

The Year in Review

Volume 50 *International Legal Developments*
Year in Review: 2015

Article 44

January 2016

Russia/Eurasia

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Recommended Citation

Maria Grechishkina et al., *Russia/Eurasia*, 50 ABA/SIL YIR 655 (2016)
<https://scholar.smu.edu/yearinreview/vol50/iss1/44>

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

Russia/Eurasia

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This article reviews international legal developments in Russia and Eurasia in 2015, including changes to Russian contract law and current developments in Russian and Ukrainian anti-corruption law.

I. Russia

A. KEY CHANGES TO THE RUSSIAN CONTRACT LAW IN 2015

Federal Law 42-FZ, which came into effect on June 1, 2015¹ (the “2015 Amendments”), continued a reform of the Russian Civil Code which began several years ago,² introducing a number of new legal concepts into the law of obligations set forth in Part One of the Civil Code³ (the “Civil Code”).

This overview of the 2015 Amendments will focus on the amendments that significantly expanded key legal concepts already existing in the Civil Code, and introduced new concepts and legal instruments as well as amendments that reinforced legal instruments already in use. A significant part of these novelties was borrowed from foreign law and

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1. See Federal’nyi Zakon RF o Vnesenii Izmeneni’ v Chast’ Pervuyu Grazhdanskogo Kodeksa Rossiiskoi Federatsii [Federal Law of the Russian Federation on Amendments to Part One of the Civil Code of the Russian Federation], ROSSIISKAIA GAZETA [ROS. GAZ.] Mar. 13, 2015 *available at* <http://rg.ru/2015/03/13/izm-gk-dok.html>.

2. See Ukaz Prezidenta RF No. 1108 o Sovershenstvovanii Grazhdanskogo Kodeksa Rossiiskoi Federatsii (v redaktsii July 29, 2014) [Decree of the President of the Russian Federation No. 1108 on Improvements to the Civil Code of the Russian Federation (as amended on July 29, 2014)], SOBRANIE AKTOV PRESIDENTA I PRAVEITSELSTVA ROSSIISKOI FEDERATSII [SAPP] *available at* <http://kremlin.ru/acts/bank/27787> (last visited on Nov. 20, 2015).

3. See GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] Part 1 [Civil Code] (Russ.).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

656 THE YEAR IN REVIEW

international private law unifications, while others were prompted by established business practices.

1. *Requirement of Good Faith During Pre-Contractual Negotiations*

In the initial version of the Civil Code adopted in 1994, a concept of good faith, a well-known legal doctrine in the countries with developed legal systems and international private law unifications, was mentioned only once: pursuant to Article 10, “good faith” and reasonableness of the participants in the civil law relationship were presumed.⁴ At the outset of the current Civil Code reform, the concept of “good faith” was promoted in the ranks and placed in the very first article of the Code.⁵

As noted by some scholars, in the absence of more specific statutory provisions, the legal practitioners encountered a number of difficulties in characterizing behavior as lacking in “good faith” in the context of contract negotiations.⁶ In many cases, a resolution of the dispute was based solely on deciding the issue of subjective good faith of the participants.

The 2015 Amendments expanded the application of the principle of good faith to contract negotiations, establishing a requirement for the parties to act in good faith throughout the negotiation process. Under the new rule, the parties should not enter into and proceed with negotiations when they have no intention of entering into an agreement, and the parties must refrain from providing incomplete or inaccurate information during the course of negotiations.⁷ If a party unfairly conducts or terminates negotiations, the other party is entitled to damages, which shall include coverage for loss of opportunity to enter into an agreement with a third party.⁸

The 2015 Amendments also allow parties to regulate the manner of conducting their negotiations via a separate agreement; that agreement can define their rights and obligations during the course of negotiations, provide for allocation of the parties’ expenses in the course of negotiations, and allow for liquidated damages for breach of pre-contractual obligations.⁹

2. *Representations and Warranties*

The 2015 Amendments introduce a new concept of “representations regarding circumstances” relevant to the parties entering into an agreement and impose liability for inaccurate representations.¹⁰

4. *See id.*, art. 10.

5. Federal’nyi Zakon RF o Vnesenii Izmenenii v Glavi 1, 2, 3 i 4 Chasti Pervoy Grazhdanskogo Kodeksa Rossiiskoi Federatsii, Statya 1 [Federal Law of the Russian Federation on Introduction of Changes to Chapters 1, 2, 3, and 4 of Part I of the Civil Code of the Russian Federation, art. 1], ROSSIISKAYA GAZETA [Ros. Gaz] Jan. 11, 2013.

6. *See* Elena Bogdanova, *Principle of Good Faith Contractual relationship in Russian and Foreign Law*, ACTUALNIYE PROBLEMY ROSSIISKOGO PRAVA, July 2014, at 1363–69, available at http://portal-msal.ru/10-7256/article_101021.html (Russ.); Denis Karkhalev, *Preddogovornaya Otvetstvenost’ v Grazhdanskom Prave*, JURIST, No. 20, 2013 (Russ.).

7. *See* Civil Code, *supra* note 1, art. 434.1(2).

