

## CHANGES IN REGULATION OF ADMINISTRATIVE LIABILITY OF LEGAL ENTITIES FOR CORRUPTION-RELATED OFFENCES

On 14 August 2018<sup>1</sup> and 8 January 2019<sup>2</sup> amendments to the Administrative Offences Code of the Russian Federation (the "**Administrative Offences Code**") took effect. Among other changes, the amendments broaden the scope of what constitutes a punishable offence under Art. 19.28 of the Administrative Offences Code (administrative liability for unlawful remuneration on behalf of a legal entity) and establish additional grounds for exemption from administrative liability for offences under Art. 19.28 of the Administrative Offences Code.

### ADMINISTRATIVE LIABILITY FOR UNLAWFUL REMUNERATION ON BEHALF OF A RELATED LEGAL ENTITY

From 8 January 2019, administrative liability can be imposed on a legal entity for giving, offering or promising unlawful remuneration<sup>3</sup> (Art. 19.28 of the Administrative Offences Code) not only if the offence is committed on behalf of the legal entity itself, but also if it is committed on behalf of another, related legal entity. The Administrative Offences Code does not clarify precisely which legal entities should be deemed related to a bribe giver. In an explanatory note to the draft of the Federal Law of 27 December 2018 it is stated that such legal entities may include affiliates and subsidiaries. There is no statutory concept of a "related legal entity" (*svyazannoe yuridicheskoe lits*) in Russian law. Accordingly there is a risk that the term could be interpreted broadly. Among other things, in addition to the terms mentioned in the explanatory note, Russian legislation includes such concepts as a "group of persons" (*grupp*) and "interdependent parties" (*vzaimozavisimye litsa*). Therefore, in practice law-enforcement authorities will probably assess the connection to a bribe giver on a case-by-case basis, taking into account the specific circumstances.

The Federal Law of 27 December 2018 also specifies the parties that can be acting for a bribe taker: the amendments provide that a legal entity should be held administratively liable under Art. 19.28 of the Administrative Offences Code even if the unlawful remuneration is given, offered or promised not to the bribe taker directly, but to another individual or legal entity acting at the bribe taker's instruction. This change is in line with the recommendations set out in the OECD's phase 2 report on implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Paris, 17 December 1997) (the "**Convention**") in the Russian Federation.

#### Key changes

- Administrative liability is established for legal entities for giving, offering or promising unlawful remuneration in the interests of related legal entities (such as subsidiaries or affiliates).
- Special grounds are established for exemption from administrative liability for unlawful remuneration.
- A new form of measures to ensure proceedings in administrative cases is introduced: attachment of a legal entity's property.
- Administrative fines now must be paid within 7 days.

<sup>1</sup> Federal Law No. 298-FZ of 3 August 2018 On the Incorporation of Amendments to the Administrative Offences Code of the Russian Federation (the "**Federal Law of 3 August 2018**").

<sup>2</sup> Federal Law No. 570-FZ of 27 December 2018 On the Incorporation of Amendments to Article 19.28 of the Administrative Offences Code of the Russian Federation (the "**Federal Law of 27 December 2018**").

<sup>3</sup> In the form of money, securities or other property, monetizable services or vested interests.

## **SPECIAL GROUNDS FOR EXEMPTION FROM ADMINISTRATIVE LIABILITY**

The Federal Law of 3 August 2018 introduces the following special grounds on which legal entities may be exempted from administrative liability for giving, offering or promising unlawful remuneration<sup>4</sup>:

- the legal entity has facilitated detection of the offence, the conduct of the administrative investigation and/or the detection, disclosure and investigation of a crime related to the offence; or
- the legal entity has been extorted.

In our view, the conduct of a thorough internal investigation, including by engaging reputable third parties specialising in such matters, may be considered by law-enforcement authorities as appropriate co-operation and serve as grounds for exemption from administrative liability.

The grounds for exemption from administrative liability described above are not applicable if the offence involves a foreign public official or official of a public international organisation in the framework of a commercial transaction<sup>5</sup>. According to the authors of the Federal Law of 3 August 2018, this carve-out is necessary because the Convention contains no analogous grounds exempting foreign officials (including officials and representatives of international organisations) from liability for bribery.

The introduction of special grounds exempting legal entities from administrative liability for giving, offering or promising unlawful remuneration is intended, among other things, to harmonise Russian administrative and criminal law. For most corruption-related offences the Criminal Code of the Russian Federation (the "**Criminal Code**") contains similar grounds for exemption from criminal liability<sup>6</sup>.

## **ATTACHMENT OF A LEGAL ENTITY'S PROPERTY: A NEW FORM OF MEASURES ENSURING PROCEEDINGS IN ADMINISTRATIVE CASES**

The Federal Law of 3 August 2018 establishes a new form of measures ensuring proceedings in administrative cases involving offences under Art. 19.28 of the Administrative Offences Code: attachment of the property of the legal entity that has been charged with the administrative offence<sup>7</sup>. This measure is meant to ensure that decisions to impose administrative penalties will be complied with. Previously the Administrative Offences Code contained no such measures for ensuring proceedings, and a legal entity's property could be attached only in the framework of enforcement proceedings.

Attachment of property is a prohibition whereby the legal entity is prevented from disposing of the attached property, and, if necessary, it can also involve restrictions on possession and use of the property<sup>8</sup>. Money kept on deposit and in accounts with banks and other credit institutions can be attached only if the legal entity has no other property<sup>9</sup>.

A decision to attach property is taken by the judge hearing the administrative case, on the basis of a reasoned request filed by the public prosecutor together with the request to institute administrative proceedings<sup>10</sup>. A judge's decision to attach property can be appealed<sup>11</sup>. Property remains under attachment until the decision imposing an administrative penalty is complied with<sup>12</sup>.

## **SHORTER TIME FRAME FOR PAYING ADMINISTRATIVE FINES**

The Federal Law of 3 August 2018 establishes a shorter time frame within which administrative fines for offences under Art. 19.28 of the Administrative Offences Code must be paid: no later than seven days after the date the decision imposing the administrative fine enters into force (previously the time frame was generally 60 days)<sup>13</sup>.

<sup>4</sup> Note 5 to Art. 19.28 of the Administrative Offences Code.

<sup>5</sup> Note 6 to Art. 19.28 of the Administrative Offences Code.

<sup>6</sup> See, for example, note 2 to Art. 204 of the Criminal Code.

<sup>7</sup> Art. 27.1(1)(13) of the Administrative Offences Code.

<sup>8</sup> Art. 27.20(3) of the Administrative Offences Code.

<sup>9</sup> Art. 27.20(4) of the Administrative Offences Code.

<sup>10</sup> Art. 27.20(5) of the Administrative Offences Code.

<sup>11</sup> Art. 27.20(8) of the Administrative Offences Code.

<sup>12</sup> Art. 29.10(3)(5) of the Administrative Offences Code.

<sup>13</sup> Art. 32.2(1.4) of the Administrative Offences Code.

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