

# Russia enacts new law requiring anti-corruption measures to be implemented by organisations

With effect from 1 January 2013, Federal Law No. 273-FZ "On Preventing Corruption" (the "Anti-corruption Law") was amended to introduce requirements that companies implement anti-corruption measures.

Article 13.3 of the Anti-corruption Law requires organisations to develop and implement anti-corruption measures such as (i) appointing a specific department or an official to be responsible for preventing corruption and related offences; (ii) co operating with enforcement authorities; (iii) developing and implementing standards and procedures for ethical business practices; (iv) establishing an ethical code of conduct for personnel; (v) preventing and resolving conflicts of interest; and (vi) preventing the filing of false or off-the-record reports and the use of forged documents. This list of measures is not exhaustive.

## Implications of the requirements

The requirements apply to all organisations (Russian and foreign) that do business in Russia. It should be noted that even if a foreign organization has no branches or representative offices in Russia, Russian law-enforcement authorities may still assess its compliance with the requirements when investigating allegations of bribery and/or unlawful remuneration.

Russian law does not establish any sanctions for failure to implement the requirements of Article 13.3 of the Anti-corruption Law, but non-compliance could in principle result in the following adverse consequences.

## Authors



**Timur Aitkulov**  
Partner

T: +7 495 725 6415

E: timur.aitkulov  
@cliffordchance.com



**Olga Semushina**  
Associate

T: +7 495 725 6418

E: olga.semushina  
@cliffordchance.com

## Legal implications

Under Russian criminal law only individuals can be subject to criminal liability. It follows that management and employees could be subject to criminal penalties for bribery and other related offences. Failure to implement the anti-corruption measures required by the Anti-corruption Law could be interpreted as suggesting knowledge of or involvement in illegal activity by a manager or other employee.

Organisations 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 money, securities or other assets constituting the bribe (Article 19.28 of the Administrative Offences Code).

Criminal proceedings against an individual and administrative proceedings against an organisation could be based on the same facts and be heard in parallel. Therefore, if a manager or employee is convicted of bribery, the organisation employing them is exposed to the risk of penalties under separate administrative proceedings. In practice, Russian law-enforcement authorities do tend to initiate an investigation of organisations when one of their managers or employees has been convicted of bribery. The limitation period is 6 years from the date the administrative offence occurred.

If an organisation is charged with bribery, it may be a defence to show that it has taken all possible and reasonable steps to prevent corruption and comply with the Anti-corruption Law (under Article 2.1 of the Administrative

Offences Code an organisation is at fault when it is unable to provide evidence that it has taken all possible and reasonable steps to prevent an offence and comply with the law). It may also be advisable to check that any prospective counterparties also comply with the law.

## Practical implications

Article 13.3 of the Anti-corruption Law requires that every organisation must appoint a person to be responsible for establishing a code of ethical conduct for the organisation's staff. This in itself could help ensure that personnel are familiar with the risks and are properly trained. Failure to implement a code of ethical conduct could have an adverse effect on both the organisation and its employees. If staff are unaware of anti-corruption measures and the related risks, the inadvertent conduct of a particular employee could be regarded – even if mistakenly – by a third party as the promise or offer of a bribe, which could ultimately lead to prosecution or administrative sanctions.

## Conclusion

Although there are currently no legal sanctions for non-compliance with Article 13.3 of the Anti-corruption Law, for the reasons given above and in view of reputational considerations compliance with its requirements is advisable.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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