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Transparency of Corporate Reporting and Anti- Corruption Politics in Russian Private Enterprise: Compliance as a Competitive Advantage

2014

Transparency of Corporate Reporting and Anti-
Corruption Politics in Russian Private Enterprise:
Compliance as a Competitive Advantage

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Transparency International – Russia

2014

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Introduction

Today, corporate transparency is one of the most widely discussed issues in scholarly, business, and expert circles. Contemporary tendencies of the world market have led accessible information about business structures, characteristics, actions, and social responsibility to become the most important criteria for forming trust. Today, business etiquette accentuates the importance of trusting relationships in order to build communication, not only in the business world, but also business interactions with the government and the general public. Therefore, a company's transparency is an essential factor in business development and the creation of a symbiotic investing climate.

The requirements of corporate transparency are often critiqued by representatives from the business community. It is argued that divulging detailed information about a company's structure, activities, and yields makes that company too vulnerable against its competition. Moreover, excessive public disclosure of information about a company can make it a target of corrupt government pressure. Misuse of the information by the media to discredit a company is another disadvantage of corporate transparency.

Of course, each of these arguments deserves detailed investigation and discussion. It is also worth noting that public information about a company should have a very specific framework in order to avoid the aforementioned negative affects. Either way, the advantages of transparency far outweigh the disadvantages for both society and the business itself.

First of all, transparency is in the interest of the business itself, since its reputation depends on it. One of the most important criteria for attracting investment is accessible, detailed, and objective information about the activities and achievements of the company. The absence or distortion of information only underscores the company's attempts to mislead potential investors and damage their positive image.

Secondly, we can say with confidence that transparency facilitates the engagement of new clients and demand of the products and services of a company. The character of the company, when presented through accessible information, can give

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potential clients positive impressions about the products and services and relationships to investors. Accordingly, it helps potential clients to make decisions about using those products or services. Transparency also facilitates trust in the products and services themselves. Corporate transparency reflects integrity in relationship to users and the willingness of companies to communicate with clients and investors. The openness of the company also provides evidence of high standards and ethics in its business practices and in its relationship to all interested parties.

It is also worth pointing out the fact that transparency inhibits the corruption risks within a business and facilitates constructive achievements. Timely disclosure of information allows for the regulation of conflicts of interest, misuse of company funds, and poor managerial decisions.

Not only is it in the best interest of the business, but openness also proves to be significant for society as a whole. Business interests often clash with the interests of society, which may not align with business goals. The publication and accessibility of information, and also the creation of effective communication and cooperation mechanisms, would help prevent conflicts of interest between society and corporations. There are many examples of situations, in which disclosing corporate information has brought about more effective implementation of societal interests. One of those examples is that a significant amount of companies participate in federal procurement procedures and, therefore, sign contracts with the government, exchanging their goods or services for Russian taxpayer money. This process should be fully reported and available to everyone both for guaranteeing the maximum effectiveness of government funds and for the quality control of the given goods or services. In this way, transparency serves as a main obstacle to the corruption associated with public procurement.

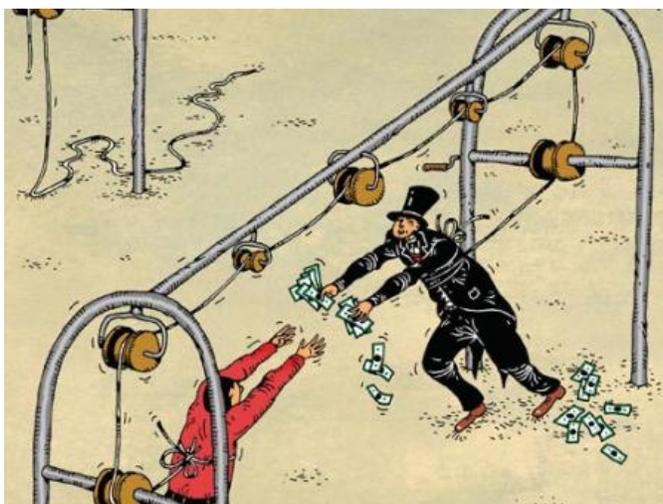
It is also worth noting that corporate activities often involve negative consequences for society in general. For example, industrial and extraction enterprises have negative effects on the vulnerable environment. Publishing information about a corporate strategic plans and declarations about its policies in relation to ecological and social consequences of its activities are of utmost importance for a company to develop successfully and in harmony with societal goals

Contemporary tendencies of market development and societal norms constantly bring up new concerns regarding the transparency and openness of business.

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Executive Summary

Corporate Transparency in Russia: An Evaluation of the Real State of Affairs



The problem with anti-corruption activities and the creation of systems of anti-corruption practices is becoming an increasingly more serious topic for the Russian private sector. Due to the growth and perfection of systems of compliance control within foreign companies, the fate of Russian companies, both on the internal market and on the world economic arena, lies on whether or not they can effectively implement similar practices. Compliance systems determine the willingness of a company to conduct

business with openness and integrity and reduce the risk of corrupt ties to zero. The realization of the company itself that *its own* compliance control is obligatory to development is key to increasing the competitiveness of the company and decreasing its corruption risks.

This study was carried out by the experts at Transparency International–Russia (TI-R) with the goal of evaluating the implementation of compliance policy in Russia’s largest companies. The study investigated the websites and legal documents of 50 Russia companies and holdings, which had been on the Forbes “Largest Businesses in Russia” 2013 list. The selection includes companies with highly varied legal structures: 30 joint stock companies (20 open and 10 closed) and 20 LLC organizations. Preference was given to mid-sized companies: smaller joint stock companies (from the lower part of the list) and larger LLCs (those from the upper part of the list) with no government participation (less than 30%).

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In this study, we have presented data about the transparency of Russian companies, their potential affiliations with the government or political parties, their corporate social responsibility (CSR), any violations of anti-corruption legislation, and an analysis of their codes of ethics. Using the data from these indicators we report, to the full extent, on the private sector's implementation of anti-corruption mechanisms.

Special attention was given to whether or not companies' websites included lists of affiliated individuals/entities, normative documents (bylaws, code of ethics), and information about participation in public procurement auctions. Moreover, we looked at the problematic use of offshore schemes used by Russian companies: 21 of the 50 companies either had a subsidiary or are subsidiaries in a jurisdiction with minimal tax requirements.

Our study considers a range of factors that point to the existence of potential public-private affiliations. The absence of legislative regulation regarding conflicts of interest in the commercial sector allows for negative affects on the development of compliance control in contemporary Russia.

