

FCPA Update

A Global Anti-Corruption Newsletter



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Spotlight on Russia and its Neighbors

For companies conducting business globally, the challenges of operating in Russia and other countries of the former Soviet Union¹ (hereinafter, the “Region”), as they can be in several other parts of the world, are potentially substantial. Although trade with and business operations in these nations remain significant on many fronts, recent East-West tensions have heightened the importance of compliance and the low ranks for this region in Transparency International’s Corruption Perceptions Index, prompting denials of corruption allegations by the Russian and other governments.

The combination of international tensions, transparency risks, and, in certain countries, security issues has likely placed this group of countries on the radar screens of multinational companies’ in-house counsel or compliance departments.

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1. The former 15 republics of the Soviet Union which are the subject of this article are the states of Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

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Yet business with the Region goes on, in no small part because of its rich resources and growth potential, its sizable territory and population, and the unacceptable costs of abandoning these markets to other companies.

Perhaps even more importantly, the conduct of international business in and with Russia and the rest of the Region may be the best hope of easing the tensions that have been of such concern in recent years. Companies and governments on all sides of the controversies thus have an interest in effective compliance solutions to the challenges involved. In this Spotlight article, we examine the risks in the Region and related history of anti-bribery enforcement in the United States, and identify steps companies may wish to consider as they navigate the challenges involved. In an accompanying article, we discuss the state of Russia's efforts to enforce anti-bribery norms.

I. Why Russia and its Neighbors Matter

A. Business Environment

As a consequence of international sanctions and the fall in energy prices, Russia faces a difficult economic environment.² The value of the ruble has recovered from record lows in 2014, but Russian companies in search of investment have limited places to turn.³ The World Bank has projected negative growth of 3.8 percent in Russia for 2015.⁴

Against this backdrop, the perception of corruption risks in Russia has only compounded the country's troubles. In 2012 and 2013, Russia received a score of 28 on the Transparency International ("TI") Corruption Perceptions Index ("CPI"), placing Russia in 133rd place out of 176 countries in 2012⁵ and 127th out of 177 countries in 2013.⁶ In 2014, Russia's score remained largely unchanged at 27. TI has explained Russia's 2014 performance by pointing to lackluster domestic enforcement of anti-corruption laws and the lack of international anti-corruption partnerships.⁷

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2. See, e.g., Holly Ellyatt, "The Russian Billionaires Hit Hard by Oil's Plunge," *CNBC* (May 27, 2015), <http://www.cnbc.com/id/102709483>.
 3. See Guy Taylor, "Russia Recovery Talk Premature as Sanctions Threaten to Cripple Economy," *The Washington Times* (May 25, 2015), <http://www.washingtontimes.com/news/2015/may/25/russia-recovery-talk-premature-as-sanctions-threat/?page=all>.
 4. The World Bank, "Russia Overview" (Apr. 17, 2015), <http://www.worldbank.org/en/country/russia/overview>.
 5. Transparency International, "Corruption Perceptions Index 2012: Results," <http://www.transparency.org/cpi2012/results>.
 6. Transparency International, "Corruption Perceptions Index 2013: Results," <http://www.transparency.org/cpi2013/results>. See also *infra* pp. 17-23.
 7. Transparency International Russia, "Corruption Perception Index 2014: Russia's Rating Falls by One Point" (Dec. 3, 2014), <http://transparency.org.ru/en/news/corruption-perception-index-2014-russia-s-rating-falls-by-one-point>.

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According to a recent survey, in-house counsel and compliance officers believe that companies doing business in Russia face greater risk of being swept up in a corruption enforcement action than those conducting business in any other region. Seventy-five percent of those surveyed chose Russia as one of the countries posing the greatest risk, higher than the percentage selecting African nations (59%) or China (53%).⁸

“Out of the 14 countries in the Region other than Russia, all save Georgia and the Baltic States placed lower than 100th in the global rankings. Estonia ranked highest, finishing in 26th place. Turkmenistan and Uzbekistan placed at the bottom, in 169th and 166th place, respectively, with only six countries in the world faring worse than Turkmenistan. Kazakhstan, a country that figured prominently in several recent FCPA investigations, finished in 126th place.”

A number of other countries in the Region also have performed poorly in the most recent CPI rankings. Out of the 14 countries in the Region other than Russia, all save Georgia and the Baltic States placed lower than 100th in the global rankings. Estonia ranked highest, finishing in 26th place. Turkmenistan and Uzbekistan placed at the bottom, in 169th and 166th place, respectively, with only six countries in the world faring worse than Turkmenistan. Kazakhstan, a country that figured prominently in several recent FCPA investigations, finished in 126th place. Even though Kazakhstan received a modestly higher ranking in 2014 than in 2013, when it ranked 140th, scores for all other countries in the Region remained relatively stable year-to-year.⁹ Although Ukraine ranked 142nd on the CPI in 2014,¹⁰ the newly formed Ukrainian government has announced that anti-corruption enforcement will be one of the government’s top priorities, passing a series of new anti-corruption laws and creating a National Anti-Corruption Bureau.¹¹ With Ukraine’s faltering economy, the future of these and other initiatives of the Ukrainian government remains in question.

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8. AlixPartners, “Global Industry Faces Ongoing Uphill Battle Against Corruption” (May 4, 2015), <http://www.alixpartners.com/en/MediaCenter/PressReleases/tabid/821/articleType/ArticleView/articleId/1650/Global-Industry-Faces-Ongoing-Uphill-Battle-Against-Corruption.aspx>.
 9. Transparency International, “Corruption Perceptions Index 2014: Results,” <http://www.transparency.org/cpi2014/results>.
 10. *Id.*
 11. Alyona N. Kucher, Jane Shvets, Alexander Dmitrenko, and Alisa Melekhina, “Compliance in a Hot Zone: Ukraine Enacts New Anti-Corruption Laws,” *FCPA Update*, Vol. 6, No. 7 (Feb. 2015), http://www.debevoise.com/~media/files/insights/publications/2015/02/fcpa_update_feb_2015.pdf.

