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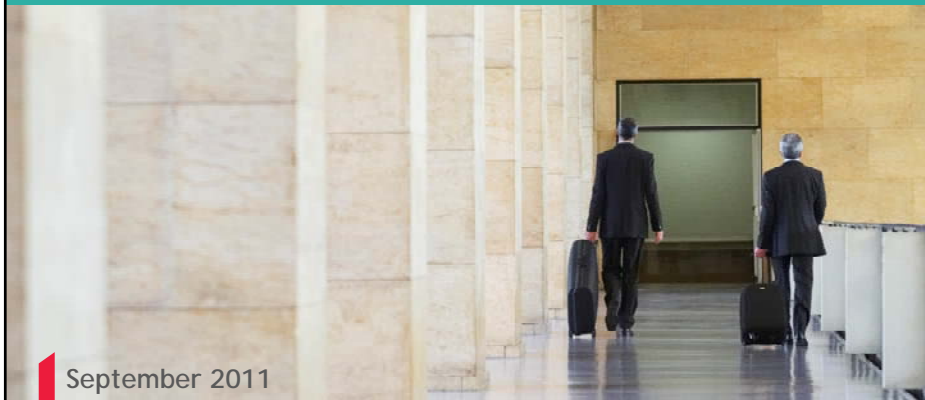
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## FCPA SERIES: DOING BUSINESS ABROAD - SPOTLIGHT ON RUSSIA



September 2011

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# INTRODUCTIONS

## MODERATOR



**Brian Mich, JD**  
 Managing Director  
 BDO Consulting  
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 (212) 885-8007

### Select Experience

- 25 years of experience as a consultant and prosecutor, investigating complex financial and white-collar crimes including FCPA violations, fraud, embezzlement, money laundering and tax violations. He co-chairs the firm's U.S. Anti-Corruption Compliance & Investigations Practice.
- Develops and implements anti-corruption compliance programs including the development of training programs. Assists counsel with internal investigations, including those in response to inquiries by the DOJ and SEC. Conducts FCPA Transaction Advisory Due Diligence.
- Prior to BDO, served as Senior Counsel to the Independent Inquiry Committee into the United Nations Oil-For-Food Programme in Iraq, where he conducted investigations of alleged corruption and mismanagement, interviewed witnesses, conducted financial analysis and documented recovery and review.
- Assistant District Attorney for the Queens County District Attorney's Office in the Economic and Environmental Crimes Bureau, Organized Crime and Rackets Bureau and Narcotics Investigations Bureau.

### Education

J.D., Villanova University School of Law  
 B.A., Colgate University

## PRESENTERS



**Barry M. Sabin**

Partner  
Latham & Watkins LLP  
[barry.sabin@lw.com](mailto:barry.sabin@lw.com)  
(202) 637-2299

### Select Experience

- Barry Sabin is a partner in the Washington, D.C. office of Latham & Watkins, where his practice is focused on white collar criminal and internal investigations, including accounting and securities fraud, healthcare fraud, Foreign Corrupt Practices Act (FCPA) matters, US congressional investigations, environmental, enforcement of sanctions and export control laws and complex civil litigation. He has significant experience with corporate investigations and enforcement matters across a range of industries, including energy, healthcare, aerospace, defense and government services. He also serves as global co-chair of the firm's Aerospace, Defense & Government Services industry group and is a member of the Corporate Governance Task Force.
- Mr. Sabin previously served the US Department of Justice (DOJ) for 18 years, most recently as Deputy Assistant Attorney General for the Criminal Division. In this role, Mr. Sabin supervised the Fraud, Appellate, Capital Crimes, Gangs and Counterterrorism Sections. Mr. Sabin served in a number of white collar task forces including Corporate Fraud, National Procurement Fraud and Identity Theft. He also represented the DOJ in front of the US Congress, where he testified 16 times on subjects such as international procurement fraud, attorney-client privilege, federal election fraud, USA PATRIOT Act and terrorist financing.
- Mr. Sabin also served as the Chief of the Criminal Division's Counterterrorism Section, where he led more than 55 attorneys and staff responsible for addressing US-domestic and international terrorism matters.
- Prior to his service at the DOJ, Mr. Sabin worked in private practice, focusing on corporate and securities, bankruptcy, real estate and healthcare matters.
- Mr. Sabin serves as a Fellow on a pro bono basis at the New York University School of Law's Center on Law and Security, focusing on national security issues.

### Education

- JD, New York University School of Law, 1987
- MA, University of Pennsylvania, 1984 magna cum laude
- BA(Hons), University of Pennsylvania, 1986

## PRESENTERS



**Irina Minskaya**

Legal Team Director  
ZAO BDO  
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### Select experience

- Track record of work in law practice - 14 years
- Management of major projects in the sphere of legal and finance consulting.
- Management of the projects, financed by MBRD, EBRD and other international financial institutions, e.g. management of the projects regarding analyses of intended expenditure of monetary funds and financial statements of designated institutions.
- Experience of developing of a scheme PPP.
- Experience of working with State bodies regarding projects of different variety.
- Management of complex Due Diligence projects (including investigative due diligence).
- Experience of sphere of Government purchases and organization of public auctions.

