



Organisation for Economic Co-operation and Development

DAF/WGB(2018)48

Unclassified

English - Or. English

13 November 2018

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

Cancels & replaces the same document of 25 September 2018

Phase 2 follow-up: additional written report by Russia

Paris, 9-11 October 2018

JT03439480

WRITTEN FOLLOW UP TO PHASE 2 REPORT - RUSSIA¹

Name of country:	RUSSIA
Date of approval of Phase 2 Report:	11 October 2013
Date of information:	20 September 2018

¹ See the “Proposed Template in the OECD Anti-Bribery Convention: Phase 2 Monitoring Information Resources”.

1. Instructions

1. This document seeks to obtain information on the progress Russia has made in implementing the recommendations of its **Phase 1 and 2 Reviews**².

2. Responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

2.

² The OECD Working Group on Bribery in International Business Transactions recommended at the time of the adoption of the Phase 2 report “a special written follow-up report, which would focus on both Phase 1 and Phase 2 recommendations, to be discussed by the Working Group before the end of 2014”. See Phase 2 Report para. 302.

CONTENT:

RECOMMENDATIONS FOR ACTION

Recommendation 10(a)4
Recommendation 10(b)4
Recommendation 10(c)5
Recommendation 10(d)5
Recommendation 11(a)5
Recommendation 11(b)6
Recommendation 12 (b)6
Recommendation 12(c)6

Appendix

Federal Law on amendments to to the Federal Law "On enforcement proceedings,
dated December 5, 2017, No 382-FZ.....7

Federal Law “On amendments to the Code of Criminal Procedure
of the Russian Federation”, dated December 5, 2017, No 387-FZ.....8

Recommendations for Action

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery and related offences

Text of Phase 2 recommendation 10(a):

10. With respect to the **offence of foreign bribery**, the Working Group recommends that Russia:
- a) Amend the law in order to (i) expand the scope of the offence of foreign bribery, to include the “promising” and “offering” of a bribe as offences; (ii) ensure that any kind of advantage, including any bribes in the form of non-material advantages are explicitly covered by the foreign bribery offence; (iii) eliminate the defence of “effective regret” as it applies to foreign bribery; and (iv) exclude the application of the defence of economic extortion from the offence of foreign bribery [Convention, Article 1, Phase 1 Evaluation, Recommendations 1a), 1b) and 1c)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Draft Federal Law No. 232807-7 "On Amendments to the Criminal Code of the Russian Federation and Article 151 of the Code of Criminal Procedure of the Russian Federation (regarding harsher punishment for corruption)" with regard to supplementing the Criminal Code of the Russian Federation with provisions on including any non-material benefits in the subject of a bribe (commercial bribery), and also on establishing responsibility for bribing arbitrators is currently under consideration of the State Duma of the Federal Assembly of the Russian Federation.

Text of Phase 2 recommendation 10(b):

- 10 With respect to the offence of foreign bribery, the Working Group recommends that Russia:
- b) Take any appropriate measures to (i) clarify that the offence of “bribe giving” (including through intermediaries) is deemed to be completed when the briber actually takes steps to transfer the undue advantage and does not require the actual receipt of the bribe by the foreign official or a third party on his behalf to be proven; (ii) raise awareness within both the public and private sectors that bribery through an intermediary, including through a related legal person, constitutes an offence under the foreign bribery offence; (iii) ensure that a reference to foreign law is not the only source relied upon for defining the foreign official’s duties and determining whether the act committed by the foreign official was lawful or unlawful [Convention, Article 1].

Actions taken as of the date of the follow-up report to implement this recommendation:

There is no updated information.

Text of Phase 2 recommendation 10(c):

- 10 With respect to the **offence of foreign bribery**, the Working Group recommends that Russia:
- c) Take any appropriate measures to ensure that the definition of public official covers, in a manner that is consistent with the Convention and Commentaries: (i) officials of public enterprises, regardless of their legal forms; (ii) officials of public enterprises where there is direct or indirect control of the enterprise; and

(iii) public officials of organised foreign areas or entities that do not qualify or are not recognised as States [Convention, Article 1].