8. *See id.*, art. 434.1(3).

9. *See id.*, art. 434.1(5).

10. *See id.*, art. 431.2(1-2).

VOL. 50

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

RUSSIA/EURASIA 657

For liability to arise, it is necessary to establish that (1) the misrepresenting party knew that the other party relied upon the misrepresentation or had reasonable grounds to do so, and (2) the misrepresentation concerned circumstances which are relevant to the other party entering into the agreement, the agreement's performance, or the agreement's termination.¹¹ The examples listed in the statute include, among others, misrepresentations concerning the subject matter of the contract, the authority to enter into a contract, the agreement's compliance with the applicable law, and the financial condition of the contracting party.¹²

The remedies for the aggrieved party include the following:

- (i) >Damages incurred as a result of a misrepresentation;
- (ii) Repudiation of the contract in case of a material misrepresentation;
- (iii) Payment of liquidated damages by a misrepresenting party; and
- (iv) Request for invalidation of the contract for mistake or fraud.¹³

Even if the misrepresenting party was not aware that its representations were not accurate does not relieve that party from liability (unless otherwise provided for in the contract).¹⁴

3. *Indemnity for Losses Not Related to the Breach*

Pursuant to the 2015 Amendments, an indemnity mechanism was introduced into commercial agreements, shareholder agreements, and agreements for the sale and purchase of shares.¹⁵

The parties can now agree that one party will indemnify the other party for any losses specified in the agreement, which do not relate to the breach of the obligation under the agreement itself. Losses incurred as a result of tax or other claims by the state authorities or claims brought by third parties can be subject to indemnification.¹⁶

For indemnification to apply, the amount of the indemnity must be defined in the agreement.¹⁷ Unless the indemnitee intentionally contributed to increase the amount of loss, a court cannot decrease the amount otherwise payable as indemnity.¹⁸ It is yet to be determined by courts what actions can be viewed as having contributed to a loss. Notably, the indemnitor will have a right of recourse against the third person if the losses were incurred as a result of unlawful acts of such third person.¹⁹

11. *See id.*, art. 431.2(1).

12. *See id.*

13. *See* Civil Code, *supra* note 3, articles 431.2(2), (3). Note that the concept of a transaction entered as a result of deceit or mistake existed in the Civil Code even before the 2015 Amendments. The Code provided that the aggrieved party can seek to invalidate such a transaction. *See* GRAZHDANSKII KODEKS ROSSIOSKOI FEDERATSII [GK RF] [Civil Code], arts. 178, 179.

14. *See* Civil Code, *supra* note 3, art. 431.2(4).

15. *See id.*, arts. 406.1(1), (5).

16. *See id.*, art. 406.1(1).

17. *See id.*

18. *See id.*, art. 406.1(2).

19. *See id.*, art. 406.1(4).

SPRING 2016

PUBLISHED IN COOPERATION WITH
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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

658 THE YEAR IN REVIEW

4. *Conditional Agreements*

The 2015 Amendments expressly allow conditioning of one party's performance of its contractual obligations upon occurrence of certain circumstances, including those within full control of the other party.²⁰ This right was not clearly recognized by the Russian courts prior to the 2015 Amendments.²¹ As recently clarified by the Russian Supreme Court, the parties can condition performance of certain obligations on, for example, obtaining a bank guarantee or registration of property rights.²²

5. *Waiver of Rights*

The 2015 Amendments introduced provisions similar to the common law concept of waiver of rights.²³ Specifically, the 2015 Amendments provide that when a party gains permission—pursuant to the Civil Code provisions, other laws, or by agreement—to exercise certain contractual rights, that party may refuse to exercise such rights. The party will be precluded from exercising those contractual rights in the future unless the circumstances that permit the party to exercise such rights arise again. The rule is applicable to persons engaged in “entrepreneurial activities.”²⁴

Also, if the party is entitled to repudiate a contract, but accepts the performance from the other party, the contract will be deemed affirmed. The affirming party is not entitled to repudiate the contract on the same grounds.²⁵

In addition, a party who accepted performance from the other party under the contract, but who fails to perform its own obligations (in whole or in part), will be precluded from challenging the validity of the contract (except in very limited circumstances).²⁶

6. *Option to Enter in Agreement and Option Agreements*

The 2015 Amendments introduce two types of option agreements to the Civil Code. The first new instrument is an option to enter into an agreement. In this case, one party extends an offer to enter into a particular agreement. This offer is irrevocable and is valid for a certain period of time. The other party pays a fee for the opportunity to accept the offer within that period of time. The fee is not refundable if the offeree does not accept the offer before it expires.²⁷

20. See Civil Code, *supra* note 3, art. 327.1.

21. *But see* Civil Code, *supra* note 3, art. 157(1) (generally providing for a possibility of entering into a contract subject to a “condition precedent”).

