Reducing 3rd Party Risk In Russia & Ukraine through a Business-Driven Approach

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CIPE’s Compliance Niche

- Mid-sized firms in emerging markets without the resources for Big 4 and Western law firms
- Focus on the carrot of joining global value chains
- Society of Corporate Compliance and Ethics (SCCE) academy graduates on staff
- Ongoing contributions to OECD, UN, TI and EBRD anti-corruption efforts

CIPE Compliance Resources

Resources include:
- Guidebooks for emerging markets firms in English, Russian, and Urdu
- Corporate Compliance Trends website with weekly blogs and Twitter
- Compliance Frontiers monthly e-mail newsletter
Russia: Climate of Compliance

Clause 13.3 and Ministry of Labour Recommendations

First signs of enforcement

Role of UKBA, US FCPA as standards of best practice

Union of Industrialists and Entrepreneurs, Chambers of Commerce and Industry, Opera and The Anti-Corruption Charter

Business Ombudsman and the amnesty

Compliance Alliance

Russia: Article 13.3

Article 13.3 requires legal entities to implement and develop measures to prevent corruption. These anti-corruption measures may include:

1) Identifying the departments and employees in legal entities responsible for the prevention of corruption and other offenses
2) Collaboration with law enforcement agencies
3) Creating and implementing standards and procedures to ensure a good faith (bona fide) business activity
4) Implementing a code of conduct and a policy for good conduct of employees
5) Measures for preventing and solving conflicts of interests, and
6) Prohibition of off-the-books accounting and using forged documents.
Russia: Ministry of Labour Guidance

**Three points** from the Recommendations which also influence understanding of the project objectives:

- The aim of the Recommendations is to provide a single approach to anti-corruption process;
- Through processes proportional to the risk;
- Effective, but not expensive.

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Russia: Ministry of Labour Guidance (cont.)

**Risk Management**, considered the most important element of anti-corruption policy:

| Divide business activity into business processes and sub-processes | Identify the critical points where corruption is more likely | Identify the possible corrupt activity in terms of:  
- The gain to be made  
- Who in the organisation is able to effect that gain  
- The likely form of corrupt pay-off | Develop the preventative measures |
Site Visits to Chambers of Commerce

- All have dedicated resource, very impressive anti-corruption knowledge, eager to offer services to clients
- Visit to reinforce learnings with practical guidance through meetings with member-clients
  - Especially risk management skills
- Develop solutions for clients in line with clause 13.3 and MoL Recommendations
- None have their own anti-corruption policies and process
  - Although they engage in risky activity – valuations, counterparty dispute resolution
- However, how they see their role in preventing corruption is still evolving

Case Study: Saratov Chamber

- Client is small-scale producer of industrial chemicals and safety equipment located in small town
- Facing persistent pressure from Local Prosecutor including requirement to show compliance with clause 13.3 (strong suspicions of competitor involvement)
- Governance: Tight control personally exercised by General Director
- Generally, desire to comply (because of Prosecutor pressure) and be good, but no willingness to “rock the boat” i.e. press their policies on to counterparties, do anything to challenge the prosecutor
Saratov (cont.)

However, some (unwittingly) good practice:
- Awareness and management of potential conflicts (but no documentary evidence of the check)
- Steps to ensure reliability of critical suppliers
- Restrictions on budgets for gifts, entertainment, marketing exercised by GD

But,
- Often excluded from big company tenders and forced to operate through intermediaries!

Saratov Chamber Response

- Drafted anti-corruption policy and relevant procedures and anti-corruption clauses for contracts
- Seminars for staff on anti-corruption law and practice
Case Study: Nizhny Novgorod Chamber

- Client is large-scale manufacturer in established Russian Holding Group and with minority western investors
- Refers Suppliers to CCI for help with compliance with clause 13.3
- Well established anti-corruption and ethical processes e.g. tendering, counterparty vetting, conflicts of interest, employee hotlines, controls on risky expenditure, etc.
- CCI services include training, document drafting, risk assessment, process design

Russia: Take-Aways So Far

- High level of knowledge and enthusiasm for what needs to be done in Chambers
- Chambers are working together to promote and develop services and raise awareness with clients, e.g.
  - Hosted hotlines, policies and procedures, counterparty DD, training materials and seminars
- Prosecutors starting to enforce
### Ukraine: Climate for Compliance

- Ukraine is 142 out of 175 on Transparency International’s Corruption Perceptions Index
- Prior to the February 2014 overthrow of President Yanukovych, little done to address issue
- For the Maidan movement, corruption is a top issue but difficult to frame and often politicized
- Big business has an Ombudsman to troubleshoot corruption issues but SMEs have no formal advocate

### Ukraine: New Laws

- National Anti-Corruption Bureau of Ukraine
- National Agency for the Prevention of Corruption
- Business Impact under the New Laws
  - **Article 61**: Business must take anti-corruption steps that are ‘necessary and reasonable’
  - **Article 62**: SOEs and large enterprises must put in place a comprehensive program and name a CO
Ukraine: Pilot Program in Dnipropetrovsk

- Training program for company executives and legal officers on implementing a program
- Curriculum developed by Baker & McKenzie, taking into account new laws, local environment
- Plan to expand to new regions, tailor to the needs of SOEs in light of 2015 privatization wave

Challenges Ahead

- How do we monitor changes in practice in a deeply corrupt environment?
- Do participants ‘believe’ in improving business ethics? Does it matter?
- From a compliance point-of-view, does the post-Soviet environment pose unique challenges?