Actions taken as of the date of the follow-up report to implement this recommendation:

There is no updated information.

Text of Phase 2 recommendation 10(d):

10. With respect to the offence of foreign bribery, the Working Group recommends that Russia:

- d) Clarify and ensure that all cases where a foreign public official directs the transmission of the benefit to a third party are covered under the offence of foreign bribery, not just those where the official has a proven relationship with the third party [Convention, Article 1].

Actions taken as of the date of the follow-up report to implement this recommendation:

There is no updated information.

Text of Phase 2 recommendation 11(a) [see also Phase 1 recommendation 4]:

11. With respect to the **liability of legal persons**, the Working Group recommends that Russia:

- a) Amend the law in order to (i) expand the scope of the offence applicable to legal persons to include third party beneficiaries; and (ii) ensure that any kind of advantage, including any bribes in the form of non-material advantages, in the context of the Code of Administrative Offences, can trigger administrative responsibility of legal persons [Convention, Article 2].

Actions taken as of the date of the follow-up report to implement this recommendation:

Draft Federal Law No. 233781-7 "On Amendments to Article 19.28 of the Code of Administrative Offenses of the Russian Federation (regarding the establishment of liability for corruption offenses committed for the benefit of third parties – beneficiaries)", which establishes liability for corruption offenses committed not only on behalf of or for the benefit of a particular legal entity, but also for the benefit of third parties – beneficiaries that might include affiliates, subsidiaries, has been adopted by the State Duma of the Federal Assembly of the Russian Federation in the first reading.

Ministry of Justice of Russia drafted a federal law "On Amendments to Article 19.28 of the Code of Administrative Offenses of the Russian Federation (regarding harsher punishment for corruption), which establishes the inclusion of the benefit of non-property nature in the subject of an administrative offense under Article 19.28 of the Code of Administrative Offenses of the Russian Federation, it has been submitted to the Government of the Russian Federation. Currently, the draft law is under consideration of the Government of the Russian Federation.

Text of Phase 2 recommendation 11(b):

11. With respect to the **liability of legal persons**, the Working Group recommends that Russia:

- b) Take all appropriate measures to clarify (i) the requirements for the administrative liability of legal persons in order to ensure coverage of the full range of situations

required in Annex I to the 2009 Recommendation; (ii) what constitutes “on behalf or in the interest of a legal person” when the offending natural person worked for a foreign subsidiary of a Russian legal entity; and, (iii) when a court can charge a legal person, including a foreign subsidiary of a Russian legal person, with mediation in bribery, and the resulting sanctions that can be imposed [Convention, Article 2 and 2009 Recommendation Annex I B) and I C)].

Actions taken as of the date of the follow-up report to implement this recommendation:

There is no updated information.

Text of Phase 2 recommendation 12(b):

12. With respect to **sanctions for foreign bribery**, the Working Group recommends that Russia:
- b) Take measures to allow for confiscation of the equivalent value of the bribe and its proceeds in proceedings against natural persons [Convention, Article 3.3].

Actions taken as of the date of the follow-up report to implement this recommendation:

The Authorities of the Russian Federation have adopted federal laws of December 5, 2017 No. 382-FZ "On Amending the Federal Law "On Enforcement Proceedings" and No. 387-FZ "On Amendments to the Code of Criminal Procedure of the Russian Federation" aimed at improving the legal regulation in the field of international cooperation in identifying, freezing, seizing, confiscating and recovering assets.

Text of Phase 2 recommendation 12(c) [see also Phase 1 recommendation 6]:

12. With respect to sanctions for foreign bribery, the Working Group recommends that Russia:
- c) Adopt legislation that would allow seizure and confiscation of the proceeds of the bribe and their equivalent value in proceedings against legal persons [Convention, Article 3.3].

Actions taken as of the date of the follow-up report to implement this recommendation:

There is no updated information.