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While the Baltic States have fared well on the CPI for many years, Georgia is an example of a remarkable turnaround. In 2005, Georgia placed 130th on the CPI, tying with Kyrgyzstan among other countries.¹² By 2014, Georgia placed 50th, while Kyrgyzstan languished in 136th place.¹³ That significant improvement in perceptions was likely the result of substantial anti-corruption efforts undertaken by the Georgian government, including passage of new anti-corruption legislation, prosecution of high-ranking officials, and overhaul of the country's regulatory framework.¹⁴

B. Enforcement Efforts

The U.S. Department of Justice ("DOJ") and the U.S. Securities and Exchange Commission ("SEC") have pursued a number of cases involving Russia and the Region over the past ten years. Indeed, from 2005 to the present, 19 concluded FCPA enforcement actions brought by the SEC included a component related to one or more countries in the Region, representing approximately 17 percent of the total number of SEC FCPA enforcement actions during this period. Countries in the region identified in these actions include Russia (9 actions), Kazakhstan (8), Azerbaijan (2), and Uzbekistan (2). In 2013 and 2014, 37 and 25 percent of the resolved SEC enforcement actions, respectively, involved conduct in the Region. Similarly, since 2005 approximately 10 percent of all FCPA cases initiated by the DOJ alleged conduct involving one or more countries in the Region, including Russia (7 actions), Kazakhstan (5), Azerbaijan (4), and Uzbekistan (2).¹⁵

The Region also figures prominently in three ongoing FCPA investigations. In 2013, Cisco Systems Inc. disclosed SEC and DOJ investigations into possible FCPA violations involving its operations in Russia and certain other countries in the Region.¹⁶ In May 2014, Key Energy Services, Inc. disclosed an ongoing FCPA investigation involving its business activities in Russia.¹⁷ While Key Energy and Cisco identified Russia as a nation of interest in the investigations, they did not identify which activities drew the attention of U.S. authorities.¹⁸

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12. Transparency International, "Corruption Perceptions Index 2005: Results," http://www.transparency.org/research/cpi/cpi_2005/0/.
 13. See Transparency International, note 9, *supra*.
 14. See Transparency International, "Anti-Corruption Progress in Georgia, Liberia, Rwanda" (July 6, 2011), http://www.transparency.org/files/content/corruptionqas/HelpDesk_Anticorruption_progress_in_Rwanda_Liberia_Georgia.pdf.
 15. See U.S. Securities & Exchange Comm'n, "SEC Enforcement Actions: FCPA Cases" (last visited June 23, 2015), <http://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>; U.S. Dep't of Justice, "FCPA and Related Enforcement Actions" (last visited June 25, 2015), <http://www.justice.gov/criminal/fraud/fcpa/cases/a.html>.
 16. Roxane Marenberg, "The Importance of Ethics in Global Business," *Cisco Blogs* (Dec. 23, 2013), <http://blogs.cisco.com/news/the-importance-of-ethics-in-global-business>.
 17. Rachel Louise Ensign, "SEC Investigating Key Energy For Potential Foreign Bribery," *The Wall Street Journal* (May 7, 2014), <http://blogs.wsj.com/riskandcompliance/2014/05/07/sec-investigating-key-energy-for-potential-foreign-bribery/>.
 18. See *id.*; Marenberg, note 16, *supra*.

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In 2015, Teva Pharmaceutical Industries, an Israeli drug maker, disclosed that it had discovered business practices in Russia that may have violated the FCPA.¹⁹ Teva originally disclosed potential liability in 2013 and has reportedly been cooperating with U.S. authorities since that time.²⁰

Although Russia has acceded to international anti-corruption conventions and enacted a series of laws aimed at combating corruption,²¹ neither the companies that have been fined in the United States and elsewhere for corrupt activities in Russia – including Daimler, Hewlett-Packard, and Bio-Rad Laboratories – nor their Russia-based employees have faced any reported enforcement actions in Russia.²²

II. Enforcement Trends and Risks

A. Corruption at the Border: Customs & Immigration

Enforcement actions by the United States indicate that one of the key risks for companies operating in the Region involves customs-related issues, which were at the core of five cases. Three cases from 2010 exemplify the issues a company may experience when interacting with government officials in this context.

First, the SEC and the DOJ settled actions filed against Panalpina, Inc. (“Panalpina”), a wholly-owned subsidiary of Panalpina World Transport (“PWT”). PWT is a global holding company whose subsidiaries and affiliates provide global freight forwarding and logistics services. According to the SEC Complaint, Panalpina, in concert with other PWT subsidiaries and affiliates, paid bribes to customs officials in Russia and Kazakhstan, among other countries, to obtain preferential customs treatment for the items shipped by Panalpina’s customers. Panalpina was charged with conspiring to violate the books and records provisions of the FCPA and with aiding and abetting certain of its customers in violating those provisions. It pled guilty to the criminal charges filed by the DOJ and reached a settlement with the SEC.²³

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19. Carly Helfand, “Teva ‘Likely’ Violated FCPA, Local Laws in Russia, Latin America and Elsewhere,” *FiercePharma* (Feb. 12, 2015), <http://www.fiercepharma.com/story/teva-likely-violated-fcpa-local-laws-russia-latin-america-and-elsewhere/2015-02-12>.

20. See *id.*

21. See also *infra pp.* 17-23.

22. See Transparency International Russia, note 7, *supra*.

23. SEC Litig. Rel. 21727, SEC Charges Panalpina with Violating the Foreign Corrupt Practices Act (Nov. 4, 2010), <https://www.sec.gov/litigation/litrelases/2010/lr21727.htm>; DOJ Press Rel. 10-1251, Oil Services Companies and a Freight Forwarding Company Agree to Resolve Foreign Bribery Investigations and to Pay More Than \$156 Million in Criminal Penalties (Nov. 4 2010), <http://www.justice.gov/opa/pr/oil-services-companies-and-freight-forwarding-company-agree-resolve-foreign-bribery>.

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The investigation into Panalpina led to the DOJ and SEC entering into a series of agreements with Panalpina's and PWT's customers regarding alleged FCPA violations. The SEC settled actions against Royal Dutch Shell, Shell International Exploration and Production, Inc., Transocean Inc., Tidewater Inc., Pride International, Inc., Noble Corporation, and GlobalSantaFe Corp. The DOJ, in turn, entered into deferred prosecution agreements with Royal Dutch Shell, Transocean, Inc., Tidewater, Inc., Pride International, Inc., and PWT.²⁴

The second action brought by U.S. authorities involving customs in the Region spun out of the Panalpina investigation. Pride International, Inc., an offshore drilling company, was targeted for illegal activity in several countries, but the U.S. government put a particular spotlight on Kazakhstan, focusing on four transactions there. According to the SEC Complaint, in April 2004, Pride was informed about certain customs irregularities that could be resolved through a payment of \$45,000 to Kazakh customs officials. Pride did so, using an intermediary; it used another intermediary to pay another \$100,000 to secure favorable customs classification for its drilling equipment.²⁵

Third, the SEC filed a settled civil action against NATCO Group, Inc., an oil and field services provider, for violating the books and records and internal controls provisions of the FCPA. According to the SEC Complaint, on two separate occasions, a subsidiary of NATCO, TEST Kazakhstan, was audited by Kazakh immigration prosecutors. The officials determined that certain expatriate employees were working without proper immigration documentation and threatened to fine, deport, or jail these individuals. To avoid these consequences, TEST's employees paid Kazakh authorities a total of \$45,000 in 2007 and were later reimbursed by TEST. The SEC Complaint also alleged that TEST employees created false invoices to receive reimbursement for payments made.²⁶

These actions and the underlying facts demonstrate the risks presented in the customs or immigration context, which are heightened by the sometimes disproportionate power to block commerce that lower-level officials in that sector

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24. See DOJ Press Rel., note 23, *supra*.