22. Postanovleniye Plenuma Verkhovnogo Suda RF ? Primenenii Sudami Nekotorih Polozheniy Razdela I Chasti Pervoy Grazhdanskogo Kodeksa RF [Resolution of the Plenum of the Supreme Court of the Russian Federation ?n Application by Courts of Certain Provisions of Section I of the Part One of the Civil Code of the Russian Federation] ROSSIJSKAIA GAZETA [ROS. GAZ] June 30, 2015 *available at* <http://rg.ru/2015/06/30/grkodeks-dok.html>.

23. As a general rule set forth in Article 9 of the Civil Code, waiver of rights does not lead to termination of such rights, and has no legal effect, unless otherwise provided for in the law. See Civil Code, *supra* note 3, art. 9.

24. See *id.*, art. 450.1(6).

25. See *id.*, art. 450.1(5).

26. See *id.*, art. 431.1(2).

27. See *id.*, art. 429.2.

VOL. 50

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

RUSSIA/EURASIA 659

The other option instrument does not envision parties entering into a separate agreement, but provides for a possibility for the parties to an existing contract to agree that one party (a requesting party) has a right to request performance of certain actions from the other party (such as payment or transfer of property) within a certain time. The requesting party pays for the right to request this performance. This right terminates if the requesting party does not request that the obligation be performed within the certain time.²⁸

7. *Independent Guarantees*

Prior to the 2015 Amendments, independent guarantee issued by a bank was the only form of available independent guarantee. The Amendments provide for an independent guarantee issued by *any* commercial entity as means of securing contractual obligations.²⁹ This instrument, free of collateral obligations, might become very popular among commercial entities as an alternative to suretyship.

8. *Security Payments*

A mechanism of providing funds as security, widely used in real estate transactions in Russia, has now received legislative reinforcement. A security deposit can be provided to secure existing or future obligation (including compensation of damages and payment of penalties) and will be credited towards performance of the obligation, subject to the occurrence of the events defined in the agreement, or must be returned if such events do not occur.³⁰

9. *Framework Agreements*

Framework agreements determine general conditions and provide for open terms, which are to be stated through submission of requests and specifications by one of the parties. Given the widespread use of framework agreements in business practice for years, their codification by the 2015 Amendments is an important addition to the Civil Code.³¹

B. DEVELOPMENTS IN THE RUSSIAN ANTI-CORRUPTION LAW

The problem of corruption in Russia has gained immense urgency in recent years. Nowadays, corruption is the main negative feature of public administration institutions that prevents effective socio-economic development of the country. Consequently, the enactment and implementation of anti-corruption laws have been a priority for reform in the Russian legal system.

The following portion of this article explores current developments in Russia's efforts to combat corruption, including the recently enacted Anti-Corruption Plan and other changes in the anti-corruption laws.

28. *See id.*, art. 429.3.

29. *See* Civil Code, *supra* note 3, art. 368.3.

30. *See id.*, arts. 381.1–382.1.

31. *See id.*, art. 429.1.

SPRING 2016

PUBLISHED IN COOPERATION WITH
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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

660 THE YEAR IN REVIEW

1. *Background Developments in the Anti-Corruption Law*

In December of 2008, Russia enacted the Federal Law “On Corruption Counteraction.”³² Although this statute established basic principles for the counteraction of corruption and the legal framework for its prevention, enforcing the law was problematic for a number of reasons. First of all, the statute was vague and overbroad. Further, the statute did not provide any specific mechanisms for fighting corruption. When the problem of enforcing the law remained, it was necessary to enact amendments to this legislation.

To address the shortcomings in the earlier legislation, the Russian government launched an anti-corruption campaign in 2010, as set forth in the Presidential Decree dated April 13, 2010.³³ This campaign introduced a host of additional anti-corruption measures. For example, in May 2011, the Russian legislature passed Amendments to the Criminal Code and the Code of Administrative Offenses of the Russian Federation that introduced longer periods of imprisonment and higher fines as penalties for giving and receiving commercial and other bribes.³⁴

Another development came on April 17, 2012, when Russia joined the Organization for Economic Cooperation and Developments Convention on Combating Bribery of Foreign Officials in International Business Transactions.³⁵ In joining the organization, Russia was now required to cooperate with other countries in combating corruption.

Further changes came about in January of 2013, when Russia implemented amendments to the Anti-Corruption Law that required companies operating in Russia to establish compliance programs and adopt measures to prevent corruption.³⁶

By implementing these laws, Russia made a significant leap toward strengthening its legislative framework and aligning it with other internationally recognized national

32. See Federal'nyi Zakon RF No. 273-FZ o Protivodeistvii Korruptsii [Federal Law of the Russian Federation No. 273-FZ on Corruption Counteraction], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Collection of Legislation] 2008, No. 52, Item 6228.

33. See Ukaz Prezidenta RF No. 460 o Natsional'noi Strategii Protivodeistvia Korruptsii i Natsional'nom Plane Protivodeistvia Korruptsii na 2010-2011 Godi. [Decree of the President of the Russian Federation No. 460 on National Strategy for Counteraction of Corruption and National Plan for Counteraction of Corruption for the Years 2010-2011], ROSSIISKAIA GAZETA [ROS. GAZ.] April 14, 2010.

