THE ROLE OF THE RUSSIAN PROSECUTION SERVICE IN PREVENTING CORRUPTION IN THE PRIVATE SECTOR

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Abstract: This article analyzes the legal and institutional foundations governing anti-corruption measures within the private sector of the Russian Federation. It examines the scope of Article 13.3 of the Federal Law 'On Combating Corruption,' which mandates that all organizations, regardless of legal form, implement comprehensive internal anti-corruption compliance programs. Particular emphasis is placed on the role of prosecutorial oversight in ensuring corporate adherence to these statutory requirements. The study demonstrates that systematic prosecutorial inspections are critical in identifying systemic deficiencies in internal compliance mechanisms and incentivizing firms to develop tailored anti-corruption policies that reflect their specific operational risk profiles. Furthermore, by reviewing common compliance failures among legal entities, the article concludes that fostering a culture of legal awareness among corporate leadership is a strategic imperative for mitigating liability risks and enhancing overall corporate governance.

Keywords: Corruption; private sector; prosecutorial supervision; prevention of corruption offences; conflict of interest

VAI TRÒ CỦA VIỆN KIỂM SÁT LIÊN BANG NGA TRONG PHÒNG, CHỐNG THAM NHŨNG TRONG KHU VỰC TƯ

Tóm tắt: Bài viết phân tích cơ sở pháp lý và tổ chức để phòng, chống tham nhũng trong lĩnh vực hoạt động, kinh doanh tư nhân tại Liên bang Nga dựa trên việc đánh giá các quy định của Điều 13.3 Luật Liên bang "Về chống tham nhũng". Theo đó, điều luật yêu cầu tất cả các tổ chức phải xây dựng và thực hiện các biện pháp phòng, chống tham nhũng, đặc biệt chú trọng đến công tác giám sát của cơ quan kiểm sát đối với việc thực hiện quy định này. Bài viết chỉ ra rằng các cuộc thanh tra của cơ quan kiểm sát giúp xác định những thiếu sót, lỗ hổng trong các biện pháp phòng, chống tham nhũng và khuyến khích các tổ chức xây dựng hệ thống phòng, chống tham nhũng hiệu quả, có tính đến đặc thù hoạt động của họ và mức độ rủi ro tham nhũng. Đồng thời, bài viết cũng đánh giá tổng quan các vi phạm điển hình của các pháp nhân, từ đó rút ra kết luận về sự cần thiết phải nâng cao nhận thức pháp luật của người đứng đầu tổ chức.

Từ khóa: Tham nhũng; lĩnh vực hoạt động, kinh doanh tư nhân; giám sát của cơ quan kiểm sát; phòng ngừa tội phạm tham nhũng; xung đột lợi ích

Anti-corruption compliance serves as a critical mechanism for safeguarding organizations against corruption-related offenses, whether involving state and municipal officials or occurring solely within the private sector. This framework is formally codified under Article 13.3 of the Federal Law "On Combating Corruption."

Paragraph 1 of this Article mandates that all organizations develop and implement measures to prevent corruption. Effective January 1, 2013, this obligation extends to every legal entity registered or operating within the Russian Federation, irrespective of its organizational structure, industry, headcount, or the presence of state equity. Notably, unlike many jurisdictions where anti-corruption compliance is elective or restricted to state-owned enterprises, multinational corporations, or large-scale entities, the Russian mandate is universal in its application.

Paragraph 2 of the Article outlines a non-exhaustive list of recommended anti-corruption measures that private sector organizations may implement, including:

- Designating specific departments or personnel responsible for the prevention of corruption and related misconduct;
- Cooperating with law enforcement authorities;

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- Developing and implementing standards and procedures to ensure the integrity of operations;

- Adopting a code of ethics and professional conduct for employees;

- Establishing mechanisms to identify and resolve conflicts of interest; and

- Prohibiting the maintenance of off-the-books accounts and the use of falsified documents.

The measures enumerated in the law are neither exhaustive nor mandatory in their entirety; rather, they serve as a framework that organizations may supplement or tailor based on their specific operational needs and independent assessments of corruption risk. Consequently, while Russian law imposes a mandatory requirement for all organizations to adopt an anti-corruption compliance program, it affords them the discretion to determine the scope and substance of such measures.

Within this regulatory framework, corporate executives tasked with developing anti-corruption compliance systems place particular emphasis on methodological guidance and the practical application of Article 13.3 of the Federal Law "On Combating Corruption." This includes the analysis of judicial precedents and enforcement practices overseen by the Prosecutor General's Office.