### Major assignments

- Designing of recommendations for reforming of city-forming enterprises and optimization of the management system of municipal finance (Ministry of economical development of Russia).
- Legal support of preparation of a bid book of participation of the RF and one of the cities of the RF in a major international winter competitions.

### Education

- University of Russian Education Academy

## PRESENTERS



**Martina Rozumberkova,**  
AVA, CBA, CFE,  
CAMS

Director  
BDO Consulting  
[mrozumberkova@bdo.com](mailto:mrozumberkova@bdo.com)  
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### Select Experience

- Martina Rozumberkova is a Director in BDO Consulting with more than 12 years of experience assisting clients with litigation support and investigations, including matters involving fraud and forensic investigations, as well as Foreign Corrupt Practices Act (“FCPA”) investigations and monitorships.
- Ms. Rozumberkova has conducted several FCPA investigations involving companies operating in the oil and gas, life sciences and freight forwarding industries in Latin America, Europe and Africa. She has been retained to conduct books and records reviews in connection with FCPA monitorships, including assisting the monitor for one of the largest FCPA monitorships involving numerous countries within Latin America, Europe, Russia and Africa. Ms. Rozumberkova has managed several international financial investigations in Europe, Latin America, Russia and the Middle East.
- Prior to joining BDO Consulting, Ms. Rozumberkova was a Director at FTI Consulting and has also worked for other consulting firms, including a “Big Four” firm. Her experience covers a wide range of industries, including oil and gas, manufacturing, telecommunications, medical devices, life sciences, construction, as well as computer hardware and software.
- Ms. Rozumberkova is fluent in Czech, Russian, French and Spanish.

### Professional Affiliations

- Association of Certified Anti-Money Laundering Specialists
- Association of Certified Fraud Examiners
- National Association of Certified Valuation Analysts
- The Institute of Business Appraisers

### Education

- M.B.A., International Management, University of St. Thomas
- B.S., Business and Economics, College of Economics, Prague, Czech Republic

## PROGRAM OBJECTIVES

Participants will:

- Recognize corruption risks associated with doing business in Russia
- Understand the anti-corruption enforcement efforts and legal framework in Russia
- Gain an understanding of the impact of the new Russian anti-corruption legislation upon information sharing and enforcement trends involving both public official and commercial bribery
- Become more knowledgeable regarding the recent FCPA enforcement matters brought by U.S. enforcement officials in Russia, including a focus on high-risk sectors and the role of third parties
- Gain an understanding the impact of the recently announced U.S. transnational organized crime strategy on FCPA enforcement efforts, including increased asset forfeiture risks
- Learn the elements of an effective compliance program for companies operating in Russia

## AGENDA

1. Brief Overview of FCPA
2. Corruption Risks in Doing Business in Russia
3. Combating Corruption in Russia: A Legal Perspective
4. Components of an Effective Compliance Program

## BRIEF OVERVIEW OF FCPA

## FOREIGN CORRUPT PRACTICES ACT OVERVIEW

- FCPA is a U.S. federal law enforced by the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ)
- Enacted in 1977 by U.S. Congress in response to SEC investigations in the 1970s
  - FCPA prohibits corrupt payments to foreign officials for the purpose of obtaining or retaining business
  - Anti-bribery
  - Books and records

## FOREIGN CORRUPT PRACTICES ACT ANTI-BRIBERY PROVISIONS

- Prohibits corrupt offers or payments to foreign government officials, political parties, political party officials or candidates, or to any person in order to gain an improper advantage
- The elements of this provision are:
  - Issuers, domestic concerns, and any person;
  - Making use of interstate commerce;
  - Corruptly;
  - In furtherance of an offer or payment of anything of value;
  - To a foreign official, political party, or candidate for political office;
  - For the purpose of influencing an official act of that foreign official in violation of the duty of that official or to secure any improper advantage in order to obtain or retain business.

## FOREIGN CORRUPT PRACTICES ACT BOOKS AND RECORDS PROVISION

These provisions require:

- That books, records, and accounts are kept in reasonable detail to accurately and fairly reflect transactions and dispositions of assets, and
- That a system of internal accounting controls is devised
  - To provide reasonable assurances that transactions are executed in accordance with management's authorization;
  - To ensure that assets are recorded as necessary to permit preparation of financial statements and to maintain accountability for assets;
  - To limit access without management's authorization; and to make certain that recorded accountability for assets is compared with the existing assets that at reasonable intervals and appropriate action is taken with respect to any differences.

## FOREIGN CORRUPT PRACTICES ACT LIABILITY

- Prosecution does not have to prove actual knowledge
- Company will be liable if it had reason to know that a corrupt payment has been made
- Companies are responsible for actions of their employees and intermediaries when engaged in company business
  - Comply with applicable laws
  - Adhere to standards of business conduct consistent with company's conduct guidelines
- Intermediaries include:
  - Agents
  - Consultants (including marketing/business development)
  - Distributors
  - Joint venture partners
  - Other parties doing business on a company's behalf



## FOREIGN CORRUPT PRACTICES ACT SIGNIFICANT PENALTIES FOR INDIVIDUALS & COMPANIES

### Individuals

- Up to \$5 million per record-keeping violation + up to 20 years in prison (applies to accounting/finance professionals)
- Up to \$250,000 per anti-bribery violation + up to 5 years in prison per violation (applies to business developers /marketing professionals)
- Company is prohibited from paying employee fines