25. SEC Litig. Rel. 21726, SEC Charges Pride International with Violating the Foreign Corrupt Practices Act (Nov. 4, 2010), <https://www.sec.gov/litigation/litreleases/2010/lr21726.htm>.

26. SEC Litig. Rel. 21374, SEC Files Settled Civil Action Charging NATCO Group Inc. with Violations of the Foreign Corrupt Practices Act (Jan. 11, 2010), <https://www.sec.gov/litigation/litreleases/2010/lr21374.htm>.

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of the government can wield. It is important that companies thoroughly vet any intermediaries used in this context, particularly in the logistics and freight-forwarding arenas. Companies may wish to take extra precautions to determine the validity of any charges or demands made by customs and immigration officials.

“The U.S. government has also moved aggressively against FCPA-covered companies in the oil and gas industry operating in the Region. Out of the 19 concluded FCPA actions brought by the SEC relating to this region since 2005, four have focused on oil and gas companies. The DOJ brought five FCPA cases against firms in the oil and gas industry in the Region in the same period.”

B. Oil & Gas Industry

The U.S. government has also moved aggressively against FCPA-covered companies in the oil and gas industry operating in the Region. Out of the 19 concluded FCPA actions brought by the SEC relating to this region since 2005, four have focused on oil and gas companies. The DOJ brought five FCPA cases against firms in the oil and gas industry in the Region in the same period.

For example, in 2007, the SEC and the DOJ settled enforcement actions against Baker Hughes (“Baker”), a Texas-based global provider of oilfield products and services. The charges were filed based on allegations that the company paid two agents approximately \$5.2 million while knowing that some of the money would be used to bribe government officials. One agent was hired to influence senior employees of KazakhOil, the largest state-owned oil company in Kazakhstan. As a result of this relationship, Baker was awarded an oil services contract which generated \$219 million in gross revenue. The other agent was hired to influence high-ranking executives of KazTransOil, the state-owned oil transportation operator. Baker was subsequently awarded a large chemical contract by KazTransOil.²⁷

In a more recent example, Tenaris, a global manufacturer of steel pipe products, entered into a deferred prosecution agreement with the SEC. According to the agreement, Tenaris bribed government officials in Uzbekistan during a bidding

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27. SEC Press Rel. 2007-77, SEC Charges Baker Hughes with Foreign Bribery and with Violating 2001 Commission Cease-and-Desist Order (Apr. 26, 2007), <https://www.sec.gov/news/press/2007/2007-77.htm>.

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process to supply pipelines for transporting oil and natural gas. After paying the bribes, Tenaris was given access to the confidential bids of its competitors. With this information in hand, the company amended its own bids and was subsequently awarded several contracts by the Uzbek government. It made profits of almost \$5 million from these contracts.²⁸

From 2003 to the present, the DOJ has also filed charges against individuals in two high-profile criminal cases arising out of FCPA investigations in the oil and gas industry. First, Frederic Bourke, Jr., co-founder of handbag maker Dooney & Bourke, was found guilty in 2009 after a jury trial of conspiracy to violate the FCPA, following pleas by several co-defendants. The charges stemmed from a scheme to bribe government officials in Azerbaijan in order to ensure those officials would privatize the State Oil Company of the Azerbaijan Republic ("SOCAR") in a rigged auction that only Bourke and two other individuals could win. The group paid several hundred million dollars to Azeri officials in shares of stock, cash, and other gifts.²⁹ Bourke spent almost a year in prison and was released in March 2014.³⁰

Second, in 2010, the DOJ concluded a lengthy investigation into Mercator Corporation and its chairman, James Giffen, involving \$78 million in unlawful payments to government officials in Kazakhstan. According to a 2003 DOJ press release, these payments were made in connection with six separate oil transactions involving Mobil Oil, Amoco, Texaco, and Phillips Petroleum. For example, the DOJ alleged that Giffen made illegal payments to government officials in connection with Mobil Oil's purchase of a 25% share in the Tengiz oil field.³¹ Ultimately, Giffen pled guilty to a misdemeanor charge of failing to disclose control of a Swiss bank account on his personal income tax return. At sentencing, the judge declined to impose any term of imprisonment or additional fines beyond a \$32,000 amount that had been ordered to be paid by Mercator upon its related plea of guilty to a single count of conspiring to violate the FCPA.³²

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28. SEC Press Rel. 2011-112, Tenaris to Pay \$5.4 Million in SEC's First-Ever Deferred Prosecution Agreement (May 17, 2011), <https://www.sec.gov/news/press/2011/2011-112.htm>.
 29. DOJ Press Rel. 09-677, Connecticut Investor Found Guilty in Massive Scheme to Bribe Senior Government Officials in the Republic of Azerbaijan (July 10, 2009), <http://www.justice.gov/opa/pr/connecticut-investor-found-guilty-massive-scheme-bribe-senior-government-officials-republic>.
 30. Richard L. Cassin, "Bourke Completes Sentence, is Released from Prison," *FCPA Blog* (Mar. 24, 2014), <http://www.fcpablog.com/blog/2014/3/24/bourke-completes-sentence-is-released-from-prison.html>.
 31. DOJ S.D.N.Y. Press Rel. 03-75, American Businessman Charged with \$78 Million in Unlawful Payments to Kazakh Officials in 6 Oil Transactions; Former Mobil Corp. Executive Indicted for Tax Evasion in Kickback Scheme (Aug. 2, 2003), <http://www.justice.gov/criminal/fraud/fcpa/cases/giffen/04-02-03giffen-press-indict.pdf>.
 32. Christie Smythe, "Bribery Defendant Giffen Walks Away with No Penalty," *Law360* (Nov. 19, 2010), <http://www.law360.com/articles/210617/bribery-defendant-giffen-walks-away-with-no-penalty>. The lack of punishment was widely reported as a failure on the part of the DOJ.