Given that the law does not prescribe granular requirements for private-sector compliance, the "Methodological Recommendations on the Development and Adoption of Organizational Anti-Corruption Measures" serve as a primary resource. These guidelines were issued by the Ministry of Labor and Social Protection of the Russian Federation, pursuant to subparagraph (b) of Paragraph 25 of Presidential Decree No. 309, dated April 2, 2013, "On Measures to Implement Certain Provisions of the Federal Law 'On Combating Corruption.'" Additionally, the Anti-Corruption Charter of Russian Business outlines a comprehensive set of preventive measures. Collectively, these instruments provide the legal framework necessary for organizations to establish anti-corruption policies that not only align with Russian legislation and international best practices but also safeguard assets, enhance operational efficiency, and protect corporate reputation.

In light of prosecutorial enforcement trends, the primary benchmark for selecting specific preventive measures within an organization must be their effectiveness. Effectiveness is demonstrated through comprehensive compliance with anti-corruption laws and the absence of violations, including both criminal and administrative corruption-related offenses committed by personnel, as well as the successful mitigation of conflicts of interest. Furthermore, such measures must be proportionate to the organization's headcount, industry sector, receipt of state or municipal funding, participation in public procurement, and overall corruption risk profile. Crucially, all measures must strictly adhere to the rule of law and must not impose obligations on employees or third parties that exceed existing statutory or regulatory mandates.

A vital resource for entities developing these frameworks is the "Review of Best Practices in Combating Corruption within Organizations Operating in the Russian Federation", published in 2022 by the Chamber of Commerce and Industry pursuant to Paragraph 24 of the National Anti-Corruption Plan for 2021–2024. Adhering to these guidelines to implement robust preventive measures is essential for mitigating both internal and external operational risks. Moreover, judicial bodies increasingly weigh an organization's anti-corruption initiatives as mitigating factors when assessing penalties for administrative offenses under Article 19.28 of the Code of Administrative Offenses (unlawful remuneration on behalf of a legal entity). These compliance efforts are also of paramount importance during prosecutorial audits, as the obligations established under

Article 13.3, Part 1, of the Federal Law "On Combating Corruption" are a core subject of prosecutorial oversight.

The procedures and timelines for inspections are governed by Articles 21 and 22 of Federal Law No. 2202-I, dated January 17, 1992, "On the Prosecution Service of the Russian Federation," as well as by administrative directives issued by the Prosecutor General's Office. Pursuant to Paragraph 2.4 of Order No. 581, issued by the Prosecutor General on October 10, 2022, "On Prosecutorial Supervision and the Exercise by Prosecutors of Other Powers in the Field of Combating Corruption," prosecutors at all levels are mandated to verify compliance with Article 13.3 of the Federal Law "On Combating Corruption" whenever information regarding potential violations by an organization comes to light. The evidentiary basis for such inquiries may include formal complaints filed with prosecution authorities, materials derived from criminal or civil proceedings, and information gathered on the prosecutor's own initiative. Specifically, Paragraph 2.3 of the same Order directs prosecutors to maintain active engagement with public associations, civil society institutions, the media, and business entities to promote anti-corruption awareness. Furthermore, prosecutors are required to systematically monitor media outlets to identify reports of corruption-related offenses and to evaluate the necessity of initiating formal review measures based on such information.

Given the relatively flexible legal regulation of anti-corruption compliance, prosecutorial inspections of organizations' compliance with Article 13.3 of the Federal Law "On Combating Corruption" are aimed primarily at assisting companies in establishing their own anti-corruption policies. They proceed from the premise that ensuring free and competitive economic relations requires protecting business not only from abuses by supervisory and law-enforcement officials, but also from unlawful actions of employees and other organizations (e.g., contractors) that do not comply with anti-corruption legislation.

Through supervisory inspections, Prosecutors identify shortcomings in the anti-corruption measures applied by organizations, the elimination of which positively affects not only the inspected companies but also other enterprises in the sector. The use of effective anti-corruption mechanisms promotes fair competition, good-faith business partnerships, and ultimately strengthens investment attractiveness.

A literal interpretation of the law indicates that every organization must, first, develop measures to prevent corruption – expressed in an objective written form (local regulations, plans) – and, second, implement these measures, i.e., effectively put into practice what is set forth in the documents. Prosecutors focus on both of these aspects during inspections.

Violations of the law identified during inspections must be addressed in prosecutorial acts of response (as a rule, submissions to eliminate violations of the law), which are adopted in accordance with Part 1 of Article 14 of the Federal Law "On Combating Corruption." Under this provision, if corruption-related offences, or offences creating conditions for them, are organized, prepared, or committed on behalf of or in the interests of a legal entity, that entity may be held liable under Russian law.