December 5, 2017

No. 382-FZ

RUSSIAN FEDERATION
FEDERAL LAW
ON AMENDMENTS
TO THE FEDERAL LAW "ON ENFORCEMENT PROCEEDINGS"

Adopted by
the State Duma
on November 24, 2017

Approved
by the Federation Council
on November 29, 2017

To amend Federal Law of October 2, 2007 No. 229-FZ On Enforcement Proceedings (Collected Legislation of the Russian Federation, 2007, No. 41, Article 4849, 2009, No. 1, Article 14, 2011, No. 30, Article 4573, 2013, No. 52, Article 7006, 2014, No. 11, Article 1099) as follows:

- 1) article 11 after the words "resolutions of foreign courts", add "including sentences, resolutions of foreign courts regarding the confiscation of proceeds from crime in the Russian Federation";
- 2) part 2 of Article 87 shall be supplemented as follows "unless otherwise established by an international treaty of the Russian Federation";
- 3) part 1 of Article 104 shall be supplemented as follows "unless otherwise established by an international treaty of the Russian Federation".

President
of the Russian Federation
V. PUTIN

Moscow, Kremlin
December 5, 2017
No. 382-FZ

December 5, 2017

No. 387-FZ

RUSSIAN FEDERATION
FEDERAL LAW
"ON AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE
OF THE RUSSIAN FEDERATION"

Adopted
by the State Duma
November 24, 2017

Approved
by the Federation Council
November 29, 2017

To amend Section XVIII of the Penal Code of the Russian Federation (Collected Acts of the Russian Federation, dated 2001, No. 52, Article 4921; dated 2002, No. 22, Article 2027; dated 2003, No. 27, Articles 2700, 2706; dated 2004, No. 27, Article 2711; dated 2007, No. 24, Article 2833; dated 2009, No. 51, Article 6161; dated 2011, No. 1, Articles 16, 45; dated 2013, No. 30, Article 4050; dated 2015, No. 1, Article 83; dated 2016, No. 27, Article 4262) by supplementing with Chapter 55.1 of the following content:

"Chapter 55.1. PROCEDURE FOR CONSIDERATION AND RESOLUTION
OF ISSUES RELATED TO THE RECOGNITION AND ENFORCEMENT
OF THE VERDICT, FOREIGN COURT ORDER
IN PART OF CONFISCATION ON THE TERRITORY
OF THE RUSSIAN FEDERATION OF THE PROCEEDS OF CRIME

Article 473.1. Recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime

1. The verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime shall be recognized and enforced in the Russian Federation if this is stipulated by an international treaty of the Russian Federation. In the absence of a relevant international treaty, the issue of recognition of the verdict, foreign court order can be solved on the basis of the principle of reciprocity, confirmed by a written obligation of the foreign state and received by the Ministry of Justice of the Russian Federation in accordance with Part 1 of Article 457 of this Code.

2. The basis of enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime is the court order of the Russian Federation on the recognition and enforcement of the verdict, foreign court order, delivered in accordance with the international treaty of the Russian Federation or on the basis of reciprocity upon consideration of request sent in the prescribed manner to the competent authority of the foreign state and the relevant foreign court order.

3. For the purposes of this Chapter, the proceeds of crime mean the property specified in Article 104.1 of the Criminal Code of the Russian Federation.

Article 473.2. Content of the request for recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime

1. The request of the competent authority of the foreign state for recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime shall contain:

1) name of the competent authority of the foreign state which sent the request;
2) name of the criminal case and information on the court of the foreign state which ruled the verdict or the order;

3) information on the property, which is located on the territory of the Russian Federation and is subject to forfeiture as the proceeds of crime, as well as information on the proprietor, owner of the property, including date and place of birth, citizenship, occupation, place of residence or location, and for legal entities - name and location;

4) request of the competent authority of the foreign state on recognition of the verdict, foreign court order in part of confiscation of the proceeds of crime and enforcement of the decision regarding confiscation of the proceeds of crime in accordance with the verdict or the order.

2. The request of the competent authority of the foreign state can specify other information, including phone numbers, fax numbers, E-mail addresses, if they are necessary for the proper and timely consideration of the case.

