciplinary approach to be undertaken by the investigative authority. Investigative teams can be formed to investigate complex cases or cases involving large volumes of work, e.g., foreign bribery cases. The head of the investigative authority in charge of the case makes the decision to set up such a team; this decision lists all investigators and operative officers within it and appoints its head. At the on-site visit, law enforcement officials confirmed that such teams work well in practice. In addition, they can draw on specialised expertise from other state institutions, as well as hire private sector experts and specialists. Institutional cooperation in criminal investigations is streamlined through numerous MOUs and cooperation agreements, which are signed among all of the law enforcement authorities that could play a role in a foreign bribery case. Similarly, it remains to be seen how such cooperation will work in practice as foreign bribery case law develops.

Commentary

While the lead examiners take note of the complex and multi-faceted system of the law enforcement and prosecutorial bodies in Russia, they remain concerned that the existing resources are not sufficiently focused for the adequate detection, investigation and prosecution of foreign bribery and related accounting offences. Given Russia's continued high incidence of domestic corruption, the complexity of foreign bribery cases, the challenges presented by

⁹⁹ Article 8 of the Law on Prosecution Authority of the RF

foreign evidence and witnesses, the intricate corporate structures often involved in foreign bribery schemes, and other unique issues that distinguish foreign bribery offences from domestic corruption offences, the lead examiners recommend that adequate resources are devoted specifically to the enforcement of foreign bribery.

The lead examiners are also concerned by the low level of awareness of the offence of foreign bribery and the Convention within the law enforcement, prosecution and judicial authorities and the low level of priority assigned to pursuing cases under the Convention. Both of these factors appear to be hampering the effective enforcement of the Russian foreign bribery legislation. Therefore, they recommend training programmes for operative officers, investigators, prosecutors and judges that incorporate more detailed information about the offence of foreign bribery, related offences and the provisions of the Convention, and that Russia emphasize the importance of pursuing foreign bribery cases.

They also recommend that Russia consider steps to more strategically and effectively pursue foreign bribery cases. To this end, Russia may wish to consider establishing specialised units or sets of investigators and prosecutors specifically tasked with detecting and investigating foreign bribery. At a minimum, the Russian authorities should devote additional resources to the detection of foreign bribery, including by providing clear directives and guidelines to the investigative, operational, and prosecutorial bodies, in addition to other state institutions, such as foreign embassies and the Financial Intelligence Unit, as to who is responsible for detecting foreign bribery and how that can be done. This should be followed up by the Working Group.

With regard to the independence of investigators and prosecutors, the lead examiners recommend that Russia take steps to ensure that investigations and prosecutions of the foreign bribery offences cannot be influenced by considerations prohibited under Article 5 of the Convention. The lead examiners remain concerned that the factors enumerated in Article 5 of the Convention could influence foreign bribery cases. As noted above, the Investigative Committee would supervise investigation of all foreign bribery cases. Because of the potential exposure of the Investigative Committee to political influence, there is a danger that investigations of foreign bribery cases could be affected by “concerns of a political nature”, “national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved”.

The lead examiners welcome continuing efforts to strengthen judicial independence in Russia, but they also believe that individual judges remain vulnerable to undue pressure from court presidents and other sources; therefore, they recommend that the issue of independence of the judiciary should be closely monitored as foreign bribery case law develops.

Furthermore, the lead examiners express serious concern in regard to the ambiguity of the venue for adjudication of foreign bribery cases in administrative proceedings. They recommend that Russian authorities as a matter of priority establish clear guidelines as to what courts would be responsible for adjudication of such cases.

Finally, while welcoming the legislative framework in place to promote coordination among law enforcement authorities, the lead examiners are of the opinion that Russia should ensure that the criminal investigators of various law enforcement agencies, as well as prosecutors pursuing administrative investigations of legal entities, are working together effectively. The lead examiners consider that this issue should continue to be monitored and further recommend that trainings with the focus on the referral and coordination of cases of foreign bribery and related accounting offences among various law enforcement bodies, as well as

coordination of criminal and administrative investigations, be made part of the training curriculum on foreign bribery and, when feasible, be conducted jointly. Russia may also wish to consider additional organizational changes, such as assigning the same prosecutors to investigations involving both legal and natural persons, to enhance the efficiency and effectiveness of their enforcement efforts.

(b) *The Conduct of Criminal Investigations and Prosecutions*

141. As stated earlier, there have been no cases of foreign bribery prosecuted, investigated or even detected in the Russian Federation since the enactment of the enabling legislation in May 2011. The lead examiners noted, however, that many Russian companies conduct trade and investment activity in sectors and with countries that have a high risk of corruption. Given the real potential for this type of crime to be committed, as well as some publicly available information about allegations of foreign bribery committed by Russian companies, the lead examiners discussed with Russian law enforcement authorities the potential obstacles to detecting and investigating foreign bribery offences.

142. During the on-site visit, the Russian authorities set forth several reasons for the fact that they have yet to detect, investigate, or prosecute foreign bribery cases. These reasons included the short period since enactment of the foreign bribery offence, the absence of credible reports of alleged foreign bribery, the practical difficulties of its detection, and the Russian law enforcement's focus on domestic corruption among others. Additional areas of concern were also revealed during the on-site visit, including the lack of training and awareness about the Convention, shortcomings in the administrative procedures for conducting investigations against legal persons, short, procedural timelines, and – most importantly – the lack of pro-active detection of foreign bribery. These issues, together with some of the other important law enforcement capabilities, including the use of special investigative techniques and the lifting of bank secrecy, are outlined below.

(i) *Commencement of criminal proceedings*

143. An investigator of the Investigative Committee can initiate a foreign bribery case on the basis of the report about a crime, confession, information about a crime from other sources, and prosecutorial order with forwarded materials¹⁰⁰. In all instances s/he is obliged to (i) record the incoming crime information, (ii) verify the report, and (iii) determine whether there is sufficient data which points to the signs of crime (reasonable grounds to believe that the crime occurred).

144. The verification of the crime report has to be completed within three days of its receipt. This period can be extended to 10 days by the supervising investigator, and if need be up to 30 days; substantiation of reasons for such extension is mandatory. If the investigator is unable to infer from a crime report whether the criminal allegations are probable, or if the information in the report does not provide a sufficient basis to require investigation, s/he may instruct the MIA or FSS operative officers to perform operative and search activities as part of the verification process. Based on the results of the verification, the investigator has to either (i) initiate a criminal case; (ii) refuse to initiate a criminal case; or (iii) refer this crime report to another authority that has jurisdiction over such crimes.

145. The person who reported a crime is notified of the investigator's decision and is explained his/her rights and procedure to appeal against this decision. The copy of the decision is forwarded to the prosecutor, and the prosecutor within 24 hours can overrule this decision and inform the investigator providing reasons for the annulment in writing. The decision on refusal to initiate a criminal case can be appealed to the prosecutor, the head of the investigative authority or the court.

¹⁰⁰ Article 140 of the CPC

(ii) Detection and sources of information used for launching investigations

146. Russian law enforcement authorities informed the lead examiners that, in practice, an investigation can be instituted based on a variety of potential sources. Investigations into complex economic crimes are often triggered as a result of information obtained through law enforcement intelligence. Information and cooperation from one of the parties to the crime were cited as another reliable source of detection in domestic corruption cases, along with the reports of crime made by citizens. While a criminal case cannot be initiated based solely on the anonymous report¹⁰¹, representatives of Russian law enforcement agencies assured the lead examiners that such reports are given proper consideration by the investigators. This statement is further corroborated by the Methodological Recommendations on Investigation of Corruption Crimes¹⁰² which prompt the investigators to follow up on anonymous reports and identify them as an important source of potential allegations.

147. Subsequent to the on-site visit, Russian authorities provided statistics on the sources of detection for corruption crimes that clearly demonstrates what was communicated at the on-site visit. Namely, that in the first 3 months of 2013 out of 13,614 materials on corruption crimes received by the Investigative Committee, at least 62.2% originated from other state institutions, mostly being referrals from law enforcement and prosecutors (49.6% of these reports were referred by MIA, 9.7% by prosecutors, and 2.8% by FSS). The rest of the reports included those received from other sources (33.3%), as well as from the citizens and NGOs (4.5%). The number of reports received from the public appears low. Further analysis of the provided data shows that only one quarter of the reports from the public resulted in the initiated criminal cases.

148. Law enforcement representatives met at the on-site visit also indicated that an investigation could be commenced on the basis of information appearing in the media. However, many of these representatives expressed open scepticism regarding this important source of allegations of foreign bribery. These representatives said that allegations reported in the media were often vague, inaccurate, and difficult to follow up on, and, therefore, rarely proved to be a sufficient basis to launch a formal criminal investigation. In practice, mass media reports were usually verified only when the newspapers or the publishing houses forwarded them to the law enforcement or prosecution authorities. The data provided to the lead examiners after the on-site visit illustrates the low number of press verifications and an even lower number of cases initiated on their basis. Thus in 2011, the Investigative Committee processed 33,110 materials on corruption crimes, subsequently initiating 12,442 criminal cases; by contrast only 158 inquiries of media reports were carried out, resulting in eight criminal cases. Data for 2012 was similar: 42,052 materials were received by the Investigative Committee, resulting in 20,437 criminal cases. Of the 53 inquiries based on media reports, only five criminal cases were initiated, while for the remaining 48 of such reports it was decided not to initiate criminal proceedings.

149. The Russian law enforcement authorities' reluctance to use certain methods to detect foreign bribery is regrettable, especially given that evidence and witnesses of foreign bribery are often located abroad, perpetrators of foreign bribery are less likely to report it to Russian authorities, and potential victims of foreign bribery are often not aware of it. The lead examiners note with concern that the law enforcement authorities appear to heavily rely on denunciations by solicited persons or by the public officials who were offered a bribe in order to open an investigation. Such a reactive approach considerably weakens the investigatory reach of the Investigative Committee and undermines potential for effective detection of foreign bribery.

¹⁰¹ Article 141 of the CPC

¹⁰² Methodological Recommendations were developed by the Main Criminalistics Directorate of the Investigative Committee in 2009 and disseminated among all regional offices of the Investigative Department.

150. The on-site visit also revealed that authorities are not, as a matter of common practice, using incoming MLA requests from abroad as a source of information for determining whether a foreign bribery investigation should be initiated in Russia. In general, incoming MLA requests are usually received by the GPO or the Ministry of Justice and referred directly to the relevant investigative authority or court for execution. The process for handling the requests does not routinely enable investigators or prosecutors to scrutinise and exploit MLA requests as potential detection sources. However, following the on-site visit, the Russian authorities insisted that this is done and provided examples of cases as illustration. The practice of reviewing MLA requests for potential allegations of foreign bribery, if encouraged, may help to detect cases.

151. Other potential sources for detection of foreign bribery include complaints received through hotlines, websites and other complaint mechanisms, referrals from tax inspectors, inspectors of the Accounts Chamber and private auditors, as well as Suspicious Transaction Reports from the FIU, and were discussed in detail in previous sections of the report. These channels of reporting appear to work well on other types of crimes, however, no foreign bribery allegations have been brought to light by these institutions to date. Enhanced awareness-raising regarding the Convention and foreign bribery offences among representatives of these institutions may help open these channels as to foreign bribery, efforts to promote cooperation between these institutions and law enforcement, complemented by joint trainings involving law enforcement officials responsible for detection and investigation of foreign bribery, may also enhance the effectiveness of Russia's enforcement.

(iii) *Pre-trial investigation and its termination: procedural timelines*

152. All bribery offences are subject to investigation and prosecution *ex officio* under Russian law. Accordingly, the investigator is obliged to open a criminal case if there is a reasonable suspicion that the offence of foreign bribery has been committed. S/he draws up a decision on opening of the criminal case which triggers a mandatory pre-trial investigation.

153. The lead examiners noted that Russian Criminal Procedure Code sets a strict timeline of two months for the pre-trial investigation. The time is calculated from the day when the criminal case was opened to the day when the conclusion of guilt (*indictment*) was submitted to the prosecutor. This term can be extended by the head of the investigative unit for up to three months, and if the case is of high complexity – by the head of the investigative authority of the constituent regions of the RF for up to 12 months. Any further extensions can be only made in exceptional cases by the Chairman of the Investigative Committee or the Deputy Chairman of the Investigative Committee¹⁰³. Such extensions are not limited.

154. If satisfied that either: (i) no offence was committed; (ii) the act is statute barred, amnestied or pardoned; and, (iii) immunity lifting request was not granted; or (iv) there is no reasonable suspicion that the person has committed the criminal offence – the investigator can decide not to initiate a criminal case or terminate it at any point of the pre-trial investigation. In this case, the investigator issues a decision on termination of the criminal investigation which is forwarded to the prosecutor. The prosecutor can overrule the decision on the termination of the criminal investigation within 14 days. S/he draws up an act that lays out reasons why the decision of the investigator was illegal or ungrounded and returns the case for additional investigation to the head of the investigative authority¹⁰⁴.

155. Representatives of the Investigative Committee stated that, in their view, the time limits seemed reasonable and did not present any practical difficulties even in the course of investigation of complex economic crimes. They further explained that extension of the timelines was easily granted, especially for cases involving large volumes of financial analysis or with an international aspect to them. The lead

¹⁰³ Article 162 of the CPC

¹⁰⁴ Articles 24 – 28.8, and 212 - 214 of the CPC

examiners nevertheless remain concerned that the timelines for the conduct of investigations may be too short and will likely impede law enforcement officials in foreign bribery investigations. These issues should be monitored as case law develops.

(iv) *Investigative techniques and bank secrecy*

156. In general, a foreign bribery pre-trial criminal investigation would utilise the same measures, powers and investigative techniques that are available in relation to other crimes pursuant to the provisions of the CPC and the Federal Law No. 144-FZ on Operational Search Activities.

157. Special investigative techniques are carried out by the operative officers on the instructions from the criminal investigator. The law defines a set of 14 strictly regulated measures, including interrogation, examination of premises, buildings and vehicles, examination of items and of documents, surveillance, identification of persons, mail, phone and internet, wiretapping of telephone conversations, operational infiltration (undercover agents), controlled delivery, and others¹⁰⁵. In addition to the Law on Operational Search Activities, numerous Internal Instructions have been issued by competent law enforcement authorities to provide guidance to the operative officers on some of the special investigative techniques. The Investigative Committee issued Practical Handbook for investigators on the use of the results of operative and search activities in the criminal investigations. This handbook analyses existing practice and identifies typical mistakes made by the operative officers or investigators and explains how to avoid them and ensure that collected evidence is admitted in court.

158. A number of investigative measures require court authorization, including search and seizure in the living quarters; seizure of the correspondence, its inspection and seizure; monitoring and recording of telephone and other talks. An investigator, with the approval from the head of his investigative unit, initiates a petition before the judge. The judge has to review this petition and issue a decision within 24 hours. The same judge cannot provide authorizations and then later hear the same case¹⁰⁶. By contrast, simple access to bank account information (without seizure) does not require a court order. Access to bank information is nevertheless limited to bank accounts of legal persons and individual entrepreneurs. Access to information with respect to a private individuals' bank account requires authorisation from the court. Bank secrecy can be lifted with respect to the seizure of objects and documents containing information on deposits and accounts in credit institutions, provided that the head of investigative authority approves it and that authorization is granted by a court order.

(v) *Indictment and criminal prosecution*

159. When all investigative actions have been undertaken and necessary evidence was collected to draw up the indictment, the investigator informs the accused and his defence attorney and explains the right to review the materials of the criminal case. The indictment act once approved by the head of the investigative body is immediately sent to the prosecutor.

160. The prosecutor has 10 days to consider the criminal case (if the case is complicated this term can be extended with the permission from the senior prosecutor up to 30 days) and take one of three decisions to either: (i) approve the indictment bill; (ii) send the criminal case back to the investigator for additional steps, and (iii) forward the indictment to the superior prosecutor if the case is within the scope of the authority of a higher court¹⁰⁷. After endorsing the bill of indictment the prosecutor forwards the criminal case to the court and notifies the accused and his/her defence counsel. The judicial investigation begins with the prosecutor making a statement in regard to the charges brought against the defendant. Once the

¹⁰⁵ Article 6 of the Federal Law No. 144-FZ on Operational Search Activities

¹⁰⁶ Articles 29 and 165 of the CPC

¹⁰⁷ Article 221 of the CPC

proof presented by parties is examined and all necessary judicial actions are taken, the presiding judge declares the judicial investigation to be completed.

161. The lead examiners had similar concerns regarding the procedural timelines imposed upon prosecutors as those mentioned above with initiating and investigating cases. The representatives of the prosecution authorities confirmed that sometimes the period of time that they are given to review the case file and make a decision on whether the case is ready for prosecution was not sufficient for an informed decision. Similarly, as in regard to procedural timelines for investigators, the lead examiners are concerned that such short periods can cause impediments in the effective prosecution of foreign bribery cases. This issue also requires further follow-up as the case law develops.

Commentary

Taking note of the explanations provided by Russia with respect to the absence of foreign bribery cases, the lead examiners are of the view that increased attention by Russian authorities to the specific issues outlined hereunder will facilitate the detection and investigation of such offences. They recommend that:

(a) Russian law enforcement authorities, including the Investigative Committee, increase their proactiveness through notably an increased use of analytical tools;

(b) Russian investigative and prosecution authorities rely more actively on other detection tools in addition to intelligence information gathered by law enforcement, such as media reports, information received from other jurisdictions, referrals from tax inspectors, auditors and FIUs, as well as complaints received via government websites and hotlines, reports from the embassies and information from other complaint mechanisms, as a basis for launching investigations;

(c) Steps are taken to adapt the existing processes for handling MLA requests to ensure that investigators or prosecutors are able to scrutinize incoming MLA requests so as to determine whether a separate foreign bribery investigation should be initiated in Russia;

(d) The effectiveness of existing training on intelligence gathering provided to the operative officers be assessed with the view to focus it on detection of foreign bribery; and,

(e) Available statistical data be used to assess the effectiveness of investigations and prosecutions and re-evaluate policies and programmes in the areas of prevention and awareness of foreign bribery.

The lead examiners also welcome the availability of a broad range of investigative measures for investigating foreign bribery offences. They invite the law enforcement authorities to make full use of these techniques to proactively and effectively investigate allegations of foreign bribery.

The lead examiners also recommend that the Working Group follow up on the procedural timelines for investigators and prosecutors to assess whether they are provided with adequate time to complete investigations and prosecutions in a full scope.

(c) Principles of investigation and prosecution

(i) Discretion to initiate, conduct or discontinue proceedings and the use of evidentiary thresholds

162. In Russia, the investigator has to investigate all cases where there is evidence that a criminal offence has occurred and the prosecutor has to prosecute all criminal offences in accordance with the principle of mandatory investigation and prosecution. Therefore, according to the Russian authorities, in Russian law, considerations such as national economic interest, the potential effect upon relations with another State or the identity of the natural or legal person involved cannot be taken into account when investigating and prosecuting a foreign bribery case. This position has been repeatedly reiterated by Russian authorities both in the responses to the Phase 2 questionnaire and at the on-site visit.

163. However, in practice there are some caveats that need to be considered when evaluating the investigatory and prosecutorial discretion in the context of a foreign bribery investigation. First the investigator faces two decisions in the conduct of an investigation based on his/her own discretion, and then the prosecutor must validate their correctness based on his/her own judgement. The first such decision is to assess the level of sufficiency of the information substantiating that the crime occurred; this “first evidentiary test” is applied by the investigator in order to decide whether or not to initiate a criminal case. The second decision that the investigator needs to take relates to the standard of proof needed for an indictment act to be drawn up. This “second evidentiary test” is applied after the investigation is complete and before the case is forwarded to the prosecutor.

164. The requirement that sufficient evidence must exist before commencing or continuing a criminal prosecution is found in the laws of many Parties to the Convention and the lead examiners believe that the use of evidentiary tests is understandable as investigations, prosecutions and adjudications consume resources and could have immediate prejudicial consequences. On its face, in Russia nothing suggests that the thresholds for the “evidentiary tests” are not set at appropriate levels. However, it is how they are applied in practice that is important and whether the investigator and subsequently the prosecutor may apply them too narrowly in declining to commence proceedings or too loosely.

165. The lead examiners note that in Russia there are no formal guidelines defining thresholds, guidelines or principles for standards of necessary proof. Each investigator takes these decisions independently based on his/her professional experience and judgement. During the on-site visit, Russian law enforcement officials assured the lead examiners that these decisions are taken in a professional manner and that their integrity is further verified by prosecutors who make their own independent judgement in this regard. They explained that if parties to the case are dissatisfied with the decisions there are avenues for appeal.

166. However, some of the statistical data disclosed by the PG speaks contrary to these statements. Namely, in 2012 prosecution authorities have recorded five million violations of law at the pre-trial stage committed by investigative authorities. “The number of such violations in the work of the Investigative Committee increased by 50 per cent from 208,770 in 2011 to 303,665 in 2012, with most of them occurring when the crime reports are received, recorded and verified.” He further stated that unsubstantiated refusals to institute a criminal case were very common because verification checks were not done properly, and that clear proofs of crime were often ignored. The number of terminated cases has also grown and almost every fourth such decision was reversed by the prosecutor. He was especially concerned that the illegal refusals to receive or register crime reports have more than doubled¹⁰⁸.

167. The lead examiners are not convinced that such “indirect discretion” cannot create potential avenues for improper influences if no guidance is provided to the investigators and prosecutors.

¹⁰⁸ Interview with Yuriy Chaika, *Rossiyskaya Gazeta*, 29.04.2013

Furthermore, they believe that the problem can only be further magnified when the case involves complex matters, such as foreign bribery cases.

Commentary

While the lead examiners take note of the importance of a certain level of discretion for investigators and prosecutors when applying the “evidentiary tests”, they remain convinced that guidance in an appropriate form would help streamline the practices and ensure their further consistency and integrity.

The lead examiners also recommend that Russian authorities monitor and evaluate on an on-going basis the performance of law enforcement authorities in regard to decisions made on whether to open or close foreign bribery investigations. This should be followed-up by the Working Group.

(ii) Out of court settlement

168. Russia’s CPC provides for a procedure for a plea-bargaining. The so-called “special court order proceedings” allows for the prosecution and defence to reach a settlement through which the defendant pleads guilty to the charges brought against him, accompanied by a mutual agreement on the corresponding sentence. A plea-bargain must be approved by the court and affirmed as a judgement. The procedure applies to crimes punishable by up to 10 years of imprisonment, thus encompassing most foreign bribery offences (except those qualified as offences on an especially large scale, to which an imprisonment term of up to 12 years applies). It carries a maximum prison sentence of two thirds of the maximum established by law, unless the defendant signed an agreement of cooperation with the investigative bodies: in that case, defendants can be sentenced to no more than 50% of the maximum sentence allowed for the crime. During the on-site visit, prosecutors indicated that this provision provides an opportunity to successfully prosecute almost all crimes. Guidelines have been developed by the GPO to assist prosecutors when concluding pre-trial agreements.