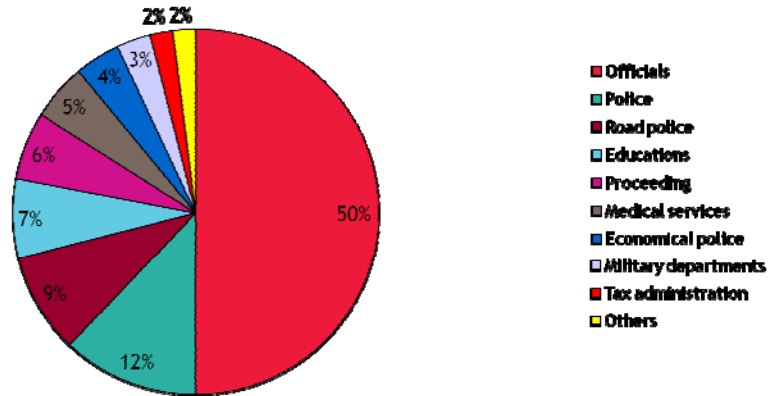
### Companies

- Up to \$25 million per record-keeping violation
- Up to \$2 million per anti-bribery violation
- Twice the pecuniary gain (or losses) from illegal activities
- Disgorgement of gross profits obtained from tainted business
- Post-enforcement monitoring
- Loss of State Department export licenses
- Disbarment from government contracts
- Disbarment from World bank, OPIC and the CFTC

## CORRUPTION RISKS IN DOING BUSINESS IN RUSSIA

## RUSSIA IN BRIEF STATISTICS ON FIGHTING CORRUPTION 2010

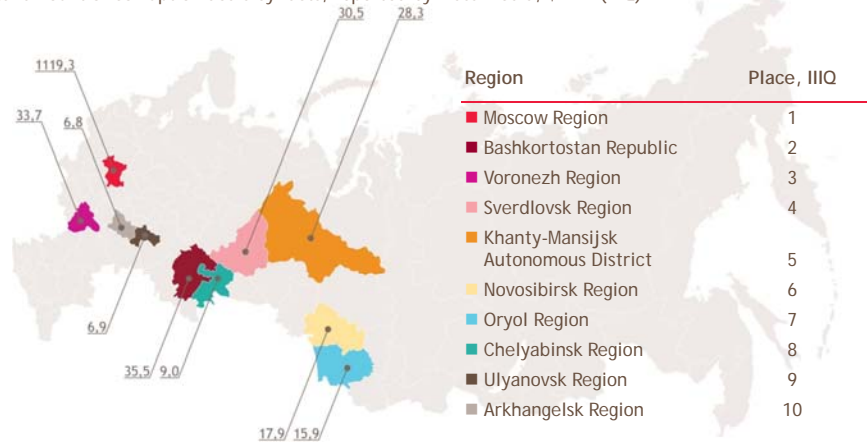
CORRUPTNESS BY PROFESSIONAL AREAS—DATA BY RUSSIAN MASS MEDIA 2010



## RUSSIA IN BRIEF STATISTICS ON FIGHTING CORRUPTION 2010

Corruptness by regions—data by Russian mass media for the 2010

Total amount of corruption deals by facts, reported by mass media, \$ mln (IIIQ):



## ANTI-CORRUPTION & ENFORCEMENT EFFORTS— LEGAL FRAMEWORK IN RUSSIA STATISTICS ON FIGHTING CORRUPTION 2010\*

Forbidden activity	Amount of registered offences	Amount of uncovered offenders (individuals)
Bribe-giving	16,917	5,67
Abuse of authority	1,588	630
Corrupt payment	1,569	757
Bribe-taking	7,747	2,488
Abuse of official position	4,795	3,323

## RUSSIA IN BRIEF INVESTMENT CLIMATE

### According to Standard & Poor's

- S&P has revised Russia's credit rating from "negative" to "stable," and affirmed Russia's BBB long-term foreign currency sovereign rating and A-3 short-term rating.
- By S&P's calculation, by the end of 2012, Russian reserves in USD will return to the amount of 2008. It allows the country to keep the position of netto-creditor for the foreseeable future.
- For the first time in a decade, the budget deficit will be at least 1-2% lower than the planned 8.3% GDP deficit. The result of 2010 and 2011 will be better, than planned 7.5% and 4.3% GDP deficit.
- S&P has noted some negative factors, including a weak banking system, corruption and resource-based economy.
- Economic activity remains very sensitive to oil prices. Productivity in resource and non-resource sectors remains one of the lowest in Europe.
- A weak public services sector and corruption will indirectly enhance demography problems (which, even without these factors remain, large), which will ultimately have an influence on public sector finances.

