

Business and State Authorities in Russia: Working to Achieve Compliance

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In the current economic situation in Russia, when the state is actively involved in regulating the economy and robustly uses its administrative resources to regulate business processes, liaising with the state and local administration becomes an important component of a successful business. Implementing any business task requires compliance with administrative procedures relating to the need to obtain permits, submit notifications to executive authorities and local government or to obtain their approval with regard to the terms of business or specific transactions. All of this reduces the risk of potential claims.

In such circumstances, compliance must take the form of a company having an internal system to monitor whether it observes compulsory requirements of legislation and subordinate legislation ("compulsory requirements") in the course of its activity. This is especially so since the failure to comply with these compulsory requirements or improper compliance with them entails administrative liability for the company and criminal or administrative liability for its officials.

Unfortunately, compliance in the business world is regarded as a system of monitoring internally whether counterparties and employees are acting in good faith and are reliable. This does not help with assessing and eliminating the risks of the state applying enforcement measures (like fines, default interest, administrative suspension of operations or suspension or canceling of licenses) against companies and their management for violating the compulsory requirements. The companies may commit such violations if they do not have an internal compliance system in place and these violations may later be revealed by the state authorities in the course of relevant inspections.

In this situation we recommend establishing a corporate system for internal monitoring

and document flow, which will ensure compliance with compulsory requirements. It will also enable the company to conduct a preliminary inspection to prepare for potential inspections by the state supervisory authorities.

Information on scheduled administrative inspections for the following year is posted on the website of the Russian General Prosecutor's Office no later than the end of the preceding year. Unscheduled inspections may be conducted based on information submitted by third parties to the state authorities regarding any violations of compulsory requirements or any threat of violation. They may also be conducted if orders of state authorities are not implemented in due time or consumers' rights are violated. Therefore, we believe it would be prudent, within the scope of compliance procedures, to ensure the loyalty of counterparties and employees who may contact the tax authorities claiming that their rights and legitimate interests have been violated by the company. This could be done by preventing potential disputes or settling the existing disputes with counterparties and employees, as well as by ensuring that orders regarding compulsory requirements are implemented in a timely manner and by informing the state authorities who issued these orders of the outcome.

To cut the potential risk of being held liable and where legislation directly provides for other measures of state enforcement, we recommend requesting written clarification from the competent state authorities. If these clarifications are complied with, it may be concluded that all measures have been adopted to ensure that compulsory requirements are met. As a rule, this indicates that the person is not guilty of committing offenses and, therefore, liability is not imposed.

There is another important factor to take into account when developing and implementing the compliance system in relations between the business and the Russian state authorities.

Persons engaged in business activity are allowed to do everything that is not directly prohibited by the law, since they must be free to exercise their constitutional right to protect the rights and legitimate interests by choosing any methods and techniques for doing so that are not forbidden by the law. The state's obligation is to ensure that these methods are applied appropriately. Meanwhile, officials are only allowed to do what is directly stipulated in administrative and official regulations. Officials of state supervisory bodies are bound by the exhaustive list and scope of the administrative procedures fixed by administrative and official regulations.

Therefore, if state officials impose requirements beyond those that the law allows, the companies are entitled to submit to them a well-grounded written refusal to comply with illegal requirements. Companies may also lodge a complaint with the higher authority (superior official) or with the court against any illegal requirements, acts or omissions, as well as decisions of the state authorities and their officials, if they violate the rights and legitimate interests of companies, serve as grounds for any liability to be unlawfully imposed on the company or for the company to be held liable on an unlawful basis.

We believe the above recommendations will help the companies to develop and implement a compliance system for conducting business in Russia.

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