169. According to statistical data collected by Russia for the Phase 2 evaluation, only 139 corruption cases, involving 147 persons, were settled through the special court proceedings in 2012 (out of a total of 5,500 persons convicted for corruption offences during the same period), i.e. 2.7%. Although Russia did not provide information as to the level of sentences applied in these cases, a study of all the cases (regardless of the offence) which were settled through the procedure from 2003 - 2008 has shown that in 80% of these cases, defendants who pleaded guilty received sentences between the lawful minimum and half of the maximum sentence¹⁰⁹. As the procedure has not been applied yet to a case of foreign bribery, it is difficult to express an opinion on the type of arrangements that might flow from it. This will need to be followed-up as case-law develops.

(iii) Immunities

170. The Russia Phase 1 report indicated that the immunities covering a wide range of elected officials could possibly apply to numerous crimes, including foreign bribery, and the WGB recommended “that Russia ensure that any person can be investigated, charged or prosecuted for foreign bribery and that the process for lifting immunity for persons alleged to be involved in foreign bribery is effective and transparent to allow investigation, prosecution and adjudication of the offence”.

171. Officials listed in Article 447 CPC, apart from former Heads of State and candidates for various elected positions, are banned from combining their primary occupation with any other paid or unpaid

¹⁰⁹ *International Criminal Justice Review* (September 25, 2009), p. 16.

activity, except for teaching, scientific and other creative activities. They are also not allowed to be members of the management boards, trusts and supervisory authorities, as well as members of foreign non-commercial non-governmental organizations. These restrictions, if properly applied, would preclude public officials covered by universal immunity from engaging in foreign bribery directly (i.e.: they will not be able to obtain business advantage directly for themselves or their companies). They still, however, can be involved in a foreign bribery case, for example, as intermediaries or third party beneficiaries (e.g. their close relatives could engage in such conduct on their behalf and they could benefit).

172. The procedure for opening the criminal case and conducting the investigation against persons enjoying immunity is regulated by Chapter 52 CPC. Article 448 CPC lists institutions/persons that make decisions regarding the lifting of immunity for each category of officials and describes each procedure. No investigative activities can be conducted in regard to the persons listed within this chapter before the immunity is lifted. Two changes since Phase 1 have been introduced into legislation but they have no bearings on the implementation of the Phase 1 Recommendation.

173. Russia provided statistical data showing that immunities can and are being lifted in practice. Thus in 2012 out of 5,585 accused officials 622 were persons with special legal status as defined in the Article 448 CPC. Russian authorities provided further break-down of these numbers shortly after the on-site visit and the bulk of these numbers relates to the heads of municipal entities and members of the municipal authorities, as well as to investigators and heads of investigative authorities. This issue will need to be followed up as case law on foreign bribery develops.

(d) Jurisdiction

(i) Territorial Jurisdiction

Territorial jurisdiction principles applicable to natural persons

174. The sufficiency of Russian legislation to satisfy the jurisdictional requirements of the Convention was raised in Phase 1 when the Working Group questioned whether an offence must be started *and* completed in Russia for territorial jurisdiction to apply. Article 4(1) of the Convention requires Parties to “take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory”.

175. Article 11 of Russia’s Criminal Code establishes territorial jurisdiction over “[a]ny person who has committed a crime on the territory of the Russian Federation”, regardless of the person’s nationality, but the interpretation of Russian authorities appeared to indicate that a crime must be committed in Russia from beginning to end for territorial jurisdiction to apply. During the on-site, however, prosecutors clarified that Russian courts would indeed have jurisdiction over a case of foreign bribery that began in Russia, but was concluded abroad. Prosecutors at the on-site also confirmed that where two or more persons acted in concert, the crime is considered to be completed in Russia where an accomplice committed part of an offence in Russian territory, but the criminal act was completed abroad. Russian law, in theory, if thus interpreted, appears to be in accord with the Convention’s requirements, but only judicial practice can ultimately confirm the applicability of these jurisdictional principles.

Territorial jurisdiction principles applicable to legal persons

176. During the discussions with the judiciary, judges at the on-site explained that there is no difference between the jurisdictional principles applied to offences under the CAO (governing legal entities) and those applied to offences under the Criminal Code (applicable to natural persons). For both administrative and criminal offences, the two jurisdictional bases are territorial and “personal” (i.e., nationality). Territorial jurisdiction over legal persons is governed by Article 1.8(1) of the CAO, which

provides that entities that have committed administrative offences in the territory of Russia shall be administratively liable. Judges and prosecutors present at the on-site visit unanimously stated that an entity that has committed an offence in Russian territory can be sanctioned under the CAO, regardless of whether the entity is a foreign or Russian company.

177. Although the answers of Russian authorities indicate that, in theory, Russia appears to have an adequate jurisdictional basis for prosecuting foreign bribery, occurring wholly or partially in its territory, in the absence of case law on point, the lead examiners are not entirely satisfied that Russian application of territorial jurisdiction (with respect to both natural and legal persons) will be sufficiently broad when put to the test, and thus recommend continued monitoring of this issue as practice develops.

(ii) *Nationality jurisdiction*

Nationality jurisdiction principles applicable to natural persons

178. Due to ambiguity in the application of territorial jurisdiction, nationality jurisdiction was likewise marked for follow-up after Russia's Phase 1 evaluation. Article 12 CC establishes that under the principle of nationality jurisdiction, Russian citizens and stateless persons who permanently reside in Russia who have committed crimes outside Russian territory are subject to jurisdiction unless they have been convicted by a foreign state. Article 12 CC also establishes extraterritorial jurisdiction over "crime[s] directed against the interests of the Russian Federation". Under this principle, foreign nationals and stateless persons not residing permanently in Russia who commit crimes outside of Russia are subject to jurisdiction if such crimes run counter to Russia's interests or are provided for by a corresponding international treaty of the Russian Federation. In the absence of relevant case law, the lead examiners were not able to gauge the efficacy of Article 12, for instance with respect to the criteria used to determine whether a case "run[s] counter to the interests of the RF".

179. During the on-site, there was some variance in the answers received on the point of extraterritorial jurisdiction as one basis for asserting jurisdiction over non-nationals committing crimes outside of Russian territory. Although most judges and prosecutors agreed that extraterritorial jurisdiction could be asserted over a foreign national or legal entity bribing abroad where Russian national interest was implicated, one judge asserted that the categories of crimes under discussion (foreign bribery and related offences) relate to universal principles and thus jurisdiction could be asserted even if no damage was caused to the interests of Russia. This opinion was not supported by any other panellist, but is an indication that further clarification – among the Russian judiciary itself – on Russian jurisdictional principles relating to foreign bribery may be necessary.

Nationality jurisdiction principles applicable to legal persons

180. Russian legislation does not strictly address the notion of nationality jurisdiction with respect to legal persons, although Russian authorities maintain that it is recognized in practice based on the place of registration of the legal entity in question. This assertion was confirmed at the on-site visit with the judges of the Supreme Court, although discussion on hypothetical scenarios posed by the lead examiners suggested that practical application of these jurisdictional principles is still somewhat of a novelty to Russian jurists.

181. When asked about the case of a foreign subsidiary of a Russian parent company bribing abroad on behalf of the parent company, judges were not entirely in agreement as to the exact jurisdictional basis that could be applied. The majority of judges responding to the question concurred that the essential inquiry would be the level of the subsidiary's independence and its relationship to the Russian parent company. Judges agreed that if the foreign subsidiary was a branch (or representative office) of the Russian

parent company, the Russian courts could properly assert jurisdiction. On the other hand, if the foreign subsidiary was independent, then it will be considered a foreign company with Russian shareholders and Russian courts would not be able to assert jurisdiction. One judge, however, posited that if the subsidiary acted within its own interests and was registered abroad, very likely Russian courts would not be able to assert jurisdiction under the Administrative Code, but may be able to assert jurisdiction under the Criminal Code (presumably over the natural person). Another judge contended that extraterritorial jurisdiction based on Russian national interest was the proper basis. The nature of the discussion on this point demonstrates to the lead examiners that, as one judge put it, the Russian judiciary does not yet have much experience with the “foreign element” of Article 19.28 and that “time is required to test the law”. This is an area for follow-up (for more discussion on intermediaries, see below).

182. The practical implementation of Article 1.8(2) of the CAO also generated some debate. Article 1.8(2) provides that an administrative offence committed outside Russia shall give rise to liability under the Administrative Code where the offence is the subject of an international treaty ratified by Russia. When asked about the possibility of Russian companies bribing foreign officials through subsidiaries located abroad, prosecutors at the on-site confirmed that offences committed outside the Federation fall under the province of “international law”, which would mean that Russian courts would have jurisdiction pursuant only to an international convention or treaty. One judge indicated that the language relating to the interests of the Federation was drafted with the intention to protect the rule of law in the country and thus any case that “touches upon” rule of law in Russia may come under the jurisdiction of Russian courts. Judges at the on-site remarked that the judicial community had been wrestling for some time with the question of exactly how broad the territorial reach of Russia (in cases where the primary actions occurred outside of Russia) should be. Judges further noted that the precise issue of whether the Convention, as one such international instrument described in Article 1.8(2), would suffice as a basis for asserting jurisdiction hopefully would be resolved in upcoming judicial plenary discussions. Overall, the lead examiners found that, even if the theoretical basis for the assertion of nationality and territorial jurisdiction are in place, in the absence of relevant judicial practice to date, it is difficult to assess whether the bases, as provided for in Russian legislation, are adequate to satisfy the requirements of the Convention.

Commentary

The Working Group should follow-up, as practice develops, on whether the current basis of territorial jurisdiction governing both natural, as well as legal, persons is sufficiently broad, in particular with respect to the extent to which Russian law will cover bribes made through intermediaries (including related legal persons). The Working Group should likewise follow the developments related to nationality jurisdiction, in particular, the outcome of discussions on whether the Convention may provide a basis for asserting extraterritorial jurisdiction over cases of foreign bribery occurring outside of Russia. It should also follow up on evolving jurisprudence relating to the determination of nationality of legal persons.

(e) Statute of limitations

183. Article 6 of the Convention requires that statutes of limitations applicable to the foreign bribery offence shall allow for an adequate period of time for the investigation and prosecution of the offence of foreign bribery.

(i) Statute of limitations applicable to natural persons

184. Pursuant to article 78 CC, the limitation periods for criminal offences are determined on the basis of the gravity of the crime. Article 78 creates four classifications, for which the Criminal Code prescribes distinct limitations periods: (i) two years for a non-grave crime; (ii) six years for a crime of average

gravity; (iii) ten years for a grave crime; and (iv) fifteen years for an especially grave crime. The limitation period begins to run from the date of commission of a crime to the time of entry into force of a court judgement, thus encompassing both the investigative stage and any ensuing judicial proceedings. In an instance where a bribe is paid in instalments over a period of time, the limitation period shall begin to run from the date of the last criminal act committed in a series of criminal acts. According to the 23rd Plenum of the USSR Supreme Court Resolution on the Procedure for Applying Limitation Period and Amnesty to the Continuing and Long-Lasting Offences, dated 4 March 1929, in with respect to “continuing and long-lasting offences,” the limitation period “shall start from the date of termination,” whether wilfully by the perpetrator of the offence, or involuntarily, such as in case of interception by the law enforcement authorities. In cases of mediation in bribery, for purposes of running the statute of limitations, Russian authorities indicate that the offence is considered completed upon the consent of a public official to the bribery scheme. The date of discovery of facts has no impact on the calculation of the limitation period.

185. Prosecutors at the on-site confirmed that all judicial proceedings, including appeals, must be concluded within the limitation period, although the accused has the right to waive the statute of limitation, for instance where he/she is appealing a conviction. Pursuant to Article 27 of the Criminal Procedure Code, one valid reason for termination of a criminal case is the “expiry of the deadlines for criminal prosecution” *unless* “the suspected or the accused objects,” in which case “the proceedings on the criminal case shall be continued in the usual order.” An acquittal, however, if not appealed to completion before the expiration of the limitation period, would stand. The running of the statutory period is suspended in the event where an individual, having committed a crime, evades investigation or court action. In such a case, the statute of limitations is renewed upon the individual’s detention or admission of guilt. The authorities confirmed at the on-site that the statute of limitations is not tolled for any other reason, such as a pending MLA request or initiation of an investigation.

186. In Phase 1, the Working Group concluded that the statute of limitations for grave and especially grave crimes was sufficient, but the “two-year threshold for crimes of little gravity, especially if not suspended or interrupted, is likely too short for an effective enforcement of the foreign bribery offence”¹¹⁰. This issue was consequently flagged for follow-up in Phase 2. During the on-site, prosecutors confirmed that the determination of the proper limitations period for natural persons depends on the severity of the crime, as delineated in the CC, but asserted that bribery cases generally fall under the category of crimes of average gravity (with a statute of limitations of six years). The Russian authorities state that giving a bribe to a foreign public official in the amount of less than RUB 25 thousand (600 EUR) seems unlikely. For this reason, they indicated that the statute of limitations scheme does not pose a problem in investigating or prosecuting such cases.

187. Russia is not at this point able to concretely demonstrate that foreign bribery cases will, as a matter of course, fall within the six year state of limitation period. The lead examiners are of the view that given the difficulty in detecting corruption offences, the complexity of foreign bribery cases, and the frequent need to rely on MLA, limiting the ability to bring charges to two years after the commission of the offence for crimes of little gravity is likely to obstruct the effective enforcement of the offence. They also note that at least one fraud investigation in recent news was closed due to expiration of the limitation period,¹¹¹ and they are concerned about the two-year limitations period¹¹² for crimes of little gravity.

¹¹⁰ Russia Phase 1 Report, para. 81.

¹¹¹ See e.g., *Ria Novosti* (12 April 2012). For reference in an analogous (although not bribery) case, Russian media in April 2012 reported on the termination of proceedings against the former first deputy head of Russian aircraft corporation MiG due to expiration of the limitation period. The contract in question was concluded in March 2006 and the investigation began in 2009. Russian authorities filed charges against the individual and his deputy, but the investigation became so protracted it did not even result in the filing of indictments before the expiration of the statute of limitations. Consequently, charges were dropped.

¹¹² In the framework of the third evaluation round of Russia, GRECO has also recommended Russia to extend the two-year minimum limitation period for bribery offenses under Article 291 CC.

(ii) *Statute of limitations applicable to legal persons*

188. For legal persons, article 4.5(1) CAO now stipulates a limitations period of six years (representing a significant increase from the previous limitation period of one year) for foreign bribery violations. In the event of an ongoing offence, the CAO stipulates that the limitation period shall commence from date of detecting the administrative offence. Where there is a refusal to bring charges against the natural person in the parallel criminal case (or where proceedings against the natural person were terminated), article 4.5(4) stipulates that the period of limitations shall be calculated from the date of rendering such a decision in the criminal proceedings. The only basis expressly stated by the CAO for suspension of the limitation period is the application by the accused for a change of venue to the district of his residence.

189. The lead examiners are concerned that the statute of limitations is tolled only if criminal proceedings against the natural person are terminated or dropped. If, as was indicated to the evaluation team at the on-site, administrative proceedings against legal persons generally follow criminal proceedings against the natural person, the larger concern with respect to the sufficiency of the limitation period is not the instance in which criminal proceedings are ceased, but the instances in which they are ongoing. Guidelines on the liability of legal persons, submitted by the GPO following the on-site, indicate that the reason for extending the previous statute of limitations to six years was to compensate for the “long terms of consideration of criminal cases against individuals.” The lead examiners doubt that a limitation period of six years is in fact sufficient if it is intended to account for proceedings against a natural person. However, in the absence of foreign bribery cases involving a legal person to date in Russia, it remains to be seen whether the rules governing the statute of limitations applicable to legal persons are satisfactory and allow for adequate investigations of legal persons.

Commentary

With respect to the limitations period applicable to natural persons under the Criminal Code, the lead examiners recommend that the Working group follow-up on the application in practice of the two-year limitation period for non-grave crimes with respect to the offence of foreign bribery in order to assess whether the applicable statute of limitations period allows for adequate investigation and prosecution.

With respect to the limitations period applicable to administrative offences, the lead examiners are concerned that the six year statute of limitations with respect to legal persons may not be sufficient, if such limitation period includes completion of the judicial proceedings and all applicable appeals against the accused. The lead examiners therefore recommend that the Working Group to continue to follow-up this issue as practice develops.

(f) *Mutual Legal Assistance and Extradition*

190. Article 9 of the Convention requires Parties to provide prompt and effective assistance to other Parties to the fullest extent possible under their laws, treaties and arrangements. In order to effectively prosecute foreign bribery, Parties themselves must be able to efficiently seek and use evidence from abroad.

(i) *Mutual legal assistance*

191. The competent authority for granting legal assistance at the pre-trial stage is the GPO. Since 2006, the GPO has had a General Department for International Cooperation, which is divided into departments dealing with, respectively, international law, extradition and MLA. All requests for assistance

must then be sent to Moscow, which then transmits them to the competent local authority. The CPC does not recognize other routes. Thirty prosecutors are in charge of MLA in the Department.

192. The CPC serves as the procedural basis for executing MLA requests¹¹³. Article 15(4) of the Constitution states that, where a conflict appears between international law and national law, the treaty takes precedence. Based on this rule, if an international treaty acceded by Russia establishes different procedural rules for rendering assistance from those envisaged by Russian domestic law, the rules of the treaty should apply. In 2013, Russia had treaties with over 70 states. Russia is a party to several agreements concerning MLA in criminal matters, including the European Convention on MLA in Criminal Matters and its First Additional Protocol, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the UNCAC and the Minsk Convention regulating cooperation among the CIS countries. Russian judicial authorities may co-operate without concluding a treaty, since Russia's law allows co-operation on the basis of reciprocity and in the absence of it.

193. The possible types of international co-operation cover a wide range of forms, such as investigative activities, searches for evidence, questioning of witnesses and suspects (unless the person who is suspected to have committed an offence abroad, has Russian citizenship – see below for discussion), inspections of sites, and seizure. Subject to an international treaty, Russia may also conduct a joint investigations with another country, as illustrated by the joint investigations conducted in 2010 with representatives of German law enforcement authorities in connection with allegations of bribe-giving by a US company through a German subsidiary.

194. Bank secrecy laws do not appear to be an impediment to the provision of information through MLA mechanisms. For example, in response to a request received from Turkey in relation to the possible bribery of managers of a Russian utility company by a Turkish company, Russia transmitted bank account information obtained from over 10 financial institutions. Upon request, Russia can also obtain and forward witness statements obtained from bank employees. During the on-site visit, Russian authorities also confirmed that dual criminality is, in general, not a requirement under Russian law with regard to MLA¹¹⁴. Nor does Russia's system of administrative liability of legal persons appear to pose an obstacle to execution of requests on rendering assistance in criminal cases against legal persons, as illustrated by the assistance provided by Russia to The Netherlands in the framework of the Dutch request concerning a criminal case involving a Dutch shipping company¹¹⁵.

195. The chief difficulty in investigating foreign bribery cases for foreign authorities has until now been the lack of co-operation in obtaining evidence from persons who hold Russian citizenship and are located in Russia, regardless of whether those persons are themselves implicated in the crime or merely have information that is relevant to a criminal investigation. This scenario occurred in connection with an MLA request submitted by the United States involving a US publicly-traded company. In that case, US authorities sought to conduct interviews of individuals whose status as a witness or suspect was unknown. The request was sent back without action to the US partly on the grounds that the individuals were Russian citizens and may be suspects or may have violated Russian law. Another example is the EBRD case involving an alleged bribery solicitation by a senior Russian public official posted at the European Bank for Reconstruction and Development (EBRD) in London in relation to a EUR 85 million EBRD loan proposed to a Canadian oil company operating in Russia. Russia declined the UK request to conduct an

¹¹³ See annex 3 to the Report for relevant provisions.

¹¹⁴ For example, requests to search, seize property and confiscate proceeds of crime is only possible if the crimes specified in the request are punishable according to the laws of both the requesting state and the requested state.

¹¹⁵ As explained at the on-site, a new chapter has been added to the COA authorizing a process for requesting assistance from authorities abroad to facilitate investigations of corruption. These provisions direct Russian authorities to offer assistance according to treaties in force or on the basis of reciprocity, which "is assumed until proven otherwise."

examination of the public official who had returned to Russia since the commission of the alleged offence on the grounds that examining Russian citizens as suspects and accused is contrary to Russian law.

196. At the on-site, the authorities explained that such denials are grounded in Russia's sovereignty over criminal prosecution of its nationals who committed crimes outside Russia (Articles 61 of the Constitution and 464 CPP, which do not permit the extradition of Russian citizens). Pursuant to Article 5(55) CPC, interrogation of a suspect is treated as a criminal prosecution under Russian law; thus under the overall protection that Russia grants to its nationals (procedural rights granted to a defendant pursuant to Russia's CPC), an interrogation of a Russian national as a suspect triggers the protection of the Russian national's constitutional rights. Requests aimed at the hearing of suspects are thus declined (unless, as provided under Russia's law, the individual in question consents to assist in the investigation or participate in proceedings). The Prosecutor's Office went on to point out that the CPC provides a remedy to this situation in that Article 459 provides that, subject to a formal request, Russian nationals suspected of having committed a crime on the territory of a foreign state can be prosecuted in Russia.

197. Although the lead examiners recognise the importance of protecting the rights of one's citizens, they are nevertheless concerned that Russia could use the "suspect" and "accused" labels as a pretext to avoid its obligations under Article 9 of the Convention. Furthermore the lead examiners hold the view that the approach followed by Russia seems to have more grounding in the Russian authorities' *interpretation* of the law rather than any principles explicitly stipulated in Russian law. The examiners note that Russia's position has been criticized in the framework of other international reviews¹¹⁶. It also does not appear that pursuant to Article 459 CPC there is an obligation, upon request by a foreign authority, to automatically prosecute Russian nationals suspected of having committed a crime abroad. Prosecutors interviewed during the on-site visit nevertheless indicated that, in their experience, they have seen plenty of instances where Russia initiated its own proceedings, although such proceedings are not tracked on a systematic basis. In any event, the lead examiners are concerned that Russia's approach on this issue could have the effect of blocking efforts by other jurisdictions to investigate and prosecute foreign bribery cases involving Russian nationals. Russia's use of this rationale should be closely monitored and followed up by the Working Group.

198. An MLA request is also returned unexecuted where its execution could prejudice the Russian Federation's security. At the on-site, Russia acknowledged that this condition could concern requests concerning foreign bribery committed by the defence industry sector if such requests would involve disclosure of sensitive military or security information. Given that Russia has not yet received requests of this kind in relation to foreign bribery, effectiveness in this area cannot be measured. This should be the subject of follow-up.

