



Conflict of interests and anti-bribery regulations in Russia: what to consider

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📌 EMPLOYMENT AND PENSIONS, RUSSIA

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Notwithstanding the moratorium for Employers in Russia may often face problems of conflict of interests with their employees. This generally occurs when employees use their job position for their own interests. In this article we will focus on the measures that may prevent such situations. First of all, the notion of conflict of interest must be clarified to the employees. By conflict of interest, it is deemed a situation when the personal interest of the employee contradicts the interest of the employer and has an impact (even potential) on due performance his/her job duties. Conflict of interests may eventually lead to losses for the employer or damage business reputation. Furthermore, examples of cases referred to conflict of interest must be listed either in separate regulations or in a specific section of the anti-bribery

regulations. Situations where the employee holds a position in another company competing with the employer may be one of such cases. The list must not be limited, as it is not possible to determine in advance all possible situations. This list enables employees to understand the actual situation and correlate it with the provisions of the documentation.

Obligations of employees to inform the employer about the real or potential conflict of interests must be provided in the internal documentation. In case of non-fulfilling such obligations the employer is entitled to implement disciplinary measures towards the employees. Termination is only applicable for the employees of state corporations, public and state companies (as per article 349.1 of the Russian Labour Code). In all other cases only a notice and reprimand can be implemented. In particular, in the



appellate decision of the Moscow city court dated 30.10.2018 in the case No. 33-47375/2018 the court upheld the notice concerning conflict of interest which was given by the employer to the employee. According to the materials of the case the employer concluded an agreement with the company where the employee's spouse had a participatory interest. The employee violated the provisions of job description and code of corporate ethics (with due acknowledgement against receipt of these documents) and did not notify the employer about this conflict of interests. Upon receipt by the employee of the information about conflict of interest, the employer must determine the further actions according to the internal documentation, which can either be a full prohibition of conflict of interests or a reservation for the employer of the possibility to take a decision on how to proceed in the case at issue. For those employees who take decisions on behalf of the company (such as General Director, Deputy General Director, Chief Accountant), it is advisable to provide for a full prohibition of conflict of interests. Referring to anti-bribery regulations, it is worthwhile mentioning that it is not compulsory to adopt such regulations according to the law, yet it would be advisable to have it. This is especially important for those companies interacting with foreign counterparts. Moreover, this may help to avoid liability of the employer for corruption offences performed by its employees and to apply appropriate disciplinary measures towards employees.

According to article 13.3 of the Federal Law dated 25.12.2008 No. 273-FZ "On prevention of corruption", companies must elaborate and adopt measures to prevent corruption. At the same time, there is no specific obligation to adopt a special internal act in the Russian law. No fine for the absence of the anti-bribery regulations is provided by the law as well. However, absence of such regulations does not allow to implement operative sanctions against employees who commit the corruption offences. In the absence of the anti-bribery regulations, employers must proceed with long-lasting criminal investigation procedure, which may take ages for

corruption crimes. Provided that in the anti-bribery regulations anti-corruption obligations and prohibitions are contemplated, employees may be punished for the occurred offence prior to completion of criminal investigation. This possibility remains even if there is not enough evidence for criminal procedure. Anti-bribery regulations are particularly important for those employers that deal with foreign companies. Large foreign companies require from their counterparts specific warranties related to the fact that employees do not take or give bribes and do not perform any other undue actions.

Particular attention must be paid to the provisions concerning gifts. Gifts may be fully prohibited either received or given, provided that such gifts exceed a certain amount (for instance, more than RUR 3,000). Another possibility is to envisage the obligations of employees to inform about the gifts of any amount and to reserve the right of employer to request from employees the refusal of the gift or its return.

Provisions on representation costs must also be carefully drafted in the internal documentation. The limits and principles for calculating these costs must be clear for employees. These costs must be reasonable; in other words, there should be no concealed remuneration for taking by the employee certain decision on behalf of the employer. Moreover, the excluded expenses must be determined (e.g., for entertainment, leisure, etc.). In a court case the employee of a bank was fired pursuant to article 81, par. 7, part 1, of the Russian Labour Code (for loss of confidence in employee operating with monetary or other valuables) for violation of anti-bribery regulations. Based on the materials of the case, the employee secretly received monetary funds from clients and directors of the companies that opened accounts in the bank. Besides, the employee did not inform the employer about the fact that he was the General Director and participant of four companies. Pursuant to the decision of the Moscow State court dated 08.06.2018 No. 4r-6522/2018, such termination was considered legal. It is worthwhile mentioning that there is no special ground for termination in case of non-compliance with anti-bribery


regulations. It is only possible to terminate employees for the first committed violation when anti-bribery regulations are violated: (i) by an employee operating with monetary or other valuables (according to article 81, par. 7, part 1, of the Russian Labour Code), or (ii) by an employee of State corporations or State companies (according to article 81, par. 7.1, part 1, of the Russian Labour Code). Summarizing the above, it is advisable to consider the issues connected to conflict of interests in the internal documentation by determining its definition, listing the

possible situations and defining the further actions. This allows the employer to implement the corresponding actions towards employees. Employees, in turn, understand how to act properly in practical situations. Even though anti-bribery regulation is not a document compulsory by the law, it is advisable to have it, especially for companies interacting with foreign counterparts. This may help to avoid liability of the employer for corruption offences performed by its employees and allows to apply appropriate disciplinary measures towards employees.



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