

February 2009

Russia Adopts New Anti-corruption Legislation

On December 30, 2008 the newly adopted Russian anti-corruption legislation (the “**Anti-corruption Legislation**”) was officially published. It is comprised of three interconnected federal laws, which came into force on January 10, 2009:

- Federal Law No. 273-FZ On Counteraction to Corruption (establishes the general framework of anti-corruption legislation);
- Federal Law No. 274-FZ On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law On Counteraction to Corruption (develops provisions of the main law with respect to certain categories of government employees, such as judges and members of parliament, persons holding state and municipal offices not qualifying as state or municipal service offices); and
- Federal Law No. 280-FZ On Amendments to Certain Legislative Acts of the Russian Federation in Relation to Ratification of the UN Anti-bribery Convention dated October 31, 2003 and the Criminal Law Convention on Corruption dated January 27, 1999, and Adoption of the Federal Law On Counteraction to Corruption (develops the provisions of the main law with respect to state and municipal service and amends the Civil, Criminal and Administrative Codes).

The adoption of the Anti-corruption Legislation in Russia is a direct consequence of the National Plan for Counteraction to Corruption, adopted by the President of the Russian Federation on July 31, 2008, and Russia’s international obligations stemming from the UN Anti-bribery Convention, dated October 31, 2003, and the Criminal Law Convention on Corruption, dated January 27, 1999, to which Russia is a party.

The Anti-corruption Legislation defines **corruption** as (i) abuse of an official position, the giving of a bribe, the receiving of a bribe, abuse of position, commercial bribery or other unlawful use by an individual of his/her capacity in contempt of the lawful interests of society and the state with the purpose of getting a benefit in the form of money, valuables, other property or services of a monetary nature, other proprietary rights for himself/herself or third persons, or unlawful provision of such benefit to such a person or other individuals; and (ii) performance of actions mentioned in (i) above in the name, or on behalf, of a legal entity. The definition lists the relevant crimes prohibited by the Criminal Code, and in item (ii) refers to a newly introduced administrative offence, which will be discussed below.

Baker & McKenzie - CIS, Limited

Sadovaya Plaza 11th Floor
7 Dolgorukovskaya Street
Moscow 127006 Russia
Tel: +7 495 787 27 00
Fax: +7 495 787 27 01

57 Bolshaya Morskaya
St. Petersburg 190000 Russia
Tel: +7 812 303 9000
Fax: +7 812 325 611

www.bakernet.com

This may qualify as “Attorney Advertising” requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

The Anti-corruption Legislation has amended the provisions of the **Civil Code** concerning gifts (Articles 574 and 575). It raised the value of a simple gift (to which the restrictions placed on gifts by the Civil Code do not apply) from five minimum statutory monthly wages (i.e., from 500 Russian rubles, which currently equals approximately 15 US dollars) to 3,000 rubles (currently approximately 90 dollars).

Furthermore, the amendment to Article 575 of the Civil Code has harmonized the wording of the provisions prohibiting gifts (except simple gifts) to certain categories of persons with the current regulations by replacing “*state servants and servants of municipal bodies in connection with their official capacity or in connection with performance of their official duties*” with “*persons holding state offices of the Russian Federation, state offices of the constituent territories of the Russian Federation, municipal offices, state servants, municipal servants, and servants of the Central Bank of the Russian Federation in connection with their official capacity or in connection with performance of their official duties*”. There is a new exception to this Article, however, permitting gifts that are more than simple gifts to certain individuals when such gifts are made at formal events. Such gifts are considered to be state, regional or municipal property.

These amendments to the Russian Civil Code, however, still do not remove the contradiction between the permission to make simple gifts to state and municipal servants implied by the Civil Code, and the prohibition upon accepting such gifts (of any value) placed on such servants by the laws governing their status.

Further, the Anti-corruption Legislation amends the provisions of the **Criminal Code** by replacing the former definition of an “*individual performing management functions in a commercial or other organization*” used in relation to commercial bribery, with a definition of an “*individual performing management functions in a commercial or other organization, or in a not-for-profit organization that is not a state or municipal body or institution*” as “*individual performing functions of a sole executive body, member of a board of directors or other collegial executive body or a person permanently, temporarily or on the basis of special authority performing organizational-management, administrative functions in the above organizations*”. Furthermore, the criminal penalties for, inter alia, commercial bribery are now higher.

The Anti-corruption Legislation has introduced a new administrative offence into the **Administrative Code**, namely, Article 19.28 “*Unlawful Compensation on Behalf of a Legal Entity*”. This article prohibits unlawful transfer, on behalf of or in the interests of a legal entity, to a public official, or individual performing management functions in a commercial or other organization (as both terms are defined by the Criminal Code), of money, securities or other property, or unlawful rendering to such person of services with a monetary value, in return for the performance by the public official, or individual performing management functions in a commercial or other organization, of action or inaction connected to the official position of this person in the interest of such legal entity.

For more information contact:**Alexey Trusov**

+7 495 787 2700

alexey.trusov@bakernet.com

Maxim Kalinin

+7 812 303 9000

maxim.kalinin@bakernet.com

The penalty established for legal entities for the above violation is an administrative fine in the amount of up to a threefold sum of the money, securities or other property transferred, or the services with a monetary nature rendered, but no less than 1,000,000 rubles, with the seizure of the transferred money, securities or other property.

This new article apparently supplements the anti-corruption provisions of the Criminal Code applicable only to individuals by establishing liability for violations connected with corruption for legal entities.

With regard to laws governing **state and municipal service** the Anti-corruption Legislation most importantly introduces the following new provisions:

1. it describes in detail the duty of state and municipal servants to report to their employer income, property and obligations of a monetary nature (such reporting should cover not only the relevant servants themselves, but also their spouses and children who are minors);
2. it places on state and municipal servants the duty to report to their employer or state bodies any attempts of other persons to induce the relevant servant to commit a corruption violation;
3. it provides rules of conflict of interest applicable to all state and municipal servants (established earlier with respect to state civil servants, and at the very end of 2008 with respect to municipal servants); and
4. it alters the status of military servants by, inter alia, extending prohibitions placed on state civil servants to cover military servants also.

Summarizing all of the above, the adoption of the Russian Anti-corruption Legislation signals the increased attention of the Russian authorities to issues of corruption, which should eventually lead to an intensification of practical efforts to eradicate the same.

Additional notes

Should any questions arise in connection with the above, please contact Alexey Trusov, Partner, at the Moscow Office of Baker & McKenzie at +7 (495) 787 2700, or Maxim Kalinin, Partner, at the St. Petersburg Office of Baker & McKenzie at +7 (812) 303 9000.

This LEGAL ALERT keeps the clients of the firm “Baker & McKenzie” and other interested parties abreast of changes in legislation that may, to one degree or another, affect their activity or cater to their particular interests. The opinions and commentaries expressed in this LEGAL ALERT are not legal opinions and cannot replace the necessity of receiving legal consultations or opinions in specific practical situations.

Baker & McKenzie – CIS, Limited is a member of Baker & McKenzie International, a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a “partner” means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an “office” means an office of any such law firm.