199. With regard to the Convention's requirement that Russia should provide prompt assistance, the CPC does not provide for a strict time limit to fulfil a request. According to GPO officials, requests are, in general, dealt with quickly, depending on the case's complexity. Delays may nevertheless occur when the request is not translated into Russian (unless an international treaty ratified by Russia states otherwise) or contains imprecise or insufficient information¹¹⁷. Where this is the case, Russia asks the requesting country to provide supplementary information. Such was the case with a 2009 request from Brazil in connection to alleged bribery of Russian public officials by a Brazilian meat export.

¹¹⁶ See EU Working Party on Cooperation in Criminal Matters' assessment of EU-Russia cooperation in criminal matters

¹¹⁷ For example, if the request asks that a search be conducted, the requesting state must expressly identify the address of the individual or the legal entity to be searched, and include a list of the documents to be seized during the search.

(ii) *Extradition*

200. Extradition in Russia is based, as is the case with other forms of MLA in criminal matters, on domestic law and a range of key international instruments dealing with extradition. Russia is party to over 35 bilateral extradition treaties, the majority of which are executed with non-parties to the Convention. As noted in Phase 1, foreign bribery is an extraditable offence in Russia.

201. Russia's CPC sets out the different steps for processing extradition requests. The department specifically handling extradition matters in the GPO examines the evidentiary material that accompanies incoming requests and checks whether the conditions for extradition are met. As already noted in the Phase 1 Report, the Department may refuse extradition on different grounds, primarily because the individual whose extradition is requested has Russian citizenship or due to the request's non-compliance with dual criminality requirements. With respect to the latter, prosecutors at the on-site asserted that technical differences in criminalizing the conduct would not be an obstacle to executing an extradition request. With regard to the first ground, prosecutors indicated that if extradition is refused because of the individual's nationality, Russia will consider initiating proceedings, provided the act is considered an offence in the State where it has been committed and that the individual was not already convicted in the foreign State (Article 12 CC). GPO representatives further indicated that such proceedings have taken place, although not in the context of transnational bribery.

(iii) *Incoming and outgoing requests for MLA and extradition*

202. Each year, Russia receives a rather large volume of MLA requests from abroad: over 3,000 in 2012, of which 27 concerned corruption offences, although thus far, none of those requests have implicated allegations of foreign bribery committed by Russian individuals or legal persons. Russia has received requests only in relation to alleged cases of active bribery of Russian public officials involving transnational companies. In most, if not all, of these cases the authorities have shown willingness to cooperate, except – as noted above – when the request sought to question suspects of Russian nationality.

203. In addition to the case mentioned above concerning a US company, Russia took part in another anti-corruption investigation initiated abroad, in relation to transnational bribery against some executives of a German company, its subsidiaries and affiliates¹¹⁸. It is worth noting that, in both cases, Russian law enforcement authorities have been involved as alleged bribe-takers. Cooperation by the Russian investigators in these cases has been regarded by many, including non-governmental participants at the on-site, as a very positive sign. Another example of what appears to be an effective cooperation concerns the possible bribery of managers of a Russian utility company by a Turkish construction holding company in connection with the electrical installations of a mega shopping centre in St. Petersburg. Russian cooperation in response to Turkey's request for assistance was extensive: a large number of legal proceedings (including those involving bank institutions) were initiated and over 1,400 pages of materials were provided to Turkey. During the on-site discussions, Russia also referred to the assistance provided to Sweden in relation to the same case.

204. Such foreign requests generally give rise to Russia's own investigations, as illustrated by the German company case. As a result of materials obtained from US authorities, Russia requested assistance from Latvia twice, which, according to Russia, was provided to the fullest extent, as well as from the US. Turkey's request in connection with the Turkish construction holding company also triggered bribery investigations by Russian authorities, as a result of which charges for commercial bribery were brought by the MIA against two individuals. In the EBRD case, Russia launched its own investigations, which led the

¹¹⁸ In this case, in response to a request received from German authorities in April 2010, Russia conducted searches in the Moscow office of the company. Materials obtained during these investigations were sent to Germany in September 2010.

Internal Affairs Ministry to bring charges in January 2013 against the Russian official for soliciting bribes from the Canadian company's representative.

205. In terms of practical experience with outgoing MLA requests, since the entry into force of the foreign bribery offence in domestic legislation, Russia has not requested any assistance from a foreign country in relation to allegations of foreign bribery committed by its own nationals, a fact that does not mean that Russia does not request MLA where needed in connection to alleged active bribery of its own officials by foreign companies (as illustrated by the assistance sought by Russia from Germany, Latvia and the US in the Daimler and Hewlett-Packard cases). Another example is the EBRD case, in the framework of which Russian authorities asked British authorities to assist in investigating the case. As far as extradition requests are concerned, Russia explained during the on-site visit that to date, it had not received any such request in relation to a foreign bribery offence, nor had Russia requested extradition in such a matter.

Commentary

Overall, the lead examiners acknowledge the positive approach of the Russian authorities to the provision of MLA to requesting states. Nevertheless, the examiners have concerns about the fact that the authorities decline requests to interview witnesses holding Russian citizenship. Russia's explanation, that it has an obligation to protect Russian nationals against prosecution in other states, is difficult to understand when there is no extradition request. Russia should make all efforts, upon request, to facilitate the interview of Russian nationals in the criminal investigations and proceedings brought by the requesting country for offences falling within the scope of the Convention. Russia's invocation of Russian citizenship to block certain MLA requests should be closely monitored and followed up on.

2. The Offence of Foreign Bribery

(a) Background

206. At the core of the Convention is Article 1 defining the offence of bribery of foreign public officials in international business transactions. Commentaries 3 to 19 on the Convention provide further guidance on the foreign bribery offence. The Phase 1 Report on Russia's Implementation of the Convention and 2009 Recommendation provides a detailed overview of the elements of the foreign bribery offence under the Russian Criminal Code. The present section of this Phase 2 report reviews elements of the offence identified in the Phase 1 Report as requiring further evaluation as well as issues of implementation of the offence that were discussed during the on-site visit.

207. The lead examiners note that since Phase 1, no legislative step has been taken by Russia with regard to the implementation of Article 1 of the Convention, specifically concerning the Working Group recommendation that Russia criminalize not only the giving but also the offering and promising of bribes. The Supreme Court was however asked in March 2012¹¹⁹ to review the courts' practice in implementing bribery offences with a view to providing further interpretation of the foreign bribery offence adopted in 2011.¹²⁰ The study carried out by the Supreme Court was not finalised at the time of the on-site visit although during the visit the evaluation team was able to discuss a preliminary draft of the Supreme Court Resolution with Russian authorities. The Resolution was finally adopted on 9 July 2013 while the

¹¹⁹ See Presidential Decree n°297 of 13 March 2012 "On the National Anti-Corruption Plan for 2012-2013 and amendments to certain acts of the President of the Russian Federation", Article 4.

¹²⁰ The courts must strictly follow such recommendations; otherwise, decisions contrary to the recommendations of the Supreme Court might be reversed. For more information on the status of the Supreme Court Resolutions, see the Introduction on "political and legal systems".

evaluation team was drafting this report. An English translation of the text was provided on 30 August 2013. Although the examiners have reviewed the final text of the Resolution, under these circumstances, they have not been in a position to fully assess it. They recommend that the Working Group consider again the contents of this Resolution in subsequent evaluations of Russia.

(b) Elements of the Offence

(i) The offence of “bribe giving”

208. Article 291 CC expressly criminalises the giving of a bribe to a foreign public official. Under the Convention, “giving” occurs when the briber actually transfers the undue advantage. In Russia, according to the Supreme Court (see para. 10 and 11 of the 2013 Supreme Court Resolution), active bribery is considered to be complete at the date of acceptance by the bribe-taker of at least part of transmitted advantages, which contradicts the requirement under Article 1 of the Convention. This interpretation is also stated in the written responses to the Phase 2 questionnaire¹²¹ and was confirmed by the authorities during the on-site visit, although the Prosecution Office expressed the view that steps taken illustrating the transfer of the bribe should be sufficient for the offence of “bribe giving” to be completed. In its 2013 Resolution (see para. 10), the Supreme Court states that there is no need for the official to be given “a real opportunity to use or dispose the bribe” for the offence of bribe giving to be complete.

209. During the on-site visit, the authorities indicated that cases where the planned transfer of a bribe does not materialise (e.g. because the official refuses to take the bribe or the transfer of the bribe failed for reasons beyond the control of the bribe-giver), fall under Article 30 CC as preparation for a crime or attempted bribery in conjunction with Article 291 CC (see also para. 12 of the 2013 Supreme Court Resolution). Certain Russian courts also consider that if the bribe has been given to the bribe-taker but immediately intercepted by the police, the offence of bribe giving cannot be considered completed and that such act incurs liability for an attempt of bribe giving. Finally, according to the authorities, in cases where the bribe has failed to be transferred in totality, the amount of the bribe that is taken into account to value the bribe is the totality of the bribe that should have been received by the bribe-taker (see also para. 10 of the 2013 Supreme Court Resolution).

210. The interpretation of the offence of bribe giving that has been confirmed by the Supreme Court in July 2013 (para. 10) does not meet the standards under the Convention according to which the bribe-giver has committed the crime of bribe giving regardless of whether the official receives, accepts or rejects the undue advantage. Using the general offences of attempt or preparations for a crime to prosecute cases that should fall under the premise of Article 291 CC is particularly problematic in Russia for several reasons. Firstly, Russia imposes lighter punishments for attempted crimes and preparations for a crime, resulting in criminal penalties that might not be effective, proportionate and dissuasive as required by the Convention.¹²² Secondly, preparation of a bribery offence triggers liability only with regard to bribery offences of certain gravity. Article 30(1) CC on preparation of crime is indeed not applicable to crimes of average or little gravity, such as bribery offences without (certain) aggravating circumstances under Articles 291(1) and 291(2) CC. There is therefore no criminal liability in Russia for the “preparation” of a bribe of less than RUB 150,000 (approximately EUR 3,500) in order to induce the foreign public official to take a legal or proper action (or inaction). This clearly contradicts Commentary 7 of the Convention. Thirdly, attempted bribery only takes place when the offence was not completed due to reasons beyond the person’s control (see Article 30(3) CC). In addition, Article 31 CC provides for exclusion of liability in case of voluntary abandonment of the crime. This means that, in the context of bribe offering or promising,

¹²¹ Russia’s responses to Question 1.1.1

¹²² The punishment for crime preparation or attempted crime cannot exceed half of the maximum limit or three fourths of the maximum limit of the severest kind of punishment prescribed for the completed offense respectively (Art. 66 CC). See Phase 1 Report, para. 12.

for instance, a person can avoid criminal liability if he/she withdraws his/her offer or promise of a bribe before receiving an unambiguous refusal from the potential bribe-taker.

211. The absence in Russia of proper criminalisation of “offer and promise” of a bribe (see below) presents an added difficulty where the bribe has not been received (and the offence of bribe giving is therefore not constituted under Russian law). In such a scenario, prosecutors can rely only on incomplete offences under Article 30 CC to prosecute the case. In addition, the proof of the actual (physical) receipt of the bribe by the official is generally difficult to establish, especially in the context of transnational corruption. This is likely to hinder the actual implementation of Article 291 CC in the context of foreign bribery (i.e. absent the proof of the receipt of the bribe, charges might only be brought for attempt or preparations of bribe giving). The lead examiners finally note that the offence of “bribe giving” through intermediaries (as referred to in Article 291 CC) will also only be considered complete at the time of receipt by the bribe-taker of at least part of transmitted advantages. This raises further concern with respect to Article 1 of the Convention.

212. As noted earlier, there have been no cases involving foreign bribery with the result that, at this time, the lead examiners are not in the position to assess the implementation of Article 291 CC in the context of bribery of foreign public officials in international business transactions.

(ii) *The offences of “bribe offering” and “bribe promising”*

213. The lack of coverage of both “bribe offering” and “bribe promising” was the element that raised the most concern during the Phase 1 evaluation. At that time, Russia was required to explicitly and clearly ensure the criminalisation of “offer” and “promise” of a bribe as completed offences in accordance with Article 1 of the Convention (Recommendation 1a)). No legislative action has been taken by Russia to address this Recommendation. The Russian authorities continue to be of the view that although the acts of offering and promising a bribe are not expressly included in the bribery offence under Article 291 CC, they are covered by the notions of attempt and preparations for a crime on the basis of Article 30 CC.

214. In the response to the questionnaire¹²³, the authorities state that the criminalisation of “offer” and “promise” of a bribe would be against the Russian legal framework (where any agreement to commit a crime shall be deemed preparation for a crime under Article 30 CC) and could cause abuse in practice (the Russian authorities highlight the risk of prosecution and conviction of an offer without criminal intent). The lead examiners note however that offences of offer and promise of bribe have been already incorporated in the Criminal Code under Article 291¹ on mediation in bribery and in the Code of Administrative Offences under Article 19.28, which substantially undermines the arguments brought by the Russian authorities. Case law provides some useful information on the interpretation developed by Russian courts of Article 30 CC in the context of bribery. In particular, some of these courts consider that an expressed intention of a person to give or take a bribe or commercial bribe in cases where such person has undertaken no specific steps to make good of his intention, and the expression of such intention did not aim to make it known to other persons for the purpose of achieving an agreement to take or give a bribe or commercial bribe, should *not* be qualified as preparation of crime (see also para. 14 of the 2013 Supreme Court Resolution). Under the Convention, the offering or promising of a bribe does not require the other side to respond positively to, or even have knowledge of, such offer or promise to be liable to prosecution.

215. As stated in Phase 1, the Working Group is of the view that incomplete offences (attempt and preparation for a crime) in case of bribery are not considered functionally equivalent (see above), especially given that attempt is separately covered by Article 1, para. 2 of the Convention. The lead examiners also consider that having liability for promise or offer of a bribe is much more effective than trying to cover the same acts through attempt. It is sufficient to prove the intentional promise or offer of a

¹²³ See response to Question. 1.1.1.

bribe, rather than trying to prove intention to give a bribe which was not realised due to circumstances beyond the bribe-giver's control. In addition, prosecution of promise or offer of a bribe as an incomplete crime does not cover all practical situations. For example, an oral promise or offer, which would be considered as demonstration of intent to give, without performance of minimal actions with the aim to make it known to other persons, would go unpunished in Russia.

216. In conclusion, the offences of offer and promise of a bribe are still not criminalised in Russia in accordance with the Convention. The lead examiners consider that Russia has therefore not fulfilled the Working Group's recommendation that such offences should be explicitly criminalised under Russian law¹²⁴.

Commentary

The lead examiners reiterate the Phase 1 concerns about the lack of proper criminalisation of offer and promise of a bribe. They recommend that Russia expand the scope of the offence of foreign bribery, so as to include the "promising" and "offering" of a bribe. They also recommend that Russia take any appropriate measures to clarify that the offence of "bribe giving" (including through intermediaries) is deemed to be completed when the briber actually transfers the undue advantage and does not require the actual receipt of the bribe to be proven. The Working Group should follow up on this issue as practice develops.

(iii) *Coverage of any "undue pecuniary or other advantage"*

217. In Phase 1, the Working Group recommended that Russia "ensure that bribes in the form of non-pecuniary benefits are appropriately covered by the foreign bribery offence in practice" (Recommendation 1 c)). The WGB also agreed that the challenges that courts may face in quantifying the proceeds of bribery of a non-pecuniary nature would need to be followed up in Phase 2.

218. The form of the bribe for the active bribery offence is not defined by Article 291 CC. However, the passive bribery offence under Article 290(1) CC refers to a bribe "*in the form of cash, securities, other property, or rendering such official any services of a pecuniary nature, granting him other property rights in exchange for actions (inaction) in favour of the bribe-giver or persons he represents, if such actions (inaction) are part of the official duties of such public official or else such person, by virtue of his office, can facilitate such actions (inaction), and equally for overall patronage or negligence in office*". The element "undue" (as referred to in Article 1 of the Convention) is not explicitly mentioned and the bribery provisions do not contain any value threshold. Case law was provided in Phase 1 and Phase 2 (although in the context of passive bribery under Article 290 CC) to illustrate that bribes may consist of money, securities, other property, benefits or services of a material nature, payable services provided for free (for instance, providing tourist vouchers, remodelling apartments, building summer houses, etc.), undervaluation of property transferred, objects to be privatised, discount rentals, discount rates for using bank loans, etc.¹²⁵ The monetary value of such advantages must be indicated in the court sentence. In Phase 1, the Russian authorities added that such rights cover all non-material/non-pecuniary benefits, including intangible advantages (e.g. advice, data or information, favours, lucrative business opportunities¹²⁶, etc.). However, the WGB concluded that the Russian legislation fell short of the requirements of the Article 1 of the Convention, according to which the criminal offence should cover "any undue pecuniary or other advantage".

¹²⁴ See the conclusions in the GRECO Third Evaluation Round Report on Russia, para. 55.

¹²⁵ See para. 9 of the 2013 Supreme Court Resolution.

¹²⁶ The Russian authorities have provided case law where the benefit of domestic bribery consisted in services for the construction of a cottage in exchange of manipulation of an invitation to tenders in favour of the bribe-giver.

219. During the on-site visit, the authorities stated that the bribe can take the form of any benefit whose value can be established (see also para. 9 of the 2013 Supreme Court Resolution). Some court cases seem also to suggest that, the valuation of the bribe depends on the determination of its market value. Such an approach would be difficult to carry out in practice as for some benefits there is no legal market (e.g. prostitution) and for others there is difficulty assessing the proper value (e.g. a distinction). During the on-site visit, the authorities also indicated that cases where the bribe-taker is awarded an honour, for instance, are not captured by the current legislation and that a draft law is being discussed by the Duma in order to address this deficiency. The lack of proper coverage of non-pecuniary bribes was confirmed in discussions with legal experts during the on-site visit. After the visit, the authorities reversed their position, stating instead that Article 191 CC indeed does cover any form of bribe, including non-pecuniary bribes, such as those in the form of honours, distinctions, etc. They denied the preparation of a draft law to address this issue. In the view of the lead examiners, this further illustrates the need for more clarity in this area by introducing an explicit criminalisation of any kind of advantage, including bribes in the form of non-material advantages.

220. According to the authorities, in cases of non-material advantages, the provisions of Article 285 CC on abuse of office¹²⁷ may apply, depending on the circumstances. However, such an offence is intended to target Russian officials who abuse their functions (and not foreign public officials bribed by a Russian citizen). The lead examiners note that this offence also contains several restrictive elements as compared to the foreign bribery provisions, *inter alia*, the substantial violation of the rights and lawful interests of individuals or organisations, or the legally protected interests of Russian society or the state¹²⁸. The lead examiners take the view that corruption acts involving any non-material advantages need to be explicitly criminalised under the foreign bribery provisions.

221. The 2013 Supreme Court Resolution (para. 9) requires that the value of the advantage is expressed in monetary terms in the court decision (since the determination of monetary sanctions depends on the actual amount of the bribe), including in the case where the benefits from the bribe are of a non-pecuniary nature. The authorities indicated that, to do so, the courts and the law enforcement authorities may use a variety of resources, including evidence submitted by the parties in court proceedings and opinions of external experts (see also para.9 of the 2013 Supreme Court Resolution). The judges met during the on-site visit indicated that courts have an extensive practice of quantifying non-pecuniary bribes that have a material value and that they generally do not face challenges in quantifying this sort of advantages. This statement is supported by the “Judicial Review of 2007-2009 case law on criminal bribery and commercial bribery” conducted by the Supreme Court¹²⁹. The judges met in Moscow however acknowledged the need for further interpretation by the Supreme Court of the notion of “services” in material and non-material form that can be priced and valued.

Commentary

The lead examiners recommend that Russia explicitly criminalise any kind of advantage, including any bribes in the form of non-material advantages.

¹²⁷ This offense is defined as the “*use by an official of his or her powers, contrary to the interests of the civil service, if this deed has been committed out of mercenary or any other personal interests and has involved a substantial violation of the rights and lawful interests of individuals or organisations, or the legally-protected interests of the society or the state.*”

¹²⁸ In addition, the maximum sanctions available under Article 285 CC (10 years’ imprisonment in aggravated cases) are lower than those available under the bribery provisions of Article 290 CC (15 years’ imprisonment in aggravated cases).

¹²⁹ In May 2010, the Supreme Court circulated to all courts of the RF a study of case law available in application of Articles 204, 209, 291 and 304 of the Criminal Code in order to support courts’ implementation of the bribery offenses.

(iv) Bribery through intermediaries

222. Article 1 of the Convention requires the coverage of cases where a person intentionally offers, promises or gives an undue advantage directly or through an intermediary. Article 291 CC covers “giving of bribe through an intermediary”. Active bribery through intermediaries is supplemented by a special offence of “mediation in bribery” under Article 291¹ CC that provides for separate criminal liability of the intermediary¹³⁰. In Phase 1, the WGB agreed that the implementation of the requirements applicable to intermediaries needed to be followed up in Phase 2.

223. The notion of “intermediary” is not defined in Article 291 CC. Russia though provided supporting case law in which a person was convicted under Article 291 CC of paying money to an intermediary in order that the intermediary would exercise influence over a Russian public official. In these court decisions,¹³¹ the money had been transferred to the intermediary and had reached the public official. However, Russian authorities were unable to satisfy the lead examiners that situations where the bribe is given through a related legal person abroad would be captured under the Criminal Code. By contrast, however, the Russian authorities have been able to show some degree of enforcement of the offence of “mediation in bribery”¹³². Article 291¹ CC criminalises the act of “transferring a bribe on the instructions of the bribe-giver or bribe-taker or otherwise assisting the bribe-giver and/or bribe-taker to fulfil or implement an agreement between them concerning the receiving and giving of a substantial bribe”. Article 291¹ al. 5 CC criminalises the “offering or promising” of mediation in bribery.

224. The lead examiners understand that the offence of “mediation in bribery” has been established to facilitate the prosecution and conviction of individuals in Russia who render such “intermediation services” and combine the functions of an accomplice and organiser, and sometimes even of an abettor, to the offence. If the conditions are fulfilled, i.e. the intermediary is merely a go-between (for example, in transferring the bribe from the bribe-giver to the bribe-taker), the provisions of Article 291¹ CC do apply but not the general rules on participation or complicity. However, these rules would not apply where the bribe is below RUB 25,000 (approximately EUR 580) since Article 291¹ CC only applies to bribes of significant amount, i.e. above RUB 25,000; however, Russian authorities find the situation of a bribe being under 580 EUR unlikely. Although the lead examiners welcome the enforcement actions taken by the authorities to go after the individuals who fall under the intended scope by rendering such “intermediation services” in Russia, they believe that such approach should not completely shift the focus from the main bribery offence under Article 291 CC that requires enforcement actions against the bribe-giver¹³³. They also note that the implementation of Article 291¹ CC in the context of foreign bribery is likely to be more challenging if an agent is used abroad since Russia may not have jurisdiction over a local agent abroad who has a limited connection with Russia, or none at all.