3. The request of the competent authority of the foreign state shall include documents provided by the international treaty of the Russian Federation, and if this is not stipulated by the international treaty of the Russian Federation the following documents shall be attached:

1) certified by the foreign court copy of the verdict, foreign court order, which provides for the confiscation on the territory of the Russian Federation of the proceeds of crime;

2) document that the verdict, foreign court order entered into legal force;

3) document on the execution of the verdict, foreign court order if they had been previously executed on the territory of the respective foreign state;

4) document confirming that the property subject to forfeiture is located on the territory of the Russian Federation;

5) document from which it follows that the person, against whom the default judgment was made on confiscation on the territory of the Russian Federation of the proceeds of crime, did not participate in the proceedings, despite the fact that he/she was timely and duly notified of the place, date and time of the hearing of the case;

6) certified translation of documents referred to in paragraphs 1-5 of this Part to the Russian language.

Article 473.3. Court considering the request for recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime

The request of the competent authority of the foreign state on recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime, addressed in the prescribed manner, shall be sent by the Ministry of Justice of the Russian Federation for the consideration to the Republic Court, krai or regional court, court of the city with federal status, court of the autonomous region or court of the autonomous district at the place of residence or location in the Russian Federation of the person in respect of whose property, by the verdict, foreign court order, the decision on confiscation was made, and in the case if such person has no place residence or

location in Russian Federation or his/her domicile is unknown - at location in the Russian Federation of his/her property subject to forfeiture.

Article 473.4. Procedure for considering the request for recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime

1. The request of the competent authority of the foreign state for recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime shall be considered by a single judge in open court with a notice about the place, date and time of request consideration of the person in respect of whose property, by the verdict, foreign court order, the decision on confiscation was made, other interested parties in whose ownership, possession, use or disposal the property subject to forfeiture is, and (or) their representatives, the competent authority of the foreign state and the attorney.

2. Persons referred to in paragraph 1 of this Article, living or staying on the territory of the Russian Federation, shall be notified of the place, date and time of the hearing no later than 30 days prior to the day of the hearing. Notice to persons, living or staying outside the Russian Federation, and the competent authority of the foreign state shall be sent in the prescribed manner, according to Part 3 of Article 453 of this Code, not later than 6 months prior to the day of the hearing.

3. The person, in respect of whose property, by the verdict, foreign court order, the decision on confiscation was made, held in custody and declared his/her desire to participate in the consideration of the request from the competent authority of the foreign state, shall be given by the court the right to participate in the hearing directly or via video conference, as well as the right to inform the court of his/her position through with the help of his/her representative on his/her behalf or in writing.

4. Other interested parties in whose ownership, possession, use or disposal the property subject to forfeiture is, and (or) their representatives can participate in the hearing.

5. The failure to appear in the court of persons, timely notified of the place, date and time of the hearing, except persons whose participation in the hearing is recognized by the court as compulsory, shall not preclude the consideration of the request of from the competent authority of the foreign state.

6. The consideration of the request from the competent authority of the foreign country shall start with the hearing of explanations of the person, in respect of whose property, by the verdict, foreign court order, the decision on confiscation was made, the representative of the competent authority of the foreign state, interested parties, if they participate in the hearing, as well as conclusions of the Prosecutor. Upon the consideration of the request, the court shall decide on recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime, refusal to do so or recognition and partial enforcement of the verdict, foreign court order.

7. If the court has any doubts in connection with the incompleteness or absence of required information, the judge may request in the prescribed manner the competent authority of the foreign state, submitting the said request, as well as other persons participating in the consideration of the request, additional clarifications, additional information and materials.

Article 473.5. Grounds for refusing recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime

Recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime shall not be permitted if:

1) execution of the verdict, foreign court order in part of confiscation of the property contradicts to the Constitution of the Russian Federation, generally recognized principles and norms of international law, international treaties of the Russian Federation, the legislation of the Russian Federation;

2) execution of the verdict, foreign court order in part of confiscation of the property may cause damage to the sovereignty or security or other essential interests of the Russian Federation;

3) the verdict, foreign court order, providing for the confiscation of the property, did not enter into legal force;

4) property subject to confiscation is located on the territory that is not under the jurisdiction of the Russian Federation;

