



ПРОБЛЕМЫ И СУЖДЕНИЯ

УДК 343.352:334.7 (045) =111

КРИТЕРИИ ОЦЕНКИ ПРОГРАММЫ АНТИКОРРУПЦИОННОГО КОМПЛАЕНСА НА МАЛЫХ И СРЕДНИХ ПРЕДПРИЯТИЯХ

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АННОТАЦИЯ

Коррупция является одним из наиболее серьезных вызовов, с которым столкнулись все страны. В настоящее время государственные институты Российской Федерации принимают меры по решению этой проблемы, которые включают в себя, в том числе, принятие ряда законодательных антикоррупционных актов. Кроме того, отдельные российские компании должны соблюдать также применимое иностранное законодательство. Это относится к антикоррупционным законам США и Великобритании. Сопоставление показывает, что российское антикоррупционное законодательство в значительной степени гармонизировано с международным. В настоящее время вопросы правоприменения являются основным вызовом в борьбе против коррупции. Национальный план противодействия коррупции сформулировал наиболее важные мероприятия, которые должны быть выполнены в 2014–2015 гг. Согласно этому плану бизнес-сообщества обязаны осуществлять мониторинг внедрения в компаниях антикоррупционного комплаенса. Для качественного мониторинга необходимо определить критерии оценки эффективности антикоррупционных мероприятий, используемых в компании. Особого внимания требует оценка антикоррупционного комплаенса на малых и средних предприятиях (*SME*). В статье предложены базовые принципы, которым должны отвечать критерии оценки антикоррупционного комплаенса. Применяя эти принципы (системность, адаптивность и разумная достаточность), можно снизить количество рекомендуемых к внедрению антикоррупционных мер до 23 в десяти бизнес-процессах. Принцип технологичности позволяет при оценке антикоррупционного комплаенса на малых и средних предприятиях ограничиться восемью критериями для десяти бизнес-процессов.

Ключевые слова: антикоррупционное законодательство Российской Федерации; закон США «О противодействии коррупции за рубежом» (*FCPA*); закон Великобритании «О противодействии коррупции» (*UKBA*); антикоррупционный комплаенс; критерии оценки; малые и средние предприятия (*SME*).

CRITERIA FOR ASSESSMENT OF ANTICORRUPTION COMPLIANCE PROGRAMS AT SMALL AND MEDIUM ENTERPRISES

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ABSTRACT

Fighting corruption is one of the most important tasks facing all countries. Currently the RF state institutes have made significant efforts to remedy the situation including passing several anti-corruption legislative acts. Some Russian companies must also comply with applicable foreign laws. Such as to anti-corruption legislation of the USA and the UK. If you compare the requirements of the Russian and international anti-corruption legislation, it appears that the Russian anti-corruption legislation is largely harmonized with relevant international law. Now the enforcement of existing legislation is the main challenge of Russian authorities and enterprises. The main actions are issued in the National Anticorruption Plan for 2014–2015. One of the actions of the National Plan is the assignment given to the business communities to monitor the implementation of anti-corruption compliance in companies. Quality monitoring requires criteria by which one can estimate the effectiveness of the anti-corruption activities in a company. Special attention requires the evaluation of anti-corruption compliance in small and medium-sized enterprises (SME). The basic principles, which must meet the criteria for the evaluation of anti-corruption compliance, are proposed in this article. Applying these principles (consistency, adaptability and reasonable sufficiency), we can reduce the number of anti-corruption measures down to 23 in 10 business processes. The principle of ease of running gives 8 criteria for 10 business processes for verification of anticorruption compliance programs at SME.

Key words: Russian anti-corruption legislative acts, FCPA, UKBA, anti-corruption compliance, criteria for the evaluation, small and medium-sized enterprises (SME).

Fighting corruption is one of the most important tasks facing all countries. The results of anticorruption work are evaluated annually by the international noncommercial organization “Transparency International” which are published in its TI Corruption Perception Index. From figure 1, you can see the results of this ranking in 2014. It is obvious from this figure that the anticorruption activity is especially important for Russia as its index is lower than the G7 and even the other BRIC’s countries.

Currently the RF state institutes have made significant efforts to remedy the situation including passing several anti-corruption legislative acts. As a result, the following anti-corruption laws now apply to companies which are registered in the Russian Federation:

- the anticorruption articles of the Penal Code, which prohibit the giving, receiving and mediation in bribery and commercial bribery;
- the Civil Code article on gifts, which prohibits giving gifts with a price higher than 3.000 RUS RUB for state and municipal officials, employees of the Bank of RF and in relations between commercial organizations.