225. Finally, the lead examiners are of the view that the authorities should take concrete steps (in addition to issuing the 2013 Supreme Court Resolution) to raise awareness within both the public and private sectors that bribery through an intermediary, including through a related legal person, on behalf of a parent or related company, constitutes an offence under Article 291 CC. They believe that there should

¹³⁰ The application of the defence of “effective regret” to the offence of “mediation in bribery” (see the Note to Article 291¹ CC) is discussed in sub-section *ix*).

¹³¹ See Moscow City Court decision of 16 April 2010 and Leningrad Regional Court decision of 15 March 2012.

¹³² According to the response to the Questionnaire, in 2011, 28 criminal investigations for mediation in bribery were opened and 11 persons were convicted for mediation in bribery. One person was convicted for “offering or promising” a bribe under Article 291¹ CC.

¹³³ Some Russian authorities acknowledged for instance that in situations where the bribe has not reached the public official but was transferred to the intermediary, the bribe-giver will be prosecuted for an incomplete offense and therefore be subject to a lesser level of the fines than the intermediary who will be convicted for mediation in bribery under Article 291¹ CC as a completed offense.

be a clear understanding in the public and private sectors that bribes through local agents overseas could constitute acts of foreign bribery under Russia's Criminal Code.

Commentary

The lead examiners recommend that Russia take appropriate measures to raise awareness within both the public and private sectors that bribery through an intermediary, including through a related legal person, constitutes an offence under Article 291 CC. The lead examiners recommend that the Working Group follow up on the issues of bribery through intermediaries and the new offence of mediation in the context of foreign bribery as the case law develops.

(v) *Definition of foreign public official*

226. Article 290 CC, as amended in May 2011, contains a definition of “foreign public official” that draws on the definition of foreign and international public officials established under Article 2 (a) and (b) of the UN Convention against Corruption. This definition reads as follows: “*For purposes of Articles 290, 291 and 291¹ herein, the foreign public official shall mean any person appointed or elected to hold a legislative, administrative or judicial position of a foreign country; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and the official of a public international organisation shall be an international civil servant or any other person authorized by such organisation to act on its behalf*”.

227. At the time of the Phase 1 evaluation, according to the Supreme Court, a foreign public official was defined as any person who exercises a public function under the law of the official's country. In practice, this would oblige the Russian authorities to rely upon the law and regulations of the foreign country and on the opinion of the authorities of the foreign country to judge whether or not the recipient of the bribe was exerting a public function in the foreign State. In Phase 1, the Working Group was concerned that the non-autonomous method of defining foreign public officials could lead to an inconsistent and potentially inadequate application of the transnational bribery offence. The Working Group therefore agreed that this issue required further analysis in the framework of Russia's Phase 2 evaluation.

228. The interpretation that prevailed at the time of the Phase 1 evaluation was still applicable at the time of the on-site visit as illustrated by case law¹³⁴. According to the Supreme Court Resolution adopted on 9 July 2013 (para. 1), the Russian courts must be mindful of the definitions of “public official” contained in the Russian Criminal Code that “include the persons recognised as such by anti-corruption international Treaties signed by the Russian Federation”. The lead examiners note the explicit reference to the definition contained in anti-corruption international treaties although they believe this might not be sufficient to ensure that the Russian courts will in practice solely rely upon such definitions in making a judgement on whether the recipient of the bribe was exercising a public function in the foreign State. This is an issue that the Russian authorities should further address and that should be followed-up by the Working Group as case law develops.

229. The definition of foreign public official in Article 290 CC covers the notion of “public function for a foreign country, including for a public agency or public enterprise”. In the response to the Questionnaire¹³⁵, the authorities stated that the terms “public function”, “public enterprises” and “public

¹³⁴ Case law shows that, in practice, the courts are asked to closely review the official's duties (and any relevant regulation) to determine his/her actual status of public official, which is likely to be problematic in a foreign bribery context. See for instance the decision of the Sevsky District Court of the Bryansk Region in the “Judicial Review of 2007-2009 case law on criminal bribery and commercial bribery”, page 22.

¹³⁵ See response to Question 1.2

agencies” (that are not defined in the CC) do not raise any interpretation issues as their definition is available in federal legislation (including in the Federal Law on state and municipal unitary enterprises). While some legislation may contain possible definitions of “public enterprises” and “public agencies, however, they are in the domestic context and thus may be of limited relevance in the context of foreign bribery. It is therefore uncertain whether, in conformity with Commentary 14 on the Convention, the foreign bribery offence would apply where there is indirect foreign control of the enterprise, or in the case where the foreign government exercises *de facto* control over an enterprise, but does not, for example, hold over 50 per cent of the voting shares. After the on-site visit, the authorities clarified that where a foreign State possesses 50 per cent of a company’s shares, if it is created as a joint-stock company (that is established pursuant to ordinary corporate law), it will not be a “public enterprise” even if the State exercises a direct control over the enterprise. This contradicts Commentary 14 on the Convention according to which “a ‘*public enterprise*’ is any enterprise, regardless of its legal form, over which a government may directly or indirectly exercise a dominant influence” (emphasis added).

230. Additionally, it is not clear whether the foreign bribery offence would apply to bribery of public officials of local subdivisions of a foreign government, or of an organised foreign area or entity, such as an autonomous territory or a separate customs territory (see Commentary 18 of the Convention).

Commentary

The lead examiners recommend that Russia take appropriate measures to ensure that a reference to foreign law is not the only source relied upon for defining the foreign official’s duties and determining whether the act committed by the foreign official was lawful or unlawful. In addition, the lead examiners recommend that Russia take any appropriate measures to ensure that the definition of public official covers, in a manner that is consistent with the Convention and Commentaries: (i) officials of public enterprises, regardless of their legal forms; (ii) officials of public enterprises where there is indirect foreign control of the enterprise; and (iii) public officials of organised foreign areas or entities that do not qualify or are not recognised as States.

(vi) Payments to third party beneficiaries

231. Under the Convention, it should not matter for whom the undue advantage is intended, i.e., for the official himself or another person or entity, as long as it is provided in exchange for the official to act or refrain from acting in the exercise of his official duties. Article 291 CC does not refer to third party beneficiaries. However, the passive bribery offence under Article 290(1) CC refers to a bribe “*in favour of the bribe-giver or persons he/she represents*”. The Russian authorities rely on this notion of representation to cover the concept of active bribery for the benefit of any third party. In Phase 1, the WGB agreed that this issue needed to be followed up in Phase 2 since it appeared that the notion of representation was not broad enough to cover situations where the bribe would go directly to a third party (for instance, a charity, political party or legal person) with which the public official does not have a relationship (i.e. where there are no legal ties between the foreign official and the third party beneficiary).

232. In the response to the Questionnaire¹³⁶, the authorities stated that where the benefit is provided directly to a third party (family members or close relatives) with the consent of the foreign public official, the latter would incur liability for bribe taking. Russia provided one court case where a public official was convicted for taking a bribe for the benefit of a legal person (a non-profit organisation)¹³⁷. In this case, however, the (legal) ties between the official and the non-profit organisation remain unclear. No court case was provided where the third party beneficiary was a company.

¹³⁶ See response to Question 1.1.4.

¹³⁷ Sentence of August 2011 in the Ruzsky Region.

233. It appears from the discussions that took place during the on-site visit that the existence of a relationship between the foreign public official and the third party beneficiary must be established for the offence of bribe giving to be prosecuted. The authorities explained that, for instance, if the bribe was given to a political party in exchange for the official to act or refrain from acting in the exercise of his official duties, the court must demonstrate existing ties between the official and the third party beneficiary (e.g. the affiliation of the official to the political party). The implication of this interpretation is that the foreign bribery offence does not cover cases where the property or other benefit goes directly to a charity, political party or legal person with which the public official does not have a relationship since the public official will not be considered to have indirectly received a benefit. In this case, actions taken by the official have been qualified as abuse of office or official misconduct.

234. The examining team remains concerned that the foreign bribery offence may not cover every instance where a public official directs that the benefit goes to a third party. The examiners are therefore of the view that measures should be taken to ensure the coverage under the foreign bribery offence (i.e. active bribery under Article 291 CC)¹³⁸ of all cases where a foreign public official directs the transmission of the benefit to a third party, including situations where bribes benefit to third parties (both natural and legal persons) with which the public official does not have a relationship so that he/she cannot be considered to have received any benefit. The lead examiners also encourage the Russian authorities to ensure that such coverage is well understood by law enforcement authorities.

Commentary

The lead examiners recommend that the Russian authorities clarify that all cases where a foreign public official directs the transmission of the benefit to a third party are covered, not just those where the official has a proven relationship with the third party, in order to ensure the effective implementation of the Convention.

(vii) *In order for the official to act or refrain from acting in relation to the performance of official duties*

235. The Convention defines the offence of foreign bribery as having occurred when an official is induced “to act or refrain from acting in relation to the performance of official duties”. Commentary 19 states the following: “*One case of bribery which has been contemplated under the definition in paragraph 4.c is where an executive of a company gives a bribe to a senior official of a government, in order that this official uses his office – though acting outside his competence – to make another official award a contract to that company*”.

236. Article 291 CC contains two active bribery offences. Interpreted in the context of article 290(1) CC, article 291(1) CC and article 291(2) CC would apply to a bribe “*for actions (inaction)... within the official duties of such official or if such official due to his/her official position may facilitate such actions (inaction)*”. Article 291(3) CC applies to a bribe “*for knowingly illegal actions (inaction)*”. In Phase 1, the Working Group agreed that this issue should be followed up in Phase 2 to ensure that the crime of foreign bribery applies in such situations when the bribe recipient is acting outside the scope of his official duties or functions or competence. The Convention encompasses situations where acts or omissions are made possible in relation to the official’s function (duties), but not necessarily limited to his/her formal scope of authority.

¹³⁸ As noted above, article 291 CC does not refer to third party beneficiaries. Only the passive bribery offense under article 290(1) CC refers to a bribe “in favour of the bribe-giver or persons he/she represents”.

237. Article 291(1) CC *a priori* encompasses situations where the bribe-taker has used his/her official position to facilitate an action (or inaction) that falls within his/her scope of authority¹³⁹. Article 291(1) CC would also apply to the case where a person gives a payment to a senior official of a foreign government in order that this official uses his/her office – acting outside his/her competence – to influence another foreign official¹⁴⁰ in order to award a contract to this person’s company. However, according to the Supreme Court, a person using his/her personal relations unrelated to his/her position to influence other officials’ decisions does not constitute a bribery offence under Russian law (see para. 4 of the 2013 Supreme Court Resolution). Finally, a public official is liable for aggravated active bribery under Article 291(3) CC where he/she has used his/her official position to commit outside the scope of his/her official duties a “*knowingly illegal action (inaction)*”¹⁴¹. In the context of the GRECO third evaluation round¹⁴², the Russian authorities indicated that any acts and omissions made possible by the official’s position, even if the act or omission amounts to misuse of that official position, are thus covered by the bribery provisions. However, in practice, the co-existence of two offences (under Article 291(1) and Article 291(3) CC) obliges courts to categorize the action (or inaction) carried out by the public official and define the official’s specific responsibilities.

238. For the purpose of Article 291(3) CC, Russia explained in Phase 1 that the meaning of “*knowingly illegal*” acts or omissions requires a case-by-case assessment. As a consequence, and in order to determine whether Article 290(1) CC or Article 290(3) CC applies (and to apply the appropriate range of sanctions¹⁴³), the courts need to understand whether the act (or omission) committed by the official was proper/legal or improper/illegal. While the distinction between bribery for proper and improper acts in the domestic context can be established based on Russian legislation, this distinction in relation to foreign bribery must ultimately take into account the applicable foreign law. Investigators and prosecutors thus will need to look at the authorised responsibilities of the foreign official and then determine whether or not the act or omission in question falls within those authorised responsibilities. This will oblige them to rely heavily on the particular laws and official documents of the bribed official’s country, which represents a further non-autonomous element of the offence. The need to determine what constitutes the scope of the public official’s official authority based on the foreign law and to determine whether the act performed by this official constituted a lawful act is inconsistent with Commentary 3 of the Convention, which provides that while various legislative approaches can be used to meet the standard of the Convention, it should be “understood that every public official [has] a duty to exercise judgement or discretion impartially” and proving that this person has a duty to exercise judgement or discretion impartially should “not requir[e] proof of the law of the particular official’s country”.

239. The lead examiners note that this issue has been highlighted in the “Overview of 2007-2009 case law on criminal bribery and commercial bribery” that states the following: “*the case law communicated by the courts suggests that they face difficulties in qualifying the actions taken by the bribe-taker to segregate between offences related to actions benefiting bribe-givers that are part of the official duties of the person and unlawful actions by the official to benefit the bribe-giver*”. The courts certainly have similar difficulties in practice to distinguish between cases of bribery, fraud, trading in influence or abuse of office. Finally, there are circumstances where a bribe may be paid to an official for that official to take an action that is not illegal, such as to win a contract that the bribe payer would have won even absent the bribe (see Commentary 4 of the Convention). It is unclear as to whether or not the law would adequately

¹³⁹ See para. 3 of the 2013 Supreme Court Resolution. However, it is not a bribe-taking offense under Russian law for an official to accept cash for action (inaction) unrelated to his powers of authority, organizational/management or administrative functions”.

¹⁴⁰ See para. 4 of the 2013 Supreme Court Resolution.

¹⁴¹ Such as fabrication of evidence in a criminal case, making an unlawful decision on the basis of forged documents, etc. See para. 6 of the 2013 Supreme Court Resolution.

¹⁴² See the GRECO Third Evaluation Round Report on Russia, para. 58.

¹⁴³ The bribery offense under Article 291(3) CC is subject to a more serious range of sanctions than the bribery offense under Article 291(1) CC. See the section on “sanctions” in the report for more details.

cover such circumstances. The lead examiners note that the response to the Questionnaire provides examples of court cases only where the public official actually acted within the scope of his functions.

Commentary

The lead examiners recommend that the Working Group follow up, as practice develops, the application of the offence of bribery in situations when the foreign public official uses his office to provide a benefit outside the scope of his official duties.

(viii) *Small facilitation payments*

240. According to the authorities, there is in Russia no exception to the foreign bribery offence for “small facilitation payments”. In Phase 1, the WGB agreed that, despite the absence of explicit exception, the Phase 2 Report should examine whether such payments are taken into account in practice. Article 291 CC does not contain any value threshold and the amount of the advantage does not matter, thus Russia appears to specifically criminalize facilitation payments. The authorities have also been able to refer to court decisions on cases of bribe giving and bribe taking involving minor benefits¹⁴⁴. The Russian authorities also say that such payments to public officials would be prohibited under Federal law No. 273-FZ. The lead examiners nevertheless note that, as stated above, there is no criminal liability in Russia for the “preparation” of a bribe of less than RUB 150,000 (approximately EUR 3,500) in order to induce the foreign public official to take a legal or proper action (or inaction). Such an exception opens the possibility that the offer or promise of small payment, which could be a facilitation payment, would not be criminalised. However, the lead examiners note that criminalising the offer and promise of all payments, as recommended elsewhere in the report, would close this exception, whether or not the payments in question would qualify as facilitation payments. Since there have been no foreign bribery cases, the lead examiners recommend that the Working Group continue to follow-up on this issue as case law develops to determine whether through prosecutorial discretion such an exception may exist in practice.

Commentary

Under Russian law, acts of “preparation” of a payment of less than RUB 150,000 (approximately EUR 3,500) are not subject to criminal liability. The lead examiners therefore recommend that Russia take steps to (i) ensure that all payments that constitute bribes are criminalised in line with Article 1 of the Convention and that (ii) the 2009 Recommendation on “small facilitation payments” is adequately implemented. The lead examiners also recommend that the Working Group continue to follow up on this issue as case law develops.

(ix) *The defence of “effective regret” and the defence of extortion*

241. A note to Article 291 CC stipulates the following: “The person giving the bribe shall be exonerated from criminal liability, if such person actively facilitated the detection and/or investigation of the crime and if the bribe was extorted by the public official, or such person after committing the crime has voluntarily reported to the body authorised to initiate criminal proceedings”. The defence of “effective regret” is also applicable in the context of mediation in bribery (Article 291¹ CC) as follows: “The person who mediates in bribery shall be exonerated from the criminal liability provided following the crime such person actively cooperated in the detection and/or prevention of the crime and voluntarily reported the mediation in bribery to the authorities invested with powers to initiate criminal proceedings”.

¹⁴⁴ For example, the Sovetskiy District Court of the city of Volgograd in its decision of 15 June 2011 convicted a public official for taking a bribe in an amount of approximately EUR 12 and the Suzdal District Court of Vladimir Oblast, in its decision of 25 March 2010, convicted a person for giving a bribe in an amount of approximately EUR 3.

The defence of “effective regret” in the context of Articles 291 CC and 291¹ CC

242. The WGB recommended in Phase 1 that Russia examine the issue of “effective regret” in order to eliminate the defence as it applies to foreign bribery (Recommendation 1b). This defence has not been removed and is still applicable in the context of Articles 291 CC and 291¹ CC. The Russian authorities have provided examples of application of this defence in the Questionnaire¹⁴⁵.

243. The conditions of application of the defence vary in the Criminal Code. Under Article 291 CC, the bribe-giver is exempted from punishment in cases of active bribery if the bribe is extorted from him/her and the later actively facilitates the detection and/or investigation of the crime *or* the bribe-giver voluntarily reports to a competent authority. Under Article 291¹ CC, it is required that the bribe-giver voluntarily reports to the competent authority *and* actively cooperates in the detection and/or prevention of the crime. In cases of extortion, it is not required that the bribe-giver voluntarily reports to the competent authority (because of fear of further harmful consequences).

244. In the case of “effective regret”, the denunciation can be made orally or in writing to the public bodies vested with the right to initiate criminal investigations, namely the Investigative Committee of the Russian Federation (see para. 29 of the 2013 Supreme Court Resolution). The Supreme Court considers that all decisions by the bribe-giver to inform law enforcement authorities about a case of foreign bribery should be deemed voluntary irrespective of the motivation of the bribe-giver with one exception: in the case where the facts were already known by the authorities.

245. According to the authorities, discharging the bribe-giver, or the person that committed the bribery and actively assisted in the detection and/or investigation of the crime, from the criminal prosecution on grounds of extortion as well as voluntary confession of the bribe-giving does not mean that acts by such persons contain no elements of offence (see para. 30 of the 2013 Supreme Court Resolution). Therefore, according to the authorities, the owner of the money and other valuables used to commit the bribery offence is entitled to restitution of the bribe. However, confiscation under the Penal Code may not be available in such situations because the briber will not appear in court. No examples were provided where the bribe had been confiscated after the release from criminal liability of the bribe-giver.

246. During the on-site visit, divergent views were expressed as to what authority is entitled to take the decision on release from criminal liability. Some authorities stated that this decision is in principle taken by the competent court. Others indicated that only the investigator in charge of the investigation can dismiss the case. A third category of interlocutors stated that both the prosecutor and the investigator can grant the defence. After the on-site visit, the Russian authorities indicated that all decisions to abandon prosecution are governed by Article 148 CPC and can be appealed before a court. The prosecutor can then revoke the decision on refusal to open the criminal case and institute criminal proceedings.

247. The lead examiners take note of the decision by the authorities to maintain the tool of “effective regret” for the purpose of stimulating reporting of domestic corruption cases. Even if no official statistics on its use in practice are available, the examiners’ interlocutors unanimously stressed the efficacy of the defence. The lead examiners consider that this provision may play an important role in identifying domestic officials who have been bribed, enabling the Russian authorities to pursue the passive bribery of domestic officials. However, when applying this provision to the bribery of foreign public officials, the important policy rationale no longer applies. Such a waiver is not contemplated by Article 1 of the Convention and may lead to a significant loophole in the implementation of the Convention. The lead examiners consider that the absence of any systematic oversight of the decisions to abandon prosecution is another pressing reason for the elimination this defence as it applies to foreign bribery.

¹⁴⁵ See response to Question 1.3.2.

The defence of extortion in the context of Article 291 CC

248. In Phase 1, the WGB agreed that given the broad nature of the defence of extortion in Russia, this issue will require further analysis in the framework of the Phase 2 evaluation. The 2013 Supreme Court Resolution (para. 18) describes extortion as a request by an official that the bribe be given when accompanied by a threat by the official to prejudice the legitimate interests of the person from whom the bribe is being sought or in circumstances where a person is forced to give a bribe in order to avoid harmful consequences to his/her legitimate interests. The exact scope of the notions of “harmful consequences” and “damage” as described in the Resolution of the Supreme Court appears to provide a rather broad interpretation of “extortion”. It is likely to cover situations where payments are made to avoid any sort of harm to one’s person, property, or existing economic interests. During the on-site visit, the Russian authorities stated that the loss of a business opportunity could be recognised as a valid defence by the courts. The concern expressed in Phase 1 with regard to the broad nature of the defence of extortion in Russia therefore remains valid.

249. The lead examiners understand that this defence plays an important role in the prosecution of cases of domestic bribery, because the official will be prosecuted, and the primary objective of the domestic bribery offence is to preserve the integrity of the domestic public administration. On the other hand, these justifications do not apply to the offence of bribing a foreign public official. Prosecution of a foreign public official by the foreign country is not guaranteed. Moreover, the Convention primarily aims to preserve good governance and economic development and to prevent distortion of international competitive conditions. Although the defence of economic extortion seems reasonable in the Russian domestic context to address passive bribery of domestic officials and the widespread phenomenon of extortion, it is likely to create obstacles to the effective implementation of the active bribery in the context of bribery of foreign public officials in international business transactions.

Commentary

The lead examiners reiterate the Phase 1 concerns about the application of the defence of “effective regret” in the context of Article 291 CC and recommend that Russia eliminate the defence as it applies to foreign bribery.

The scope of the defence of extortion appears to be broad in scope and not clearly limited. The policy reasons underpinning the defence in domestic bribery are not applicable in the foreign bribery context. Accordingly, the lead examiners recommend that Russia amend its legislation to exclude the defence of economic extortion from the offence of foreign bribery [note to the examiners: See Phase 2 of Italy].

3. Liability of legal persons

(a) The legal basis for liability of legal persons in Russia

(i) Background

250. Russian law establishes administrative responsibility of legal persons for “corruption offences” under Article 14 of Federal Law 273-FZ and in the Code of Administrative Offences (CAO). Article 19.28 CAO, amended in May 2011 sets out a specific active bribery offence committed “on behalf or in the interests” of a legal person. Article 19.28 includes the “giving”, the “offer” and the “promise” of a bribe as

prohibited acts. Article 13.3 of Federal Law 273-FZ provides that organizations must elaborate and take measures to prevent corruption¹⁴⁶.