34. See Federal'nyi Zakon RF No. 97-FZ o Vnesenii Izmeneni' v Ugolovni' kodeks Rossiiskoi Federatsii i Kodeks Rossiiskoi Federatsii ob Administrativnih Pravonarusheniakh v Zv'azi s Sovershenstvovaniem Gosudarstvennogo Upravleniia v Oblasti Protivodeistvia Korruptsii [Federal Law of the Russian Federation No. 97-FZ on Amendments to the Criminal Code and the Code of Administrative Offences of the Russian Federation toward Improvements in the State Efforts to Combat Corruption], ROSSIISKAIA GAZETA [ROS. GAZ.] May 6, 2011.

35. See Andy Spalding, *The Russian Federation Joins the OECD Convention Against Bribery*, AMERICAN SOCIETY OF INTERNATIONAL LAW (June 5, 2012), http://www.asil.org/insights/volume/16/issue/19/russian-federation-joins-oecd-convention-against-bribery#_ednref1.

36. See Federal'nyi Zakon RF No. 231-FZ o Vnesenii Izemeneni' v Otdel'nie Zakonodatel'nie Akti Rossiiskoi Federatsii v Zvyazi s Prinyatiem Federal'nogo Zakona o 'Kotrole za Sootvetstviem Rashodov Litz Zameschaushih Gosudarstvennie Doljnosti i Inih Liz ih Dohodam, § 18 [Federal Law of the Russian Federation No. 231-FZ on Amending Certain Legislation of the Russian Federation in Connection with Enactment of the Federal Law on Control over Conformity of Expenses to Income Earned by Certain Government Officials and Other Individuals, § 18], ROSSIISKAIA GAZETA [ROS. GAZ.] Dec. 7, 2012.

VOL. 50

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

RUSSIA/EURASIA 661

legislations, such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.³⁷ Notwithstanding these legislative developments, however, widespread corruption remained in Russia. The lingering corruption led to the implementation of the most recent anti-corruption measures by the Russian government.

2. *The National Anti-Corruption Plan and Subsequent Developments in the Anti-Corruption Law*

In April of 2014, the Russian government approved the National Anti-Corruption Plan of 2014-2015.³⁸ In the enacting Decree, the Russian President recommended to the Russian legislators that they enact measures designed to ensure that officials would not exceed their authority and would comply with the restrictions on receiving gifts.³⁹ He further recommended to the Chief Judge of the Russian Supreme Court and other court officials to establish a department that would coordinate the implementation of measures to combat corruption in Russian courts.⁴⁰

In 2015, Russia enacted a number of important amendments to its Anti-Corruption laws. In March of 2015, the Russian President signed an amendment to the Criminal Code of the Russian Federation introducing new penalties for bribery.⁴¹ In addition to the current system of monetary fines based on the amount of the bribe, the amendments introduced fixed fines, as well as fines based on the amount of the convicted person's salary or other income.⁴²

Another change was enacted by the Presidential Decree on March 8, 2015.⁴³ According to this Decree, officials are required to develop a list of certain governmental positions which would be prohibited from opening and maintaining cash, and other accounts in foreign banks located outside of Russia.⁴⁴

Further, pursuant to the same Presidential Decree, on November 17, 2015, the Russian State Duma approved a new bill that seeks to improve efficiency in the fight against

37. However, unlike the Bribery Act, the Russian law does not provide an "adequate procedures" legal defense against corruption. See Russian Federal Anti-Corruption Law, BUSINESS ANTI-CORRUPTION PORTAL, <http://www.business-anti-corruption.com/about/about-corruption/russian-federal-anti-corruption-law.aspx>.

38. See Ukaz Prezidenta RF No. 226 o Natsional'nom Plane Protivodeistviya Korrupsii na 2014-2015 Godi [Decree of the President of the Russian Federation No. 226 on National Plan for Counteraction of Corruption for Years 2014-2015], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Collection of Legislation] 2014, No. 15, Item 1729.

39. See *id.*; see also *The President Has Approved the Plan for Fighting Corruption*, ROS. GAZ. (April 24, 2014, 2:20 PM), <http://www.rg.ru/2014/04/24/korruptsiya-site.html>.

40. See *id.*

41. See Federal'nyi Zakon RF No. 40-FZ o Vnesenii Izmeneni' v Otdel'nie Zakonodatel'nie Acti Rossiiskoi Federatsii [Federal Law of the Russian Federation No. 40-FZ on Amendments to Certain Legislative Acts of the Russian Federation], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Collection of Legislation] 2015, No. 10, Item 1410.

42. See *id.*

43. See Ukaz Prezidenta RF No. 120 o Nekotorykh Voprosakh Protivodeistviya Korrupsii [Decree of the President of the Russian Federation No. 120 on Some Issues for Combating Corruption], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Collection of Legislation] 2015, No. 10, Item 1506.