Legislation on State Service which prohibits officials to accept any payment or compensation in connection with the performance of their official duties or business activities including business trips at others expense.

“Anti-corruption Law” № 273 which regulates the relationship between officials and businesses and requires implementation of anti-corruption procedures in companies (article 13.3).

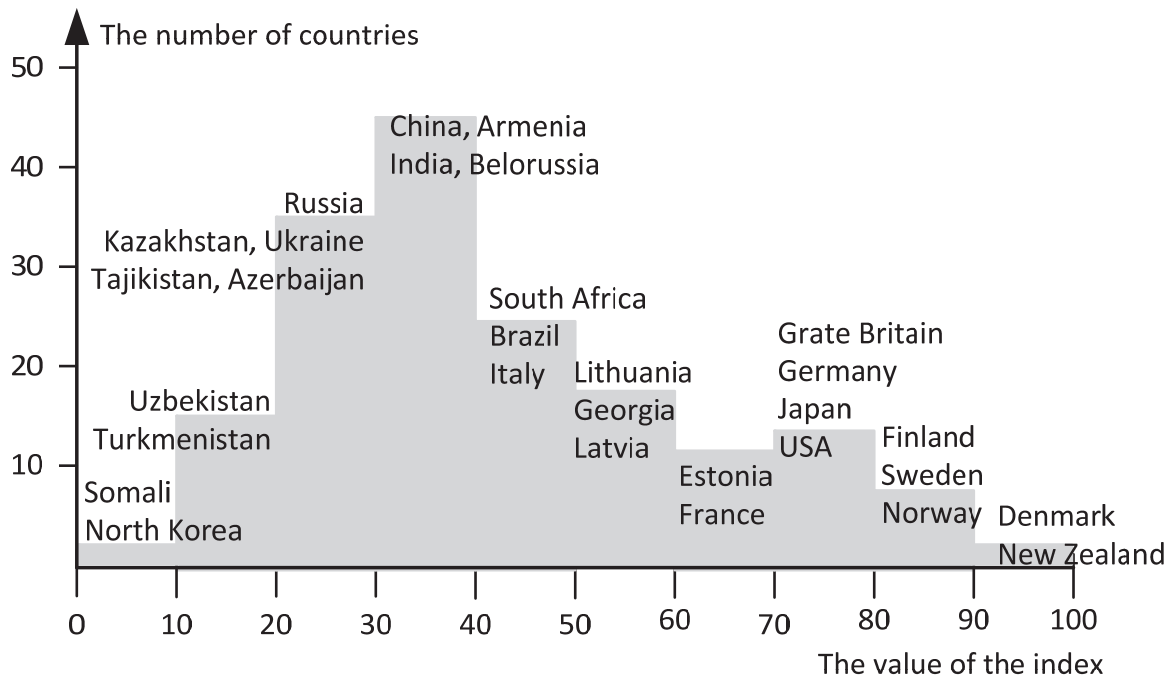


Fig. 1. Transparency International Corruption Perception Index, 2014

Among normative documents released in recent time, it is necessary to note “Anti-corruption Guidance for Russian Companies’ guidelines for the development and adoption by organizations of measures for preventing and combating corruption”. This document was approved by the Ministry of labor, November 8, 2013 and after some refinement approved by the Presidium of the Council under the President of the RF for anti-corruption 8 April 2014. This document provides guidance on the implementation of anti-corruption procedures in organizations to reduce the risk of corruption.

Some Russian companies must also comply with applicable foreign laws. This applies to anti-corruption legislation of the USA and the UK. The U.S. anti-corruption legislation, the Foreign Corrupt Practices Act (FCPA), prohibits bribery of foreign state officials. It applies to all U.S. companies and companies that are not issuers or residents, if their securities are traded on a US stock market or if they engage in cross-border trading, located on the territory of the USA, while engaging in corruption offenses.

Furthermore, there is a recent precedent for the application of the FCPA legislation in a matter called the Straub case. The details of

the offence are as follows. Three former top managers of Magyar Telekom Company (subsidiary of Deutsche Telekom) offered a bribe to the officials of the Macedonian government. The bribe was issued in the form of a payment for services according to a fictitious contract, which was concluded by means of E-mail. Although the participants of the correspondence were outside the United States, the E-mail network server was located in the USA. Based on this, the U.S. Federal court decided that the company falls under the jurisdiction of the FCPA. The court rejected the request for termination of criminal proceedings in connection with the expiration of the Statute of limitations, arguing that the count for this period should begin with the appearance of the defendant in the USA.