251. The lead examiners stress the relatively high number of domestic enforcement actions taken over a short period of time by the authorities in application of Article 19.28 CAO¹⁴⁷. They however note that despite this, the GPO deemed it necessary to issue guidelines in 2012 to support stronger enforcement of the administrative liability of legal persons for corruption offences (see below a detailed analysis of the Methodological Recommendations developed by the GPO).

(ii) *Legal entities subject to liability*

Legal persons covered by the Russian legislation

252. Russian law establishes administrative liability of legal persons for foreign bribery. According to the authorities, this liability applies to “legal entities” as defined under the Civil Code as covering profit and non-profit organisations both public and private. The authorities maintain that both state-owned and state-controlled enterprises may be held liable for administrative offences under the CAO, but the effective prosecution of state-owned or state-controlled companies for the offence of foreign bribery will need to be followed up as case law develops. This is particularly important considering the prominent role of the State in the economy¹⁴⁸.

253. The Administrative Code also covers enterprises formed by merger after the commission of an offence, as well as foreign enterprises. Under the CAO, companies cannot artificially escape sanctions by way of a merger to become a new legal entity. Under paragraph 3 of Article 2.10 CAO, an enterprise formed by a merger after an offence was committed shall be administratively liable. Foreign enterprises are likewise not exempt from punishment in Russia for the commission of bribery (see also the section of jurisdiction above). According to the CAO, “*legal entities shall be administratively liable, regardless of location, organisational-and-legal form and subordination or other circumstances*” (Article 1.4). It is the understanding of the lead examiners and legal commentators of Russian law that the provisions of the CAO as well as the requirements set out in Federal Law 273-FZ are intended to apply to all companies operating in Russia, without any limitation, including branches and subsidiaries of foreign companies. However, the lead examiners are not aware of any foreign enterprise having been sanctioned to date in Russia on the basis of the CAO. This should be followed up as case law develops.

Liability of parent companies for the acts of bribery committed by intermediaries including related legal persons

254. Annex I to the 2009 Anti-Bribery Recommendation clarifies that “*a legal person cannot avoid responsibility by using intermediaries, including related legal persons*” to commit foreign bribery. Russian law does not address the liability of parent companies in general, nor does it specifically provide for the liability of parent companies for acts of bribery committed by intermediaries, including related legal persons such as their subsidiaries. However, for a legal person to be liable under Article 19.28 CAO, a violation must be made by a natural person “on behalf or in the interest” of the legal person. Determining whether the bribery offence has been committed in the interests of the legal person would thus require a finding of intention. In addition, the language “in the interest” of the legal person appears to require that the bribe benefit the legal person from which it emanates. Bribes for the benefit of related companies – such as subsidiaries or holding companies – then could potentially fall outside the scope of Article 19.28 CAO.

¹⁴⁶ See below and also the section of the report on preventive measures in the business sector

¹⁴⁷ From 2010 to the first half of 2012, 84 proceedings were initiated against legal persons for domestic bribery

¹⁴⁸ See the introduction to this report.

255. During the on-site visit, judges indicated that liability of a parent company for bribery committed by a branch of that company on its behalf is theoretically possible although no case law was provided to illustrate that position. However, doubts were expressed as to whether the act of bribery committed by a subsidiary could trigger the liability of the parent company, the subsidiary being a separate legal entity from the parent. It therefore remains to be seen whether the CAO imposes liability on a legal person when a principal offender bribes to the advantage of a subsidiary or vice versa. It also remains to be seen whether acting “on behalf or in the interest [of]” includes agents acting as intermediaries in a bribery transaction. During the visit, the Supreme Court informed lead examiners that it intended to produce further guidance on this particular topic.

(iii) *Relationship of liability between the legal person and the natural person*

Possibility to convict a legal person even where the individual responsible for the bribery has not been convicted or prosecuted

256. Annex 1 to the 2009 Recommendation states that “member countries’ systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should not restrict the liability to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted”. Article 14(2) of Federal Law 273-FZ implies that a prior conviction of a natural person is not necessary for the prosecution of a legal person for the offence of foreign bribery. Pursuant to Article 14(2) of Federal Law 273-FZ, the imposition of an administrative penalty on a legal entity in Russia does not relieve the guilty natural person of responsibility for the given offence, and holding a natural person to administrative or criminal responsibility does not relieve the legal entity of administrative responsibility for the given offence. The examples provided in Russia’s responses to the Questionnaire¹⁴⁹ are further indication that the liability of legal persons in cases of domestic bribery is not restricted to cases where the natural person who perpetrated the offence has been convicted.¹⁵⁰ Moreover, during the on-site visit, the authorities presented one case where prosecution was abandoned against a natural person for facilitating the detection of a bribery offence although the proceedings against the legal person arising from related facts continued. The legal person was finally sentenced on the basis of Article 19.28 CAO¹⁵¹.

257. Prosecutors during the visit explained that the timeframe for investigation of legal persons is limited to 2 months since evidence is already available as a consequence of the investigation against the natural person (see below the section on Prosecution of legal persons in practice). The lead examiners note that in practice the very short timelines for completion of investigations against legal persons create an evidentiary dependency on the parallel investigation and prosecution of a natural person. The lead examiners accordingly conclude that problems may arise in establishing the liability of legal persons in cases where there is no criminal investigation of a natural person (because either the identity of the individual offender is unknown, the individual has fled, or is a foreigner with no nexus with Russian law). Thus, the lead examiners are concerned that if the successful investigation and prosecution of a legal person is *de facto* contingent on the criminal investigation of a specific and identifiable individual who can be prosecuted under Russian law, no investigation and prosecution would realistically take place against the legal person in the absence of proceedings against a natural person, which would seriously undermine the application of the Convention in Russia. Liability of legal persons would then be inapplicable in scenarios quite common in the context of foreign bribery, such as those in which no natural person was identified (e.g. in case of collective decision making) or the person identified has fled or is a foreigner with no nexus with Russian law. Representatives from the legal profession at the on-site visit confirmed the

¹⁴⁹ Russia’s response to Question 2.2.1.

¹⁵⁰ See for instance the ruling of the Justice of Peace against Publishing House Vozrozhdenie LLC of 8 July 2010 that imposed a fine on the legal person. The director of that company was convicted by the Central District Court of Volgograd on 21 October 2010 i.e. after the proceedings against the legal person were terminated.

¹⁵¹ See the press release of this case.

impression that Russian courts are focused on proving a culpable act and intent by a representative of the company rather than establishing the liability of the corporations in a corruption scheme. The legal profession was of the view that the members of the judiciary are very much in need of training on liability of legal persons under Russian law. Some members of the legal profession at the on-site called for a specialisation of courts for the prosecution of legal persons.

Level of seniority of person whose action triggers the liability of the legal person

258. Annex I to the 2009 Recommendation for further combating foreign bribery provides that the level of authority of the person whose conduct triggers the liability of the legal person should a) either be flexible and reflect the wide variety of decision-making systems in legal persons; or, b) if restricted to the highest level managerial authority, cover cases where such person directs or authorises a lower level person to bribe or fail to prevent such person from bribing, including through a failure of supervision or a failure to implement adequate internal controls, ethics and compliance programs and measures.

259. The authorities stressed that actions by any employee or individual who was empowered to act on behalf of the company can trigger liability. Article 19.28 CAO, however, does not define the specific persons whose acts can give rise to the liability of the legal person except that the offence must be committed “on behalf or in the interest” of the legal person. Moreover, all court cases provided in the response to the Questionnaire¹⁵² refer to liability of directors or “heads” of companies. The lead examiners were also told that the majority of the cases that have been prosecuted since the adoption of Article 19.28 CAO relate to situations where the owner or the manager of the legal person triggered liability. It appears that some courts consider that where it was neither the director nor the founder of the company who acted “on behalf or in the interest” of the legal person, liability of the company is not triggered¹⁵³. It therefore remains to be seen if all the situations described under Annex I to the 2009 Recommendation would be covered in the context of Article 19.28 CAO.

Liability of Legal Persons for Failing to Take Measures to Prevent Bribery

260. According to paragraph 2 of Article 2.1 CAO, “[a] legal entity shall be found guilty of an administrative offence, if it is established that it had the opportunity to observe rules and norms whose violation is administratively punishable under this Code or under the laws of a subject of the Russian Federation, but it has not taken all the measures that were in its power in order to follow them.” Thus, under Article 2.1 CAO, it appears that legal persons may be held liable for failing to take all measures within their powers to prevent bribery. In January 2013, Article 13.3 of Federal Law 273-FZ took effect, stating that “organisations must elaborate and take measures on prevention of corruption” (these measures are further explained in section B) 1. of the report).

261. The lead examiners are uncertain whether paragraph 2 of Article 2.1 CAO, read together with Article 13.3, does in fact establish liability of legal persons for failure to take measures to prevent bribery. Likewise, if an organization can show that it did take all measures to prevent bribery, it is unclear whether it would constitute a defence. Neither Article 13.3 nor FL 273 provides a definition of the term “organization”, but legal commentators opined that it likely applies to all companies – including SOEs – operating in Russia. Thus, all companies operating in Russia, including foreign entities, have an incentive to adopt anti-corruption measures. However, the lead examiners note that neither Article 13.3 nor Federal Law 273 contains a penalty provision; thus it is not clear what sanctions would be imposed in case of non-compliance. If a violation of Federal Law 273 is determined, the court would have to refer to Article 19.28

¹⁵² Response to Questions 2.2.1 and 3.6.

¹⁵³ See decision of the Justice of Peace of Perm Krai of 2010 quoted in the 2012 “Methodological Recommendations on Liability of Legal Persons for Corruption Offenses”.

CAO. Moreover, the terms of Article 13.3 are broad and no guidance yet exists on how and to what extent it should be implemented.

262. Under Article 19.28 CAO, the prosecution is required to prove that a person acting “on behalf or in the interest” of the company committed bribery. In the context of Article 2.1, para. 2 CAO, the legal person has the onus of proving that it has taken all the measures within its power to prevent bribery. According to some legal commentators during the on-site visit, proof of the implementation of the compliance measures suggested in Article 13.3 would constitute a defence to administrative liability for the legal entity. Other commentators noted that a company’s failure to have compliance measures under Article 13.3 might constitute a stand-alone administrative offence. Indeed, Article 19.28 CAO does not expressly include an offence for failure to have a compliance policy. Additionally, Article 13.3, as drafted, does not expressly require an underlying corruption-related violation, and it remains to be seen whether Russian authorities will attempt to enforce Article 13.3 without an underlying allegation of corruption.

263. Panellists met during the on-site visit expressed conflicting views as to whether Article 13.3 when read in conjunction with Article 2.13 could be interpreted as a defence to escape liability. They referred to some judicial practice relating to other administrative offences that suggest that Russian courts might be receptive to the defence¹⁵⁴. However, the prosecutors met by the assessment team were of the view that effective compliance programs to prevent bribery are not a defence. In the absence of clear guidance as to what Articles 2.1 and 13.3 specifically require companies to do, their application is open to interpretation. The lead examiners also note that, to date, no publicly available Russian court case has defined or considered the measures that companies would be obligated to take to ensure anti-corruption compliance. Further guidance is necessary in this area and the application of liability of legal persons for failure to prevent bribery will have to be followed up as case law develops.

(iv) Coverage of the giving of a bribe to a third party

264. Article 19.28 CAO does not expressly cover the giving, offer or promise of a bribe to a third party on behalf of or in the interest of a legal person. In Phase 1, the WGB recommended that Russia ensure that third party beneficiaries are covered by the foreign bribery offence for legal persons, and that this issue should be followed up in Phase 2. Since Phase 1, no legislative step has been taken to address this issue and it remains a concern.

(v) Bribes in the form of non-pecuniary bribes

265. Under Article 19.28 CAO, a bribe can take the form of cash, securities, services of pecuniary nature and proprietary rights. In the opinion of the Russian authorities in Phase 1, the “proprietary rights” referred to in Article 19.28 CAO would cover all non-material/non-pecuniary benefits, including any type of intangible advantages. However, as discussed earlier in this report, this definition does not cover all categories of non-material advantages as foreseen by the Convention. This issue will have to be further addressed by the authorities and followed up by the Working Group.

(b) Investigation and prosecution of corruption offences committed by legal persons

266. Investigation of foreign bribery involving legal persons is done in the framework of administrative proceedings. The prosecutor institutes such proceedings and participates in their consideration in court. Similar to the principles of criminal investigation and prosecution, the prosecutor in

¹⁵⁴ In an analysis of Article 13.3, an international law firm established in Moscow has referred to a case where a company, which had been accused of violating cash register rules due to breach by an employee, successfully proved that it took all possible measures to comply with the rules. Among other things, the company adopted all necessary internal documents on the cash register rules and informed the employees of their requirements and the need for compliance.

the administrative proceedings must issue a decision to institute administrative proceedings when sufficient evidence of the offence exists. Such a decision must be issued immediately upon the detection of the offence; if additional circumstances need to be clarified, the prosecutor is given up to 48 hours to do so. The prosecutor must then complete administrative investigation in one month; this term can be prolonged for a maximum of another month¹⁵⁵. The lead examiners note with concern that the timelines are considerably shorter than the already short timelines available in the criminal proceedings and believe that this would present a serious challenge in any foreign bribery investigation involving legal persons. Given the likely need to obtain evidence abroad, two months to investigate foreign bribery by legal persons is insufficient.

267. The liability of legal persons for foreign bribery is not restricted to cases where the natural person who perpetrated the offence has been convicted. However, both the practice and the Methodological Recommendations on liability of legal persons for corruption offences, developed by the GPO in 2012, confirm that prosecutors rely heavily on results of criminal investigations to successfully investigate and prosecute legal persons. Thus as indicated above, in situations in which the natural person is not readily identifiable or outside the jurisdiction of Russia, the likelihood of a criminal investigation is low. The effective result likely would be inability of the prosecutor to successfully investigate the legal person within two months.

268. Investigative tools available to the prosecutor for the conduct of administrative investigations are very limited and may not allow for thorough investigation of foreign bribery offences committed by legal persons. The prosecutor cannot provisionally freeze, seize or arrest assets to ensure confiscation of the bribe and imposition of court sanctions. The Methodological Recommendations stress that in 2011, only 7.4% of the imposed fines were paid by legal persons because in most cases the legal persons were dissolved or filed for bankruptcy before court decisions were reached. Moreover, although proof of the natural person's guilt in the criminal case is not required by law, courts tend to adopt a conservative approach and hand over guilty verdicts in administrative cases more readily after the natural person was convicted. The Methodological Recommendations also point to a large number of cases being dismissed or acquitted due to procedural mistakes made by prosecutors in the conduct of administrative investigations.

Commentary

Russia has gathered some positive experiences in its general enforcement of the regime of liability of legal persons in the domestic corruption context. However, the lead examiners are concerned that Russia has not detected any instances of foreign bribery by legal persons. They recommend that Russia raise awareness of the Investigative Committee, relevant MIA and FSS operatives, prosecutors and judges (e.g. through guidance and training focused on the foreign bribery offence) on detection, investigation and adjudication of foreign bribery cases involving legal persons, and make full use of Methodological Recommendations developed by the GPO on liability of legal persons for corruption offences.

The lead examiners recommend that Russia clarify and issue guidance on whether Article 2.1 para. 2 CAO together with Article 13.3 of Federal Law 273-FZ require all legal entities to create anti-corruption measures to prevent bribery. Russia should clarify whether non-compliance with Article 13.3 can serve as the basis for a stand-alone offence, and the resulting sanctions, or whether Article 13.3 is a potential defence. Russia should also provide guidance on what constitutes appropriate "measures on prevention of corruption" under Article 13.3 of Federal Law 273-FZ.

¹⁵⁵ Chapter 28 CAO.

The lead examiners reiterate the Phase 1 concerns about the coverage of bribes to a third party on behalf or in the interest of a legal person. They recommend that Russia expands the scope of the offence under Article 19.28 CAO to include third party beneficiaries. They also recommend that Russia ensure that any kind of advantage, including any bribes in the form of non-material advantages, can trigger liability under the Code of Administrative Offences. They finally recommend that Russia clarify when it can charge a legal person, including a foreign subsidiary of a Russian legal person, with mediation in bribery, and the resulting sanctions that can be imposed.

The lead examiners recommend that Russia clarify the requirements for the administrative liability of legal persons in order to ensure coverage of the full range of situations required in Annex I to the 2009 Recommendation. Russia should clarify what level of authority of natural persons acting “on behalf or in the interest of” legal persons can trigger liability for legal persons, including whether the liability extends to third parties such as agents acting on behalf of the legal person. Russia should also clarify what constitutes “on behalf or in the interest of a legal person” when the offending natural person worked for a foreign subsidiary of a Russian legal entity.

The lead examiners note with concern the short procedural timelines for instituting and conducting administrative investigations and urge Russia to adjust them and enable the prosecutor to detect and assess credible allegations and seriously investigate uncovered instances of foreign bribery involving legal persons. They also recommend that Russia take all necessary measures to ensure that liability of legal persons is not restricted in practice to cases where the natural person(s) who perpetrated the offence is prosecuted.

The lead examiners further recommend that Russia make available a broader set of investigative tools in the framework of the administrative proceedings, to enable successful detection, investigation, and judicial proceedings of legal persons independent of criminal investigations and criminal proceedings.

Finally, the lead examiners recommend that the Working Group follow up the issues below, as practice develops in order to assess (1) whether Russia can effectively prosecute legal persons for foreign bribery in the following cases: (i) in the absence of proceedings against natural persons; (ii) where the legal person is a state-owned or state-controlled company; (iii) where the bribe is for the benefit of a third party (e.g. a company related to the legal person from which the bribe emanated); (iv) where the bribe is to a third party beneficiary; and (2) the application of the liability of legal persons for failure to take measures to prevent bribery.

4. Adjudication and sanction of the foreign bribery offence

269. Article 3 of the Convention provides for the imposition of effective, proportionate and dissuasive sanctions for foreign bribery offences. It also provides for confiscation of the bribe and proceeds of bribery of a foreign public official.

(a) Sanctions against natural persons

270. In Russia’s Phase 1 review, the Working Group recommended follow-up on the practical implementation of the sanctions regime as applicable to foreign bribery. Under Article 291, bribe-giving is punishable by fines of 15 to 90 times the sum of the bribe or by imprisonment of 2 to 12 years in addition to fines of 10 to 70 times the bribe amount, depending on the amount of the bribe and the presence of certain circumstances (such as inducing the public official to commit unlawful action in return for the bribe

or offering a bribe in the context of organised crime). Judges at the on-site indicated that there is a RUB 500 million cap (approximately EUR 11.5 million) on fines for natural persons.

271. As noted earlier in the Report, one particular area of concern for lead examiners is the valuation of non-pecuniary bribes for the purpose of sentencing, as the size of the bribe ultimately “identifies” the proper penalty¹⁵⁶. Prosecutors at the on-site explained that the valuation of a bribe is performed not by judges during court proceedings, but rather by external experts at the investigation stage. One judge admitted that some judges still do not know how to properly categorize an advantage in the form of a service. This issue has been recognized as ripe for discussion and accordingly, a judicial conference has been organised to examine all aspects of non-material bribes. The examiners acknowledge efforts made by the judiciary to clarify the issue, but pending the conclusion of such discussions, advocate for continued monitoring of this issue, particularly as it also bears relevance to the sanctions regime for legal persons.

272. Another area of concern is the implication for Russia’s sanctions regime of the fact that cases of offer and promise are considered mere preparation and attempt crimes¹⁵⁷. As offers and promises to bribe are not considered completed offences in Russia, they fall under Article 66 CC (governing the imposition of punishment for an unfinished crime), which stipulates that the scope of punishment for preparatory acts may not exceed half the maximum applicable punishment for the offence itself and the scope of punishment for attempted crimes may not exceed three-quarters the maximum punishment prescribed for the completed offence. On this point, the examiners presented prosecutors with a hypothetical scenario in which a Russian businessman uses an intermediary to commit bribery, but the scheme is discovered prior to the delivery of the bribe. In such a scenario, the businessman would be charged with the *incomplete* offence of bribe-giving, but the intermediary would be charged with the *completed* offence of mediation in bribery. Prosecutors conceded that under such facts, the possibility exists that the businessman would receive *less* severe punishment than the intermediary.

(i) *Mandatory reduction of sanctions and mitigating factors*

273. Prosecutors confirmed that, in addition to the sentencing rules stipulated in Article 291, a determination of an appropriate penalty for any crime must always be based on the general principles enshrined in Article 60 CC¹⁵⁸, which include the nature and degree of the social danger of the crime, the personality of the convict, the existence of any mitigating or aggravating circumstances (contained in Articles 61 and 63), and the influence of the imposed penalty on the rehabilitation of the convicted person and the conditions of his family. Further, under Article 73 CC, a convicted person may receive a suspended sentence (“conditional judgement”) or, under Articles 64-65 CC, in the presence of “exceptional circumstances” (such as “the role played by the guilty person, his behavior during or after the commission of the crime, or other circumstances essentially reducing the degree of the social danger of the crime”) along with active assistance in the disclosure of the crime, a more lenient sentence.

(ii) *Enforcement relating to natural persons*

274. The trend of penalties imposed for domestic bribery and related crimes has been in past years significantly weighted in favour of fines rather than custodial punishments. Russian legislation on available penalties for foreign bribery do not mandate imprisonment, and in fact if non-custodial penalties are available, the court must provide a reasoned sentencing verdict to explain the imposition of punishment in the form of deprivation of liberty.

¹⁵⁶ See section C.2 (b) above on elements of the offense.

¹⁵⁷ *Ibid.*

¹⁵⁸ See also RF Supreme Court’s Resolution No.2 of 11 January 2007 on Criminal Sentencing Practices of the RF Courts (as amended by Resolutions of the RF Supreme Court Plenums of 03.04.2008 No. 5, 29.10.2009 No. 21, and 02.04.2013 No. 6)

275. A survey of criminal prosecutions in 2007 - 2012 resulting in convictions demonstrates that courts have almost exclusively imposed fines and probationary sentences for domestic active bribery cases, although such cases tried in 2012 suggest that they may be starting to increasingly impose prison terms¹⁵⁹. For example, in 2011, 54.8% of those convicted were sentenced to fines, 35.2% to probation, and 9.4 % to prison terms. The statistics for 2010 were, respectively, 39%, 51% and 10%. In 2012, of 107 individuals prosecuted under Article 291 CC, 46 were sentenced to fines (44%), 34 to probation (32%), and 25 to prison terms (23%), representing an increase in the percentage of prison sentences imposed and a slight decrease in the percentage of probationary sentences handed down. Additionally, two defendants were restricted in conducting certain activities, two were acquitted, and one prosecution was closed due to lack of evidentiary support for the charges. No individuals were sentenced to compulsory work, nor were any released from liability due to active repentance. Although the trend in 2012 appears to be heading in the direction of using deprivation of liberty as a more dissuasive penalty than monetary fines, the lead examiners recommend that the Working Group monitor this issue to assess whether sanctions for foreign bribery are sufficiently effective, proportionate and dissuasive as practice in this area evolves.