The question of the corporate social responsibility (CSR) of a business – its declaration and limitations – was of special interest to the authors of this study, considering the conditions of contemporary Russian realities.

Implementing a compliance control system within a company is important and necessary to restrict opportunities for corruption and highlight the existence of violations and the factors that cause them.

As a result of this study, the experts at TI-R have prescribed a list of suggestions and recommendations, which, if implemented, would allow for significant positive gains in the sphere of anti-corruption policy within private companies.

Section I. Methodology

This study is directed at evaluating the level of transparency of Russian companies and the implementation of anti-corruption measures. In this case, the center of attention is focused on the information that a company has published about itself. Besides that, information about ties between companies and the government/political parties, the relationship to CSR and tax information was collected and analyzed.

Despite the fact that the study has a specific accent on the information that the companies disclosed about themselves, the authors recognize that the presence or absence of any one piece of information alone cannot guarantee the integrity or transparency of all of the activities of the company. The published information can reflect just a small part of the picture, which is advantageous to the company. Nonetheless, the disclosure of the information proves that the company is willing to report its activities to the general public and expand civil control on itself. Moreover, in the contemporary business environment, excessive opacity can harm the reputation of a company and its activities.

1. Selection of Corporations

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The study takes into consideration 50 private Russian companies and holdings.¹ Companies were taken from the Forbes “Largest Businesses in Russia” 2013 list.² The selection includes companies that represent the most widely used legal structures in Russia: OJSC, CJSC, and LLC. Preference was given to mid-sized companies: smaller joint stock companies (from the lower part of the list) and larger LLCs (those from the upper part of the list) with no government participation (less than 30%). On one hand, it allowed us to focus on the less known joint stock companies, which are used to receiving less attention and, because of that, could be less motivated to introduce compliance control policies. The culture of transparency among OJSCs is generally less developed than other joint stock companies, not to mention the new innovations like anti-corruption compliance. Thus, it is most realistic to expect the first steps to compliance to come from larger OJSCs and we, therefore, included them in our sample.

In the case of groups of companies/holdings, we considered the legal form of the head company. In two instances of the 50, we were unable to attach the companies to a larger group. It was impossible to find information about which company is the head of Miratorg. We found that head of STS Media was STS Media, Inc. and was registered in the US. Thus, it was impossible to compare it to any sort of legal structure in Russia.

When we investigated a company from the Forbes list that is part of a larger group, the data and conclusions that we present in this report relate to the holding as a whole, not to just the head company whose legal structure was used for the selection process. In other words, the division of legal structures is partly conditional, having first played its role in the selection procedure.

Along with the diversity of legal structures, the selection process reflects various spheres of activity: retail, wholesale, agriculture, the food industry, metallurgy, the coal industry, metal working, the chemical and petrochemical industry, the oil and gas industry, power generation, transportation, construction, real estate, information technology (IT), and the media.

Since we are interested in private companies, we only included those companies with less than 30% government participation in our sample. Our perception of the share of government participation and the legal structure is based on the information available online.

¹ The majority of business enterprises that were selected are holdings comprising several companies. Each of those companies is its own legal entity. However, in the text of this study, the word “company” will not be used in a strictly legal sense. For example, a group composed of companies and holdings could be called by the collective name “company.”

² <http://www.forbes.ru/rating/200-krupneishikh-chastnykh-kompanii-rossii-2013/2013?full=1&table=>

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A list of the selected companies is available in Appendix I.

The authors of this study would like to point out that the sample of companies chosen for this report is, by no means, meant to represent all Russian private companies. The conclusions and results of the analysis relate only those companies selected for investigation and are not designed for the generalization of a wider group of entities.

2. Evaluation Criteria

This study was conducted in two steps:

1. Corporate self-declaration (Section II of this report)
2. Expert evaluation of corporate transparency by Transparency International-Russia (Section III)

Phase 1: Corporate Self-Documentation

In the first stage, we planned to have the companies fill out the paperwork themselves, answering questions about the transparency of their corporate reporting. The forms were created on the basis of a survey that Transparency International had used in the “Transparency in Corporate Reporting” study.³ The study that we sent out was corrected to reflect the current situation of the business environment in Russia.

The form is comprised of three thematic blocks:

- disclosure of the anti-corruption program
- organizational transparency
- country-by-country disclosure

The form is made up of 23 yes or no questions, with the option of adding additional commentary in a commentary box. The form is located in Appendix II.

The form was first sent out to companies in November and December of 2013 by email or, if there was no email available, through the “contact us” portal on the website. However, since not a single company responded to our requests, we decided to repeat the attempts by telephone.

It was not easy to get ahold of anyone by calling the numbers available on the companies’ websites. Despite the fact that we called numerous times throughout the week, we could

³http://www.transparency.org/whatwedo/pub/transparency_in_corporate_reporting_assessing_the_worlds_largest_companies

not get through to representatives from Children’s World, Siberian Business Union – Nitrogen, Permenergosbyt, Chelyabinsk Electric Plant, EFKO, The Petersburg Heating Company, DNS, Transoil, Yug Rusi, or Sportmaster. We managed to get through to Rolf, VSMPO-AVISMA, DSK-1, and Synergy, but were never able to get hold of the right person. In these cases, the surveys were sent to the email address shown on the company’s website.

Of the 50 companies, with which we were able to speak with on the telephone, two refused to participate in our study. Representatives from UNICONF explained that their company was, in fact, transparent and that the information on the website would prove that. We received an email refusal from Atlant-M, with no explanation as to why they would not take part in the study. Of the other 48 companies, only two filled out the form – Euroset and Lenta. The rest simply did not respond to our invitation to participate in the study.

A detailed analysis of the companies’ answers follows in Section II of this study.

Phase 2: Expert Evaluation of Corporate Transparency

Since such small percent of companies participated in the self-documentation process, there was not a large enough sample for a wide analysis. Thus, the key stage of the study became the second part – evaluating the transparency of companies by the experts at TI-R.

Based on the survey that we originally sent out to the companies in our study, we revised a new form. Significant changes were made to way that the questions were posed, but the focus on the transparency of the company based on the disclosure of information remained the same. However, this does not only concern the disclosure of information to investors or the disclosure regarding applicable Russian legislation, but also about the unwritten minimal standards on the publication of information. It is the opinion of the authors of this report, that any interested party, including the average consumer, has the right to expect this information out of a private company.