The other primary foreign anti-corruption law, which applies to a Russian company, is the United Kingdom Bribery Act 2010 (“UKBA”), which requires companies to have adequate anticorruption procedures. This provision of the law applies to all companies doing business in the UK. Moreover, the concept of “doing business” is interpreted very widely, including the purchase of British goods, selling goods to companies in the UK, exhibitions on the

Table 1

Anti-corruption legislation of the Russian Federation vs FCPA and UKBA

The law	RF	FCPA	UKBA
Giving, receiving and mediation in bribery.	✓	✓	✓
The promise of a bribe, the request of a bribe.	x	✓	✓
Commercial bribery.	✓	x	✓
Facilitation payments.	✓	x	✓
Bribes without monetary value.	x	✓	✓
Bribery of foreign officials.	✓	✓	✓
Anti-corruption compliance.	✓	✓	✓
Reliability and accuracy of bookkeeping.	✓	✓	x
Extraterritoriality.	x	✓	✓

Table 2

Criteria for small and medium-size enterprises

	Value of the indicator for the previous calendar year (no more than)	
	Average number of employees (units)	Gross income from sales (without VAT) or total value of assets (mln rub)
Medium enterprise	250	1000
Small enterprise	100	400
Micro enterprise	15	60

territory of the country, advertising in the British media and so on, and so forth.

If you compare the requirements of the Russian and international anti-corruption legislation (Table 1), it appears that the Russian anti-corruption legislation is largely harmonized with relevant international law.

Now the enforcement of existing legislation is the main challenge of Russian anti-corruption activities. The main actions are issued in the National Anticorruption Plan for 2014–2015, approved by the decree of the Russian President, dated April 11, 2014 № 226. The plan contains a detailed list of anti-corruption actions, which are to be addressed by the various levels of government, governance and public associations, starting with the chambers of the Federal Assembly of the Russian Federation, the Supreme Court of the Russian Federation and the government of Russia and to the business community, educational and research institutions.

One of the actions of the National Plan is the assignment given to the business communities to monitor the implementation of anti-corruption compliance in companies. Quality monitoring requires criteria by which one can estimate the effectiveness of the anti-corruption activities in a company. The basic principles and criteria for the evaluation of anti-corruption compliance, are as follows:

- **consistency**, which involves the review of all major types of anti-corruption actions, including regulatory, organizational and informational activities;
- **adaptability**, i.e. the ability to use the test procedures for large, medium and small enterprises;
- **reasonable sufficiency**, which means that a comprehensive assessment of the anti-corruption compliance in a company can be done without substantial financial and time costs;

Table 3

Mitigating Anticorruption activities for business processes

Process	Anticorruption activity
Operating activity	Company management publicly and clearly states their intention to act honestly and openly when making purchases and interacting with counterparties
Agents and intermediaries	Company management requires employees to make payments to agents and other intermediaries through legal means
	Clauses on their readiness to counteract corruption and bribery are added to contracts with agents and intermediaries
	All material aspects of interactions with agents and intermediaries are properly documented
	A clause is included in contracts with agents and intermediaries, which gives the Company the right to break the contract if the agent or intermediary is involved in corrupt activities
Human resources	Company management does not retaliate against employees who refused to pay a bribe, even if such a refusal resulted in lost profits
	When evaluating employees, Company management considers their commitment to compliance with anticorruption requirements
Gifts and business hospitality	Management gives clear instructions to employees with regard to giving and receiving gifts and signs of business hospitality
	Gifts, signs of business hospitality and other similar expenses are clearly and accurately recorded in accounting books and are checked by management
Tone from the top	The principle of corruption being unacceptable is officially stated by the company management, which adheres to this principle in its everyday activities
	Refusal to use corruption in its activities is affirmed in the company's documents
	Company management's actions serve as an example of honest behavior for other employees
Bookkeeping	Financial controls and processes in the Company ensures proper recording of activities and performance of appropriate checks
	All financial operations are accurately and correctly reflected in accounting books of the Company and are available for review

• **ease of running**, i.e. assessment is easy for implementation and not burdensome to the audited companies.

Special attention requires the evaluation of anti-corruption compliance in small and medium-sized enterprises (SME). This is due to their high vulnerability to any non-production costs. Our work presents an effort to answer these questions. Hereinafter, small and medium-size enterprises are understood to be businesses that follow the criteria below (Table 2).