(b) Sanctions against legal persons

276. Article 3 of the Convention requires that, where a country's laws do not provide for criminal penalties for legal entities, effective, proportionate and dissuasive non-criminal penalties, including monetary sanctions, are available. Under Russia's Code of Administrative Offences, legal persons are subject to administrative liability for providing, offering or promising unlawful remuneration, the penalties for which include an administrative fine of up to 100 times the value of the bribe and "confiscation of the advantages" (Article 19.28 CAO)¹⁶⁰.

277. As confirmed by prosecutors and judges at the on-site, the amount of the administrative fine depends on the amount of the bribe. The minimum fine is imposed if the amount of the unlawful remuneration (bribe) does not exceed RUB 1 million. In this case, the fine can reach three times the bribe, though not less than RUB 1 million. If the amount of the bribe exceeds RUB 1 million, the fine can be 30 times this amount, but not less than RUB 20 million. The highest fine is imposed for bribes exceeding RUB 20 million (approx. EUR 700,000). In this case, the fine can be 100 times the amount, but not less than RUB 100 million (approx. EUR 3,2 million). No ceiling exists on fines for legal persons. The examiners acknowledge the increase in fines against legal persons and consider that, on its face, the sanctions regime prescribed by the CAO appears to be proportionate and dissuasive, including when used in conjunction with confiscation. In the absence of any foreign bribery cases to date, the efficacy of the penalty scheme in practice remains to be seen.

278. Although no foreign bribery cases have yet been prosecuted in Russia, a number of companies have been convicted for domestic bribery. From 2010 to the first half of 2012, 84 proceedings were initiated against legal persons for domestic bribery and over 60 legal entities were convicted under Article 19.28 CAO. Administrative fines totaling RUB 130 million (EUR 3 million) were imposed. The proceedings also resulted in confiscation amounting to nearly RUB 44 million (EUR 1 million). The efficacy of Russia's administrative sanctions regime under the CAO has yet to be proven with respect to bribes on a large scale. Independent research shared with the evaluation team at the on-site demonstrates that most of the domestic active bribery cases prosecuted thus far involved bribes of relatively small sums of money¹⁶¹. The average unlawful inducement involved was RUB 83,000 (EUR 2,000). In all cases concerned with petty bribery (e.g. in cases where the amount of bribe ranged between EUR 250 and 2,000), the company received the minimum sentence of RUB 1 million (EUR 25,000) under Article 19.28.

¹⁵⁹ All data are from statistics compiled by the RF Supreme Court.

¹⁶⁰ See the rules governing confiscation in respect to legal persons in section C.4 (c) below.

¹⁶¹ This research, undertaken by Baker and Mackenzie in Moscow, has been based on public source information in relation to 114 cases treated by Russian courts from 2010 to March 2013.

279. Although the examiners acknowledge that the penalties for petty bribes seem to be effective, proportionate and dissuasive, they would like to see cases of larger bribes in the context of international business transactions. In the one example of a larger domestic bribery case proffered by Russia prior to the on-site (the “GRINN” case), a bribe of 40 million RUB resulted in a fine of 60 million RUB and confiscation of the bribe itself. Although the bribe amount exceeded 1 million RUB, the penalty (including the amount confiscated) did not amount to 3 times the bribe value, the minimum stipulated by Article 19.28 for smaller bribes. The lead examiners recognize that, as explained at the on-site, the GRINN case was adjudicated prior to the new sanctions regime established under Article 19.28 and that penalties are now expected to be much higher. The Working Group should remain abreast of this issue as practice develops.

Commentary

With regard to sanctions available to natural persons, the lead examiners express their concerns about the considerable reduction of sanctions for cases of an offer or promise. They consider it a significant loophole in the law that an individual who is not able to complete the act of delivering the bribe, for whatever reason, shall be penalized less than an individual who has fully transferred the unlawful advantage. They recommend Russia to ensure that the above corrupt behaviours are aligned with Article 1 of the Convention and, as such, are subject to effective, proportionate and dissuasive sanctions.

Furthermore, while acknowledging and appreciating the efforts made by the Russian judiciary to address areas in the criminal and administrative sanctions regime that contain ambiguity, the lead examiners, pending the outcome of these discussions and development of jurisprudence on point, cannot be certain that the current sanctions regime, and system of quantifying bribes, is adequate in imposing penalties based on bribes of a non-pecuniary nature.

Finally, the lead examiners recommend that the Working Group follow-up on the application of sanctions to foreign bribery cases, particularly with respect to legal persons, as practice develops.

(c) Confiscation

280. In Phase 1, the WGB recommended that Russia ensure that measures are available for natural and legal persons to enable the identification, seizure and confiscation of the bribe, its proceeds or their equivalent value (Recommendation 4).

(i) Rules governing seizure and confiscation in respect to natural persons

281. The procedural rules governing confiscation and pre-trial seizure have not changed since Phase 1. Efforts have been made prior to the Phase 1 evaluation to modernise the regime of seizure and confiscation, but the most recent features of confiscation (contained in Article 104.1 CC) are limited in application to the offence of bribe-taking under Article 290 CC. Procedural confiscation under Article 81 CPC, on the other hand, is available to foreign bribery. Article 81 CPC permits the procedural confiscation of proceeds (including income and property resulting from proceeds that have been transformed) that are derived directly or indirectly from the commission of an offence. This provision can also be used to confiscate proceeds that have been co-mingled with legitimate property. However, rules that are aimed primarily at securing evidence through confiscation do not foresee value-based confiscation as envisaged by the Convention. In order to ensure future enforcement of judgements and to facilitate the gathering of evidence, seizures should be executable against both proceeds of crime and instrumentalities.

(ii) *Rules governing seizure and confiscation in respect to legal persons*

282. Article 19.28 CAO provides for the confiscation of the bribe as a sanction for legal persons who commit foreign bribery. However, the CAO does not empower the prosecutors to take provisional measures (seizure) with the purpose of subsequent confiscation in application of Article 19.28 (see the Methodological Recommendations developed by the GPO on legal persons in the section on legal persons below). Thus, in effect, prosecutors cannot confiscate the proceeds of foreign bribery by legal persons.

283. The authorities believe that the large fines available as sanctions against legal persons if imposed in practice are sufficiently dissuasive and the absence of provisions on seizure and of confiscation measures for the proceeds is compensated by the possibility to impose heavy fines and the confiscation of the bribe. However, this argument has not been fully accepted by the WGB in the past. In addition, the lead examiners consider the confiscation of proceeds a very important sanction in the context of foreign bribery, and one that is required by the Convention. The bribe may often no longer be available for confiscation if it is already in possession of a foreign public official in a foreign country. Russia also indicated that provisions under the Civil Code provide for the confiscation of the bribe and its proceeds. It would appear, however, that this statute is only used in commercial litigations with the objective of voiding a contract and is therefore not relevant in the context of bribery. Given the absence of foreign bribery cases, effectiveness of the CAO provisions cannot be measured at this time.

(iii) *Freezing of assets and confiscation in practice*

284. As noted above, there have been no foreign bribery cases to date, thus no forfeiture or confiscation orders have been pronounced in the context of a foreign bribery offence. Statistics show some level of enforcement of the confiscation provisions in the context of criminal proceedings related to domestic corruption. Available data indeed show that in 2012, 19 confiscation orders under Article 290 CC (passive domestic bribery) and 60 under Article 291 CC (active domestic bribery) were executed. No information is available on whether the confiscation measures were taken in relation to the bribes or/and their proceeds. No figures were provided on the number of confiscation measures taken in application of Article 19.28 CAO. Only one example of such confiscation was given at the on-site, in relation to the GRINN case discussed above. In this case, the court charged the company a fine of RUB 60 million (EUR 1.5 million) and confiscated the bribe amounting to RUB 40 million (EUR 1 million).

285. It also results from the discussion held during the on-site visit that the authorities generally make good use of the provisions in force to seize and confiscate the bribe either in active or passive bribery cases. However, the on-site interviews revealed that the authorities face difficulty quantifying the direct or indirect proceeds of a bribe and that confiscation of proceeds may, in effect, not be sought by the prosecuting authorities, and/or imposed by the courts. The examiners are aware that the difficulty of quantifying the direct or indirect proceeds of a bribe is one that is common to all the Parties to the Convention. They submit, however, that more consideration should be given by the authorities to this aspect of the enforcement of Article 3.3 of the Convention.

286. In the response to the Questionnaire¹⁶², Russian authorities clearly identify the challenges (such as the size of the Russian territory) faced by law enforcement authorities in detecting and tracing illicit assets. They refer to existing joint actions and coordination efforts among the law enforcement community. They also indicate that, in the framework of the Anti-Corruption Plan for 2012-2013, guidelines and training programmes aiming at improving law enforcers' capacity to trace illegal assets and adopt provisional measures, including seizure of property, are under preparation. The lead examiners welcome these initiatives and wish for their actual implementation.

¹⁶² Russia's response to Question 4.4.1.

287. Finally, the “Overview of 2007 – 2009 case law on criminal bribery and commercial bribery” also provides information on the implementation of confiscation measures in bribery cases. It highlights the difficulty faced by law enforcement authorities in proving (in the course of preliminary investigation) that the property subject to forfeiture had been obtained through crime. Currently, Russian law allows *in personam* confiscation (the seizure of an object from an individual based on proof that the object constitutes proceeds of a crime for which the individual is on trial or has been convicted). Only a court may order *in personam* confiscation, and prosecutors have the burden of proving that the object does in fact constitute proceeds of a crime. The level of evidence necessary to apply for freezing orders in practice will have to be followed up as case law develops. This is particularly relevant in a context where the authorities are studying the possibility to introduce a regime of *in rem* confiscation (i.e. a regime of confiscation where the proceeds of a crime can be confiscated without the conviction of the perpetrator)¹⁶³.

Commentary

The lead examiners recommend that Russia take measures to allow for confiscation of the equivalent value of the bribe and its proceeds in proceedings against natural persons. They also recommend that Russia adopt legislation that would allow provisional measures (seizure) and confiscation of the proceeds of the bribe and their equivalent value in proceedings against legal persons.

They recommend that Russia take all appropriate measures to (i) develop a proactive approach to seizure and confiscation of the instrument and proceeds of bribery, including in the context of proceedings involving legal persons; (ii) draw the attention of investigative and prosecutorial authorities to the importance of seizure and confiscation as a sanction for foreign bribery and provide them with appropriate training and guidance, including on methods for quantifying the proceeds of a bribery offence. In this respect, the Russian authorities could draw on work carried out at an international level, such as the study published jointly by the Working Group and the StAR (Stolen Assets Recovery) Initiative in June 2011 entitled “Identification and Quantification of the Proceeds of Bribery”.

The lead examiners finally recommend that the Working Group follow up on the issues below, as practice develops, in order to assess the use of measures of seizure and confiscation in cases of bribery of foreign public officials, including in proceedings involving legal persons.

5. The Offence of Money Laundering

(a) Scope of the Money Laundering Offence

288. In Russia, money laundering is criminalised by Articles 174 CC (money laundering), 174.1 CC (self-laundering) and 175 CC (acquisition of property obtained by crime)¹⁶⁴. Russia follows an “all crimes” approach, i.e. all offences listed in the Criminal Code, including bribery of foreign public officials, are predicate offences to money laundering.

¹⁶³ Russia’s response to Question 4.5.

¹⁶⁴ Article 174 CC defines money laundering as an act that includes the completion of financial operations and other transactions with monetary funds or property knowingly acquired by other people by criminal means in order to impart legitimacy to their ownership and to conceal the criminal origin of the property. Article 175 CC states that the acquisition or sale of property knowingly obtained in a criminal manner is a punishable offense. The money laundering offense extends to any property and monetary funds, which refers to cash and financial deposits in any currency. Other property includes all physical objects and property rights.

289. Jurisdiction to prosecute money laundering extends to predicates that occurred outside Russia's territory under the conditions set out in Article 12 CC¹⁶⁵. Where they take place abroad, there is no additional requirement of dual criminality that needs to be met i.e. the money laundering offence applies regardless if they are a crime in the country where they take place. No case law has been provided to demonstrate how this operates in practice. It is also unclear whether prosecution is absolved or not from the need to prove a predicate or underlying offence prior to proving the offence involving the laundering of funds.

(b) *Sanctions for Money Laundering and enforcement of the Money Laundering Offence*

(i) Sanctions for natural persons

290. There is a wide range of sanctions available for money laundering by natural persons, consisting of increasing fines and terms of imprisonment as the factors surrounding the offence become more severe (e.g. participation in an organised group)¹⁶⁶. Prior to the 2010 reform of the Criminal Code, a large scale self-laundering case committed as part of an organised group was punishable by imprisonment up to 10 to 15 years. Since then, the maximum imprisonment term is 7 years with fines (up to RUB 1 million i.e. approximately EUR 23,000) under Article 174 CC and Article 174.1 CC. This is likely to impact the dissuasiveness of the sanctions in relation to very grave offences. Another concern relates to the very low number of cases where prison terms and fines were imposed on individuals. 40 imprisonment sentences were pronounced in 2010 for money laundering and 8 in 2011. Fines were imposed in 11 cases in 2010 and 22 in 2011. No figures are available on the number of confiscation orders taken in the context of Articles 174 and 174.1 CC. However, figures show that the amounts confiscated only reached RUB 450,302 (approximately EUR 10,000) in 2010 and RUB 171,039 (approximately EUR 4,000) in 2011. These amounts are extremely low.

(ii) Sanctions for legal persons

291. Legal persons found to have failed to comply with the AML Law are liable to administrative liability under Article 15.27 CAO. Sanctions for failure to meet the AML requirements (i.e. elaboration of internal controls, failure to report to the FIU and failure to implement corrective measures imposed by the supervisory bodies) consist of fines (up to RUB 1 million, i.e. approximately EUR 23,000) and administrative suspension of activity up to 90 days. The lead examiners raise some concerns as regard the level of sanctions available (see above). They also note that these requirements only apply to legal persons that are subject to AML requirements (e.g. banks, insurance companies, etc.) under the AML legislation, which limits the scope of application of Article 15.27 CAO. Beyond Article 15.27 there is no sanction of legal persons that commit money laundering offence. Though the Convention does not require that Parties establish the liability of legal persons for such offences, the imposition of such liability in Russia could increase the effectiveness of implementation of Article 7 of the Convention.

(iii) Enforcement of the Money Laundering Offence

292. Money-laundering prosecutions have been brought under predicate offences other than foreign bribery. In 2010, the number of ML investigations reached 1,762 and, in 2011, 704. 1,502 ML cases were sent to court in 2010 and 352 in 2011. In its 2008 Report, the FATF notes that Russia has progressively improved its effectiveness in implementing the ML offence and that the ML offences are being used increasingly, with ML investigations jumping from 618 in 2003 to 7 957 in 2006 and with the number of money laundering cases sent to court going from 465 in 2003 to 6 880 in 2006. However, the FATF states

¹⁶⁵ See above section C.1 c) of the report on jurisdiction.

¹⁶⁶ In the absence of data provided by the Russian authorities, all the figures in this section of the report are based on data supplied by Russia to the FATF in 2012.

that in a country where, based on the information available, corruption is a significant problem, including corruption in the police and the judiciary, and where there is an acknowledged problem with organised crime, there should be higher numbers for both the number of ML cases being investigated and cases going to court. Finally, the FATF notes that the overall number of convictions is somewhat low (from 14 in 2003 to 532 in 2006) and that Russia should continue to make progress in the use of its ML offence¹⁶⁷. This is also the lead examiners' opinion.

Commentary

The lead examiners recommend that Russia ensure that an appropriate range of sanctions exists for serious money laundering offences, particularly in proceedings against legal persons.

The lead examiners also recommend that Russia should expand statistics on the predicate offences for money laundering identified in money laundering investigations, prosecutions, convictions and sanctions to cover foreign bribery offences as predicate offences to money laundering.

The lead examiners recommend that the Working Group follow up on the issues below as case law develops: (i) The number of convictions for money laundering; (ii) The sanctions for money laundering imposed in Russia, including confiscation measures.

6. Accounting offences

293. Article 8 of the Convention provides for the imposition of effective, proportionate and dissuasive civil, administrative or criminal penalties for omissions and falsifications in respect of the books, records, accounts and financial statements of companies for the purpose of bribing foreign public officials or of hiding such bribery. In Phase 1 the Working Group recommended that Russia takes measures to ensure the introduction of effective, proportionate and dissuasive sanctions for such omissions and falsifications.

294. In Russia, depending on the intended purposes of inadequate book-keeping, misrepresentation of accounts will be categorized as an administrative offence under the CAO, or as a tax offence under the Tax Code, or, eventually, as a criminal offence under the Criminal Code. A gross violation of bookkeeping rules is thus punishable under article 15.11 of the CAO. Similarly, a gross violation of accounting rules for tax matters is punishable under article 120 of the Tax Code¹⁶⁸. Failure to submit reliable information, including accounting information, or submission of incomplete or falsified information on the securities market is punishable under Articles 15.19 and 19.7.3 of the CAO. "Fraud" – which, according to Russia could in some cases be applied to accounting – is punishable under article 159 CC¹⁶⁹.

295. While the Convention does not require explicit coverage of the infractions in Article 8.1, Russia's current legal framework raises issues both about the certainty of coverage and about the degree of awareness of the prohibitions amongst companies and the relevant professions. Furthermore, violations of accounting rules entail very small sanctions, in the area of only EUR 50-80 under the CAO and EUR 250-750 under the Tax Code. Potentially higher penalties are available pursuant to the rules that apply to the securities market, in the area of EUR 12,500-25,000 but their application in practice to accounting

¹⁶⁸ Under Article 15.11 CAO, a gross violation of bookkeeping rules means (i) distorting amounts of charged taxes and fees by at least 10 %; (ii) distorting any item (line) of an accounting form by at least 10%. Under Article 120 TC, a gross violation of accounting rules means the absence of source documents, books of account or tax ledgers, or the systematic (two or more times within a calendar year) incorrect recording in accounting records, in tax ledgers and in reports of the taxpayer's economic operations, monetary resources, tangible assets, intangible assets and financial investments.

¹⁶⁹ Fraud is defined as "misappropriation of, or acquisition of rights to another's property by way of deceit or abuse of trust".

offences related to foreign bribery remains untested so far. As seen earlier in the report, reliance on professional standards also raises enforcement issues, including the effectiveness of sanctions for violating the rules¹⁷⁰.

296. In the absence of statistics that break down the types of accounting offences which have been prosecuted and the sanctions actually imposed, it is difficult to assess how the system works in practice¹⁷¹. It has nevertheless been reported that, for example, fines paid today by auditors rarely exceed RUB 10,000 (EUR 245); moreover they are usually levied for reasons other than auditing itself (like late submission of information)¹⁷². Russia has not reported any sanction (under all laws) which would have been pronounced in respect to attempts made by companies or individuals to hide bribe payments¹⁷³. At the time of the Phase 2 evaluation, pursuant to the Ministry of Finance's plan for 2012 - 2015 on developing reporting accountability in Russia, the Russian authorities were working on a new reform of accounting legislation that would address some of the shortcomings identified above¹⁷⁴. The authorities were also working on proposals to amend existing legislation with a view to increasing liability of companies, their managers and other responsible persons, including audit firms, for the inaccuracy of accounting. These proposals were also being developed pursuant to the Ministry of Finance's plan.

Commentary

The lead examiners are concerned that the available penalties for accounting offences do not appear to be effective, proportionate or dissuasive. The lead examiners recognize the proposals contained in the Ministry of Finance's Plan for 2012-15 to increase liability for the inaccuracy of accounting as well as proposals aimed at strengthening accounting requirements. The lead examiners welcome both initiatives, and recommend that Russia make the most of the current momentum for change in this area by increasing the sanctions that apply to accounting offences and by ensuring that the legislation more explicitly prohibits the making of off-the-books accounts and transactions, the recording of non-existent transactions, and the use of false documentation.

7. Sanctions in relation to public advantages

297. New Federal Law N 44-FZ Concerning the Contract System in the Procurement of Goods, Works, Services for State and Municipal Needs (Law on Procurement) was adopted on 27 March 2013 right before the on-site visit. This Law made some improvements within the general system of public procurement, making it more transparent and accountable by: implementing a system approach to preparation, placement, and fulfilment of state (municipal) contracts; providing for transparency of the overall procurement cycle, from planning to accepting and analysing contract results; and preventing corruption and other abuses in procurement processes.

¹⁷⁰ See section B. 8 (d).

¹⁷¹ For example, in the Federal Service for Financial Markets statistics provided by Russia after the on-site visit, only the number of penalties imposed under Articles 15.19 and 19.7.3 CAO is included (987 penalties in 2012).

¹⁷² See, on this subject, the Interregional Labour Union of Auditors and Accountants in GAAP-IFRS.com (4 June 2013)

¹⁷³ Russia's response to Question 9.3 of the Phase 2 Questionnaire.

¹⁷⁴ On 14 June 2013 the State Duma considered and passed in the first reading Bill No. 192810-6 Concerning the Introduction of Amendments to Federal Law No. 402-FZ of 6 December 2011 on Accounting developed by the Ministry of Finance pursuant to its plan for 2012-15 on developing reporting accountability in Russia. The bill contains amendments aimed at strengthening accounting regulations. These include the introduction of the concepts of fictitious (non-existent items or economic events which did not take place), and sham accounting items (items entered in the records in place of other items for the purpose of concealing the latter). The bill also provides that all primary documents received by the accounting office must contain accurate information. The bill does not specify what sanctions may be faced by someone who prepared a primary document for a sham or fictitious transaction. According to Russia, the bill was expected to be adopted by the State Duma during its 2013 autumn session. As the bill was only passed in the first reading in June, it may undergo substantial changes prior to enactment.

298. This being said, Russia admitted at the on-site visit that the new provisions, just like the old Law, do not specifically allow the authorities to reject participation of enterprises that have bribed a foreign public official in tenders for public contracts. Article 31 of the Law on Procurement, as well as its other relevant provisions provide for possibilities of exclusion from bidding for public contracts when the contractor failed to meet contractual obligations. There are also some measures on exclusion from public bidding of legal persons whose representative, chief accountant, director or member of the board had prior conviction for economic crimes. A corresponding register of bad-faith companies is maintained by the federal government and is accessible on-line but is also not applicable to foreign bribery offenders.

299. Russia, at the on-site, explained that some provisions of the law will come into force from 2014 through 2016, and its various provisions are still being further improved. The lead examiners urge the Russian authorities to address the issue of Article 3 of the Convention and the 2009 Recommendation in the process of changes to the newly adopted law.