In part, we were interested in the existence of the following information on the companies’ websites:

- Bylaws
- Full name, biography, and information about the general director and the rotation of the members of the board of directors.
- Information about corporate activities with foreign contractors
- Information about non-reciprocal support of government-implemented projects
- Simplified, easy to understand reports

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- Participation of the public procurement procedure
- Existence of an English version of the website

The goal of this work is to test the waters, not to dig up all the information available online. Specifically because of that, the given list is neither exhaustive, nor does it pretend to be. The requirements included in the list represent what the authors of this study find important for a contemporary private company to disclose. At the same time, the list is not all-inclusive.

Along with disclosure of information, the authors of this study were interested in the degree to which the company implemented very basic measures against corruption and revision of the anti-corruption compliance control system. In order to check for that, we looked for the existence of a code of ethics and a special confidential portal for whistleblowers on the website. The results of these findings are investigated further in Part 4 of Section III.

In addition to the questions about transparency and anti-corruption compliance control, the form also contained a line of questions regarding the activities of the company in relation to corporate social responsibility (CSR), taxation (including the use of offshores), and cooperation between public and private entities. More specifically, we looked for:

- overlap between members of private administrative organs and those of federal or municipal authoritative organs;
- corporate financial or any other support of projects, which are being implemented by any level of the government;
- corporate support of any political parties, movements, etc

For questions on disclosure, we used the official corporate websites and the universal Russian website for information disclosure, www.e-disclosure.ru.

We filled out forms for each company in February and March 2014. In April, we crosschecked the data that we had gathered. So, the information that was available on the companies' websites in those months is the information we used to conduct our analysis. Any changes made after April are not accounted for in this study.

Analysis of the data that was collected in phase 2 is presented in Section III of this report. The results have been divided into three thematic blocks: transparency, ties to political parties and government representatives, and corporate social responsibility. The last part of the section includes an analysis of the codes of ethics for the investigated companies.

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Section II. Corporate Self-Evaluation of Anti-Corruption Activities

As we mentioned earlier, of the 50 companies that were selected to partake in this study, **only two** voluntarily filled out our forms: Euroset-Retail and Lenta.

The form that was filled out by the Saint Petersburg company, Lenta, showed the following measures to limit corruption and to guarantee openness being implemented inside the organization:

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- a code of ethics, including appendices about anti-corruption measures, to which all employees are subject
- specific policies pertaining to gifts and business trip expenses in the code of ethics, forbidding commercial bribery, and procedures to disclose conflicts of interest
- special confidential channels, through which employees can report wrongdoing
- monitoring of anti-corruption programs
- observation of political neutrality, ban on making political contributions, and restriction of supporting political goals
- designation of a department or person who is responsible for the preventative measures against corruption violations, and also the existence of a system of cooperation with the law enforcement to reprimand wrongdoing
- corporate disclosure of subsidiary organizations and the amount of shares in those organizations; disclosure of incorporated countries and a list of countries where the subsidiaries conduct business.

Lenta admits that it is not currently implementing the following anti-corruption measures:

- anti-corruption training for employees
- special practical instructions for employees on how to behave in situations associated with corruption risks
- systematic protection of whistleblowers rights
- public disclosure of their charitable donations to federal and municipal organs

Representatives from Euroset-Retail noted the existence of practically the entire list of anti-corruption measures in their company policy. The only instrument that is currently not being implemented is the public disclosure of their expenditures in foreign countries.

Comparing the self-reported data of the companies to the information that the experts at TI-R gathered, no clear contradictions were found.

At the same time, in order to eliminate the unknowns, the experts at TI-R suggest the following recommendations:

1. Publication of a code of ethics on the official website

- The implementation of anti-corruption policies is necessary because it allows employees and partners alike to familiarize themselves with the rules. Moreover, the accessibility of a code of ethics on the website not only allows employees and partners to use it as a reference in questionable situations, but also provides a point of reference for other companies to create their own codes of ethics.

2. Whistleblower protection

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- One of the important elements of successful anti-corruption policies is a clearly written system of protection for whistleblowers both in the code of ethics and on the official website. Fear of formal and informal repercussions restrains employees from reporting information that they may have about corruption to the administration. Creation of a special page on the website for confidential reporting about corruption and providing a copy of the statement in the company's code of ethics that guarantees the protection of whistleblowers can influence the success of implementation of the anti-corruption program.

Section III.

Part 1. Corporate Transparency

The approach to guaranteeing transparency in companies and holdings (that is, the parent company of the holdings) can be two-fold. On the one hand, they can strictly observe the legislative requirements about the disclosure of information, although they will still be

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limited. On the other hand, the company could voluntarily disclose more documents that regulate its activities or summaries of information about its achievements. The latter is preferred, but is a rarity in practice. So, of the investigated companies in the framework of the given study, only 22% of CJSCs, 26% of LLCs, and 80% of OJSCs publish their bylaws on their websites. As a reminder, disclosures for joint stock companies were moved to a specialized website and, for the most part, republishing the information on their own website is completely voluntary. Four of the five CJSCs and three of the four OJSCs are limited by requirements of the law, not wanting to publish their normative documents on their website.

We separately make a note that, in most cases, factual documents (reports, lists of affiliated entities, etc) are published on a company's website in the form of .tiff, PDF, zip, .rar, or as attachments. This makes searching the document through search functions impossible. This minimalizes the risk that information in these types of documents (a random last name in a list of affiliations, for example) will accidentally be found via search engine. In regards to the obligatory list of affiliated entities, it is the goal of legislators to ensure that it is available to all interested parties.⁴ On the one hand you have formal observation of the declaration requirements and even a guarantee of utmost openness. On the other hand, concrete legislative requirements complicate (deliberately or not) companies' attempts to reach their goals. Therefore, a recommendation could be that companies simply publish their documents in word or PDF formats.

A whole line of companies simply published blank charts in place of lists of addresses and full names of affiliated entities. Officially, this can be considered as an outright disregard for declaration requirements. A concrete example of the heedlessness in regard to these requirements is on SDS Nitrogen's list of affiliated entities⁵ from 31 December 2013. Where the full address of the location of the legal entity should be declared (in clause 136), only a country is given: Switzerland.

Including the actual entities that "belong to the same group" on lists of affiliation is a requirement stated by law. However, the formulation of the requirement does not clarify the exact companies or people that need to be included on the list. You can find the use of this loophole on the lists of affiliation of nearly every company that we investigated. Therefore, we cannot use this as indicator to prove the observance of the law. However, from the point of view of the transparency of a company, the use of a different formulation, which we found in Article 9 of the Federal Law on The Protection of Competitiveness, is more concrete and a significant improvement.