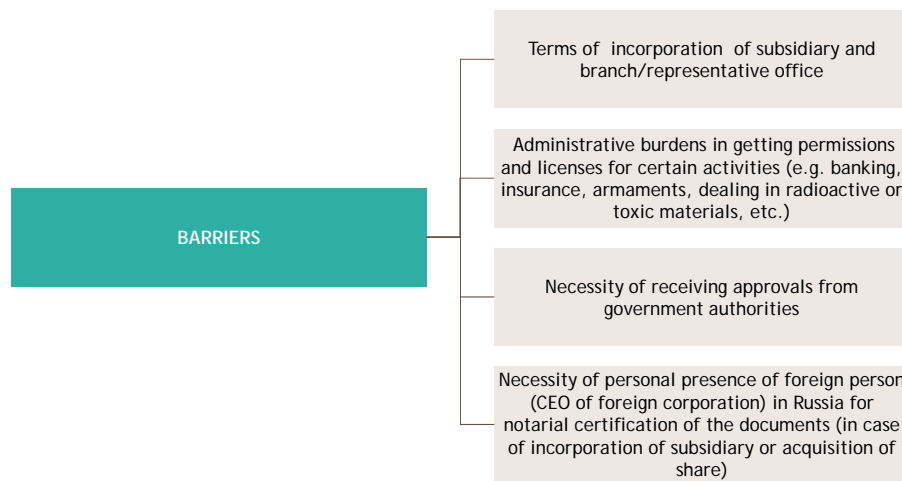
## RISK FACTORS FOR BUSINESS IN RUSSIA

### WAYS OF STARTING/DOING BUSINESS IN RUSSIA

- Acquisition of share in a Russian company's authorized capital
- Incorporation of subsidiary (formally independent legal entity)
- Incorporation of branch/representative office
- Conclusion of foreign trade contract
- Granting of loan/credit

## RISK FACTORS FOR BUSINESS IN RUSSIA

### SETTING UP BUSINESS IN RUSSIA



## RISK FACTORS FOR BUSINESS IN RUSSIA DOING BUSINESS IN RUSSIA

SPECIFICS

- Administrative pressure of regulatory and control authorities. "Bloated" system of regulatory and control authorities.
- Inconsistency of some legal provisions. Poor legal culture.
- Use of non-economic means of business competition
- Possibility of the founder and CEO being liable for the obligation of legal entity if actions of founder and CEO lead to insolvency (bankruptcy) of the legal entity
- CEO and founder of the legal entity can be subject to prosecution, tax or administrative liability in case of violation of law in connection with the business activity

## COMBATING CORRUPTION IN RUSSIA: A LEGAL PERSPECTIVE

## OVERVIEW

- Background: Corruption in Russia
- Combating Corruption: Russia's New Anti-Corruption Legislation
- Analysis of Recent FCPA Enforcement Actions Involving Russian Officials
- New U.S. Transnational Organized Crime Strategy & Asset Forfeiture Risks

## BACKGROUND: CORRUPTION IN RUSSIA

- Russia is widely recognized as one of the most corrupt countries in the world
  - Long history of corruption during Soviet & pre-Soviet era
  - Problems not adequately addressed with democratic regime change
- BRIC(SA) countries: Brazil, Russia, India, China (South Africa)
  - Fastest-growing and largest emerging markets economies
  - Highest risk of corruption
- High-Risk Sectors/Institutions
  - Mining, precious metals
  - Oil & gas
  - Utilities
  - Police (including traffic police)
  - Municipal bodies
  - Healthcare/pharmaceutical

## THE RANKINGS ARE IN...

- Transparency International
  - Corruption Index: 2.1/10 (0 = "highly corrupt," 10 = "very clean")
  - Corruptions Perceptions Index (2010):154/178
  - Bribe Payers' Index (2008): 22/22 (ranks top exporting countries based on likelihood of bribe)
  
- Public Perceptions
  - Statistics vary, but according to a 2008 Gallup poll, at least 75% of Russians believe corruption in government is widespread
  - 29% of Russian citizens and 56% of persons doing business in Russia have paid bribes

## "NATIONAL STRATEGY FOR COUNTERACTING CORRUPTION": FORWARD PROGRESS?

- Fighting corruption is one of President Medvedev's highest stated priorities
  - "I will repeat one simple, but very painful thing. Corruption in our country has become rampant. It has become commonplace and characterizes the life of the Russian society." (Meeting of the Council, 9.20.08)
  - "National Strategy for Counteracting Corruption" (approved by presidential order, 4.13.10)
- Ratification of UN Convention against Corruption (2006)
- Joined Group of States Against Corruption (2007)
- New Anti-Bribery Legislation (May 2011)
  - To support bid to accede to OECD Convention
- Invitation to join OECD Working Group on Bribery & Accession to OECD Anti-Bribery Convention (May 2011)

## OVERVIEW OF NEW LEGISLATION

### 3 BIG CHANGES

- 1) Expressly outlaws bribery of foreign (non-Russian) officials
  - Previous laws did not criminalize bribery of foreign officials & officers of public int'l organizations (in absence of int'l agreement allowing Russian officials to prosecute non-Russian officials)
- 2) Complete overhaul of system of criminal and administrative penalties
  - New method for calculating fines
  - Significant increases in monetary penalties for bribery in public & private sector
  - Longer prison terms
- 3) New Crime - "bribery intermediation" (criminal liability for third party intermediaries)
  - Direct delivery of bribe or other facilitation by third party or consultant (at request of bribe-taker or giver)
  - Also includes promise or proposal of bribery intermediation

## CRIMINAL CODE: PRIMARY ANTI-BRIBERY PROVISIONS

### What is corruption?

- Any of the following acts constitute corruption: active or passive bribery (including commercial bribery); abuse of authority; and any other unlawful abuse of a person's official function in violation of legitimate interests of the state and in pursuit of a corrupt objective