44. See *id.*

SPRING 2016

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

662 THE YEAR IN REVIEW

corruption.⁴⁵ According to the official government publication *Rossiskaia Gazeta*, the new legislation will clarify the laws prohibiting certain citizens from opening and maintaining accounts in foreign banks and proposes to create a single, unified system of control over incomes and expenditure of all officials. Although the existing law already prohibits senior officials, parliamentarians, and law enforcement officers from opening and maintaining accounts in foreign banks, the law contains loopholes—such as investments in the blind trusts—which were actively used to circumvent the existing bans.⁴⁶ Under the new statute, officials will have to terminate such blind trust arrangements within three months from the date of taking an official governmental position.⁴⁷ As of the writing of this article, the bill is pending before Federation Council, the upper chamber of the Russian parliament.⁴⁸

Another amendment to the Anti-Corruption Law was enacted into law in October of 2015.⁴⁹ The amendment introduced a uniform definition of a “conflict of interests.” The statute defines a “conflict of interest” as a situation in which a personal interest (direct or indirect) of an official affects or may affect a proper and impartial performances of his or her official duties.⁵⁰ Furthermore, the statute provides that a “personal interest” includes an ability by the close relatives of the official to receive benefits.⁵¹ The amendment also introduced provisions for avoiding and resolving conflicts of interest.⁵² For example, officials must now immediately inform their supervisors of a conflict, and the governmental agency is obliged to take steps to resolve the conflict.⁵³

On November 4, 2015, the Russian President signed the Federal Law “On Amendments to Certain Legislative Acts,” which introduced yet another amendment to the Anti-Corruption Law.⁵⁴ Pursuant to this statute, officials of all levels, including

45. See Zakonoproekt No. 813195-6 Federal'nogo Zakona RF o Vnesenii Izmeneni' v Otdel'nie Zakonodatel'nie Acti Rossiiskoi Federatsii v Tselyah Sovershenstvovaniia Mer po Protivodeistviyu Korruptsii [Draft Law No. 813195-6 of the Federal Law of the Russian Federation on Amendments to Certain Legislative Acts of the Russian Federation to Improve Anti-Corruption Measures], available at [http://asozd2c.duma.gov.ru/addwork/scans.nsf/ID/5F5049DD86CAECEA43257E60004D12C7/\\$FILE/813195-6.PDF?OpenElement](http://asozd2c.duma.gov.ru/addwork/scans.nsf/ID/5F5049DD86CAECEA43257E60004D12C7/$FILE/813195-6.PDF?OpenElement).

46. See Tatyana Zamahina, *State Duma Approved New Anti-corruption Statute*, ROS. GAZ (Sept. 18, 2015, 6:53 PM), <http://www.rg.ru/2015/09/18/zakonoproekt-site.html>.

47. See *id.*

48. See Draft Law No. 813195-6 of the Federal Law of the Russian Federation on Amendments to Certain Legislative Acts of the Russian Federation to Improve Anti-Corruption Measures, Chronology, STATE DUMA, available at [http://asozd.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=813195-6](http://asozd.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=813195-6).

49. See Federal'nyi Zakon RF No. 285-FZ o Vnesenii Izmeneni' v Otdel'nie Zakonodatel'nie Acti Rossiiskoi Federatsii, § 10 [Federal Law of the Russian Federation No. 285-FZ on Amendments to Certain Legislative Acts of the Russian Federation, § 10], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Collection of Legislation] 2015, No. 41, Item 5639 (Part II).

50. See *id.* at § 10.1.

51. See *id.* at § 10.2.

52. See *id.* at § 11.

53. See *id.*; see also *Officials Will Have to Report about a Conflict of Interests in Compliance with the Anti-Corruption Fight*, RUS. GAZ. (Oct. 9, 2015, 12:19 PM), <http://www.rg.ru/2015/10/09/korruptcia-site.html>.

54. See Federal'nyi Zakon RF No. 303-FZ o Vnesenii Izmeneni' v Otdel'nie Zakonodatel'nie Acti Rossiiskoi Federatsii, § 10 [Federal Law of the Russian Federation No. 303-FZ on Amendments to Certain Legislative Acts of the Russian Federation, § 10], ROSSIISKAIA GAZETA [ROS. GAZ.] Nov. 6, 2015.

VOL. 50

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

RUSSIA/EURASIA 663

municipal officials, must annually disclose their expenditures and incomes.⁵⁵ The statute provides for termination of officials who fail to comply with this new obligation.⁵⁶

As these amendments illustrate, the current version of the anti-corruption legislation is more detail-oriented and provides additional measures toward fighting corruption. As a practical matter, it remains to be seen how the new laws will be enforced.

3. *Conclusion*

Although Russia made significant steps toward strengthening its anti-corruption legislative framework, the results of its fight against corruption have so far been modest. However, Russia appears to be on the path of reducing corruption, at least according to the following measure. Based on the survey of Transparency International (TI) in 2008, Russia ranked 147th of 180 countries with the score of 2.1 out of 10 (10 being “highly clean”) in the Corruption Perception Index (CPI).⁵⁷ However, the 2014 CPI placed Russia 136th of 175 countries with the score of 27 out of 100 (100 being “very clean”).⁵⁸ This increase in Russia’s CPI’s score could be interpreted as its positive response to the anti-corruption legislation.