⁴ Page 30 of Federal Law N39-F3 (22 April 1996) on The Bond Market

⁵ <http://e-disclosure.ru/portal/FileLoad.ashx?Fileid=784731>

In some of the cases of the framework of this study, we were not able to uncover the personal tax reference number (ИИИ) and/or an exact name of the legal entity (Russian parent company of the holding) for the following companies:

- Miratorg
- Avtomir
- DNS
- Rolf

This could have been avoided by simply publishing the personal tax reference number or full name (and in the case of holdings, the personal tax reference number, full name of the Russian parent company, or legal entity directing activities in foreign countries) on their websites. We only found details about this information on the websites of the most transparent companies (Sportmaster, Transoil, and some others).

In some cases, when this information was absent on the official corporate websites, we were able to find personal tax reference number and the full names of some companies in places like egrul.nalog.ru and e-disclosure.ru. However, this information isn't oriented at the general public, as it demands experience of reading quarterly reports and other legal documents.

We also checked for information about the participation of the companies in public procurement procedures of labor, goods, and services on corporate websites and on the official page zakupki.gov.ru. Only 8% of companies (or parent companies of holdings) provided full disclosure about winning government contracts on their websites. However, three times more of the companies in our study – 24% - did not publish any information about participation in the public procurement procedure in the news section of their websites. Of course, the absence of this information is not technically a violation of legal norms. However, publishing this kind of information would be a step in the right direction for conducting transparent business, seeing as the sphere of public procurement as long been fraught by the high corruption risks of low transparency.

The next indicator of corporate openness is the code of corporate ethics, which should regulate the behavioral norms of employees in regards to interaction with clients, other employees, contractors, supervisory organs and other entities, with which employees come into contact while fulfilling professional duties. The code of ethics permeates all areas of business. The given documents are of a non-normative nature, but they significantly decrease financial and defamation risks to an organization.⁶

⁶ Primakov, D.Y., Konik K.A. *Implementation of Anti-Corruption Programs on the Municipal Level: A Scholarly Publication*. 2013.

The code of ethics includes policies on preventing conflicts of interest, zero-tolerance policies on corruption and bans on paying bribes, giving political gifts, etc.

The key to a code of ethics is that it must touch on a wide range of questions and apply to each employee. Of the 50 companies that we investigated, only **seven** companies had codes of ethics on their websites.

In this study we also looked at how invested the companies were in fighting tax fraud. Since the decision of the administration to engage responsibly is of an individual non-normative legal nature, usually the responsibility lies with a tax authority or contractor. Therefore, data about unpaid taxes had to be dug out from Russian court of arbitration archives, where only contested decisions fall. The period for which we reviewed active court decisions was from January 2012 – April 2014.

Of the 50 companies, only three have been found guilty in court of not paying their taxes in full. It is interesting that there are also a few cases against tax authorities for taking too much money in taxes and failing to return the excess.

The small amount of contested and confirmed cases against companies for underpaying on their taxes could be caused by any of the following situations:

- the high legal competency of corporations
- the use of foreign offshores – The majority of companies (21) have declared affiliation lists with parent companies or subsidiaries in Cyprus, the British Virgin Islands, Luxembourg, and other jurisdictions with minimal taxes.
 - o 16 of them were OJSCs
 - o 4 of them were LLCs⁷

Under these circumstances, companies of separate legal structures would rather use the possibility given to them by Russian legislation to keep information secretive. These forms are directed at CJSCs and OJSCs because there are substantial constrictions on which entities need to be included on their affiliation lists (offshore jurisdictions). In this study, 12 of the 50 companies were missing information that proved the presence or absence of subsidiaries or dependent organizations in jurisdictions with favorable tax regimes. All 12 of those companies are OJSC or CJSC. Therefore, researching the transparency of large Russian holdings can speak to the potential interest in keeping information about the internal group structure and legal entities to themselves.

⁷ The remaining company – CTC Media, Inc. is registered in the US and conducts business in Russia through special representation

Part 2. Affiliations

Declaration requirements about information on affiliated entities are located in Article 93 of the 1995 Federal Law on Joint Stock Companies, but the understanding of *affiliation* is defined in the RSFSR Law on Competition and Limitations of Monopolistic Activities In the Trade Market, which was revised on 06 May 1998. In Article 4 of the law, it defines affiliated entities as physical and legal entities that are able to influence the activities of legal and/or physical entities engaged in entrepreneurial activities.⁸

We will call the first type of affiliation “financial support of a company to a party or political movement.” For example:

Magnatek

According to the Forbes list, Mytischki oil base is part of Magnatek and, for the past three years, has made large contributions to United Russia – 55 million rubles in 2010,⁹ 40 million rubles in 2011,¹⁰ and 50 million rubles in 2012.¹¹ Today, the company belongs to another entity.

A second type of affiliation is when the “party in power provides support to a company’s project.” For example:

Titan Group

The Titan Group is implementing a project, with investment from the federal government, called “PARK: Industrial and Agricultural Regional Clusters,” (ПАПК: Промышленно-Аграрные Региональные Кластеры). According to the website, the project is “supported” by United Russia.¹² Data about the project can also be found on the United Russia page.¹³

⁸ The US has the oldest and most developed conflict of interest regulations. In 2007 Honest Leadership and Open Government Act went into effect and partly amended the Lobbying Disclosure Act of 1995.

⁹ http://cikrf.ru/politparty/finance/2010/2010_er.pdf

¹⁰ <http://cikrf.ru/politparty/finance/2011/edros.PDF>

¹¹ http://cikrf.ru/politparty/finance/party/SFO_Edn_Rossia.PDF

¹² <http://www.titan-omsk.ru/park/>

¹³ <https://proj.edinros.ru/project/park-promyshlenno-agrarnye-regionalnye-klastery>

A third type of affiliation can be categorized as “family ties between the founders or owners of companies and government employees.” For example:

Siberian Business Union – Coal

According to information on the company’s website, Mikhail Yurevich Fedyaev and Andrei Vladimirovich Gridin are on the board of directors.¹⁴

The eldest son of M.Y. Fedyaev – Pavel Mikhailovich Fedyaev – was elected into the State Duma in 2011 from the “Governor’s List” of Aman Tuleev (United Russia),¹⁵ who is a member of the Agriculture Committee.