### Public Sector: Criminalizes both GIVING and RECEIVING a bribe

- **Accepting a bribe:** Prohibits acceptance of bribe by government official, foreign official, or official of public int'l organization
- **Giving a bribe:** Prohibits giving bribe (directly or through an intermediary) to a government official, foreign official, or official of public int'l organization

### Private Sector: Criminalizes Commercial Bribery

- Illegal receipt of money, securities, or other valuables, or illegal obtaining of services having an economic value, by a person responsible for managerial functions within a commercial or other organization, in exchange for acts/omissions in interests of donor which are connected with that person's managerial authority
  - E.g., kickbacks

*\*Criminal Code applies ONLY to individuals, NOT legal entities\**

## WHAT IS A “FOREIGN OFFICIAL”?

- **Foreign official =**
  - Any appointed or elected official holding any office within the legislative, executive, administrative, or judicial body of a foreign state, or any other person serving a public function in a foreign state (including public agency or public enterprise)
  - Employees of government-owned enterprises are likely considered “foreign government officials”
  
- **Open question:**
  - Are Russian authorities likely to deem employees of large U.S. companies in which U.S. government has a substantial equity position “foreign officials” under the Act?

## PENALTIES: CRIMINAL (FOR INDIVIDUALS ONLY)

### Criminal Penalties (for individuals only, NOT legal entities)

- Fines with potential prison sentence and restriction from occupying certain government positions
- 4-tier system (varies depending on conduct at issue and amount of bribe)
  - Small Bribes (< RUR 25,000)
  - Medium Bribes (RUR 25,000-150,000)
  - Large Bribes (RUR 150,000-1MM)
  - Extra-large Bribes (> RUR 1MM)
- Max fine = 100x amount of bribe (no more than RUR 500MM, or \$18.3MM), combined with disqualification or imprisonment
- Penalties are harsher for receiving than for giving
  - Max. 15 years imprisonment for state officials receiving bribe vs. max. 12 years for donor or bribe
  - Max. 12 years imprisonment for receiving commercial bribes vs. max 6 years for giving bribe
- Same penalties for 3rd party intermediaries conveying the bribes
  - Proportional fines, either with disqualification or up to 12 years of imprisonment

## PENALTIES: ADMINISTRATIVE (FOR COMPANIES)

### Administrative Fines (for companies)

- Companies are NOT subject to criminal sanctions, but may incur steep administrative fines for “unlawful remuneration on behalf of a legal entity”
- Fines vary depending on size of bribe
  - Fines vary from 1 million RUR to 100 million RUR (max. fine is 100x value of inducement)
- In addition to fine, companies are subject to simultaneous appropriation of the money, property, or rights offered or given as bribe
- Promises or proposals to provide unlawful remuneration are also subject to administrative penalties

## STATUTORY DEFENSES

- Individuals are released from liability in two situations:
  - 1) Extortion
    - Donor must prove that official extorted the bribe
  - 2) Voluntary Reporting
    - Bribe donor/intermediary voluntarily notifies authorities that the bribe was given

Full cooperation with subsequent investigation is pre-requisite for both

- Having adequate rules and procedures will NOT release companies from liability under the Administrative Code

## OTHER NEW LAWS PROMOTING TRANSPARENCY & REFORMING STATE PROCUREMENT

- **New Reporting Requirements & Conflict of Interest Rules**  
(Draft Law 539159-5):
  - State and Municipal Officials must report income, property, and financial obligations (also applies to spouses and minor children)
  - Two-year restriction on certain employment following office
  - Must report all bribe attempts to employer or relevant state body
  
- **Reforming State Procurement:**
  - Area currently unregulated, even though state-owned companies control significant portions of economy
  - New laws (which will enter into force in 2012) seek to reform regulation of state and municipal purchasing of goods, works, and services

## MEASURING UP: COMPARISON TO FCPA AND UK BRIBERY ACT

	U.S. (FCPA)	UK (Bribery Act)	Russia
Key Offenses	Bribing foreign official, failure to maintain books & records or internal accounting controls	Offering bribe, accepting bribe, bribing foreign official, failure to prevent bribery	Abuse of official position, active & passive bribery, commercial bribery, unlawful use of official function
Who is being bribed?	Prohibits bribes to "foreign officials" only	Prohibits bribes to "any person" to induce them to act "improperly" (includes purely private transactions)	Gov't & foreign officials, officials of public int'l orgs, and persons with managerial functions in commercial org
Jurisdiction	Domestic concerns, issuers, "any person" while acting in U.S.	Conduct inside UK or outside if person has "close connection" (British citizen/resident or UK company)	Crimes committed in Russia or by Russian citizens throughout world (provided no foreign court ruling). Extra-territorial conduct subject to admin. fine only if int'l treaty in place
Criminalization of receipt of bribe?	NO - only act of payment prohibited	YES - both bribing (active offense) & being bribed (passive offense) prohibited	YES - giving and receiving prohibited
Exception for Facilitation Payments ("grease payments")?	YES - exception for performance of routine, non-discretionary function	NO	NO
Criminal/Civil Enforcement	DOJ and SEC can bring civil & criminal actions	Criminal enforcement only by SFO	Criminal & admin. enforcement. No unified anti-corruption authority, various bodies involved.
Penalties	Imprisonment & criminal fines; civil fines and debarment	Imprisonment and potentially unlimited fines	Companies: admin. fines only; Individuals: criminal fines, imprisonment, restriction from gov't office