5) the act, in respect of which the verdict, foreign court order provides for the confiscation of the property, was committed on the territory of the Russian Federation and (or) the act is not recognized by the legislation of the Russian Federation as a crime;

6) the legislation of the Russian Federation does not provide for the confiscation of the property for the act, similar to the act in respect of which the verdict, foreign court order decided on confiscation;

7) in regard to the person referred to in the request of the competent authority of the foreign state, the court of the Russian Federation ruled the legally effective verdict in respect of the act, criminal proceedings were terminated, as well as there is an irreversible decision on the termination of the preliminary investigation on the criminal case or refusal of the initiation of the criminal case;

8) the verdict, foreign court order, providing for the confiscation of the property, cannot be enforced due to the lapse or other grounds envisaged by the Constitution of the Russian Federation, international treaties of the Russian Federation, the legislation of the Russian Federation;

9) the request of the competent authority of the foreign state and the accompanying verdict, foreign court order, providing for the confiscation of the property, have no evidence that the property subject to the confiscation is the proceeds of the crime or is the income received from criminal activities, as well as used to commit the crime;

10) in the Russian Federation in connection with the same act, there is the criminal prosecution of the person regarding whose property the request on confiscation is sent to the competent authority of the foreign state;

11) the property, the confiscation of which was requested by the competent authority of the foreign state, was charged by the verdict or decision of the court of the Russian Federation in criminal, civil or administrative proceedings;

12) the property, specified in the verdict, foreign court order, is not subject to confiscation in accordance with the legislation of the Russian Federation.

Article 473.6. Court decision upon the consideration of the request from the competent authority of the foreign state on recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime

1. When considering the request from the competent authority of the foreign state on recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime, the court shall conclude on the presence of grounds under Article 473.5 of the Code for the refusal of recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime, shall rule on the refusal of recognition of the verdict, foreign court order and their enforcement.

2. In all other cases, the court shall decide on recognition of the verdict, foreign court order in part of confiscation of the proceeds of crime and their enforcement completely or partially, with the relevant order which specifies:

1) name of the court of the foreign state, place and date of the verdict, foreign court order;

2) information on the last place of residence, place of work and occupation in the Russian Federation of the person convicted by the court of the foreign state;

3) description of the crime for which the convicted person was found guilty, and the criminal law of the foreign state under which he/she was convicted and the decision on confiscation of the property was made;

4) article of the Criminal Code of the Russian Federation providing responsibility for the crime committed by the convicted person and the application of confiscation of the property;

5) information on the property located on the territory of the Russian Federation and subject to confiscation;

6) appeal procedure established by Chapters 45.1, 47.1 and 48.1 of this Code.

3. If the confiscation of a specific item, included in the property subject to forfeiture, at the time of the court's decision on recognition of the verdict, foreign court order in part of confiscation of the proceeds of crime and their enforcement fully or partially, is impossible due to its use, sale, or other reason, the court in accordance with Article 104.2 of the Criminal Code of the Russian Federation shall determine the amount subject to confiscation that equals the value of this item, or shall determine a different property the value of which corresponds to the value of the item subject to confiscation or comparable to its cost.

4. Copies of the order within 3 days from the date of the verdict shall be sent by the court to the competent authority of the foreign state, the person in respect of whose property, by the verdict, foreign court order, the decision on confiscation was made, the Prosecutor, as well as other interested parties in whose ownership, possession, use or disposal the property subject to forfeiture is.

Article 473.7. Issue of the writ of execution and its enforcement

1. On the basis of the enforceable court decision on recognition and enforcement of the verdict, foreign court order in part of confiscation on the territory of the Russian Federation of the proceeds of crime, the court shall issue the writ, which shall contain the operative part of the verdict, foreign court order, as well as the operative part of the court decision on recognition of the verdict, foreign court order and their enforcement fully or partially.

2. The writ with copies of the verdict, foreign court order and the copy of the court decision on recognition and enforcement of judgment the verdict, foreign court order shall be sent to a bailiff for execution in accordance with the legislation of the Russian Federation on proceedings.

President
of the Russian Federation
Vladimir Putin

The Kremlin, Moscow
December 5, 2017
NO. 387-FZ