Additionally, some experts believe that the fight against corruption in Russia has now become systemic. For example, since 2011, four criminal corruption cases were brought against former Russian governors.⁵⁹

If Russia continues on this path, corruption should decline in the years to come. As noted by one of the participants of a recent Ernst & Young anti-corruption study, however, although “[t]he prospects [of reducing corruption] are bright, the path will be tortuous.”⁶⁰ To be effective, the fight against corruption must not only be carried out at the governmental level, but must also involve the Russian society as a whole. In other words, to eliminate corruption, Russia will have to prevent its dissemination.

II. Ukraine

The following section of this article describes and analyzes major recent developments in the anti-corruption law in Ukraine.

Corruption has always been a major problem in Ukraine. According to Transparency International, the Corruption Perception Index in Ukraine reached the mark of twenty-six in 2014, which ranked Ukraine 142nd out of 175 represented countries.⁶¹ In 2013,

55. *See id.*

56. *See id.*; *see also* Vitaly Petrov, *Report or Leave: Municipal Officials Are Required to Provide Information on Income and Expenditures*, *RUS. GAZ.* (Nov. 5, 2015, 9:35 PM), <http://www.rg.ru/2015/11/06/dohod.html>.

57. *See* Corruption Perception Index 2008, *TRANSPARENCY INT’L*, http://www.transparency.org/research/cpi/cpi_2008/0/#results (last visited Nov. 17, 2015).

58. *See* Corruption Perception Index 2014, *TRANSPARENCY INT’L*, <http://www.transparency.org/cpi2014/results> (last visited Nov. 17, 2015).

59. *See* Tatyana Zamahina, *In Spite of Personalities*, *RUS. GAZ.* (Sept. 20, 2015, 11:17 PM), http://www.rg.ru/2015/09/21/currupcia.html#/11256_f9cc9371/1/.

60. *See* Mikhail Malihin, *Ernst & Young Noted Decrease in Corruption Risk in Russia*, *VEDOMOSTI* (May 29, 2012), http://www.vedomosti.ru/management/articles/2012/05/29/ey_korrupciya_v_rossii_padaet.

61. *See* *Corruption Perception Index 2014: Results*, *TRANSPARENCY INT’L*, <http://www.transparency.org/cpi2014/results/> (last visited Nov. 21, 2015).

SPRING 2016

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

664 THE YEAR IN REVIEW

Ukraine took the 144th place with a mark of twenty-five.⁶² According to another study, Ukraine ranks 83rd out of 189 economies in terms of “ease of doing business.”⁶³

Reducing corruption is, therefore, one of the key priorities of Ukraine and its western partners. German businesses are ready to invest in Ukraine, but only if it succeeds in establishing a transparent business environment.⁶⁴ The United States government has recently decided to give Ukraine two million dollars to support its anti-corruption reform.⁶⁵

A full-scale fight against corruption in Ukraine began in 2014 with the passage of the Law “On Principles of State Anti-Corruption Policy (Anti-Corruption Strategy) for 2014 – 2017.”⁶⁶ In 2015, Ukraine continued to combat corruption.

Creation of specialized anti-corruption government agencies has been viewed as one of the most significant steps in fighting corruption. The International Monetary Fund, for example, had insisted on the creation of a National Anti-Corruption Bureau as a requirement for Ukraine to receive the next installment of a rescue package from that organization.⁶⁷ Building institutional capacity to combat corruption was also one of the obligations undertaken by Ukraine under the Memorandum of Understanding between Ukraine and the European Bank for Reconstruction and Development (EBRD), Organization for Economic Cooperation and Development (OECD), and business associations, dated October 7, 2014.⁶⁸ Furthermore, the “Action Plan for strengthening co-operation to help tackle corruption, improve public governance and the rule of law, boost investment and foster a dynamic business environment” was signed between Ukraine and the OECD on April 22, 2015.⁶⁹

Recently, two specialized agencies were created in Ukraine to combat corruption—the aforementioned National Anti-Corruption Bureau and the National Agency for Corruption Prevention. These agencies are authorized to perform their duties as part of

62. See *Corruption Perception Index 2013: Results*, TRANSPARENCY INT’L, <http://www.transparency.org/cpi2013/results> (last visited Nov. 21, 2015).

63. See *Doing Business – Ease of Doing Business in Ukraine*, WORLD BANK GROUP, <http://www.doingbusiness.org/data/exploreeconomies/ukraine/> (last visited Nov. 21, 2015).

64. See Paul Carrel, *Merkel Offers German Investment if Ukraine Tackles Corruption*, REUTERS (Oct. 17, 2015 5:15 AM), <http://www.reuters.com/article/2015/10/17/us-ukraine-crisis-germany-investment-idUSKCN0SB0AD20151017>.

65. See *Remarks by US Ambassador Geoffrey Pyatt at the Odesa Financial Forum*, EMBASSY OF THE UNITED STATES, KYIV, UKR., <http://ukraine.usembassy.gov/statements/ambpyatt-odesa-finforum-09242015.html> (last visited Nov. 21, 2015).