## IMPACT OF NEW LEGISLATION: WILL IT HAVE TEETH?

- Are harsh penalties feasible?
- Will penalties deter large-scale commercial bribery?
- Interplay with FCPA and UK Bribery Act?
- Increased cooperation with U.S. and other foreign authorities?
  - New provisions in admin. code provides for tools for requesting legal aid from abroad & processing such requests in Russia; also establishes rules concerning evidence obtained in foreign territory

## RECENT FCPA ENFORCEMENT ACTIONS: U.S. V DAIMLER AG (D.D.C. 2010)

- **The Company:**
  - German vehicle manufacturing company with business operations throughout the world
- **The Scheme:**
  - Improper payments to foreign officials to obtain vehicle contracts
  - Use of corporate ledger accounts, cash desks, offshore accounts, deceptive pricing, and third party intermediaries
- **Focus on Russia:**
  - Subsidiary DaimlerChrysler Automotive Russia (DCAR) made payments to Russian officials, often by over-invoicing customer and paying excess back to official
  - Payments to third parties with understanding that they'd be passed onto Russian officials
  - Wire transfers from Daimler AG's bank accounts in Germany to U.S. and Latvian bank accounts held by shell companies with the understanding that money was for Russian officials
  - Piggybacking: Russian authorities commenced criminal proceedings after Daimler admitted to conduct to resolve U.S. investigation

## U.S. V DAIMLER AG (CONT.)

### The U.S. Penalty:

- Parent company admitted to violations of books & records provisions
  - 3-year DPA with independent monitor & compliance program
  - \$93.6MM fine to DOJ
  - \$91.4MM in disgorgement to settle SEC charges
  
- Certain subsidiaries (including DCAR) pleaded guilty to anti-bribery violations
  - DCAR: Criminal penalty of \$27.2MM

### Noteworthy:

- One of largest FCPA dispositions ever (combined fine of \$185 million), involved 22 countries and conduct spanning 10 years
- Prime example of coordination between U.S. & Russian enforcement authorities
- Use of third party intermediaries

## U.S. V. PANALPINA WORLD TRANSPORT (S.D. TEX. 2010)

### The Company:

- PWT = Global freight forwarding and logistics service firm based in Switzerland

### The Scheme:

- Over five years, allegedly paid almost \$50MM in bribes to foreign officials in Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia, and Turkmenistan to help itself and customers circumvent local rules & regulations and obtain preferential customs, duties, and import treatment for int'l freight shipments
- Improperly recorded & invoiced bribes paid on behalf of clients to make them appear to be legitimate

### Focus on Russia:

- \$7MM in bribes to Russian officials responsible for assessing & collecting duties on imports
- Purpose of bribes: avoid delays & admin. fines for missing/incomplete documentation, avoid problems arising from improper use of Temporary Import Permits, bypass customs process altogether

## U.S. V. PANALPINA (CONT.)

### The U.S. Penalty:

- Parent resolved entered into a 3-year DPA:
  - \$70MM penalty
  - Revision of existing policies & procedures
  - Yearly report to DOJ on remediation and implementation of compliance program
- U.S. subsidiary pleaded guilty to conspiracy to violate books & records and aiding & abetting
  - \$70MM penalty
  - Implementation of compliance program
- U.S. subsidiary also resolved SEC charges
  - Disgorgement of \$11.3MM in illicit profits
- PWT's customers paid \$51MM in fines to DOJ and disgorged \$33MM in profits to settle SEC civil charges

## U.S. V. SIEMENS AG (D.D.C. 2008)

### The Company:

- German company, one of world's largest industrial and consumer products manufacturer

### The Scheme:

- Improper payments in Argentina, Bangladesh, China, Iraq, Israel, Mexico, Nigeria, Russia, Venezuela and Vietnam from 2001 to 2007
- Systematic efforts to falsify books & records and circumvent internal controls (use of false invoices, slush funds, payment intermediaries, sham "consulting agreements," offshore accounts, etc).

### Focus on Russia:

- \$750,000 to officials of the Moscow Project Implementation Unit, a quasi-government entity in Russia responsible for implementing traffic control system in Moscow
- \$55MM in bribes through Dubai intermediary to Russian state-owned hospitals in connection with sales of medical equipment

## U.S. V. SIEMENS AG (CONT.)

### The U.S. Penalty:

- Largest FCPA settlement ever
  - DOJ: Siemens AG & subsidiaries pleaded guilty to violating books & records provisions, total criminal fine of \$450MM
  - SEC: \$350MM in disgorgement
- Unprecedented level of cooperation between U.S. & foreign authorities
  - \$800MM in penalties to German authorities
- Settlement with WBG over allegations involving Russian urban transport project: \$100MM payment over 15 years to anti-corruption efforts; temporary debarment from WBG projects

### Asset Forfeiture: New Trend?

- Separate forfeiture action to recover \$3MM held in Singaporean bank accts (alleged proceeds of conspiracy to pay Bangladeshi officials and family members in connection with public works projects)
- U.S. law enforcement officials: “shows the lengths to which the U.S. law enforcement will go to recover proceeds of foreign corruption”