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FCPA investigations in this area often have timelines reaching back many years. For example, in the Giffen investigation the DOJ brought charges in 2003 based on transactions that occurred as far back as 1995.³³ The case, as noted above, finally concluded in 2010. The SEC's case against Baker also lasted just short of a decade. Through these cases, the U.S. government may be sending a message that it will root through years, if not decades, worth of information in the course of investigating what it considers serious bribery offenses. But it is equally plausible that delays are generated by defendants spending significant time preparing a defense.

C. FCPA Enforcement in the Pharmaceutical Industry

Since 2012, almost half of the SEC's completed FCPA enforcement actions against companies doing business in Russia or the Region have involved the pharmaceutical industry. During this period, the SEC settled actions against Eli Lilly and Company, Pfizer Inc., and Bio-Rad Laboratories, Inc. Likewise, approximately one-quarter of the DOJ's completed enforcement actions during this period focused on the pharmaceutical industry in Russia and other countries in the Region.

Bio-Rad, a clinical diagnostic and life sciences research company, was charged by the SEC with violating the FCPA because its subsidiaries made improper payments to government officials in Russia, Vietnam, and Thailand. In total, Bio-Rad allegedly failed to prevent approximately \$7.5 million in bribes paid over a five-year period. According to the SEC's order instituting settled administrative proceedings, Bio-Rad disguised payments as commissions to agents who were retained primarily to influence Russian government officials and to help the company win government contracts. The company agreed to pay \$40.7 million in disgorgement to settle the charges, which included alleged violations of the anti-bribery and accounting provisions of the FCPA.³⁴

The DOJ also investigated Bio-Rad based on similar allegations, but the DOJ's resolution focused solely on the company's activities in Russia. Evidencing the government's desire to reward Bio-Rad for its cooperation, the DOJ entered into a non-prosecution agreement with Bio-Rad focusing solely on internal controls and books and records issues, under which the company agreed to pay \$14.35 million to close the investigation.³⁵

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33. See DOJ S.D.N.Y. Press Rel., note 31, *supra*.

34. SEC Press Rel. 2014-245, SEC Charges California-Based Bio-Rad Laboratories with FCPA Violations (Nov. 3, 2014), <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370543347364>.

35. DOJ Press Rel. 14-1221, Bio-Rad Laboratories Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$14.35 Million Penalty (Nov. 3, 2014), <http://www.justice.gov/opa/pr/bio-rad-laboratories-resolves-foreign-corrupt-practices-act-investigation-and-agrees-pay-1435>.

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Eli Lilly was charged by the SEC based on similar allegations – namely, that its subsidiaries made alleged improper payments to officials in Russia, Brazil, China, and Poland. According to the SEC Complaint, Eli Lilly’s subsidiary in Russia used offshore “marketing agreements” to funnel money to individuals selected by government customers or distributors to win business. The individuals receiving the funds rarely performed any services and, in at least some instances, transferred the funds to government officials. The SEC alleged that approximately \$2 million was transferred to an entity owned by a government official and another \$5.2 million was transferred to entities owned by an individual with ties to a member of the Russian Parliament.³⁶ In February 2015, the DOJ closed its investigation without filing charges.³⁷

“As in the customs and immigration context, the vetting of intermediaries is a recurring concern for pharmaceutical and medical device companies operating in the Region. Companies may also wish to place extra scrutiny on interactions between its employees and state-employed doctors in Russia.”

Pfizer was charged by the SEC with violating the FCPA because its subsidiaries allegedly bribed government officials and publicly employed health care professionals in Kazakhstan, Russia, Bulgaria, China, Croatia, Czech Republic, Italy, and Serbia. According to the SEC Complaint, Pfizer employees gave cash, gifts, and donations to state-employed doctors and other government officials in order to obtain regulatory approval for its products and to influence doctors to prescribe Pfizer products. Pfizer agreed to pay approximately \$26 million to settle the SEC’s charges.³⁸

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36. SEC Press Rel. 2012-273, SEC Charges Eli Lilly and Company with FCPA Violations (Dec. 20, 2012), <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171487116>.
37. Richard L. Cassin, “DOJ Declination for Eli Lilly after Long-Running Probe,” *FCPA Blog* (Feb. 23, 2015), <http://www.fcablog.com/blog/2015/2/23/doj-declination-for-eli-lilly-after-long-running-probe.html>.
38. SEC Press Rel. 2012-152, SEC Charges Pfizer with FCPA Violations (Aug. 7, 2012), <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171483696>.

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The DOJ also filed criminal charges based on similar allegations against Pfizer's indirect wholly-owned subsidiary, Pfizer H.C.P. The DOJ's investigation was more narrowly focused, targeting activity in Kazakhstan, Russia, Bulgaria, and Croatia. Pfizer H.C.P. agreed to pay a \$15 million criminal penalty and entered into a deferred prosecution agreement, in which it admitted to paying more than \$2 million in bribes to government officials in these countries.³⁹

As in the customs and immigration context, the vetting of intermediaries is a recurring concern for pharmaceutical and medical device companies operating in the Region. Companies may also wish to place extra scrutiny on interactions between its employees and state-employed doctors in Russia.

D. DOJ Parallel Enforcement

In nearly every FCPA enforcement action with a connection to Russia or another country in the Region since 2013, the SEC and the DOJ have simultaneously filed civil and criminal charges against the companies involved. This may evidence the perceived seriousness of the matters and the fact that U.S.-listed companies continue to have significant business interests in the Region. This more recent pattern contrasts with the statistics from an earlier period: between 2005 and 2012, the SEC and the DOJ simultaneously brought charges in fewer than 40 percent of the FCPA cases having a Russian or other Region country component.

Last year, the DOJ and the SEC concluded parallel actions against Hewlett-Packard and Bio-Rad Laboratories, Inc. Hewlett-Packard paid a total of \$108 million as part of the SEC and the DOJ FCPA settlements⁴⁰; Bio-Rad paid a total of \$55 million.⁴¹

As is customary in parallel SEC/DOJ proceedings, the SEC brought actions for disgorgement of the ill-gotten profits, and the DOJ agreements imposed fines or, in the parlance of some U.S. criminal-law settlements, an agreed "penalty." In some instances, the criminal fines or penalties were more than twice as large as the disgorgement.⁴²

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39. DOJ Press Rel. 12-980, Pfizer H.C.P. Corp. Agrees to Pay \$15 Million Penalty to Resolve Foreign Bribery Investigation (Aug. 7, 2012), <http://www.justice.gov/opa/pr/pfizer-hcp-corp-agrees-pay-15-million-penalty-resolve-foreign-bribery-investigation>.

40. SEC Press Rel. 2014-73, SEC Charges Hewlett-Packard with FCPA Violations (Apr. 9, 2014), <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541453075>.