Commentary

With regard to additional sanctions, the lead examiners recommend that Russian authorities address requirements of the Article 3 of the Convention in regard to the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official, including through temporary or permanent disqualification from participation in public procurement, as well as other relevant requirements of the 2009 Recommendation.

D. RECOMMENDATIONS OF THE WORKING GROUP AND FOLLOW-UP

300. Based on the findings of the Working Group with respect to Russia's implementation of the Convention and the 2009 Recommendations, the Working Group makes the following recommendations to Russia. In addition, the Working Group recommends that certain issues should be re-examined as the case law and practice evolve.

301. The Working Group remains concerned that in the Phase 2 evaluation, Russia has not addressed the Working Group's Phase 1 recommendations with regard to the foreign bribery offence, the defence of effective regret and confiscation. While the Working Group notes that Russia has engaged in efforts to implement the Convention, it recommends that, as set forth below, Russia take prompt action in order to achieve full compliance with the Convention and related instruments.

302. Considering the seriousness of the recommendations, the Working Group recommends a special written follow-up report, which would focus on both Phase 1 and Phase 2 recommendations, to be discussed by the Working Group before the end of 2014.

1. Recommendations

Recommendations for ensuring effective prevention and detection of the bribery of foreign public officials

1. With respect to prevention, awareness raising and training activities to promote implementation of the Convention and the Revised Recommendation, the Working Group recommends that Russia:

- a) Enhance training to raise the level of awareness of the foreign bribery offence within the public administration and among those agencies that can play an important role in preventing and detecting foreign bribery by Russian companies active in foreign markets, including diplomatic and foreign trade personnel, tax inspectors, and trade promotion, the accounting chamber, export credit and development aid agencies so that they may be able to detect and report instances of foreign bribery committed by Russian companies and provide appropriate assistance when such companies are confronted with bribe solicitations [2009 Recommendation, Section III(i); Annex I. A.: Good Practice Guidance on Implementing Specific Articles of the Convention on Combatting Bribery of Foreign Public Officials in International Business transactions]; and,
 - b) Take further action, as appropriate in cooperation with business organisations and other civil society stakeholders, to improve awareness among companies throughout Russia, in particular companies active in foreign markets and industry-sectors (including, the defence industry), as well as state-owned enterprises and small and medium enterprises, which are traditionally at high risk of bribe solicitation by foreign public officials, of Russian legislation regarding foreign bribery, and to advise and assist companies in their efforts to prevent foreign bribery through, for example, the development of seminars, guidelines and other forms of guidance [2009 Recommendation, Section III(i)].
2. With respect to reporting of suspected foreign bribery, the Working Group recommends that Russia:
- a) Introduce clear rules/guidelines requiring public officials to report suspicions of foreign bribery committed by individuals and companies to appropriate authorities [2009 Recommendation, Section IX (ii)];
 - b) Take further measures to protect those private and public sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery, and ensure that complaints of foreign bribery are seriously investigated and credible allegations assessed by competent authorities [2009 Recommendation Section IX (iii); Annex I. D.: Good Practice Guidance on Implementing Specific Articles of the Convention on Combatting Bribery of Foreign Public Officials in International Business transactions]; and,
 - c) Take steps, as appropriate with business organisations, to provide guidance and assistance in training to company managers and employees on the adoption and implementation of internal whistle-blower mechanism foreseen under Article 13.3 of Federal Law on Combating Corruption, taking into account the Good Practice Guidance on Internal Controls, Ethics and Compliance, and encourage companies to take appropriate action based on such reporting [2009 Recommendation Section X.C. (v); Annex II of the 2009 Recommendation].
3. With respect to officially supported export credits, the Working Group recommends that Russia:
- a) Implement the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits and complete the 2006 Recommendation Survey for both EXIAR and VEB and report to the OECD Working Group on Export Credit and Credit Guarantees (ECG) [2009 recommendation, Sections XII (i) and (ii)];

- b) Ensure that applicants requesting export credit support are made expressly aware of the foreign bribery offence and its legal consequences [2009 Recommendation, Sections III (i) and XII]; and,
 - c) Ensure that due diligence procedures are put in place to verify that applicants are not engaging in acts of foreign bribery and that appropriate measures are in place to encourage reporting to competent authorities of foreign bribery instances employees of EXIAR and VEB may come across in the course of their work [2009 Recommendation, Sections IX(i) and (ii), X.C(vi), and XII].
4. With respect to official development assistance (ODA), the Working Group recommends that Russia:
- a) Raise awareness of foreign bribery among staff and project partners involved in ODA [2009 Recommendation, Section III (i)];
 - b) Incorporate an anti-bribery clause in its standard contract for ODA-funded projects [2009 Recommendation, Section XI (ii)]; and,
 - c) Ensure that due diligence procedures are in place for detecting instances of foreign bribery by contractors and that appropriate measures are in place to facilitate reporting to competent authorities by employees of Rossotrudnichestvo of credible information about foreign bribery offences that they may uncover in the course of performing their duties [2009 Recommendation, Sections III (vii), IX (i) and (ii)].
5. With respect to defence exports, the Working Group recommends that Russia:
- a) Ensure that its defence industry develops strong anti-corruption measures and engage in international anti-corruption initiatives concerning the defence sector [2009 Recommendation, Section III (i)]; and,
 - b) Ensure that, when providing licenses for exporting military equipment, the competent authorities consider whether applicants have been involved in foreign bribery as well as the level of risk of corruption in relation to arms procurement in the destination country [2009 Recommendation, Section XI (i)].
6. Regarding taxation, the Working Group recommends that Russia:
- a) Expressly communicate to tax officials the need to detect any outflows of money that could represent bribes to foreign public officials, for example through training grounded on the new OECD Bribery Awareness Handbook for Tax Examiners to be issued shortly [2009 Recommendation on Tax Measures, Section I (ii)];
 - b) Enhance the existing organisational enforcement infrastructure by introducing clearer processes between Russia's tax and law enforcement authorities to facilitate detection and reporting by tax officials of suspicions of foreign bribery arising out of the performance of their duties to the appropriate law enforcement agencies [2009 Tax Recommendation on Tax Measures, Section II (ii)]; and,
 - c) Facilitate international exchanges of information in accordance with the 2009 Recommendation of the Council on Tax Measures by continuing to include in existing and future tax treaties the language of Article 26.3 of the OECD Model Tax Convention,

which provides a legal framework allowing for the reciprocal sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities in relation to corruption offences, and by considering prompt ratification of the Convention on Mutual Administrative Assistance in Tax Matters [2009 Recommendation on Tax Measures, Section I].

7. With respect to the prevention and detection of the bribery of foreign public officials through accounting requirements, external audit and internal company controls, the Working Group recommends that Russia:
 - a) Encourage Russian companies, including SMEs active internationally, to further develop and adopt adequate internal controls, ethics and compliance programmes or measures, for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance in Annex II of the 2009 Recommendation [2009 Recommendation, Section X.C. and Annex II];
 - b) In consultation with relevant professional associations and self-regulatory organisations, take steps to encourage the detection and reporting of suspected bribery of foreign public officials by accountants and internal and external auditors, tax officials and officials of the accounting chamber, in particular through guidelines and training for these professionals, including specific training on foreign bribery risk factors and methods to test false documents used to conceal foreign bribery and related accounting offences [2009 Recommendation, Section X.B. and Annex II];
 - c) Consider requiring external auditors to report suspected acts of foreign bribery to competent authorities independent of the company such as law enforcement or regulatory authorities, in particular where management of the company fails to act on internal reports by the auditor, and ensure auditors making such reports are protected from legal action as appropriate; and, in connection with the new law on the Accounts Chamber, enhance the awareness of its inspectors of the foreign bribery offence in connection with their obligation to report any serious wrongdoing detected in the course of their audits to law enforcement agencies [2009 Recommendation, Section X. B. (v)]; and,
 - d) Raise the awareness of supervisory authorities and self-regulatory organisations about the importance of utilising the full range of available sanctions so as to punish more dissuasively any infringements of audit standards and independence requirements [2009 Recommendation, Section X.B. (ii) and (iii)].
8. With regard to money laundering and foreign bribery, the Working Group recommends that Russia:
 - a) Ensure that all reporting entities, including non-financial professions required to report suspicious transactions, receive appropriate directives and training (including typologies) from the relevant authorities on their obligation to report information that could be linked to foreign bribery [Convention, Article 7; and 2009 Recommendation, Section III (i)];
 - b) Take appropriate steps to improve the flow of information and feedback between the relevant government agencies and reporting entities in the anti-money laundering system. Promptly improve the flow of FIU reports as relating to foreign bribery to law enforcement agencies [Convention, Article 7]; and,

- c) Ensure that the non-compliance with Customer Due Diligence requirements and the legal obligation to report suspicious transactions, including those related to foreign bribery, be sanctioned in a dissuasive manner [Convention, Article 7].

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery and related offences

- 9. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Russia:
 - a) Ensure that adequate resources are provided specifically to the detection, investigation and prosecution of foreign bribery offences and ensure accountability for enforcement of the foreign bribery offence, in particular consider specifically tasking specialised units with detecting, investigating and prosecuting foreign bribery, and ensure effective cooperation between prosecutors and investigators working on foreign bribery cases involving both natural and legal persons [2009 Recommendation, Sections II, III(ii), V, and Annex I, Paragraph D];
 - b) Ensure adequate, regular training to relevant operative officers, investigators, prosecutors and judges specifically on the offence of foreign bribery to guarantee effective detection, investigation and prosecution of foreign bribery and related accounting offences, and, when feasible, conduct joint trainings with the focus on the referral and coordination of such cases among law enforcement agencies, as well as coordination of criminal and administrative investigations [2009 Recommendation, Sections II, III(ii), V, and Annex I, Paragraph D];
 - c) Take steps to ensure that the exercise of investigative and prosecutorial powers, in particular for foreign bribery offence, is not influenced by considerations prohibited under Article 5 of the Convention, and closely monitor and evaluate the performance of investigation and prosecution authorities with regard to foreign bribery allegations on an on-going basis, including in particular with regard to decisions not to open or to discontinue an investigation or prosecution [Convention, Article 5];
 - d) Clarify which courts would be responsible for adjudication of foreign bribery cases against natural and legal persons [Convention, Article 5];
 - e) Consider further strengthening safeguards of judicial independence to ensure that prosecutions and adjudications of the foreign bribery offence cannot be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved [Convention, Article 5]; and,
 - f) Take necessary measures to ensure that all credible foreign bribery allegations are proactively and conscientiously detected and seriously investigated, and remind the investigators and the prosecutors of the importance of actively reviewing the entire range of possible sources of detection of foreign bribery and making full use of the broad range of investigative measures available to them, and ensure that emphasis is made on the importance of pursuing such cases in law enforcement guidance and other relevant documents [2009 Recommendation, Sections II, III(ii), V, XIII (ii), and Annex I, Paragraph D].
- 10. With respect to the offence of foreign bribery, the Working Group recommends that Russia:

- a) Amend the law in order to (i) expand the scope of the offence of foreign bribery, to include the "promising" and "offering" of a bribe as offences; (ii) ensure that any kind of advantage, including any bribes in the form of non-material advantages are explicitly covered by the foreign bribery offence; (iii) eliminate the defence of "effective regret" as it applies to foreign bribery; and (iv) exclude the application of the defence of economic extortion from the offence of foreign bribery [Convention, Article 1, Phase 1 Evaluation, Recommendations 1a), 1b) and 1c)];
- b) Take any appropriate measures to (i) clarify that the offence of "bribe giving" (including through intermediaries) is deemed to be completed when the briber actually takes steps to transfer the undue advantage and does not require the actual receipt of the bribe by the foreign official or a third party on his behalf to be proven; (ii) raise awareness within both the public and private sectors that bribery through an intermediary, including through a related legal person, constitutes an offence under the foreign bribery offence; (iii) ensure that a reference to foreign law is not the only source relied upon for defining the foreign official's duties and determining whether the act committed by the foreign official was lawful or unlawful [Convention, Article 1];
- c) Take any appropriate measures to ensure that the definition of public official covers, in a manner that is consistent with the Convention and Commentaries: (i) officials of public enterprises, regardless of their legal forms; (ii) officials of public enterprises where there is direct or indirect control of the enterprise; and (iii) public officials of organised foreign areas or entities that do not qualify or are not recognised as States [Convention, Article 1]; and,
- d) Clarify and ensure that all cases where a foreign public official directs the transmission of the benefit to a third party are covered under the offence of foreign bribery, not just those where the official has a proven relationship with the third party, [Convention, Article 1].

11. With respect to the liability of legal persons, the Working Group recommends that Russia:

- a) Amend the law in order to (i) expand the scope of the offence applicable to legal persons to include third party beneficiaries; and (ii) ensure that any kind of advantage, including any bribes in the form of non-material advantages, in the context of the Code of Administrative Offences, can trigger administrative responsibility of legal persons [Convention, Article 2];
- b) Take all appropriate measures to clarify (i) the requirements for the administrative liability of legal persons in order to ensure coverage of the full range of situations required in Annex I to the 2009 Recommendation; (ii) what constitutes "on behalf or in the interest of a legal person" when the offending natural person worked for a foreign subsidiary of a Russian legal entity; and, (iii) when a court can charge a legal person, including a foreign subsidiary of a Russian legal person, with mediation in bribery, and the resulting sanctions that can be imposed [Convention, Article 2 and 2009 Recommendation Annex I B) and I C)].
- c) Clarify (i) whether Article 2.1 para. 2 CAO together with Article 13.3 of Federal Law 273-FZ require all legal entities to create anti-corruption measures to prevent bribery; (ii) whether non-compliance with Article 13.3 can serve as the basis for a stand-alone offence, and resulting sanctions, and if so, what those sanctions are, or whether Article

13.3 is a potential defence and (iii) what constitutes appropriate "measures on prevention of corruption" under Article 13.3 of Federal Law 273-FZ [Convention, Article 2];

- d) Raise awareness of the relevant operative officers, investigators, prosecutors and judges on detection, investigation and adjudication of foreign bribery cases involving legal persons, and make full use of Methodological Recommendations developed by the GPO on liability of legal persons for corruption offences [Convention, Article 2]; and,
- e) Make available a broader set of investigative tools in the framework of the administrative proceedings, to enable successful detection, investigation, and judicial proceedings of legal persons independent of criminal investigations and criminal proceedings [Convention, Article 2].

12. With respect to sanctions for foreign bribery, the Working Group recommends that Russia:

- a) Ensure that individuals who do not complete the act of bribe-giving, but who have offered, promised or attempted to give a bribe, are subject to effective, proportionate and dissuasive sanctions [Convention, Articles 1 and 3];
- b) Take measures to allow for confiscation of the equivalent value of the bribe and its proceeds in proceedings against natural persons [Convention, Article 3.3];
- c) Adopt legislation that would allow seizure and confiscation of the proceeds of the bribe and their equivalent value in proceedings against legal persons [Convention, Article 3.3];
- d) Take all appropriate measures to (i) develop a proactive approach to seizure and confiscation of the instrument and proceeds of bribery, including in the context of proceedings involving legal persons and (ii) draw the attention of investigative and prosecutorial authorities to the importance of seizure and confiscation as a sanction for foreign bribery and provide them with appropriate training and guidance, including on methods for quantifying the proceeds of a bribery offence [Convention, Article 3.3]; and,
- e) Consider the temporary or permanent disqualification of enterprises convicted of bribing foreign public officials from applying for arms export licenses and ODA contracts and from participation in public procurement, in order to contribute to the application of sanctions that are effective, proportionate and dissuasive [Convention, Article 3.4; Commentary paragraph 24; 2009 Recommendation Section XI].

13. With respect to the related money laundering offence, the Working Group recommends that Russia:

- a) Ensure that all enforcement officials and others required by law or regulation to take measures to counteract money laundering receive further training with respect to bribery of foreign public officials as a predicate offence to money laundering [Convention, Article 7 and 2009 Recommendation III (i)];
- b) Take further measures to strengthen its money laundering offence in order to ensure that serious money laundering offences are subject to an appropriate range of sanctions, including in proceedings against legal persons [Convention, Article 7]; and,

- c) Expand statistics collected at the stage of investigation, prosecution and conviction on the predicate offences for money laundering with a view to covering foreign bribery offences [Convention, Article 7].
14. Regarding false accounting, the Working Group recommends that Russia seize the opportunity of the announced legislative reform to amend its legislation to ensure that (a) the false accounting offences cover all of the activities described in Article 8(1) of the Convention; (b) that relevant authorities receive training and tools to detect, investigate and prosecute false accounting offences; and, (c) that sanctions for false accounting are effective, proportionate and dissuasive (Convention, Article 8; 2009 Recommendation, Sections X.A. (i) and (iii)).
15. With respect to mutual legal assistance, Russia should make all efforts to promptly execute MLA requests falling within the scope of Article 9 of the Convention and allow for interviews of all witnesses, including Russian nationals. In addition, Russia should consider MLA requests as a possible source of foreign bribery cases, and take steps to ensure that enforcement authorities receive and proactively investigate all credible information concerning foreign bribery cases brought to their attention through MLA.

2. Follow-up by the Working Group

16. The Working Group will follow up the issues below, as practice develops, in order to assess:
- a) The application of the offence of bribery in situations when the foreign public official uses his office to provide a benefit outside the scope of his official duties [Convention, Article 1];
 - b) Whether (i) all payments that constitute bribes irrespective of size are criminalised, investigated and prosecuted in line with Article 1 of the Convention and (ii) the 2009 Recommendation on “small facilitation payments” is adequately implemented [Convention, Article 1 and 2009 Recommendation, Sections VI and VII];
 - c) The application of the liability of legal persons with respect to the following issues: (1) whether Russia can effectively prosecute legal persons for foreign bribery in the following cases: (i) in the absence of proceedings against natural persons; (ii) where the legal person is a state-owned or state-controlled company; (iii) where the bribe is for the benefit of a third party beneficiary (e.g. a company related to the legal person from which the bribe emanated); (2) in situations where the legal person has failed to take measures to prevent bribery; and, (3) the level of authority of natural persons acting "on behalf or in the interest of" legal persons that can trigger liability and whether the liability extends to third parties such as agents acting on behalf of the legal person [Convention, Article 2 and 2009 Recommendation, Annex I B)];
 - d) The sufficiency of Russia’s sanctions regime as applicable to foreign bribery, with respect to both natural and legal persons, as practice develops [Convention, Article 3];
 - e) The application of Russian procedures for out of court settlements (i.e., plea bargaining) to foreign bribery cases as practice develops;
 - f) The use of measures of seizure and confiscation in cases of bribery of foreign public officials, including in proceedings involving legal persons [Convention, Article 3];

- g) Whether any person can be investigated, charged or prosecuted for foreign bribery, and that the process for lifting immunity for persons alleged to be involved in foreign bribery is effective and transparent to allow for investigation, prosecution and adjudication of the offence [Convention, Article 5];
- h) Whether the current bases for jurisdiction, both territorial and nationality, governing natural and legal persons are sufficiently broad, particularly as applicable to bribing through intermediaries and the determination of nationality of legal persons [Convention, Article 4];
- i) Whether clear directives and guidelines are being provided to the investigative, operational, and prosecutorial authorities, in addition, to other state institutions, such as foreign embassies, and the Financial Intelligence Unit, as to who is responsible for detecting foreign bribery and how it can be done more effectively [Convention, Article 5];
- j) Whether the investigators and prosecutors are provided with adequate procedural timelines to complete investigations and prosecutions of foreign bribery by natural persons and legal persons in full scope [Convention, Article 5];
- k) Whether, in practice, the statute of limitations with respect to natural and legal persons is sufficient to cover investigation and completion of the judicial proceedings and all applicable appeals against the accused [Convention, Article 6];
- l) The anti-money laundering system focusing on: (i) the capacity of the FIU to detect foreign bribery cases; (ii) the implementation of domestic legislation, including with respect to the application of sanctions for failure to report; (iii) the level of feedback from the FIU to reporting entities; (iv) the range of requirements under the AML Law applicable to lawyers, auditors and accountants for the purpose of detecting foreign bribery; (v) the number of convictions for money laundering; and, (vi) the sanctions for money laundering imposed in Russia, including confiscation measures; [Convention, Article 7]; and,
- m) Whether Russia authorities have engaged business organizations and civil society, including NGOs working to combat corruption, in raising awareness of and combating foreign bribery [2009 Recommendation, Sections III (i) and XVIII].