66. See *Zakon Ukraini pro Zasadi Derjavnoi Antikoruptsionoi Politiki v Ukraini (Antikoruptsi’na Strategia) na 2014–2017 roki* [The Law of Ukraine on Principles of State Anti-Corruption Policy (Anti-Corruption Strategy) for 2014 – 2017], <http://zakon3.rada.gov.ua/laws/show/1699-18>.

67. See *Kyiv Has Shown What Anti-Corruption Bureau Will Look Like*, UKRAINSKA PRAVDA, (Sept. 8, 2014, 3:39 PM), <http://www.pravda.com.ua/news/2014/09/8/7037093/> (Ukr.).

68. See Anton Usov, *Ukraine and EBRD launch initiative to combat corruption*, EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, (May 12, 2014), <http://www.ebrd.com/news/2014/ukraine-and-ebrd-launch-initiative-to-combat-corruption.html>; see *OECD and Ukraine to Step Up Co-Operation on Anti-Corruption, Rule of Law and Business Environment*, OECD, <http://www.oecd.org/newsroom/oecd-and-ukraine-to-step-up-co-operation-on-anti-corruption-rule-of-law-and-business-environment.htm> (last visited Nov. 21, 2015) (contains date cited above).

69. See *OECD and Ukraine to Step Up Co-Operation on Anti-Corruption, Rule of Law and Business Environment*, OECD, <http://www.oecd.org/newsroom/oecd-and-ukraine-to-step-up-co-operation-on-anti-corruption-rule-of-law-and-business-environment.htm> (last visited Nov. 21, 2015).

VOL. 50

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

RUSSIA/EURASIA 665

the national law enforcement system and are charged with developing and implementing the country's anti-corruption policy.

The National Anti-Corruption Bureau is authorized to take specific measures designed to prevent, detect, terminate, investigate, and disclose corruption.⁷⁰ Specifically, the Bureau can search for and seize monetary funds and other property that is subject to confiscation for corruption offenses within its jurisdiction, and it may store seized monetary funds and other seized property.⁷¹ The Bureau is also responsible for providing confidentiality to and fostering cooperation with individuals who report incidents of corruption.⁷²

The National Agency for Corruption Prevention, in turn, will perform a set of specific functions designed to combat corruption. The Agency's responsibilities include review of disclosures ("declarations") filed by state and local officials; storage and publication of such declarations; overall control of state and local officials' activities; maintenance of the State Declarations Register; and drafting administrative protocols on anti-corruption violations.⁷³ State and local authorities are now obligated to annually publish their disclosures on the Agency's website.⁷⁴ The disclosed information must now include information about personal property, such as securities, real estate, and vehicles.⁷⁵ The scope of disclosure has been expanded to include unfinished construction projects, property that is not yet serviceable, and property with unregistered property rights.⁷⁶

Another recently created government agency is the Office of Anti-Corruption Prosecutor, which will be part of the Department of the Prosecutor General's office. The tender committee for administrative positions in the newly created Office began on October 8, 2015.⁷⁷

The process of institutionalization in the anti-corruption field has been slow and systematically faces obstacles. For example, the appointment of the tender committee charged with the formation of the Anti-Corruption Prosecutor's Office was met with a widespread public dissatisfaction.⁷⁸ On September 23, 2015, NGO activists picketed the Prosecutor General's Office, insisting on replacing committee members who have questionable backgrounds.⁷⁹ Moreover, according to Transparency International, the

70. See *Zakon Ukraini pro Natsionalne Antikoruptsi'ne Buro Ukraini* [Law of Ukraine on the National Anti-Corruption Bureau of Ukraine], art. 1, <http://zakon3.rada.gov.ua/laws/show/1698-18>.

71. See *id.*, art. 16.

72. See *id.*

73. See *Zakon Ukraini pro Zapogibann'a Korupsii* [Law of Ukraine on Prevention of Corruption], art. 11, <http://zakon0.rada.gov.ua/laws/show/1700-18/page>.

74. See *id.*, art. 21.

75. See *id.*, art. 46.

76. See *Zakon Ukraini pro Vnesenn'a zmin do Stati 46 Zakonu Ukraini pro Zapogibann'a Korupsii* [Law of Ukraine on amending Article 46 of the Law of Ukraine on Prevention of Corruption], at "2-1, <http://zakon3.rada.gov.ua/laws/show/631-19>.

77. See *Announcement by Prosecutor General's Office of Ukraine on Open Competition for Selection of Candidates for Administrative Positions in Special Anti-Corruption Prosecutor's Office*, PROSECUTOR'S GEN. OFFICE OF UKR., (Oct. 7, 2015), http://www.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=163213 (Ukr.).

78. See Oleksandr Savitski, *Election of Anti-Corruption Prosecutor Caused Scandal*, DEUTSCHE WELLE, (Sept. 23, 2015), <http://goo.gl/u0NuiY> (Ukr.).