## SEC V. BAKER HUGHES (S.D. TEX 2007)

### The Company:

- U.S. corporation, global provider of oilfield services and products

### The Scheme:

- Alleged improper payments to agents in 8 countries, including Kazakhstan, Nigeria, Angola, Indonesia, Russia, and Uzbekistan from 1998-2005; failure to conduct adequate due diligence
- Payments in Kazakhstan related to development of oil & gas field

### U.S. Penalty:

- \$23MM disgorgement and \$10MM fine to SEC (for violation of existing cease & desist order)
- Compliance monitor

## CURRENT INVESTIGATIONS

### Hewlett Packard (HP)

- April 2010 - Russian investigators raided the HP's Moscow offices at the request of German authorities, who have been investigating whether HP executives paid bribes to win a contract to sell computer equipment to the office of the prosecutor general of the Russian Federation
- DOJ & SEC are also investigating matter, and have requested info on involvement of Russian personnel in kickbacks

### Deere & Co.

- Farm equipment manufacturer currently under investigation in connection with potentially illicit payments made to Russia & other Eastern European countries
- Requests from SEC to produce documents relating to Deere's activities & those of third parties

## TREND: INCREASED INT'L COOPERATION?

- Int'l regulators cooperating to a greater extent than ever in anti-corruption efforts
- OECD encourages member countries to cooperate with authorities in other countries
  - Recent report praised U.S. enforcement agencies for frequent initiation of int'l cooperation
- Key Examples:
  - Siemens: high degree of cooperation between U.S. & European authorities; U.S. considered enforcement activities of non-U.S. regulators in determining ultimate disposition of matter
  - H-P Investigation: effective cross-border cooperation between Russian, German, and U.S. authorities

## U.S. STRATEGY TO COMBAT TRANSNATIONAL ORGANIZED CRIME (TOC)

### Five strategic objectives:

1. Protect Americans and partner countries from harm, violence, and exploitation of transnational criminal networks
2. Help partner countries strengthen governance and transparency, break the corruptive power of transnational criminal networks, and sever state-crime alliances
3. Break economic power of transnational criminal networks and protect strategic markets and the U.S. financial system from TOC penetration and abuse
4. Defeat transnational criminal networks that pose the greatest threat to national security by targeting their infrastructures, depriving them of their enabling means, and preventing the criminal facilitation of terrorist activities
5. Build international consensus, multilateral cooperation, and public-private partnerships to defeat transnational organized crime

## STRATEGY TO COMBAT TOC (CONT.)

### New capabilities and tools:

- **Executive Order** - establish sanctions program to block property of transnational criminal organizations that threaten national security, foreign policy, economy of U.S.
- **Legislative proposals** - enhance authorities available to investigate, interdict, and prosecute the activities of top transnational criminal networks
- **Presidential Proclamation** - deny entry under INA to transnational criminal aliens and others targeted for financial sanctions
- **Rewards program** - help obtain information leading to arrest and conviction of the leaders of transnational criminal organizations (modeled after successful narcotics awards program)

## STRATEGY TO COMBAT TOC FOCUS ON RUSSIA

- Strategy explicitly identifies Russian organized crime networks (including the Mogilevich organization) as growing threat to American interests
- Collusion between Russian organized crime syndicates & criminally-linked oligarchs and state actors to undermine competition in strategic markets such as gas, oil, aluminum, and precious metals

## STRATEGY TO COMBAT TOC ASSET FORFEITURE

- **Kleptocracy Asset Recovery Initiative (2010)**
  - Part of DOJ Asset Forfeiture & Money Laundering Section
  - 5 staff attorneys
  - To combat large-scale corruption and recover public funds for their intended use
  - Specifically targets assets of corrupt foreign officials
- **Siemens AG: Key Example**
  - Following FCPA settlement, separate forfeiture action alleged FCPA violations as predicate offenses subjecting banks to forfeiture
  - Forfeiture of \$3MM in payments allegedly made to the son of the former Prime Minister of Bangladesh, Arafat Rahman ("Koko") & others in exchange for government contracts connected to a digital cellular mobile phone network
- **New Era of Accountability?**
  - Foreign officials who receive bribes are not subject to prosecution under FCPA, but will DOJ regularly start pursuing their assets in connection with FCPA actions?

## COMPONENTS OF AN EFFECTIVE COMPLIANCE PROGRAM

## DEFERRED PROSECUTION AGREEMENT BETWEEN JOHNSON & JOHNSON AND U.S. DOJ ATTACHMENT C - CORPORATE COMPLIANCE PROGRAM

1. Clearly articulated corporate policy against violation of the FCPA
2. Promulgation of compliance standards and procedures designed to reduce the prospect of violations of the anticorruption laws and J&J compliance code
3. Designation of senior compliance officer
4. Mechanism for effective communication of policies, standards and procedures to all directors, officers, employees and where appropriate to agents and business partners
5. System for reporting suspected criminal conduct and/or violations of the compliance policies, standards and procedures
6. Appropriate disciplinary procedures

**DEFERRED PROSECUTION AGREEMENT BETWEEN  
JOHNSON & JOHNSON AND U.S. DOJ  
ATTACHMENT C - CORPORATE COMPLIANCE  
PROGRAM (CONT.)**