41. See DOJ Press Rel., note 35, *supra*.

42. See SEC Press Rel., note 38, *supra*.

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E. Issues in Global Investigations

As a result of the perceived corruption risks in the Region, there is a higher probability that a company swept up in a global review of its operations will find its operations in the Region a subject of a U.S. government investigation. The U.S. government's investigations of Daimler AG and Siemens AG, for example, were each initiated following revelations of issues in business units elsewhere. Yet some of the more serious allegations in each case involved the companies' Russian and Region-related businesses that were identified in the resulting company-led internal investigations.

As indicated in the settlement documents, the Daimler investigation involved 22 countries, four of which are in the Region – Russia, Turkmenistan, Uzbekistan, and Latvia. The DOJ and SEC charged the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. According to the SEC Complaint, among other violations, Daimler made cash payments totaling DM 9,191.34 to two government officials after the sale of a commercial vehicle to a government customer. It also wired €110,000 to a German bank account held in the name of a Russian official in order to obtain a contract for the sale of four vehicles to a government agency. In Turkmenistan, Daimler gave a government official two armored vehicles valued at €550,000 in order to secure business. In Uzbekistan, the company paid over €3.5 million to government officials to obtain an approximately €37 million government contract. In Latvia, the company paid bribes to members of a political party that controlled a city council in order to obtain a contract to sell the city buses.⁴³ Daimler and three of its subsidiaries paid \$185 million to the SEC and the DOJ to settle the charges involving these and other matters.⁴⁴

The SEC and the DOJ investigations in the Siemens case, which originated following disclosures concerning the company's telecommunications businesses, led to charges implicating operations in ten countries, including Russia. Siemens, on behalf of itself and three subsidiaries, paid \$800 million to settle charges of violations of the anti-bribery, books and records, and internal controls provisions of the FCPA.⁴⁵ According to the SEC Complaint, the company paid more than \$55 million to intermediaries in connection with the sale of medical equipment, including in Russia. The SEC also alleged that the company paid approximately \$714,419 in bribes to government officials in connection with the design and installation of a traffic control system in Moscow.⁴⁶

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43. *SEC v. Daimler AG*, No. 1:10-cv-00473, Complaint (D.D.C. 2010), ¶¶ 86, 96, 100-01, 104, 110-11.

44. SEC Press Rel. 2010-51, SEC Charges Daimler AG with Global Bribery (Apr. 1, 2010), <http://www.sec.gov/news/press/2010/2010-51.htm>.

45. SEC Litig. Rel. 20829, SEC Files Settled Foreign Corrupt Practices Act Charges Against Siemens AG for Engaging in Worldwide Bribery with Total Disgorgement and Criminal Fines of Over \$1.6 Billion (Dec. 15, 2008), <http://www.sec.gov/litigation/litreleases/2008/lr20829.htm>.

46. *SEC v. Siemens Aktiengesellschaft*, No. 1:08-cv-02167, Complaint (D.D.C. 2008), ¶¶ 60-63.

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The extent to which global multinational firms with business in Russia and the Region are subject to the risk of being required to undertake an extensive global review remains to be seen. In recent months, U.S. government officials, including Assistant Attorney General Leslie Caldwell, who heads the Criminal Division of the DOJ, have stated that it is not the government's intent to require firms caught up in an FCPA investigation to "aimlessly boil the ocean" with a deep-dive review of every potentially problematic issue.⁴⁷ Nevertheless, it may be prudent for companies engaged in a corruption investigation elsewhere to pay extra heed to whether similar issues may have arisen in the Region. By contrast, companies that have strong internal controls in their Russian and other high-risk businesses may be able to mitigate their global enforcement risk.

III. Best Practices

Implementing standard compliance safeguards can present unique challenges in this part of the world. The conduct of internal audits, for example, must take into account recently enacted Russian regulations governing the storage and transmittal of electronic data.⁴⁸ Similarly, the implementation of strict controls on the engagement of third-party distributors and partners has been subject to sometimes rigorous antitrust review, leaving companies at risk of violating Russian competition law.⁴⁹ This risk is particularly acute for firms that are considered dominant in their relevant markets, as determined under Russian law.

Companies are best advised to take a number of other steps to navigate the shoals of transnational and local law. The first of these involves the use of clear and consistent criteria for selection of third parties and their monitoring. Such criteria should be framed to address, in as objective a manner as possible, the specific risk factors that will warrant concern with respect to compliance with transnational and local anti-corruption legislation. A due diligence manual should also endeavor to identify genuine risks of impropriety rather than employ a check-the-box approach. Due diligence should also be conducted in a way that complies with legitimate local privacy laws and that utilizes reputable and lawfully retained due diligence advisors.

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47. See Assistant Attorney General Leslie R. Caldwell Delivers Remarks at New York University Law School's Program on Corporate Compliance and Enforcement (Apr. 17, 2015), <http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-delivers-remarks-new-york-university-law>.

48. See Alan V. Kartashkin, Andrew M. Levine, Dmitri V. Nikiforov, Anna V. Maximenko, and Jane Shvets, "Bringing Money and Data Back to Russia," *FCPA Update*, Vol. 5, No. 12 (July 2014), http://www.debevoise.com/-/media/files/insights/publications/2014/07/fcpa%20update/files/view%20fcpa%20update/fileattachment/fcpa_update_july2014.pdf.

49. See Sean Hecker, Alyona V. Kucher, Jane Shvets, Anna V. Maximenko, and Alisa Melekhina, "Between a Rock and a Hard Place: Anti-Corruption Compliance and Anti-Trust Law in Russia," *FCPA Update*, Vol. 6, No. 8 (Mar. 2015), http://www.debevoise.com/-/media/files/insights/publications/2015/03/fcpa_update_march_2015.pdf.

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Second, companies should document carefully compliance determinations and decisions made in connection with third-party engagements. Ideally, compliance determinations should be documented contemporaneously and relevant supporting documents demonstrating the course of decision-making should be maintained for an appropriate period, and in accordance with local data protection and related regulations.

Third, companies should recognize that, under local law, privilege may not attach to advice by internal legal counsel in connection with third-party hiring. In sensitive cases, it may therefore be necessary to seek the advice of outside counsel before proceeding with an engagement, or, to the contrary, making a determination not to engage a particular third party.⁵⁰

Notwithstanding these challenges, prompt integration of merger and JV partners, clear and well-communicated compliance policies, and fair but firm employee discipline or retraining in the event of problematic behavior, among other best practices, can mitigate compliance risks. Thorough due diligence on intermediaries, merger and JV partners, sales and supply-chain entities, as well as employees themselves is also important. Further, in the current economic climate in the Region, employee compensation systems that emphasize conducting honest business over winning business at any cost are essential to compliance efforts.