79. See *id.*

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AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

666 THE YEAR IN REVIEW

Bureau is being set up as a “puppet” agency propped up by the highest state officials, including the Prosecutor General, Viktor Shokin.⁸⁰

One of the key developments in the field of combating corruption has been the enhancement of penalties for violating the anti-corruption laws. The sanctions for administrative offenses have been expanded to include a prohibition on holding certain offices and conducting certain activities for a period of time ranging from six months to a year; the sanctions can be levied at the court’s discretion for any administrative offense.⁸¹ Moreover, the penalties for a number of administrative offenses in the anti-corruption field have been significantly enhanced, including penalties for violations of legal restrictions on receiving gifts, violations of requirements of financial control, conflicts of interests, and illegal use of information received in the exercise of one’s official authority.⁸²

Liabilities for anti-corruption crimes now include criminal liability for state and municipal officials who provide inadequate information in their disclosures and administrative liability for failure to comply with the legal requirements of the Agency for Corruption Prevention.⁸³

The scope of preventive measures to combat corruption has also been expanded. A major advancement is the establishment of formal rules and guidelines to prevent conflicts of interest. These rules include guidelines promulgated by the Agency for Corruption Prevention on how to resolve conflicts of interest in questionable situations, as well as control mechanisms in situations when potential conflicts of interest may arise.⁸⁴ These mechanisms include removal of an official from fulfilling certain tasks or taking certain actions, limiting access to certain information, revising an official’s authority, transferring an individual to another job, and dismissal.⁸⁵

Ukrainian judges have received the authority to approve monitoring of bank accounts of persons suspected of committing corruption crimes and to search for and identify property that is subject to confiscation.⁸⁶ In that event, the banks must provide the Bureau with all the necessary information about operations with the accounts.⁸⁷

To prevent corruption, state and municipal authorities, as well as commercial companies with state or municipal shares exceeding 50 percent and those participating in state procurement procedure, are now obligated to adopt anti-corruption programs and

80. See *Transparency International Ukraine Considers Prosecutor General Shokin to Be Personally Responsible for The Breakdown in Fighting with Corrupt Senior Officials*, TRANSPARENCY INT’L UKRAINE (Oct. 11, 2015), <http://ti-ukraine.org/en/news/oficial/5562.html>.

81. See *Zakon Ukraini pro Zapogibann’a Korupsii* [Law of Ukraine on Prevention of Corruption], art. 59-1, <http://zakon0.rada.gov.ua/laws/show/1700-18/page>.

82. See *Zakon Ukraini pro Zapogibann’a Korupsii* [Law of Ukraine on Prevention of Corruption], arts. 13, 59-1, 22, <http://zakon0.rada.gov.ua/laws/show/1700-18/page>.

83. See *id.*, art. 188-46.

84. See *id.*, art. 28.

85. See *id.*

86. See *Zakon Ukraini pro Vnesenn’a Zmin do Deakih Zakonodavchih Aktiv Ukraini shodo Zabezpechenni’a Dial’nosti Natsionalne Antikoruptsi’ne Buro Ukraini ta Natsionalne Agenstva z Pitann’ Zapogibann’a Korupsii* [Law of Ukraine on Amending Several Legal Acts of Ukraine to Ensure Functioning of The National Anti-Corruption Bureau of Ukraine and The National Agency For Prevention Of Corruption], art. 269-1, <http://zakon0.rada.gov.ua/laws/show/198-19>.

87. See *id.*

VOL. 50

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

RUSSIA/EURASIA 667

appoint persons responsible for its execution.⁸⁸ The program should contain an exhaustive list of anti-corruption measures and procedures and set forth the order of their implementation.⁸⁹

The procedure for state procurement has also been subject to changes. The amendments are aimed at increasing control over the procurement process by adding new grounds for refusing to participate in the process. Such grounds include the prospective participant's inclusion in the State Register of persons engaged in corruption and related offenses; the absence of data on the end beneficiary owner in the State Register of entrepreneurs and legal entities; and the absence of an anti-corruption program or of a person authorized with its implementation when the value of purchased goods and services equals, or exceeds, 20 million Hryvnias.⁹⁰

In general, the amendments of the 2015 Ukrainian anti-corruption legislation have the potential to promote transparency in both the private and public sectors and reduce corruption. However, several politicians and government officials are deliberately sabotaging the enforcement of the country's anti-corruption policies. The anti-corruption reform is far from complete; numerous goals, such as defining legal grounds for lobbying, strengthening public control over civil servants, reforming the civil service payment system, and promoting free and transparent market competition, are yet to be achieved.

88. See Zakon Ukraini pro Zapogibann'a Korupsii [Law of Ukraine on Prevention of Corruption], art. 62, <http://zakon0.rada.gov.ua/laws/show/1700-18/page>.

89. See *id.*, art. 37.

90. See Zakon Ukraini pro Vnesenn'a Zmin do Diakih Zokoniv Ukraini v Sferi Derjavnih Zakupelev Schodo Prevedenia ih u Vidpovidnist' iz Mijnarodnimi Standartami ta Vjitr'a Zahodiv z Podolannia Korupsii [Law of Ukraine on Amending Several Laws of Ukraine in The Sphere of State Purchases Regarding Bringing Them in Accordance with International Standards and Taking Measures of Combating Corruption], art. 4 § 5, <http://zakon0.rada.gov.ua/laws/show/679-19>.

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