7. Appropriate due diligence for retention and oversight of agents and business partners
8. Standard provisions in agreements, contract and renewals with agents and business partners:
  - a) Anticorruption representation and undertaking to compliance with the anticorruption laws
  - b) Rights to conduct audits of the books and records of the agents and business partner
  - c) Rights to terminate an agent or business partners a result of any breach of anticorruption laws
9. Periodic testing of the compliance code, standards, and procedures

**DEFERRED PROSECUTION AGREEMENT BETWEEN  
JOHNSON & JOHNSON AND U.S. DOJ  
ATTACHMENT D: ENHANCED COMPLIANCE  
OBLIGATIONS**

- Compliance department
- Gifts, hospitality and travel
- Complaints and reports
- Risk assessments and audits
- Acquisitions
- Relationships with third parties
- Training
- Annual certifications

## COMPLIANCE DEPARTMENT



## ANTI-CORRUPTION POLICIES AND PROCEDURES

### Areas of Anti-Corruption Policies and Procedures:

- Overview of FCPA and other applicable laws
- Areas of high risk and required compliance in these areas
- Facilitating payments
- Dealing with third parties
  - Due diligence on third parties
  - Overall rules for dealing with third parties
  - Training for third parties
  - Compliance review for third parties
- Training
- Reporting of violations
- Employee certification form
- Periodic compliance reviews

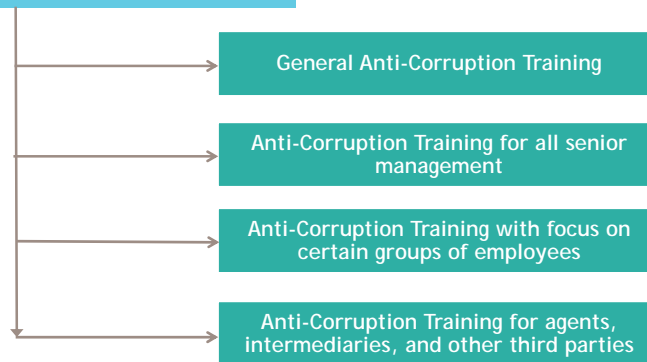
## ANTI-CORRUPTION TRAINING

*“I don’t understand how the FCPA relates to me. I just give people cash”*

- Actual statement of cashier in Russia who handled over U.S. \$2,000,000 in petty cash annually.

## ANTI-CORRUPTION TRAINING (CONT.)

Recommended types of Anti-Corruption Training



## ANTI-CORRUPTION TRAINING (CONT.)

### Topics to Cover in Training:

- Overview of the FCPA and other applicable laws
- Overview of compliance with locals laws
- Current Trends
- Employee conduct:
  - Applying recordkeeping and internal control procedures
- Dealing with agents, intermediaries, and other third parties
  - Commission payments and approval process;
  - Recordkeeping and internal control procedures;
  - Customs and freight payments; and
  - Prohibited payments.

## ANTI-CORRUPTION TRAINING (CONT.)

### Topics to Cover in Training, continued:

- High-risk areas depend on company specifics, but at the least the following areas need to be addressed:
  - Cash and petty cash payments;
  - Rules for hospitality, travel and entertainment, gifts for government officials;
  - Pricing discounts;
  - Charitable and political contributions;
  - Payments to police and national guard;
  - Approval processes on various levels;
  - Facilitating payments;
  - Red flags;
  - Reporting of violations; and
  - Employee certification form.



## PERIODIC (ANNUAL) REVIEWS (CONT.)

### Components of periodic review:

- Interview with employees in high-risk areas for possible non-compliance/violations:
  - Employees in direct contact with any governmental officials;
  - Sales, marketing and business development;
  - Employees in direct contact with third parties;
  - Employees in direct contact with processing agents (freight forwarders, custom gents, etc);
  - Finance and accounting employees; and
  - Mid and high level management.
- Sample testing of transactions to determine compliance with books and record provision.

## PERIODIC (ANNUAL) REVIEWS (CONT.)

### Major issues encountered during investigations/reviews and monitorships in Russia:

- Heavy reliance on cash payments for employee travel reimbursement, advance payments, first salaries for new employees, etc.
- cursory review versus substantive review
- Reliance on review by other person or other department
- Incomplete/missing supporting documentation except for invoice from intermediaries (missing shipping documents, customs forms, etc.)
- Travel and entertainment reimbursements
- Entertainment versus gifts
- Language barrier



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## Q&A

## AC'SENSE PROGRAMMING

Ac'sense<sup>SM</sup> Programs and Website:  
<http://www.bdo.com/acsense/>

NOTE: Link to a self-study course of today's program will be available shortly at:

<http://www.bdo.com/acsense/events/FCPARussia.aspx>

Currently scheduled webcasts:

2011 Q3 Technical Update - October 6, 2011

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5. Note: CLE credit is only available for the live webcast. CLE will NOT be made available for the self-study version of this course.

## EVALUATION

- We continually try and improve upon our programming and appreciate constructive feedback
- Following the program, we will be sending out a thank you e-mail that contains a link to a brief evaluation
- Thank you in advance for your consideration!

THAT CONCLUDES TODAY'S PROGRAM.



Thank you for attending!