

ДИАЛЕКТИКА ПРОТИВОДЕЙСТВИЯ КОРРУПЦИИ

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Астанин В. В.
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V. V. ASTANIN,

*Doctor of Science in Law, Professor, Deputy Director for Academic Affairs and Research
Federal State-Funded Institution «Scientific Centre for Legal Information of the Ministry of Justice
of the Russian Federation»*

ANTI-CORRUPTION PROTECTION OF INVESTMENTS: THE PRIMARY FOUNDATIONS OF THE REGIONAL MODEL

Objective: The purpose of the opinions presented in this paper is to update promising models of implementation of anti-corruption measures and procedures with respect to investment and foreign economic activity that are implemented in regional policy format.

The methods that served as the basis for the contents and conclusions presented by the author are contained in the general means of cognition: systemic approach, comparative law analysis, hypotheses testing.

The academic novelty of this paper consists in a comprehensive consideration of a specific research subject, that is, prevention of manifestations of corruption using general and specialised prevention means with a view to safeguard the investment attractiveness of regional economy (as illustrated by the example of the Republic of Tatarstan).

The practical significance of the paper is determined in its resolution part where scientifically grounded recommendations on the organisation of the prevention of manifestations of corruption based on a package of measures are set forth, among them: ensuring the quality of normative law regulation of the activities of subjects of investment operations, special anti-corruption awareness raising for law enforcement officials from amongst public functionaries, forming and implementing principles of due diligence in interacting with contracting parties which allows to avoid manifestations of corruption and their adverse consequences.

Key words: corruption; corruption prevention; investments; English law; anti-corruption expert examination; raising of anti-corruption awareness; compliance procedures.

Introduction

As regards the academic and practical foundations of issues of combating corruption, research works devoted to tasks of anti-corruption protection of investments as well as foreign economic activity are rare to find. Considering the existence of such a lacuna, it is important that this paper sets forth the primary foundations for forming the required protection at the level of implementation of general and specialised measures of prevention of manifestations of corruption that can be applicable at the regional level.

Anti-corruption tasks have different destinations and implementations. It came about that an average man sees them in concrete results of counteracting corruption (detecting corruption offences and punishing the perpetrators). If such an approach is used, the evaluation of the

efficiency of combating corruption and efforts taken in this direction will be reduced to figures. After entering this statistical marathon it will be difficult to fall out of it afterwards explaining the rise or fall of the number of facts, cases, persons, and amounts of damage. This approach turned out not to be adhered to by the executive branch agencies of the Republic of Tatarstan which organise and carry out the anti-corruption tasks in the unique form of their destination and implementation, which have a large reserve of examples that deserve implementation in all subjects of the Russian Federation.

Using medical terms, a brief ‘patient summary’ of the anti-corruption strategy of the region can be expressed as its protective destination for the economy and everything that is connected with it: the administration staff, state and

municipal property, information medium, and investment projects that are advanced for Russia and attractive for foreign partners.

Considering unprecedented achievements and progressive accumulations the Republic of Tatarstan has in the development of the economic sphere, we deem it important to set forth some positions of its anti-corruption protection. Safeguarding this protection is effected in a variety of ways and can be formed in various spheres.

A condition *sine qua non* for its implementation is sustaining a healthy (that is, free from corruption temptations) administrative staff of state and municipal level managers. Such opportunities are offered by trainings, seminars and special training courses (all of which are already being given) aimed at acquiring anti-corruption knowledge and skills. That said, we should drop the illusions that anti-corruption training of public and municipal officers alone can prevent all possible manifestations of corruption. In point of fact, such manifestations can come from persons who interact with public officials. Accordingly, the training should be solidary, somewhat similar to how the subjects of active and passive bribery become solidary due to committing a corruption offence. Without any veil of secrecy, for one and the same audience, lawful (not replaceable by corruption) ways of interaction between officials and businessmen as well as of taking decisions should be analysed. This aspect has a considerable indirect effect: it allows to promptly eliminate gaps in the law and law collisions, to do away with law enforcement excesses, to form an environment of openness meeting the requirements of investment desires. This variant of forming the investment attractiveness of regional economy can be called the «Singapore» variant.