ANNEX 1 – LIST OF PARTICIPANTS TO THE ON-SITE

Presidential, government and public institutions

Institutions	Department	Service
Ministry of Justice	Deputy Minister	
	Department of International Law and Cooperation	
	Department of Civil Service and Staff	
	Department of Constitutional Law	
Ministry of Foreign Affairs	Department of Economic Cooperation	
Ministry of Finance	Department of Accountancy, Financial Documentation and Audit	
	Department of National Debt and State Financial Assets	
Ministry of Economic Development	Department of Government Control in Economy	
	Department of International Organization	OECD division
	Department of Development of Contract System	
Ministry of Industry and Trade	Department International Economic Relations	Division for State Support to Export
Ministry of Labour and Social Protection	Department of State Service Development	
Federal Tax Service	Legal Department	Division for Judicial Disputes with Largest Taxpayers in the Sphere of Production and Processing of Natural Resources Division of Legal Expertise and Judicial Case-Law Analysis,

	Department of Staff	Division for Prevention of Corruption and Other Offences
	Control Department	
	Department of Transfer Price Formation and International Cooperation	Division for International Cooperation in Taxation Sphere
	Department of Taxation	Division of Income Tax and Special Taxation Regimes Division of VAT Division for Taxation on Natural Persons
Ministry of Internal Affairs	Legal Department	Division of Legal Regulation for Crime Counteraction Department of International Police Cooperation
	Chief Department for Economic Safety and Corruption Counteraction	«K» Department Organizational Department
	Investigative Department	Division of Control and Methodology, Investigative Department Division of Information and Analysis
Investigative Committee	Chief Department of Procedural Control	Department of Procedural Control on Prevention to Corruption, Division on Control over Investigation of Corruption Crimes
	Investigation Department for the Ulyanovsk Region	
Federal Security Service		

General Prosecution Office	General Prosecutor's Office	Department for Supervision over Anti-Corruption Legislation Implementation Chief Department of International Legal Cooperation: <ul style="list-style-type: none">- Division for Legal Assistance- Extradition Division- Division for International Cooperation on Especially Important Cases Department for Supervision over Anti-Corruption Legislation Implementation Academy of the General Prosecutor's Office of the Russian Federation, Division on Matters of Prosecutorial Supervision on State and Municipal Service and Prevention of Corruption
	Deputy Prosecutor of Moscow Central Administrative Circuit of Moscow Prosecutor's Office of the Krasnodar Dray Inter-District Prosecutor's Office of the Savyolovskiy District of Moscow	
Federal Financial Monitoring Service	Department of Coordination and Interaction Legal Department Department for Supervision Activity Organization	
Presidential Administration	State Legal Directorate of the President of the Russian Federation Directorate of the President of the Russian Federation for State Service and Staff Secretariat of the Head of the Presidential Administration	Department for Corruption Prevention and Counteraction Department for Maintenance of the Counsels of the President of the Russian Federation
Federal Agency for CIS, Compatriots Abroad Affairs and International Humanitarian Cooperation		

Other public institutions or institutions with a public service mission

Institution	Department
Central Bank	Department of Financial Monitoring and Currency Control Department coordination and organization with international institutions
Russian Agency for Export Credit and Investment Insurance	
Institute of Legislation and comparative Law under the Government of Russian Federation	Centre of comparative-legal researches
Account Chamber	Department of State Service and Staff Division for Prevention of Corruption and Other Offence
Supreme Court	Presidium
Supreme Arbitration Court	Presidency

Non-governmental sector*Enterprises*

- Nornickel
- Syngenta

Business associations

- Russian Union of Industrialists and Entrepreneurs
- Opora Russia
- Chamber of Commerce and Industry of the Russian Federation
- International Compliance Association

Legal Profession and Academics

- Federal Notary Chamber
- Russian Law Academy
- Russian Academy of Justice
- Russian Association of Lawyers
- Moscow Bar
- Moscow State Law University
- Institute of Public and Legal Research
- Federal Chamber of Advocates
- Baker & Makenzie
- Comparative Law Centre
- Institute of Public and Legal Research

Accounting and Auditing Profession

- Audit Chamber of Russia
- KPMG

- Ernst & Young

Financial Institutions

- Gazprombank
- Globex bank
- Sberbank
- Raiffeisen bank
- Bank TRAST
- VTB
- Russian Banking Association
- Vnesheconombank

Civil society

- Public Foundation Business Perspective
- Public Centre “Business against corruption”
- Russian Public Political Centre Foundation
- Transparency International Russia

Medias

- ITAR-TASS
- Magazine “Zakon”
- RIA-Novosti
- Rossiyskaya Gazeta
- Zakonia

ANNEX 2 – LIST OF ACRONYMS

AML	Anti-money laundering
CC	Criminal Code
CAO	Code of Administrative Offences
CPC	Criminal Procedure Code
DAC	Development Assistance Committee
DTCs	Double tax conventions
EBRD	European Bank for Reconstruction and Development
EU	European Union
EXIAR	Russian Agency for Export Credit and Investment Insurance
FAS	Federal Auditing Standards (FSAD according to Russian acronyms)
FAS	Federal Antimonopoly Service
FATF	Financial Action Task Force
FCPA	United States Foreign Corrupt Practices Act
FDI	Foreign direct investment
FSMTC	Federal Service of Military-Technical Cooperation
FSS	Federal Security Service
GAAP	Generally Accepted Accounting Principles
GDP	Gross domestic product
GPO	General Prosecutor's Office
IAS	International Accounting Standard
IFAC	International Federation of Accountants
IFRS	International Financial Reporting Standards
ISA	International Standard on Auditing
MFA	Ministry of Foreign Affairs
MIA	Ministry of Internal Affairs
MLA	Mutual legal assistance
MOU	Memorandum of Understanding
NGOs	Non-governmental organisations
ODA	Official development assistance
OECD	Organisation for Economic Co-operation and Development
PG	Prosecutor General
RAS	Russian accounting standards
RF	Russian Federation
SMEs	Small and medium sized enterprises
SOEs	State-owned enterprises
SRO	Self-regulatory organization
STR	Suspicious Transaction Report
TC	Tax Code
WGB	OECD Working Group on Bribery in International Business Transactions

ANNEX 3 – RELEVANT LEGISLATION

THE FOREIGN BRIBERY OFFENCE

Article 291 CC: Bribe-giving

(1) The giving of a bribe to an official, a foreign official or an official of a public international organisation, personally or through an intermediary, is punishable by a fine of between 15 and 30 times the amount of the bribe, or by corrective labour of up to 3 years, or by up to 2 years' imprisonment with a fine of 10 times the amount of the bribe.

(2) The giving of a substantial bribe to an official, a foreign official or an official of a public international organisation, personally or through an intermediary, is punishable by a fine of between 20 and 40 times the amount of the bribe, or by up to 3 years' imprisonment with a fine of 15 times the amount of the bribe.

(3) The giving of a bribe to an official, a foreign official or an official of a public international organisation, personally or through an intermediary, in return for deliberately unlawful acts/failures to act, is punishable by a fine of between 30 and 60 times the amount of the bribe, or by up to 8 years' imprisonment with a fine of 30 times the amount of the bribe.

(4) The actions provided for in paragraphs 1 to 3 of the present article, when committed a) upon prior conspiracy by a group of persons or by an organised group; b) on a large scale, are punishable by a fine of between 60 and 80 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by between 5 and 10 years' imprisonment with a fine of 60 times the amount of the bribe.

(5) The actions provided for in paragraphs 1 to 4 of the present article, when committed on a particularly large scale, are punishable by a fine of between 70 and 90 times the amount of the bribe, or by between 7 and 12 years' imprisonment with a fine of 70 times the amount of the bribe.

Note: A person having given a bribe shall be released from criminal liability, if s/he was actively facilitating the detection and/or investigation of a crime and if the bribe has been extorted by the official or the person gave voluntary notification of bribery, after committing the crime, to a body authorised to instigate criminal proceedings.

Article 291¹ CC- Mediation in bribery

1. Mediation in bribery, i.e. direct conveyance of the bribe on instructions from the bribe-giver or the bribe-taker, or facilitation in having the bribe-taker or bribe-giver reach or implement an agreement between the two to take or to give a bribe in a significant amount, - shall be punishable with a fine of twenty- to forty-fold amounts of the bribe, with a deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years, or deprivation of liberty for a term of up to five years with a fine of twenty-fold amount of the bribe.

2. Mediation in bribery in exchange for knowingly illegal actions (inaction) or by a person employing his official position - shall be punishable with a fine of thirty- to sixty-fold amount of the bribe, with a deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years, or deprivation of liberty for a term of three to seven years with a fine of thirty-fold amount of the bribe.

3. Mediation in bribery committed:

- a) by a group of persons in prior agreement (collusion) or by an organized group;
- b) in a large amount, -

shall be punishable with a fine of sixty- to eighty-fold amount of the bribe, with a deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years, or deprivation of liberty for a term of seven to twelve years with a fine of sixty-fold amount of the bribe.

4. Mediation in bribery committed on an very large scale, - shall be punishable with a fine of seventy- to ninety-fold amount of the bribe, with a deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years, or deprivation of liberty for a term of seven to twelve years with a fine of seventy-fold amount of the bribe.

5. Promise or offer of mediation in bribery - shall be punishable with a fine of fifteen- to seventy-fold amount of the bribe, with a deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years or deprivation of liberty for a term of up to seven years with a fine of ten- to sixty-fold amount of the bribe.

Note: The person who mediates in bribery shall be exonerated from the criminal liability provided following the crime such person actively cooperated in the detection and/or prevention of the crime and voluntarily reported the mediation in bribery to the authorities invested with powers to initiate criminal proceedings.

Article 30 CC. Preparation and criminal attempt

(1) The looking for, manufacturing, or adapting by a person of means or instruments for committing a crime, the finding of accomplices for a crime, the conspiracy to commit a crime, or any other intentional creation of conditions to commit a crime shall be deemed preparations for a crime, unless the crime has been carried out owing to circumstances outside the control of this person.

(2) Criminal responsibility shall ensue only for preparations to commit grave or especially grave crime.

(3) Intentional actions (inaction) by the person concerned, directed expressly towards the commission of a crime, shall be deemed to be an attempted crime, unless the crime has been carried out owing to circumstances beyond the control of this person.

LIABILITY OF LEGAL PERSONS

Article 1.8. CAO Operation of the Legislation on Administrative Offences in Territory

1. A person who has committed an administrative offence in the territory of the Russian Federation shall be held administratively liable in compliance with this Code or the law of a constituent entity of the Russian Federation on administrative offences, except for the cases envisaged by an international treaty of the Russian Federation.
2. A person who has committed an administrative offence outside the Russian Federation shall be held administratively liable under this Code where it is provided for by an international treaty made by the Russian Federation.

Article 2.1 CAO Administrative Offence

1. A wrongful, guilty action (omission) of a natural person or legal entity which is administratively punishable under this Code or the laws on administrative offences of subjects of the Russian Federation shall be regarded as an administrative offence.
2. A legal entity shall be found guilty of an administrative offence, if it is established that it had the opportunity to observe rules and norms whose violation is administratively punishable under this Code or under the laws of a subject of the Russian Federation, but it has not taken all the measures that were in its power in order to follow to them.
3. Imposition of an administrative penalty on a legal entity shall not relieve the guilty natural person of administrative responsibility for the given offence, and holding a natural person to administrative or criminal responsibility shall not relieve the legal entity of administrative responsibility for the given offence.

Article 19.28. CAO Unlawful Remuneration on Behalf of a Legal Entity

1. Unlawful transfer on behalf or in the interests of a legal entity to a functionary, to the person exercising managerial functions in a profit-making or other organization, to a foreign functionary or a functionary of a public international organisation of money, securities or other property, as well as unlawful rendering thereto of services of a pecuniary nature or granting of property rights for making actions (for omitting to act) in the interests of the given legal entity by the functionary, by the person exercising managerial functions in the profit-making or other organization, by the foreign functionary or by the functionary of the public international organization connected with the official positions held by them - shall entail the imposition of an administrative fine on legal entities in the amount of up to three times as much as the sum of money, the value of securities, other property, services of property nature or other property rights unlawfully transferred or rendered, or promised or offered on behalf of the legal entity but at least one million roubles accompanied by confiscation of the money, securities, other property or the cost of the services of property nature or other property rights.
2. The actions provided for by Part 1 of this article which are made on a large scale - shall entail the imposition of an administrative fine on legal entities in the amount of up to thirty times as much as the sum of money, the value of securities, other property, services of property nature or other property rights unlawfully transferred or rendered, or promised or offered on behalf of the legal entity but at least one million roubles accompanied by confiscation of the money, securities, other property or the cost of the services of property nature or other property rights.
3. The actions provided for by Part 1 of this article which are made on an especially large scale - shall entail the imposition of an administrative fine on legal entities in the amount of up to one hundred times as much as the sum of money, the value of securities, other property, services of property nature or other property rights unlawfully transferred or rendered, promised or offered on behalf of the legal entity but at least one hundred million roubles accompanied by confiscation of the money, securities, other property or the cost of the services of property nature or other property rights.

Notes:

1. A functionary in this article means the persons cited in Notes 1-3 to Article 285 of the Criminal Code of the Russian Federation.
2. The person exercising managerial functions in a profit-making or other organisation means in this article the one cited in Note 1 to Article 201 of the Criminal Code of the Russian Federation.

3. A foreign functionary means in this article any appointed or elected person holding an office in the legislative, executive, administrative or judicial body of a foreign state, and any person exercising a public function for a foreign state, in particular for a public department or public enterprise; a functionary of a public international organization means an international civil servant or any person authorised by such organisation to act on behalf of it.

4. As a large scale in this article is deemed the sum of money, the value of securities, other property, services of property nature or other property rights exceeding one million roubles and an especially large scale are deemed those exceeding twenty million roubles.

CONFISCATION

Article 81 CPC - Demonstrative Proof

1. Recognized as demonstrative proof shall be any objects: 1) which have served as instruments of crime or have retained on themselves the prints of the crime;

2) at which the criminal actions were aimed;

2.1) money, valuables and another property received as the result of commission of a crime; 3) the other objects and documents which can serve as the means for the exposure of the crime and for the establishment of the circumstances of the criminal case.

The objects mentioned in the first part of the present Article, shall be examined, identified as demonstrative proof and enclosed to the criminal case, on which the corresponding resolution shall be passed. The procedure for the storage of demonstrative proof is established by the present Article and by Article 82 of this Code.

When passing the sentence, as well as the ruling or the resolution on the termination of the criminal case, the issue of demonstrative proof shall also be resolved. In doing this: 1) the instruments of the crime, belonging to the accused, shall be subject to confiscation, or shall be handed over to the corresponding institutions or shall be destroyed; 2) objects prohibited for the use shall be handed over to the corresponding institutions or destroyed; 3) objects of no value and not claimed back by the party, shall be destroyed and if the interested persons or institutions lodge an application. They may be handed over to them; 4) money, valuables and another property received as the result of committing a crime, and incomes from such property are subject to return to the legal owner;

4.1) the money, valuables and other property mentioned in Items "b" - "c" of Part 1 of Article 104.1 of the Criminal Code of the Russian Federation are subject to confiscation in the procedure established by the Government of the Russian Federation, except for the cases envisaged by Item 4 of the present part;

5) documents which are demonstrative proof shall be kept in the criminal case materials in the course of the entire term of the latter's storage, or shall be handed over to the interested persons upon their application;

6) the rest of the objects shall be handed over to their lawful owners, and if the latter are not identified, they shall be passed into the ownership of the state. Disputes on the ownership of demonstrative proof shall be resolved by the civil court proceedings.

4. Objects seized in the course of the pre-trial proceedings but not recognized as demonstrative proof, shall be returned to the persons, from whom they were seized.

JURISDICTION

Article 11 CC Operation of Criminal Law in Respect of Persons Who Have Committed Crimes on the Territory of the Russian Federation

1. Any person who has committed a crime on the territory of the Russian Federation shall be brought to criminal liability under this Code.

2. Crimes committed within the limits of the territorial sea or the airspace of the Russian Federation shall be deemed to have been performed on the territory of the Russian Federation. The validity of this Code shall also be extended to offences committed on the continental shelf and in the exclusive economic zone of the Russian Federation.

3. A person who has committed a crime on a craft registered in a port of the Russian Federation and situated on the open sea or in the airspace outside the confines of the Russian Federation shall be brought to criminal liability under this Code, unless otherwise is stipulated by an international agreement of the Russian Federation. Under this Code, criminal liability shall also be borne by a person who has committed an offence on board a warship or a military aircraft of the Russian Federation, regardless of the place of their location.

4. The question of the criminal liability of diplomatic representatives of foreign States and other individuals who enjoy immunity shall be settled in conformity with the standards of international law, if these persons have committed crimes on the territory of the Russian Federation.

Article 12 CC Operation of Criminal Law in Respect of Persons Who Have Committed Offences Outside the Boundaries of the Russian Federation

1. Citizens of the Russian Federation and stateless persons permanently residing in the Russian Federation who have committed outside the Russian Federation a crime against the interests guarded by the present Code shall be subject to criminal liability in accordance with the present Code, unless a decision of a foreign state's court exists concerning this crime in respect of these persons.

2. Servicemen of military units of the Russian Federation located beyond the confines of the Russian Federation shall bear criminal liability for their crimes committed on the territories of foreign states under this Code, unless otherwise stipulated by international agreements of the Russian Federation.

3. Foreign nationals and stateless persons who do not reside permanently in the Russian Federation and who have committed crimes outside the boundaries of the Russian Federation shall be brought to criminal liability under this Code in cases where the crimes run against the interests of the Russian Federation or a citizen of the Russian Federation or a stateless person permanently residing in the Russian Federation, and also in the cases provided for by international agreements of the Russian Federation, and unless the foreign citizens and stateless persons not residing permanently in the Russian Federation have been convicted in a foreign state and are brought to criminal liability on the territory of the Russian Federation.

MUTUAL LEGAL ASSISTANCE

**(CRIMINAL PROCEDURAL CODE OF THE RUSSIAN FEDERATION NO. 174-FZ OF
DECEMBER 18, 2001)**

Art. 5(55) Principal Concepts Used in this Code

Unless otherwise specified, the principal concepts, used in the present Code, shall have the following meaning:

55) Criminal prosecution - procedural activity, performed by the party of the prosecution and aimed at the exposure of the suspect or the accused in committing the crime

Article 457. Execution of an Inquiry on Legal Assistance in the Russian Federation

1. The court, the public prosecutor, the investigator, the head of an investigatory body shall execute inquiries on the performance of the procedural actions, handed over to them in the established order, which have come in from the corresponding competent bodies of the foreign states in conformity with the international treaties of the Russian Federation and the international agreements, or on the basis of the principle of reciprocity. The principle of reciprocity shall be confirmed by a written statement of the foreign state on rendering legal assistance to the Russian Federation in the performance of the individual procedural actions [...].

2. In the execution of the inquiry shall be applied the norms of the present Code, but the procedural norms of the legislation of the foreign state may also be applied in conformity with the international treaties of the Russian Federation, with the international agreements or on the basis of the principle of reciprocity, unless this contradicts the legislation and the international liabilities of the Russian Federation.

3. In the execution of the inquiry may be attending the representatives of the foreign state, if this is stipulated by the international treaties of the Russian Federation or by a written liability on an interaction, based on the principle of reciprocity.

4. If the inquiry cannot be executed, the received documents shall be returned with an indication of the reasons which have prevented it from being executed, through the body that has received it or along diplomatic channels, to that competent body of the foreign state, from which the inquiry was directed. The inquiry shall be returned without execution, if it contradicts the legislation of the Russian Federation, or if its execution may inflict damage upon its sovereignty or security.

**Art. 459 Execution of the Inquiries on Carrying Out the Criminal Prosecution
or on Instituting a Criminal Case on the Territory of the Russian Federation**

1. An inquiry from the competent body of a foreign state on carrying out the criminal prosecution with respect to a citizen of the Russian Federation, who has perpetrated a crime on the territory of the foreign state and has returned to the Russian Federation, shall be considered by the Office of the Procurator-General of the Russian Federation. A preliminary inquisition and the judicial proceedings shall be conducted in such cases in accordance with the procedure, established by the present Code.

2. If a crime is committed on the territory of a foreign state by a person, who is a citizen of Russia and who has come back to the Russian Federation before the criminal prosecution was instituted on his account at the place of the perpetration of the crime, the criminal case may be instituted and investigated by the

materials, supplied by the corresponding competent body of the foreign state to the Office of the Procurator-General of the Russian Federation in conformity with the present Code, if there

TAX

Letter of the Ministry of Finance of the Russian Federation of 3 September 2012 on Tax Accounting of Bribes to Foreign Public Officials

According to paragraph 1 of Article 3 of the Tax Code of the Russian Federation (hereinafter the TC of Russia), each person shall pay legally established taxes and fees. Therefore, tax control in the Russian Federation is based on the recognition of the fact that taxpayers perform activities and incur expenses in accordance with the Law.

Item 4 of Article 15 of the RF Constitution states that generally recognized principles and norms of international law and international agreements of the Russian Federation constitute an integral part of its legal system. If an international agreement of the Russian Federation states the rules other than those covered by the Law, then the rules of the international agreement shall be applied.

Moreover, Federal Law No. 3-FZ of 1 February 2012 "On the Accession of the Russian Federation to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" entered into force on 13 February 2012, and the corresponding Convention entered into force for Russia on 17 April 2012.

In accordance with paragraph 1 of Article 252 of the TC of Russia expenses are reasonable and documented costs (and in cases under Article 265 of the TC of Russia — losses), incurred by the taxpayer. Reasonable expenses are economically justified costs, which are measurable in monetary terms. Documented expenses are costs proved by documents, executed in accordance with the Law of the Russian Federation. Therefore, if expenses meet the criteria stated in Article 252, namely justified and documented, they can be considered as expenses for corporation tax purposes.

Prohibitions (restrictions) to perform certain actions, established by the Law, are mandatory, including for taxation purposes. Costs incurred as a result of commission of offences (including bribery, commercial bribery) are not considered for taxation purposes.

Tax Code, article 32(3)

If, within two months from the date of expiry of the time limit for the fulfilment of a demand for the payment of tax (a levy) which was sent to a taxpayer (levy payer, tax agent) on the basis of a decision on the imposition of sanctions for the commission of a tax offence, the taxpayer (levy payer, tax agent) has not fully paid (remitted) the amounts stated in that demand of arrears, the level of which gives reason to suspect the commission of a violation of tax and levy legislation bearing elements of a crime, and corresponding penalties and fines, tax authorities shall be obliged, within 10 days from the day on which those circumstances are discovered, to send materials to investigative bodies authorized to conduct preliminary investigation in criminal cases involving crimes such as are provided for in Articles 198 ["Evasion by Natural Person of Tax or Insurance Premium to Be Paid to the State Extra-budgetary Funds"] to 199(2) [Evasion of Taxes or Insurance Premiums to Be Paid to the State Extra-budgetary Funds by Organizations] of the Criminal Code of the Russian Federation (hereinafter referred to as "investigative bodies") in order for a decision to be adopted on the institution of criminal proceedings.

Tax Code, article 82

Tax authorities, customs authorities, internal affairs bodies and investigative bodies shall, according to a procedure to be determined by agreement among them, inform one another of materials in their possession concerning violations of tax and levy legislation and concerning tax crimes, concerning measures taken to stop their occurrence and concerning tax audits performed by them, and shall exchange other necessary information for the purpose of carrying out their assigned tasks.

REQUIREMENTS FOR CORPORATE ANTI-CORRUPTION MEASURES

Law on Combating Corruption (2008, #273-FZ), Article 13.3 - Responsibility of organizations to take measures on prevention of corruption

1. Organizations must elaborate and take measures on prevention of corruption.
2. Measures on prevention of a corruption taken in an organization may include:
 - 1) determination of units or officers responsible for the prevention of corruption and other offences;
 - 2) cooperation of the organization with law enforcement agencies;
 - 3) development and introduction to practice of standards and procedures providing for a fair operation of the organization;
 - 4) acceptance of Code of ethics and official conduct of employees of the organization;
 - 5) prevention and settlement of a conflict of interests;
 - 6) prevention of preparation of unofficial accounts or usage of forged documents.

REPORTING OF CORRUPTION BY PUBLIC OFFICIALS

Law on Combating Corruption (2008, #273-FZ), article 9 - The obligation of government and municipal employees to notify of approaches with a view to incite to corruption offences

Article 9.1 provides that “*A state or municipal servant must report any attempts by any persons to induce him/her to commit corrupt practices to a representative of the servant’s hirer (employer), public prosecutor’s offices or other government bodies*”. Article 9.2 defines the duty to report as an “official duty”, the non-observance of which is an “*offence entailing dismissal of the servant from the occupied state or municipal service position or bringing him/her to other forms of liability in accordance with Russian Federation laws*”(article 9.3). Article 9.4 provides that “*a government or municipal employee who has notified the representative of the employer, the Public Prosecutor’s Office or other state bodies of the facts of approaching him/her for the purpose of inciting to corruption offences, the facts of corruption offences committed by other governmental or municipal employees [...] is under the protection of the State in accordance with the legislation of the RF*”.