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50. *Id.*

**Resolved Corporate FCPA Enforcement Actions
2005 to Present Involving Russia and the Region**

| Company | Year | DOJ/SEC | Countries |
|------------------------------|------|---------|--|
| Baker Hughes Inc. | 2007 | SEC | Uzbekistan, Russia, Kazakhstan |
| Omega Advisors, Inc. | 2007 | DOJ | Azerbaijan |
| Paradigm B.V. | 2007 | DOJ | Kazakhstan |
| NATCO Group Inc. | 2007 | SEC | Kazakhstan |
| Siemens Aktiengesellschaft | 2008 | Both | Russia |
| Daimler AG | 2010 | Both | Russia, Turkmenistan, Uzbekistan, Latvia |
| Panalpina | 2010 | Both | Azerbaijan, Kazakhstan, Russia, Turkmenistan |
| Tidewater | 2010 | Both | Azerbaijan |
| Mercator Corporation | 2010 | DOJ | Kazakhstan |
| Pride International | 2010 | SEC | Kazakhstan |
| Alliance One | 2010 | Both | Kyrgyzstan |
| Tenaris, S.A. | 2011 | Both | Uzbekistan |
| Eli Lilly and Company | 2012 | SEC | Russia |
| Pfizer Inc. | 2012 | Both | Russia, Kazakhstan |
| Data Systems & Solutions LLC | 2012 | DOJ | Lithuania |
| Diebold, Inc. | 2013 | Both | Russia |
| Parker Drilling | 2013 | Both | Kazakhstan |
| Archer Daniels Midland | 2013 | Both | Ukraine |
| Bio-Rad Laboratories, Inc. | 2014 | Both | Russia |
| Hewlett-Packard | 2014 | Both | Russia |

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**Resolved or Pending Individual FCPA Enforcement Actions
2005 to Present Involving Russia and the Region**

| Associated Corporate Entity | Individuals | Year Initiated | Disposition/Status | DOJ/ SEC | Countries |
|-----------------------------|--|----------------|--|--------------------|------------|
| Omega Advisors | Frederic Bourke, Jr. David Pinkerton Viktor Kozeny | 2005 | Conviction Dismissal Fugitive | DOJ | Azerbaijan |
| Baker Hughes | Roy Fearnley | 2007 | Civil Penalty | SEC | Kazakhstan |
| ALS Technologies, Inc. | Daniel Alvarez | 2009 | Plea | DOJ | Georgia |
| Alliance One | Bobby Elkin, Jr. Baxter Myers Thomas Reynolds | 2010 | Injunction, Plea, Fine Civil Penalty, Injunction Civil Penalty, Injunction | Both SEC SEC | Kyrgyzstan |

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Evolution and Revolution in Anti-Corruption Regulation in Russia

Despite its long history of enacting anti-corruption legislation,¹ Russia has faced enormous corruption problems as it has entered the twenty-first century. In 2005, the year prior to Russia's ratification of the United Nations Convention Against Corruption ("UNCAC"), Russia scored 2.4 points out of 10 on Transparency International's Corruption Perceptions Index ("CPI") and shared a rank of 126 (out of 159 countries) with Albania, Niger, and Sierra Leone.² In 2008, then-President Dmitry Medvedev adopted the first National Plan for Counteracting Corruption (the "National Plan 2008"), providing a legislative basis for an anti-corruption policy. In 2010, the newly formulated National Strategy for Counteracting Corruption declared the necessity of further development of the legislative framework, enforcement of anti-corruption laws, and strict penalties for their violation. These aims were developed in the National Plans for Counteracting Corruption, enacted biannually ever since (collectively, the "Plans").

Though not comprehensive, the Plans led to some improvement in Russia's rankings: in 2008, when the National Plan for Counteracting Corruption was launched, Russia scored the equivalent of 21 out of 100 points on the CPI (ranking in a tie for 147 out of 180 countries)³; in 2013, Russia scored 28 out of 100 points (ranking in a tie for 127 out of 177 countries),⁴ the highest score it has reached in recent years.

It remains to be seen whether this positive trend, however slight, will continue in light of the worsening economic climate in Russia and the tense relations with the West, which have combined to make robust cross-border cooperation in the anti-corruption field unlikely in the near future.

Establishing the Legal Framework

In order to implement UNCAC and the National Plan 2008, in December 2008, Russian State Duma adopted Federal Law No. 273-FZ on Counteracting Corruption (the "Anti-Corruption Law"), Russia's first comprehensive anti-corruption legislation.

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1. See, e.g., Sean Hecker, Bruce E. Yannett, Anna S. Dulova, Aaron M. Tidman, and Alexey L. Konovalov, "Developments in Russian Anti-Corruption Laws," *FCPA Update*, Vol. 2, No. 10 (May 2011), <http://www.debevoise.com/~media/files/insights/publications/2011/05/fcpa%20update/files/view%20the%20update/fileattachment/fcpaupdatemay2011.pdf>.
 2. Transparency International, "Corruption Perceptions Index 2005," http://www.transparency.org/research/cpi/cpi_2005#results.
 3. Transparency International, "Corruption Perceptions Index 2008," http://www.transparency.org/research/cpi/cpi_2008#results.
 4. Transparency International, "Corruption Perceptions Index 2013," <http://www.transparency.org/cpi2013/results>.

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The Anti-Corruption Law sets forth basic principles of anti-corruption policy as well as restrictions on public officials. It provides for disclosure of income and assets of public officials and their spouses and dependents, restrictions on employment of former public officials, and rules with respect to conflicts of interest, among other reforms.