An essential component of eliminating the corruption risks, which can alert investors or determine the burdensome guarantees of investment terms, is observing the clarity and adequacy of normative legal regulation. In this case, we implicate not only elimination of clogging the legislation with corruption factors, but the quality of law making in general. This is due to the fact that the sophisticated, hard to implement requirements and conditions of rendering-obtaining of the state and municipal services are the first and foremost factor of corruption rush for the participants of investment projects (the representatives of both clients and executives).

The mentioned components of anti-corruption safeguarding of the attractiveness of investment of capital into the economy of the region are aimed, contents-wise, at private investors representing small and medium-sized businesses. However, it is important to be aware that the combination of and connection between anti-corruption

and investment policy that takes shape in the regional format, forms an evidence of guarantees for federal and foreign investors. Figuratively speaking, moving towards the great begins with the minor.

A modern trend of intergovernmental co-operation in issues of foreign economic activity that is primarily related to investment of capital is the obligation of non-acceptance of any corrupt ways of doing business. This trend has formed in connection with the participation of many countries, including the Russian Federation, in the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions¹.

A particular feature of the anti-corruption measures provided for in this Convention is the condition of imperative prohibition and criminal prosecution for receiving and granting tax deductions from corruption payments received or made in connection with a concluded international business transaction. The standards laid down in the Convention enforce a scrupulous attitude towards receiving gifts and any other rewards for simplifying formalities, exceeding the acceptable level of exchange of business gifts or hospitality expenses. All this can be regarded as a corruption payment. An important circumstance that creates a real threat of cancelling agreements including investment ones is the trans-boundary nature of prohibitory standards and criminal prosecution. It is necessary to be aware that a possible picture of susceptibility to corruption can be formed on the basis of a simple story of receiving/granting a gift by/to an official carrying out public functions. These can be public as well as municipal officers, members of representative (legislative) bodies and other possible participants (direct as well as indirect ones) of investment projects.

Formal but important principles for minimising the possibilities for corruption risks manifestations which are used by many investors are laid down in the provisions of the Anti-Corruption Charter² that recommends to include in economic contracts the so-called 'anti-corruption

¹ Federal Law no. 3-FZ dated the 01.02.2012 «On the Accession of the Russian Federation to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions», *Official gazette Sобрание Законодательства Россииской Федератсии [Collection of Laws of the Russian Federation]*, 06.02.2012, no. 6, art. 622.

² The Anti-Corruption Charter of the Russian Business signed on the 20.09.2012 at the XI Investment Forum in Sochi by the heads of the Russian Union of Industrialists and Entrepreneurs, the Chamber of Commerce and Industry of the Russian Federation, Business Russia and Opора Rossii All-Russian non-governmental organisations, with the participation of the Chairman of the Government of the Russian Federation. URL: <http://against-corruption.ru/ru/> (accessed: 15.09.15).

clauses'. Such clauses provide a way for out-of-court dissolution of civil law relationships with the subject caught in corrupt behaviour.

The Anti-Corruption Charter being a body of rules for doing business presupposes introducing anti-corruption programmes into corporate policy, monitoring and evaluating the results of their implementation, an efficient financial control, ensuring the principle of publicity of anti-corruption measures, rejection of receiving unlawful advantages, participation in tenders based on the principles of transparency and competition, counteracting corruption informationally. For businessmen of various levels including serious investors the Charter is a fundamental document for implementing compliance procedures which are so far uncommon for domestic businesses but customary for many foreign companies. Knowing these procedures is very important for persons responsible for the development of investment policy and ensuring its implementation.

A high potential for global legal protection and safeguarding of investments and at the same time risks of responsibility for corruption are set by the standards of English law. Two legislative solutions, The International Anti-Bribery and Fair Competition Act of 1978³ and The United Kingdom Bribery Act 2010⁴ are currently of prevailing importance for protecting investors against corruption claims, irrespective of the geography of their sources. The standards laid down in the said legislative instruments require no implementation in the national law, including the Russian one, which enforces treating them as binding. Considering the trans-boundary nature of anti-corruption standards of the English law as well as the fact that most countries of the world are committed to comply with them, including such representatives of theirs as national industrial concerns, investment funds, and loan and financing corporations, one should not disregard their protective potential for possible and current investment projects.

