

B2B: A Look at Compliance in Russia

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In today's Russia, where the authorities actively use administrative resources to regulate business processes, interaction with state and local administrative authorities is an important component of a successful business.

Any business task requires compliance with administrative procedures like obtaining permits, sending notifications to executive authorities and local authorities, or agreeing with them the terms and conditions of business activity and of specific transactions to avoid potential claims.

In such circumstances compliance should become for business an internal system ensuring compliance with the mandatory requirements of legislation and bylaws, the failure to perform which or improper performance of which results in administrative liability for the company and criminal or administrative liability for its officers.

Today compliance is treated as a system of internal control over whether business counterparties and employees are behaving in good faith and a reliable manner. This approach cannot be used to evaluate and eliminate the risks of the state applying enforcement measures (like fines, default interest, administrative suspension of activities or licence suspension and cancellation) to the company and its management for violating the mandatory requirements. These risks may be realized, if there is no internal control system in place and if the state authorities identified the violations during the inspection.

In such a situation, we recommend establishing an internal control and document flow system in the company, which would allow you to comply with the mandatory requirements, as well as to conduct preliminary audit to prepare for potential audits by the state authorities.

We remind the reader that information about the planned administrative audits for the

following year is posted on the website of the Public Prosecutor's Office of the Russian Federation no later than the end of the previous year. There are the following grounds for non-scheduled audits: if third parties file a complaint with the state authorities regarding any violation of the mandatory requirements or regarding the threat of such a violation, if they create danger; the failure to perform official orders before the specified deadline or violations of consumer rights.

When ensuring compliance, it is advisable to ensure the loyalty of counterparties and employees, which may lodge a complaint regarding the company violating their rights and legitimate interests, by preventing or resolving potential conflicts with them. It is also advisable to perform in advance the orders regarding compliance with the mandatory requirements and to report the results to the state authorities.

To eliminate the potential risks of being held liable and if other state enforcement measures are applied, we recommend contacting the competent state authorities for written explanations. If such explanations are complied with, this is a ground for concluding that everything was done to comply with the mandatory requirements. This, as a rule, eliminates the guilt of committing violations and, therefore, the liability.

The companies should take the following into account when developing and using their compliance systems in relationships between the business and state authorities in Russia.

Business entities are allowed everything that is not directly prohibited by law. This is connected with the fact that the constitutional right for protection implies that business entities are free to choose any method or technique to protect their rights and legitimate interests, provided that such methods or techniques are not forbidden by the law, and that the state is obliged to ensure that these methods or techniques are used properly. At the same time, state officials are only allowed to do what administrative and official regulations directly order them to do. An exhaustive list and limitations of administrative procedures stipulated in these regulations limit the procedural capacities of the state supervisory authorities' officials.

Therefore, if certain requirements of officials are beyond the authorities vested in them by legislation, companies are entitled to send to them a motivated written refusal to perform their illegal requirements. Moreover, companies may file a claim with the superior authority (superior state official) or with the court against any illegal requirements, actions, omissions or decisions of the state authorities and their officials in cases where they affect their rights and legitimate interests, if any obligation may be imposed illegally on the companies based on them or if a company may be held illegally liable.

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