Although necessary to counteract corruption, the Anti-Corruption Law quickly proved to be insufficient. The National Plan 2010 triggered the drafting of additional anti-corruption laws, which were for the most part adopted in 2011 and 2012. In 2011, the new legislation tightened income disclosure requirements, applying them not only to public officials, but also to officials of the Russian Central Bank, state funds, and state corporations.⁵ In 2012, a new law introduced limited control over expenditures by the above-mentioned officials.⁶ In addition, the government launched a specialized review of all bills and regulations to assess their potential for exacerbating (or ameliorating) corruption; one result of these anti-corruption reviews could be the prevention or delay in the enactment of the bill or regulation. Following the launch of anti-corruption reviews, almost 20,000 regulations were suspended pending this specialized review.⁷

The adoption of the Anti-Corruption Law also affected criminal and administrative liability for bribery, including by introducing the administrative offense of providing illegal remuneration on behalf of a legal entity. But more significant changes to the Criminal Code and the Code of Administrative Offenses were adopted in 2011, in light of Russia's desire to join the Organization for Economic Cooperation and Development ("OECD"). The 2011 amendments criminalized bribery of not only Russian, but also foreign (non-Russian) officials and introduced calculations of fines based on the bribe amount, which could yield penalties many times that amount.⁸ Following this set of amendments, Russia acceded to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on April 17, 2012.⁹

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5. Federal Law No. 329-FZ on Amendments to Certain Legislative Acts of the Russian Federation in respect of Improvement of State Anti-Corruption Regulation (Nov. 21, 2011). For more information, see Hecker et al., note 1, *supra*.
 6. For more information, see Bruce E. Yannett, Alyona N. Kucher, Anna V. Maximenko, and Michael T. Leigh, "Russia's Turn Toward Anti-Corruption Enforcement?," *FCPA Update*, Vol. 3, No. 7 (Feb. 2012), http://www.debevoise.com/~media/files/insights/publications/2012/02/fcpa%20update/files/view%20the%20update/fileattachment/fcpa_update_feb_2012.pdf; Bruce E. Yannett, Alyona N. Kucher, Anna V. Maximenko, and Michael T. Leigh, "More Developments in Russian Anti-Corruption Efforts", *FCPA Update*, Vol. 3, No. 10 (May 2012), http://www.debevoise.com/~media/files/insights/publications/2012/05/fcpa%20update/files/view%20the%20update/fileattachment/fcpa_update_may_2012.pdf.
 7. "Thousands of Regulations Did Not Pass Anti-Corruption Review," *RAPSI* (Nov. 21, 2012), http://rapsinews.ru/anticorruption_news/20121121/265448231.html?wb48617274=5C794432 [Russian].
 8. See Hecker et al., note 1, *supra*.
 9. "Russia Joins OECD Anti-Bribery Convention," OECD (Feb. 17, 2012), <http://www.oecd.org/russia/russiajoinsocdanti-briberyconvention.htm>.

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As a result of these legal measures, Russia came close to bringing its anti-corruption legislation, as written, in line with international standards.¹⁰ Russia now faces what has proved to be a greater challenge – enforcing its new legislation.

“In a move that may prove more successful than combating corruption from the top, the Russian government has encouraged public and private companies to implement anti-corruption measures themselves, thereby establishing a basis for anti-corruption enforcement ‘from the bottom.’”

Improving Enforcement

The National Plan 2012, in contrast to the 2008 and 2010 Plans, shifted the focus from developing anti-corruption legislation to its enforcement. In line with this change of priorities, several major corruption cases were initiated in 2012.¹¹ The most significant and notorious was the *Oboronservis* matter, which was ultimately resolved in 2015. Former Defense Ministry official, Yevgeniya Vasilyeva, as well as four of her ex-colleagues, were convicted of fraud, money laundering, and exceeding and abusing their authority in the sale of extremely underpriced Defense Ministry property through the state-owned OJSC *Oboronservis*. The state alleged that the damages incurred equaled approximately \$60 million. Ms. Vasilyeva was sentenced to five years’ imprisonment; her accomplices received lesser terms.¹² The former Minister of Defense, who some alleged was implicated in the case, was cleared of all charges.

In addition, in December 2013, a Russian court for the first time upheld Russia’s obligation to combat corruption under UNCAC, enforcing a judgment set by an Irish court in the *Demesne* case.¹³ The Irish court found a creditor agreement contract

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10. See, e.g., Viktor Khamraev, “What Hampers Russia’s Anti-Corruption Legislation,” *Russia & India Report* (May 22, 2013), http://in.rbth.com/society/2013/05/22/what_hampers_russias_anti-corruption_legislation_25229.html?wb48617274=5C794432.
 11. See Paul R. Berger, Sean Hecker, Andrew M. Levine, Bruce E. Yannett, Samantha J. Rowe, and Amanda M. Bartlett, “The FCPA in 2012: Release of the Government’s Guidance Caps a Year of Disparate Developments,” Section VI.B, *FCPA Update*, Vol. 4, No. 6 (Jan. 2013), <http://www.debevoise.com/-/media/files/insights/publications/2013/01/fcpa%20update/files/view%20the%20update/fileattachment/fcpaupdatejan2013.pdf>.
 12. “Former Defense Official Vasilyeva Gets 5 Years in Prison,” *The Moscow Times* (May 8, 2015), <http://www.themoscowtimes.com/article/520396.html>.
 13. See Presidium of the Supreme Arbitrazh Court of the Russian Federation Decision, No. 6004/13 (Oct. 8, 2013), [http://www.arbitr.ru/bras.net/f.aspx?id_casedoc=1_1_55f3c2b9-745c-40c3-a9cd-d8526867530f\[Russian\]](http://www.arbitr.ru/bras.net/f.aspx?id_casedoc=1_1_55f3c2b9-745c-40c3-a9cd-d8526867530f[Russian]).

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to be invalid on the basis of corrupt procurement.¹⁴ The Russian court upheld the ruling on comity principles, ruling that the Irish court set forth circumstances suggesting suspicious activities surrounding the contested transactions.¹⁵ The Russian court viewed its decision as vindicating Russia's "obligations under international law, particularly the implementation of the pledge in paragraph 5 of Article 14 of the Convention against Corruption to cooperate among judicial, law enforcement, and financial regulatory authorities to combat the illegal obtainment of funds."¹⁶

The *Oboronservis* and *Demesne* cases can be viewed as examples of anti-corruption enforcement "from the top." It remains to be seen whether these cases will stand out as exceptions – or as a beginning of a trend. The fact that, three years after Russia's reform efforts started in earnest, the *Oboronservis* and *Demesne* cases stand out as the only ones of their kind sends mixed signals at best.

In a move that may prove more successful than combating corruption from the top, the Russian government has encouraged public and private companies to implement anti-corruption measures themselves, thereby establishing a basis for anti-corruption enforcement "from the bottom." First, in the beginning of 2013, the Anti-Corruption Law was supplemented by the new Article 13.3, which requires companies to take anti-corruption measures, making anti-corruption compliance compulsory for companies operating in Russia.¹⁷ In November 2013, the Ministry of Labor issued detailed recommendations on implementation of Article 13.3.¹⁸

These new measures have already yielded some results. Prosecutors in several Russian regions have successfully challenged in a number of court proceedings companies' failure to implement all or some of the anti-corruption measures mandated by Article 13.3. The courts in those cases ordered the companies to remedy the violations, in some cases within fixed periods of time.¹⁹ Russian courts have also begun to recognize anti-corruption compliance programs as a defense in bribery cases brought by the government against companies. In a case in which

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14. See *id.* at 3.