The father of A.V. Gridin – Vladimir Grigorievich Gridin¹⁶ - has been a member of the State Duma since 2007. Currently, he is the vice chairman of the transportation committee of the VI Assembly. In 2007 and in 2011, he was elected to the federal list of candidates from United Russia.

A.V. Gridin is a member of the board of directors at SDS-Coal.¹⁷ A.V. Gridin and M.Y. Fedyaev registered Siberian Business Union – Nitrogen (the largest supplier of nitrogen) and are also directors of that enterprise.¹⁸ They could easily have conflicts of interest considering the positions of their family members.

In the United States and Great Britain, these kind of connections are forbidden by law. Any form of payment (other than the so-called facilitating fees) to a political party or movement can be viewed as unfair competition.

Affiliations are connected to conflicts of interest – a phenomenon that is real, not only for government employees, but for representatives for the corporate sector as well. American legislative acts, like the Sarbanes-Oxley Act, are directed at solving conflicts of interest within corporate boards of directors, audit committees, and auditors/experts. In contrast, in Russian legislation, the problem of conflicts of interest in the commercial sector, if it is discussed at all, is only at the academic level.¹⁹ Only recently have higher courts begun to

¹⁴ <http://www.sds-ugol.ru/struk/ruk/>

¹⁵ <http://www.duma.gov.ru/structure/deputies/131203/>

¹⁶ <http://www.duma.gov.ru/structure/deputies/131487/>

¹⁷ <http://sds-ugol.ru/struk/ruk/>

¹⁸ <http://www.sbu-azot.ru/index.php/ru/kompany/sovet-direktorov>

¹⁹ Dedov D.I., *Conflict of Interest*. Wolters Kluwer, 2004.

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examine the issue – the ruling of the Superior Commercial Court of the Russian Federation No. 62 on Some Questions of the Damages to Organization within a Larger Legal Entity (further – the ruling). The ruling presumes the wrongdoing of the director in the case that he used his legal position to act in his own interests. This includes deals that the director closed for his personal gain from his professional position, unless he declared his conflict of interest beforehand and his activities followed the preconceived legislative norms. (Clause 2 of the ruling)

Part 3. Corporate Social Responsibility (CSR)

The idea of social responsibility of a business as an institutional value was formed in the second half of the 20th century among American and Western European companies and later spread to developing nations. The appearance of CSR as a mass movement is directly related to the changes that are happening now in developing countries.²⁰

With increased demands of politics and government as an apparatus of guidance, the social demands of business also arose. Western society began to actively critique business for their barbarous treatment of the environment²¹ and the opacity of their procurement of goods and services from irresponsible companies.²²

Under the circumstances of the paternalistic politics of the government, weak development of civil society, and lack of dialogue between federal authority and the business community as equals, social responsibility is limited. It is implemented to such a significant degree by the government, that it becomes a lever of influence on business activities instead of a real social responsibility tool, in which the presence of the company would enhance the development of the region and help the community. True social responsibility also guarantees the stable growth of the company.

Quantity of Socially Responsible Companies

Currently, a significant amount of companies declare CSR information on their official websites and designate plausible plans in the sphere. In fact, of the 50 private companies, which were subject to our analysis, **34 companies** consider themselves socially responsible. Their websites provide information about the guiding principles of their CSR policies. For **16 of the companies**, there is no information that they are implementing CSR projects of any kind.

²⁰ Nisnevich, Y.A. Governments of the 21 Century: Tendencies and Development Problems: A Monograph. KNORUS, 2012. 11-23.

²¹ Peregudov, S P., and I S. Semenenko. *Corporate Citizenship: Concepts of World Practices and Russian Realities*. N.p.: Progress-Trandition, 2008. 31-33.

²² *Corporate Social Responsibility: A New Philosophy of Business*. Vneshekonombank, 2011. <http://www.veb.ru/common/upload/files/veb/kso/ksobook2011.pdf>

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Declaration of Information about the Social Projects of Companies

A small amount of the socially responsible companies publish special reports or include information about CSR in their annual reports. However, there are companies, which do publish detailed reports about their social responsibility work. This, of course, makes it easier for interested parties, like investors, to evaluate companies. For example, the website of The Far East Shipping Company contains information about the founding guidelines of CSR practices and also puts up social reports that include detailed information about the implementation of projects in the CSR sphere.²³

Due to the absence of information about corporate social projects in reports and on official websites, it is impossible to evaluate the extent of CSR activities and their effectiveness to interested parties.

The absence of transparency in questions about the socially oriented activities of companies could be used as a cover for unlawful schemes of cooperation with the government. The risk of corruption should lead to widespread implementation of a “Declaration of Social Responsibility” report, which would indicate the lack of understanding of CSR goals and objectives in a number of companies.

Implementation of Governmental Projects as Declaration of Corporate Social Responsibility

The corporate social responsibility for a significant number of the investigated companies is extremely one-sided and includes the implementation of government projects and charity donations to orphanages, schools, hospitals, and other municipal institutions.

Analysis of the companies’ official websites showed that **26** are involved in government projects and give charitable donations to municipal institutions according to contracts with governmental organs of various levels. Specifically, of the 34 companies that declared their CSR activities, **20** made such contributions, as did **six** of the 16 companies that did not publish any CSR information.

For some of the companies that participated in government projects, it is the only instance of their declared CSR activity. For example, Magnatek announces the fact that it is socially responsible on its website; however, in practice, the only project that it participates in is a federal program called “Children of Russia,” which is directed at guaranteeing full lives for children with disabilities.²⁴

²³ <http://www.fesco.ru/about/social-responsibility/>

²⁴ <http://www.magnatek.ru/company/social/>

By implementing socially responsible practices, business effectively fulfills several social functions of the government. Unfair tax breaks, benefits, and other incentives could be a way to get the corporate sector into various socially oriented programs. However, in practice, the government often needs companies to fill this duty by means of corporate money. The objective of a socially responsible government is to maximally stimulate business through legislative regulations about the conduct of CSR activities, not to obligate business to participate.

It is worth pointing out that several companies, as a form of CSR are implementing secondary projects. For example, in the policy note about charity at Samaraenergo,²⁵ law enforcement is shown as one of the target groups for charitable giving. However, law enforcement organizations should be supported by the government. Moreover, according to Article 10 of Federal Law N273-F3 on Anti-Corruption (25 December 2008, revised 28 December 2012), members of law enforcement are government employees and are forbidden from accepting significant sums of money because it could lead to a conflict of interest. For all intents and purposes, charitable donations to a law enforcement institution is bribery.