Consider how the principle of **consistency** can be applied to a SME. The full volume of adequate anticorruption procedures includes a combination of activities aimed at shaping the

control environment and monitoring its state; also, the presence of a system for counteracting corruption risk, including implementing internal anticorruption controls and an effective system for communication and information exchange between different control divisions and management. There are a lot of anticorruption actions that can be implemented in a company. Transparency International offered a list of actions which includes 231 activities concerning 26 business processes. As of now, this list is the most comprehensive, recognized and methodically correct. This list of activities, of course, allows for further expansion. However, it contains a sufficient set of activities

Table 4

Additional anticorruption activities available to SME due to last initiatives

Process	Anticorruption activity
Membership	The Company participates in local collective activities on counteracting bribery and corruption, signing a joint "Anticorruption charter"
Suppliers and counterparties	The Company has a Due Diligence procedure for assessing counterparties and suppliers for the presence of effective anticorruption programs
	The Company has a procedure for informing counterparties and suppliers about its anticorruption program
	The Company informs the public about educational activities carried out for counterparties and suppliers
	The Company has procedures for monitoring the presence of effective anticorruption programs at its largest counterparties and suppliers
Training	There are procedures for continuing appropriate training of directors, managers and employees so that they clearly understand the company's program, know the company's expectations and the sanctions procedure in the event of a violation
	There are procedures for continuing appropriate training of agents so that they clearly understand the company's program, know the company's expectations and the sanctions procedure in the event of a violation
	There are procedures for providing continuing training where appropriate to contractors and suppliers on the program

that provide an opportunity to reduce the risk of corruption in core business processes, ensuring the implementation of the principle of consistency. But its implementation is expensive and not always acceptable even for large enterprises.

Certainly these activities cannot be fully realized at small and medium enterprises. To use this list for SME you should take into account their specificity, in other words, to adapt them for SME (**adaptability**). Out of the number of business processes that carry signs of increased corruption risk, the following are the most characteristic for an SME:

1. Operating activity.
2. Counterparties and suppliers (purchases/sales of goods and services).
3. Agents and intermediaries (attracting them to speed up completion of business tasks).
4. External communications (obtaining permits and licenses, tax audits, etc.).
5. Human resources.
6. Gifts and business hospitality.

In turn, out of the business processes that contribute to a decrease in corruption risk (so-called mitigating processes), the following can be identified:

7. Tone from the top.
8. Bookkeeping.
9. Membership in anticorruption business associations.
10. Training.

Considering the list of activities characteristic for small and medium enterprises it can be noted that the number of mitigating activities related to them is 95 concerning these 10 business processes [1].

For small and medium enterprises the effective anticorruption methodology should be in compliance with current anticorruption requirements and that can be implemented with minimum costs of their realization. In other words, the anti-corruption procedures must comply with the principle of **reasonable sufficiency**. This list may be used as a reference list of activities that contribute to lowering corruption risk. Expert evaluation of these activities on the basis

Table 5

Validation criteria for SME, complying with the ease of running principle

Criteria	Description of criteria	Business processes to be tested
1. The document, declaring anti-corruption policy of the company.	Internal regulations of the company are in compliance with Russian anti-corruption legislation	Operating activity; Human resources; Tone from the top.
2. The effectiveness of anti-corruption activities.	The company's anti-corruption actions are in compliance with recommended list	Operating activity; Gifts and business hospitality; Bookkeeping; External communications. Training; Suppliers and counterparties;
3. Monitoring and training	The company monitors compliance with anti-corruption measures, conducts regular trainings	Operating activity; Human resources; Training.
4. Participation in anti-corruption activities.	The company is involved in the process of collective anti-corruption and bribery actions.	Agents and intermediaries; Tone from the top; Membership; Suppliers and counterparties
5. Interaction with third parties	The company holds an effective anti-corruption measures in relation to third parties involved in its business activities	Agents and intermediaries; Suppliers and counterparties
6. Disclosure and transparency of doing business	The company discloses the information on implemented anti-corruption measures	Tone from the top; Membership; External communications
7. Feedback	There is an anti-corruption feedback in the company	Operating activity; External communications; Human resources
8. Management	Management of the company is in compliance with anti-corruption principles	Tone from the top; Human resources

of “value/cost” allows for their representation and comparison on a graph. Based on the results, processes with the highest value and lowest cost are identified and recommended for small and medium enterprises. The number of anticorruption actions decreased to 14 in 6 business processes. However, some business processes were not covered by the anti-corruption activities.