Unconventional measures and means of preventing corruption risks with a view to ensure investment attractiveness can be found in foreign practice. A remarkable

experience is that of Brazil (random sampling of audits of economic agents from among government and municipal customers), Finland (anti-corruption propaganda among businessmen), China (extra-departmental anti-corruption 'hot line') and many other countries. The implementation of such experience can only be relative or approximate.

Conclusion

There can not and should not be any ready-made recipes for anti-corruption protection of investments. Differences in social, macroeconomic, and mental positions regarding the issues of counteracting corruption exist not only at the level of countries, but also at the regional level. Measures for the said protection should be developed, adopted, and implemented, to undergo thorough monitoring afterwards. The example of the Republic of Tatarstan, as regards its determination to be once again the leader in creating tactical and strategic measures for anti-corruption protection of investments and possibly (and highly likely) to be later the donor of acquired experience, was a factor of inspiration for the author of this paper and the proposals set forth in it. It is also important to realise that the beginnings of this work should be carried out not in the form of fragmentary measures but in the form of building an efficient compliance system. Its priority areas of action should include fulfilling the recommendations contained in the 2015-16 G20 Anti-Corruption Action Plan⁵ as well as implementing its own measures applicable to the economic and social realia of the development of regional economy.

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³ The Foreign Corrupt Practices Act of 1977, PL 95–213, Title 1; 91 Stat 1494, Dec 19, 1977.

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⁵ 2015-16 G20 Anti-Corruption Action Plan. URL: https://g20.org/wp-content/uploads/2014/12/2015-16%20_g20_anti-corruption_action_plan_0.pdf (accessed: 15.09.15).

Information about the author

Astanin Viktor Viktorovich, Doctor of Science in Law, Professor, Deputy Director for Academic Affairs and Research, Federal State-Funded Institution «Scientific Centre for Legal Information of the Ministry of Justice of the Russian Federation»
Address: bld. 1, 65, Mikhalkovskaya Str., 125438, Moscow, tel.: +7 (495) 539-25-17
E-mail: callc@scli.ru

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В. В. АСТАНИН,

доктор юридических наук, профессор, заместитель директора по научной и исследовательской работе

*Федеральный государственный институт «Научный центр юридической информации
при Министерстве юстиции Российской Федерации»*

АНТИКОРРУПЦИОННАЯ ЗАЩИТА ИНВЕСТИЦИЙ: ПЕРВООЧЕРЕДНЫЕ ОСНОВЫ РЕГИОНАЛЬНОЙ МОДЕЛИ

Цель: совершенствование перспективных моделей применения антикоррупционных мер и процедур в отношении инвестиций и внешнеэкономической деятельности на уровне региональной политики.

Методы: общие методы познания: системный подход, сравнительно-правовой анализ, проверка гипотезы.

Научная новизна: комплексное рассмотрение предмета исследования, а именно предотвращения проявлений коррупции с помощью общих и частных превентивных мер, с учетом сохранения инвестиционной привлекательности региональной экономики (на примере Республики Татарстан).

Практическая значимость: представлены обоснованные рекомендации по организации предотвращения проявлений коррупции на основе комплекса мер, включая обеспечение качества нормативного регулирования деятельности субъектов инвестиционных операций, повышение информированности в сфере противодействия коррупции среди правоприменителей из числа государственных служащих, формирование и применение принципов должной осмотрительности при взаимодействии с участниками контракта, что позволит избежать проявлений коррупции и их негативных последствий.

Ключевые слова: коррупция; предотвращение коррупции; инвестиции; англосаксонское право; антикоррупционная экспертиза; повышение информированности в сфере противодействия коррупции; процедуры соответствия.

Информация об авторе

Астанин Виктор Викторович, доктор юридических наук, профессор, заместитель директора по научной и исследовательской работе, Федеральный государственный институт «Научный центр юридической информации при Министерстве юстиции Российской Федерации»
Address: 125438, Москва, ул. Михайловская, 65, стр. 1, тел.: +7 (495) 539-25-17
E-mail: callc@scli.ru

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