Due to this, a significant amount of the investigated companies are masquerading public-private partnerships and other types of government cooperation as CSR projects.

Of the 26 companies that donate funds or aid to government projects, **only 13** report it on their official website. Only five of those companies provide detailed information, as opposed to simply announcing the participation.

It is likely that, in the cases that the company fills a social function for the government, they do it with their own money. Therefore, we pose the question about how voluntary these expenditures really are.

Problems with Public-Private Partnerships (PPP)

Public-private partnerships in the Russian social sphere are still in their early stages and, therefore, have not received a special status at the legislative level. PPP agreements between companies and public institutions, as a rule, provide the general obligations of CSR. However, in Russia, there is no regulation for the way that agreements are made or what the obligations are for both parties.

Many large and mid-sized businesses implement PPP projects, although a large number of those companies prefer not to declare information about those activities on their official websites or annual reports. Corporate social responsibility and public-private

²⁵ Charity Policy of Samaraenergo. <http://www.samaraenergo.ru/stockholder/docs/>

partnerships should be subject to anti-corruption compliance control in private companies because opaque social practices can lead to shadowy lobbying from the business and any of its affiliated entities.

Part 4. Analysis of Corporate Codes of Ethics

The following indicators of corporate openness concerning the company's code of ethics that documents the norms of conduct for employees in interactions with clients, other employees, contractors, supervisory committees and other entities with which one may come into contact in the process of fulfilling his or her professional duties and permeate all spheres of business. These documents are of a non-normative nature, however, they hold some weight and the financial risks of an organization decrease significantly after adopting them.²⁶

The corporate governance code of Stroitransgaz²⁷ defines the general policy statement on the work of the management team, which is formed of the board of directors, the stockholders convention, the administration, accessibility to information, control of the committee on audits, payment of dividends, and any other labor functions. The document is composed of 10 pages. In their basic anti-corruption ethics policies there is no mention of gifts, no process to provide information about corruption, whistleblower protection or procedures on how to handle interactions with government institutions. Information on any sort of compliance auditing committee is also absent from the document. Information about insider information and conflicts of interest of the board of directors, members of the administration, and the President is mentioned separately.

Children's World has two documents on its website – a code of ethics and an anti-corruption policy.²⁸ These short, but dense, documents touch on all of the fundamental ethical questions. In both documents there is information about gifts, reporting wrongdoing and whistleblower protection, procedures for interacting with government representatives, contractor integrity and dependability checks, and the obligation to conduct open and transparent reports and follow up with independent audits. The anti-corruption policy contains the general guidelines on compliance procedures, but does not assign the duties to a specific department. There is information about integrity while working with contractors and restrictions on using third parties for illegal operations. In

²⁶ Primakov, D.Y., Konik K.A. *Implementation of Anti-Corruption Programs on the Municipal Level: A Scholarly Publication*. 2013.

²⁷ <http://www.stroytransgaz.ru/upload/iblock/c00/c004dfd41e25a42c797544fae04d9b03.pdf>

²⁸ http://www.det-mir.ru/cntnt/menu1/investoram_i_akchioneram/raskritie_informachii21/detskiy_mir_chentr/dokumenti_reglamentiruushie_deyatelnost_akchionernogo_obshestva1.html

the code of ethics, there are restrictions on conflicts of interest, using one's professional status for personal gains, and also for giving out insider information.

The code of corporate guidance of Novorossiysk Commercial Sea Port²⁹ has provisions about ethical principles of internal issues, including that of the annual stockholders meeting, the board of directors, the administration, and the president. As is standard, the document also contains conflict of interest policies for the board of directors and administration, restrictions on sharing insider information, and independent auditing reports. Some of the compliance objectives are carried out by the audit committee. There is no mention of how to treat gifts, report wrongdoing, whistleblower protection, public-private cooperation or using company assets for person gains.

The code of corporate guidelines of Quadra - Generation Company³⁰ is comparative to that of Novorossiysk Commercial Sea Port, with the exception of the information about financial and operational activities – there is no specific department assigned to be responsible for those duties.

Rusenergoby has two documents pertaining to ethical standards – a code of ethics³¹ and a policy statement on the impermissibility of corruption. The code of ethics is an intensive document comprising many actual provisions. The policy statement is more formal. Both documents provide company norms for dealing with gifts, compliance (under the control of the auditing department), working with contractors, and reporting wrongdoing within the company. The code of ethics also gives information on whistleblower protection, conflicts of interest, working with government institutions, integrity declarations of working with contractors, observing authenticity and openness, and restrictions on using company assets for personal gain.

Croc³² has a fairly short document (only three pages) that includes clauses about reporting wrongdoing within the company and whistleblower protection, as well as conflicts of interest, fair relations with contractors, transparent reporting standards, and independent audits. There is nothing on gifts, compliance, cooperation with governmental institutions, or using corporate assets for personal gain.

A composite of the data on codes of ethics from the six companies can be found in the table in Appendix 3.

²⁹ http://www.nmtp.info/holding/investors/info_disclosure/uch_documents/

³⁰ http://www.quadra.ru/shareholders/corporate_governance/constituent_and_internal_documents/

³¹ <http://www.ruses.ru/about/code-of-ethics>

³² <http://www.croc.ru/eng/about/overview.php>

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Part 5. Monitoring Violations of Anti-Corruption Legislation

Monitoring of mass media and governmental websites for data on the companies in our study showed that the introduction of compliance control procedures and carrying out anti-corruption policies within companies is of utmost importance. The absence of ethical principles, which guide employees in corrupt situations and censure the activities of the leadership and the lack of whistleblower protection leads to more corruption offenses and crimes.