However, recent anti-corruption initiatives proposed by the Russian business community have helped change the situation. So, the opportunity to join the Anti-corruption Charter of Russian Business has enabled SME to participate in collective anti-corruption actions, without any additional financial expenses. In turn, participation in the self-evaluation process developed and proposed by the Russian Compliance Alliance, allows implementing of employs training and evaluation of anti-corruption compliance of suppliers and counterparties at minimum financial cost. The results of these activities are shown in *Table 4*.

Note that for “External communications”, no significant, adequate, low cost procedures

could be identified. These include such procedures as:

- the company has implemented the policy of facilitation payments monitoring,
- the company has implemented procedures and controls to ensure that political contributions are not used as a subterfuge for bribery.

It is apparent that from the first procedure other mechanisms should be identified, which will contribute to implementation of significant adequate anticorruption procedures into business practices of SME. However, as to the second procedure, you can offer the prohibition of political payments and payments to political parties. In this case, for all 10 SME business processes we have 23 anti-corruption procedures.

Finally, we apply the principle of **ease of running**, according to which audit procedures should not be burdensome to implement. To resolve this problem, we should define performance criteria and formulate the conditions under which the assessment of the performance criterion can be considered satisfactory. Here we present a summary (*Table 5*).

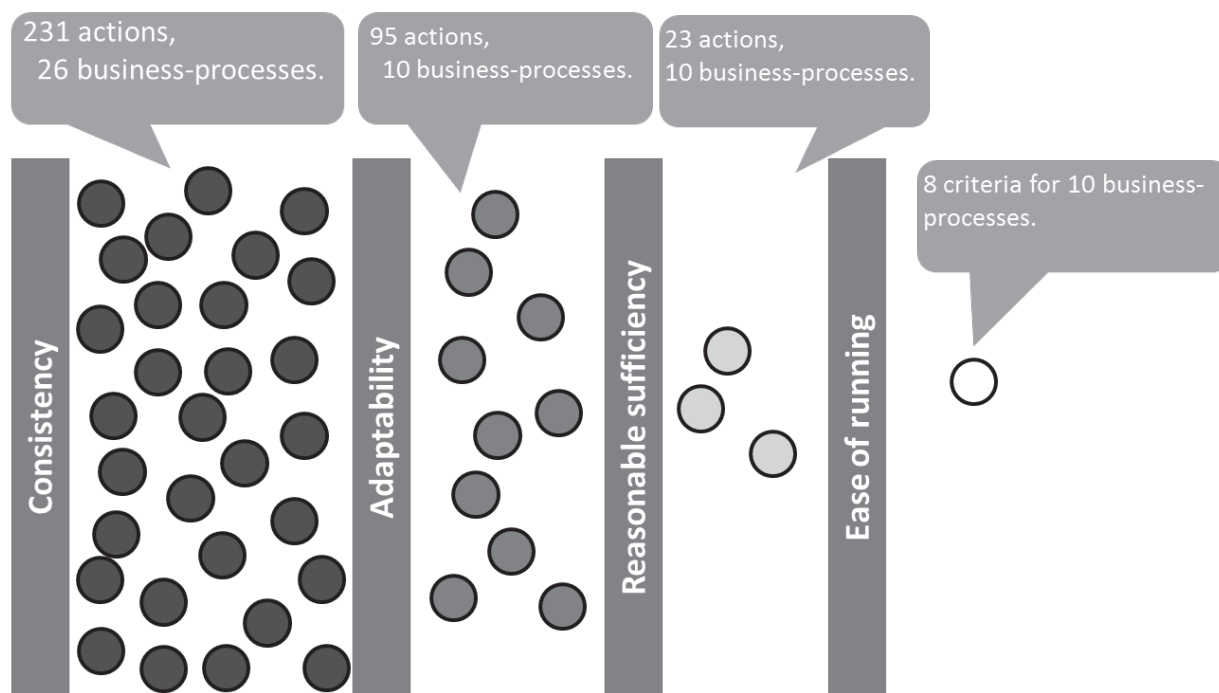


Fig. 2. The result of application of effective anti-corruption compliance principles

SUMMARY

Taking into account the diversity of financial and economic relations, the proposed criteria of anticorruption compliance should be sufficient for large, small and medium size enterprises. Moreover, to apply the same requirements for large, medium and small enterprises would be wrong. Consistency principle allows allocating 231 anti-corruption actions, which can be implemented in 26 business processes. The adaptability principle gives the opportunity for a SME to reduce the number of required anti-corruption measures to 95 for 10 business processes. Applying the principle of reasonable sufficiency, reduce the number of anti-corruption measures up to 23 in 10 business processes. The principle of ease of running gives 8 criteria for 10 business processes in an SME (see figure 2).

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