The Prosecutor's submission is subject to immediate consideration. Within one month from its issuance, concrete measures must be taken to eliminate the violations, their causes, and contributing conditions. The results must be reported to the prosecutor in writing. According to Article 6 of the Federal Law "On the Prosecution Service of the Russian Federation," the Prosecutor's demands arising from his or her authority are binding and must be executed within the established timeframe.

For instance, in the case of a company engaged in vehicle rental and leasing, which

received such prosecutorial submission, the organization appealed the act of prosecutorial response in court. However, the courts of first instance, appeal, and cassation all recognized the Prosecutor's submission as lawful and well-founded. The company argued that it had taken sufficient measures to prevent corruption by adopting a code of ethics and conduct and issuing an order appointing a special officer responsible for preventing corruption and other offences.

Nevertheless, the Prosecutor – based on the results of the company's performance review and the provisions of the Methodological Recommendations – considered the measures insufficient. The submission stated that, in order to ensure the effective fulfillment of anti-corruption duties by employees, the organization had to clearly regulate the relevant procedures. Specifically, it was required to adopt a local act establishing a procedure for notifying the employer about attempts to involve an employee in corruption offences or about information concerning such offences. The act also had to define reporting channels and formats, rules for registering and reviewing such reports, deadlines, as well as measures to ensure the confidentiality of the information received and the protection of whistleblowers.

The courts upheld the Prosecutor's conclusions, noting the absence of a full-fledged anti-corruption policy within the organization. The norms of the code of ethics and conduct were of a recommendatory nature, lacked concrete implementation mechanisms, and, in practice, no anti-corruption prevention measures were being applied. It was concluded that the objective of creating an effective corporate anti-corruption system had not been achieved[1]. Similar judicial practice can be observed in other cases.

[1] The Ruling No. 15AP-4915/2020 of the Fifteenth Arbitration Appellate Court of June 30, 2020 in case No. A32-52509/2019. Followed by the Ruling No. F08-6621/2020 of the Arbitration Court of the North Caucasus District of September 01, 2020, this ruling was upheld without changes.

If organizations fail to comply with or improperly implement the prosecutor's requirements as set out in submissions to eliminate violations, Prosecutors seek full remediation of the violations through court proceedings. Moreover, such organizations and their officials may be held administratively liable under Article 17.7 of the Code of Administrative Offences of the Russian Federation (deliberate failure to comply with the lawful demands of a prosecutor arising from his or her authority established by federal law).

Based on the analysis of more than a decade of prosecutorial oversight practice, including information letters and reviews of the Prosecutor General's Office of the Russian Federation, the following common violations of the requirements of Article 13.3 of the Federal Law "On Combating Corruption" by organizations can be identified:

- Absence of departments or officials responsible for preventing corruption-related offences,
- Failure to adopt internal regulations on corruption prevention, primarily an anti-corruption policy,
- Inconsistency of internal regulations on corruption prevention with the provisions of federal anti-corruption legislation,
- Formal development of anti-corruption measures without their actual implementation,
- Lack of proper cooperation between the organization and law-enforcement authorities,
- Failure to take measures to prevent and resolve conflicts of interest.

At the same time, the results of prosecutorial oversight show that the assessment of the effectiveness of corporate anti-corruption measures requires an individual approach. It is not possible to apply identical requirements to companies acting on behalf of and in the interests of the state and to micro-enterprises in the private sector with only a few employees. When determining mandatory preventive measures, account must be taken of the degree of state participation, the public

importance of the organization, the tasks assigned to it, the amount of public funds allocated, and the number of employees.

For this reason, Prosecutors of the constituent entities of the Russian Federation, as well as specialized prosecutors, are guided by the Prosecutor General's Office of the Russian Federation to focus inspections of compliance with Article 13.3 of the Federal Law "On Combating Corruption" primarily on organizations performing public (municipal) contracts. This includes those engaged in the state defense order, providing services, supplying goods, or carrying out work for a significant portion of the population at city-forming enterprises, organizations with a large workforce, or companies using state or municipal property. At the same time, Prosecutors are instructed to avoid issuing acts of prosecutorial response for violations in this area against directors of organizations with fewer than three employees. The results of prosecutorial inspections demonstrate that an important factor influencing organizations' compliance with Article 13.3 of the Federal Law "On Combating Corruption" is the awareness of their executives about the relevant legal framework. Many managers failed to adopt necessary measures simply due to lack of information.

Thus, the following conclusions can be drawn:

- All organizations, regardless of their legal form and ownership structure, are obliged to develop and implement measures to prevent corruption-related offences;

- The list of measures provided by law is not exhaustive; organizations should take into account law enforcement practice and the specifics of their activities;

- In cases of inadequate anti-corruption work, prosecutors are entitled to require organizations to develop and implement appropriate measures;

- Raising the awareness of corporate executives in this area is advisable to minimize the risks of violations and liability./.

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