In 2012, the agro-industrial group Yug Rusi acquired piece of land of more than 26,000 hectares near Lake Manych-Gidlo. The head of the Proletariat Region of Rostov Oblast made the decision that Yug Rusi could have the land despite the fact that the lake is on the list of protected swamplands according to the Ramsar Convention (2 February 1971) on Swamplands with International Value and Habitat of Waterfowl. The Proletariat Region Prosecutor's Office of the Rostov Oblast found giving up land to be illegal, as it disregards land, water, and environmental protection laws. A case statement with demands to admit the unlawful deal has been sent to the arbitration court.³³

In 2013, a criminal case was brought against the former general director of Novorossiysk Commercial Sea Port in relation to Part 3 Article 204 of Criminal Code of the Russian Federation for commercial bribery. Shortly thereafter, he fled the territory of the Russian Federation and has been put on *the wanted list*.³⁴

In April 2014, Novorossiysk Commercial Sea Port was accused of an administration violation wherein the company hired a former government employee (the former head of the Municipal Services Department in Novorossisk) and did not notify the proper authorities in the legal timeline.³⁵

For the same reason, KuibyshevAzot was fined 20,000 rubles by a judge. They had hired a former law enforcement employee without sufficient notice.³⁶

In 2014, the Swiss Prosecutor's Office investigated a case about corruption on the Yamal-Europe project and found Siemens Industrial Turbomachinery guilty of paying bribes to top Russian managers in order to close delivery deals. Despite the fact that the names of

³³ <http://www.prokuror-rostov.ru/news/6266.html>

³⁴ <http://www.sledcom.ru/news/286933.html>

³⁵ http://www.utprok.ru/ne_5109472/

³⁶ http://www.samproc.ru/news/125/2668/?sphrase_id=10028

the Russian managers were withheld, it is well known that the owner and operator of the pipeline is Gazprom, the supplier was its subsidiary Yamalgazinvest, and the general contractor is Stroytransgaz.³⁷

In March 2013, E. Schapov, the director of the Irkutsk office of the East-Siberian branch of Rusenergosbyt, was accused of commercial bribery on the grounds of Part 3 Article 204 of the Criminal Code of the Russian Federation. According to information about the investigation, E. Schapov demanded a financial sum in return for writing off the debt of legal entity, reduction of tariff rates, and not hindering further conduct of business.³⁸

Avtotor attempted tax evasion in September 2013. According to the governor of Kaliningrad, The Baltic Automotive Factory (a subsidiary of Avtotor) was given tax-exempt status for six years, beginning in 2006. However, when the time came to pay taxes, Avtotor tried to register as a new tax resident of its special economic zone.³⁹

Conclusions and Recommendations

In accordance with Article 13.3 of the federal law on Anti-Corruption Activities, the responsibility of taking action against corruption lies with legal entities. In other words, *companies* should introduce systems of anti-corruption compliance control. However, the real issue is not with legal entities. Many Russian companies, like MTS and Yandex, have already realized that compliance is a competitive advantage. At the same time, among representatives of small and mid-sized businesses, there is still no understanding of the necessity of a compliance system for their companies. Compliance cannot be outsourced to a simple security service because it covers a full range of issues that require a special approach. Examples of these issues include a system to report wrongdoing and corruption, solving conflicts of interest in the administration, implementing due diligence, interaction with outside parties, and fraud among managers.

Often, it is small and mid-sized businesses who face these very problems. In companies of that size, there is no need to allocate large amounts of funding and human resources to compliance. In the majority of cases, a tone of zero tolerance to corruption among the top managers and the existence of a concise code of ethics is usually enough to motivate employees to act in accordance of the company values. In turn, it influences the firm's

³⁷ http://www.bbc.co.uk/russian/business/2013/11/131112_yamal_pipeline_siemens_swiss_fine.shtml

³⁸ <http://www.sledcom.ru/news/288235.html>

³⁹ <http://www.regnum.ru/news/1709663.html>

reputation of responsibility and integrity and increases its competitiveness because investors and contractors react positively to their activities.

Further, we present a list of recommendations that have been made on the results of our analysis of the corporate transparency and compliance of 50 Russian companies.

- **Publishing the following information** on corporate websites will not only strengthen the relationship to clients, but also make policy information more available to investors and contractors.
 - Legal address of the company
 - Names of beneficiaries and leaders of the company
 - Personal tax reference number of the organization
 - Statutory documents

- **Publish information about participation in the public procurement process.** Information about federal and municipal procurement proceedings should be accessible, especially because they are implemented with taxpayer money. Moreover, a company's participation in government contracts and competitions should not be considered as part of a CSR plan, as they are reimbursable.

- Develop full-scale compliance policies beginning with a corporate code of ethics comprising the following characteristics:
 - announcement of zero tolerance policy toward corruption
 - assignment of a party responsible for the compliance of the company
 - statement forbidding gifts to government workers and a clear description of facilitation fees
 - program of evaluating the risks and inspection of work with contractors
 - existence of anti-corruption clauses in contracts
 - internal systems for reporting corruption and wrongdoing, such as hotlines
 - measures on prevention of conflicts of interest among members of the administration
 - provision on advanced training and seminars on compliance

An example of such a code of ethics is the Anti-Corruption Charter of Russian Business,⁴⁰ which was developed by the Chamber of Commerce and Industry in cooperation with the Ministry of Economic Development in 2012. Another good example is the International Chamber of Commerce's Rules on the Fight Against

⁴⁰ http://www.tpprf.ru/common/upload/EB_Antikorruptsionnaya_khartiya_rossiyskogo_biznesa.PDF

Corruption, which was penned in 1977 and has recently been translated into Russian.⁴¹

- **Create a special portal on the corporate website, or a hotline, for the confidential reporting of corruption or wrongdoing** and repeat the information from the code of ethics there, in a relevant manner, in order to guarantee whistleblower protection. One of the most important elements of a successful anti-corruption policy is a clearly written system of whistleblower protection in the code of ethics and on the company's website. Fear of formal and informal repercussions partly deters employees from reporting information to the administration about wrongdoing in the workplace. The recommended measures could significantly increase the success of any anti-corruption program. It is worth taking note that by authorization of the President of the Russian Federation, systems of reporting wrongdoing exist to protect employers and regional business ombudsmen. On one hand, these mechanisms are not written well enough to really protect whistleblowers. On the other hand, it only refers to corporate directors and not average employees who would want to report wrongdoing in their company or in relation to clients or other third parties.
- **Conduct trainings for employees**, explaining the compliance policies of the company. Personal responsibilities and consequences (firing and report to law enforcement) in cases of violations of company norms should be clear to all employees. If small or mid-sized business are not able to conduct such trainings, it would be necessary to united several companies in joint trainings, or to share best-practices.
- **Amend the legislation of the Russian Federation**, forbidding corporate bribery (especially in law enforcement) in the form of charitable support to institutions of federal and regional authority.