15. See *id.* at 9.

16. *Id.* at 10.

17. For more information, see Paul R. Berger, Dmitry V. Nikiforov, Bruce E. Yannett, Jane Shvets, and Anna V. Maximenko, "Anticorruption Compliance Programs under Russian Law: Article 13.3 and the FCPA/UKBA Experience," *FCPA Update*, Vol. 4, No. 9 (Apr. 2013), http://www.debevoise.com/-/media/files/insights/publications/2013/04/fcpa%20update/files/view%20the%20update/fileattachment/fcpa_update_apr_2013_proof_3.pdf.

18. For more information, see Dmitry V. Nikiforov, Bruce E. Yannett, Anna V. Maximenko, and Jane Shvets, "Russia Issues Detailed Recommendations on Compliance with Russian Anti-Corruption Law," *FCPA Update*, Vol. 5, No. 5 (Dec. 2013), http://www.debevoise.com/-/media/files/insights/publications/2013/12/fcpa%20update/files/view%20fcpa%20update/fileattachment/fcpa_update_dec2013.pdf.

19. See, e.g., Proletarsky District Court (Tver) Judgment, Case No. 2-2459/2014 (Dec. 19, 2014); Inzensk District Court (Ulianovsk Region) Judgment, Case No. 2-1099/2014 (May 19, 2014).

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the company defendant had introduced anti-corruption measures in its internal regulations and the bribe-giving employee was notified of those measures, the company was found not guilty of bribery.²⁰

Russian businesses have also established their own mechanisms for anti-corruption compliance. For example, the Anti-Corruption Charter of Russian Business has recently opened its membership to all companies doing business in Russia. The Charter covers best practices for third-party risk assessment and due diligence, financial and commercial controls, cooperation with law enforcement, and other issues.²¹

Notwithstanding this good news, administrative and court practice has some way to go in aligning with global anti-corruption best practices. The Federal Antimonopoly Service (“FAS”) has initiated several cases against international pharmaceutical companies dominant in the Russian market, challenging their third-party due diligence practices as violating Russian competition law. Although they present a challenge, the FAS’s and Russian courts’ interpretations of Russian antitrust law leave an opening for companies to comply with their FCPA or other anti-corruption obligations while staying on the right side of Russian law.²²

From Globalization to Domestication

The global political context in which Russia finds itself has had indirect effects on transparency in another realm – with regard to the management of company assets and data. Undertaken against a backdrop of multiple concerns, one of the Russian government’s first efforts to promote “economic domestication” began on May 7, 2013, when the Russian State Duma adopted Federal Law No. 79-FZ on the Prohibition for Certain Categories of Persons to Open and Maintain Accounts/ Deposits and Cash in Foreign Banks Located Abroad and Hold Securities of Foreign Issuers. The law prohibits public officials from holding cash and deposits in foreign banks or securities of foreign issuers. The government considered banning foreign real estate holdings by state and municipal officials, their spouses and minor children, but that proposal was replaced with a less restrictive obligation to disclose information about such property.²³

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20. See Syktyvkar City Court Judgment, Case No. 12-235/2014 (Mar. 14, 2014).

21. The Charter is available at http://against-corruption.ru/images/documents/Anti-Corruption_Charter_of_the_Russian_Business.pdf.

22. For more details see Sean Hecker, Alyona N. Kucher, Jane Shvets, Anna V. Maximenko, and Alisa Melekhina, “Between a Rock and a Hard Place: Anti-Corruption Compliance and Antitrust Law in Russia,” *FCPA Update*, Vol. 6, No. 8 (Mar. 2015), http://www.debevoise.com/-/media/files/insights/publications/2015/03/fcpa_update_march_2015.pdf.

23. See Paul R. Berger, Alyona N. Kucher, and Anna V. Maximenko, “Russian State Officials’ Assets Abroad: Proposed Ban on Foreign Accounts, Deposits and Securities,” *FCPA Update*, Vol. 4, No. 7 (Feb. 2013), http://www.debevoise.com/-/media/files/insights/publications/2013/02/fcpa%20update/files/view%20the%20update/fileattachment/fcpa_update_feb_022713_final.pdf.

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In 2014, the government's domestication program reached private parties. At first, the Duma prohibited processing of personal data of Russian citizens through databases located abroad. The original deadline for transfer of such data to Russia-based servers was September 1, 2016, but the deadline has been shortened by one year.²⁴ A violation of this data law can lead to blocking of the server used for the illegal processing. Compliance with this new law has proved a challenge for many companies, and may make it more difficult if not impossible for them to comply with foreign regulatory requests, handle internal investigations and audits, or perform even routine operations.²⁵

Other "domestication" initiatives have proved more positive for transparency and anti-corruption compliance. The November 2014 tax code amendments attempt to address the widely discussed need to reverse the offshoring of the Russian economy and to repatriate funds to Russia.²⁶ Though they have a mainly fiscal purpose, the amendments have the potential of removing assets from offshore jurisdictions with confidentiality regimes that have long hindered anti-corruption and other investigations. As such, the new law, if aggressively enforced, could make business transactions more transparent and illegal income harder to conceal.²⁷

Looking Forward

The outcome of Russia's anti-corruption efforts will likely depend on broader political and economic developments. Although the National Plan 2014 continued to emphasize the importance of anti-corruption legislation and enforcement, the government has competing priorities oriented toward enhancing national security and strengthening the country's faltering economy.

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- 24. Federal Law No. 242-FZ on Amendments to Certain Legislative Acts of the Russian Federation in respect of Processing of Personal Data in Information and Telecommunication Networks (July 21, 2014).
 - 25. See Alan V. Kartashkin, Andrew M. Levine, Dmitry V. Nikiforov, Anna V. Maximenko, and Jane Shvets, "Bringing Money and Data Back to Russia," *FCPA Update*, Vol. 5, No. 12 (July 2014), http://www.debevoise.com/~media/files/insights/publications/2014/07/fcpa%20update/files/view%20fcpa%20update/fileattachment/fcpa_update_july2014.pdf.
 - 26. Federal Law No. 376-FZ on Amendments to the First and the Second Part of the Tax Code of the Russian Federation Tax Code in respect of Taxation of Profit of Controlled Foreign Companies and Income of Foreign Organizations (Nov. 24, 2014).
 - 27. See Kartashkin et al., note 25, *supra*.

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The current political climate may make Russia disinclined to promote cross-border cooperation in the anti-corruption area or other fields, but the Russian government may well realize that boosting the private sector's trust in the Russian economy is crucial for purely domestic reasons, as well as for attracting foreign capital.

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