⁴¹ <http://www.iccwbo.ru/news/0/393/>

Appendix 1. List of Selected Companies

ОАО:	ЗАО:	ООО:
Siberian Business Union Coal (СДС-Уголь)	Gloria Jeans (Глория Джинс)	Stroygazconsulting (Стройгазконсалтинг)
Ostankino Meat Processing Plant (Останкинский МПК)	Atlant-M (Атлант-М)	Stroygazmontazh (Стройгазмонтаж)
Stroytransgaz (Стройтрансгаз)	Ulmart (Юлмарт)	Avtotor (Автотор)
Synergy (Синергия)	CrocusGroup	Rolf (Рольф)

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Children's World (Детский Мир)	Срос (Крок)	Окай (О'кей)
Siberian Business Union – Nitrogen (СДС Азот)	Stroyservis (Стройсервис)	Rusenergosbyt (Русэнергосбыт)
Permenergosbyt (Пермэнергосбыт)	Domodedova Airport (Аэропорт Домодедово)	SNS (СНС)
Chelyabinsk Electric Plant (Челябинский электрометаллургический комбинат)	Petersburg Heating Company (Петербургская топливная компания)	Lenta (Лента)
KuibyshevAzot (Куйбышевазот)	Titan Group (ГК Титан)	Euroset (Евросеть)
Novorossiysk Commercial Sea Port (Новороссийский морской торговый порт)		Tashir Group (Ташир)
SINTEZ Group (Группа Синтез)		DNS
Samaraenergo (Самараэнерго)		Avtomir (Автомир)
Far East Shipping Company (Дальневосточное морское пароходство)		NefteGazIndustriya (Нефтегазиндустрия)
UNICONF (Объединенные кондитеры)		Transoil (Трансойл)
Quadra (Квадра)		Yug Rusi (Юг Руси)
DSK-1 (ДСК-1)		AEONCorporation
Aston (Астон)		Sportmaster (Спортмастер)
E4 Group (Группа E4)		Metal Profile Group (Группа компаний Металл Профиль)
EFKO (ЭФКО)		Magnatek (Магнатэк)
VSMPO-AVISMA (ВСМПО-ависма)		
<i>А также: Miratorg (Мираторг); CTC Media (СТС Медиа)</i>		

Appendix 2. Corporate Transparency Self-Evaluation Form

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Disclosure of Anti-Corruption Programs

1. Does your company have an internal code of ethics for its employees?
2. Does the code of ethics include anti-corruption measures?
3. Do those anti-corruption measures apply to all employees?
4. Do the anti-corruption measures apply to third parties and entities with which your company works?
5. Do the anti-corruption measures apply to contractors, sub-contractors, and suppliers?
6. Does your company have special anti-corruption training programs for its employees (training sessions/courses)?
7. Does your company have a policy that sets standards for accepting gifts, tracking travel expenses, etc?
8. Does your company have policies forbidding corporate bribery (paying extra money to ease formalities)?
9. Does your company have a procedure for declaring conflicts of interest?
10. Does your company have a system of protection for whistleblowers (those who report wrongdoings within the company)?
11. Does your company have special confidential channels for employees to report corruption or for consultations in case of questions (a hotline or an online portal, for example?)
12. Does your company conduct regular monitoring of its anti-corruption programs?
13. Has your company set internal standards on political neutrality?
14. Is it forbidden to make political contributions from your company?

Organizational Transparency

1. Does your company provide a full list of its subsidiary and affiliated companies?
2. Does your company the amount of shares that it owns in its subsidiary organizations?
3. Does your company declare the incorporated countries of its subsidiaries?
4. Does your company declare a complete list of countries where its subsidiaries operate

COUNTRY-BY-COUNTRY DISCLOSURE⁴²

1. Does your company publicly declare income/sales in country X?
2. Does your company publicly declare expenditures in country X?
3. Does your company publicly declare income in dollars⁴³ in country X?

⁴² In this study “countries of operation” defines those countries, in which parent companies do not reside, but their subsidiaries conduct business. The corresponding list of these countries is based on the self-evaluations.

⁴³ Before-tax profits

4. Does your company publicly declare its charitable donations in country X?

Appendix 3. Overview of Key Elements in Codes of Ethics

We use the following terms according to the definitions below:

- article: if an entire article of a policy statement was dedicated to the subject
- clause: limited amount of information within a larger article
- reference: when the idea is mentioned without proper definition
- no information: if the idea was completely absent from the document

	Stroytransgaz	Children's World (2 documents: Code of Ethics, Anti-Corruption Policy Statement)	Novorossiysk Commercial Sea Port, PJSC	Quadra	Rusenergosbyt (2 documents: Code of Ethics and Policy Statement on corruption intolerance)	Croc
Gifts	No information	Article in both documents	No information	No information	Article in both documents	No information
Reporting mechanism for internal wrongdoing	No information	Article in both documents	No information	No information	Article in both documents	Clause

Whistleblower protection	No information	Article in both documents	No information	No information	Article in code of ethics	Clause
Compliance control department	Audit committee and internal audit board	No department responsible for auditing, but there is an article about the general order of anti-corruption policy	Audit Committee	Audit Committee	Audit Department	No information
Size of Policy Document	10 pgs, only on the internal structure of the company	Code of ethics - 12 pgs; policy statements - 9 pgs.	12 pgs - only on the internal structure of the company	15 pgs - only on the internal structure of the company	Code of ethics - 25 pgs; policy statement - 7 pgs, formal nature	3 pgs, none of which clear definitions

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Conflict of Interest	In regards to the board of directors, members of the administration, and the president	Article in the code of ethics in regards to all employees and members of the the administration	In regards to the board of directors and the administration	In regards to the board of directors, general director, and members of the administration	In regards to the employees	A clause in regards to the employees
Public-Private Cooperation Procedures	No information	Article in both documents	No information	No information	Article in the code of ethics	No information
Contractors: commercial bribery, procurement bias	No information	Article in the policy statement	No information	No information	Article in both documents	No information

Integrity in relation to contractors	No information	Article in both documents about contractors and charitable donations	No information	No information	Article in the code of ethics	Clause
Reliability and transparency of documentation and reporting	Article	Article in both documents	Article	Article	Article in the code of ethics	Clause
Using corporate assets for personal gain	No information	Article in the code of ethics	No information	No information	Reference in the code of ethics	No information

Spreading Insider Information	Article	Article in the code of ethics	reference in the code of ethics as well as a separate statement	reference in the code of ethics as well as a separate statement	Article in the code of ethics	No information
Conducting Independent Auditing	Reference	Article in both documents	Article	No information	Reference in the code of ethics	Clause
Using Third Parties for Unlawful Activities	No information	Article in the policy document	No information	No information	In the policy document	No information

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