

# ABAC Compliance review of the Russian Arbitration Center

Extract from the report dated 29 May 2020

27 October 2020





Russian Institute of Modern Arbitration  
119017, Moscow,  
Kadashevskaya naberezhnaya, bld. 14/3  
To: Mrs Yu. Mullina

27 October 2020

**Subject: Compliance review**

Dear Yulia,

According to the engagement letter No. 1/20 of 31 March 2020 we conducted a compliance review of the Russian Arbitration Center (the "RAC") for the year ending 31 December 2019 and issued a report dated 29 May 2020.

As requested, we have prepared this document giving a high-level summary of our observations during the review. You intend to include this document on the RAC's web-site.

Our work was carried out during the period 6 April 2020 to 19 May 2020. No work was done, and no documents were considered after 19 May 2020. This document does not incorporate the effects, if any, of events and circumstances which may have occurred or information which may have come to light subsequent to that date.

All recommendations made by PwC in this document are for management's consideration only. PwC is not responsible for the management decisions in respect of the compliance function.

PwC accepts no duty of care to any person (except to Russian Institute of Modern Arbitration) for the preparation of this document. Accordingly, regardless of the form of action, to the extent permitted by applicable law, PwC accepts no liability of any kind and disclaims all responsibility for the consequences of any person (other than Russian Institute of Modern Arbitration) or for any decisions made or not made which are based upon this report.

Yours faithfully,

# Summary of observations

The scope of our work is set out in the Appendix to this document.

In the course of our review top management of the RAC demonstrated high level of anti-corruption commitment, good understanding of compliance principles and “zero-tolerance” for bribery and corruption. Besides, since its establishment in 2016, the RAC started implementing policies and procedures, which contribute to mitigation of compliance risks. The example of such policies is the Arbitration policy which stipulates the arbitration process and requirements for arbitrators to inform the RAC about potential conflict of interest with the party of the dispute.

At the same time, considering the growing Russian and international arbitration practice in the RAC, we believe that additional preventative measures needed to mitigate the compliance risks, such as development and implementation of a formalised compliance framework and additional procedures, as well as conducting regular assessment and update of compliance risks and controls to comply with best international compliance practice.

This document presents our key observations (risks identified) and recommendations.

## 1. Tone at the top

### **Observation:**

There is no practice in place to communicate “zero tolerance” for bribery and corruption and other compliance-related topics that leads to a risk of perception of the compliance framework by RAC’s employees in a wrong way.

### **Recommendation:**

- Develop communication plan for Anti-Bribery and Corruption (“ABAC”) compliance, including internal and external communication processes;
- Implement regular internal communication of management’s “zero tolerance” for bribery. Practical step may include distribution of a letter from the CEO via the RAC’s intranet and external web site, publication in mass media, etc. You may wish to consult with your marketing and communication team and / or public relations team in this regard.

## 2. Compliance framework

### **Observation:**

There is no formalised compliance framework in RAC, including compliance policies and dedicated function, compliance trainings and hotline, that leads to a risk of perception of ABAC compliance framework by RAC employee in a wrong way.

### **Recommendation:**

- Introduce a compliance function by assigning a person responsible for development and supervision of compliance related controls;
- Develop and implement a Code of Conduct which incorporates all relevant ABAC compliance matters;
- Make sure acknowledgement with the Code of Conduct of all employees of the RAC;

- Develop and implement a regular compliance monitoring program (e.g. quarterly, semi-annual, annual depending on the risk);
- Roll-out of regular (i.e., annual) anti-bribery training to the employees of the RAC.

### **3. Arbitration process**

**Observation:**

There is no policy or procedure in place to mitigate the risk of potential involvement of the RAC in the administration of the disputes with unclear business rational which might bear high reputational and compliance risks.

**Recommendation:**

Continue improvement of the Arbitration Policy to correspond with best international practices. Specifically, consider development of preventive measures to avoid entering into administration of the disputes with unclear business nature.

### **4. Use of third parties, including work with Arbitrators, Experts, suppliers and consultants**

**Observation:**

There is no policy and procedure in place to carry out a comprehensive anti-bribery due diligence with respect to the prospective or existing business partners which represents a compliance risk for the RAC.

There is no policy or procedure in place to perform independent conflict check in respect of Arbitrators and Experts that may lead to a hidden conflict of interests with the parties in arbitration.

**Recommendation:**

- Introduce a formal, documented and risk-based due diligence process (background and conflict check) for all new and current counterparties, including Arbitrators, Experts, suppliers and consultants;
- Include an anti-corruption clause in all contracts with counterparties;
- Include a section in the Code of Conduct dedicated to the identification and managing of conflict of interest;
- Conduct independent check of information provided by the Arbitrators and the Experts in the declarations;
- Conduct regular checks of potential conflict of interests between the RAC's employees and counterparties.

### **5. Personnel matters**

**Observation:**

RAC does not have the policy or procedures to review whether employees and/or their relatives have close or family relationships with counterparties of the RAC. This could increase the risk of non-arm-length transactions.

**Recommendation:**

Include a section dedicated to personnel matters in the Code of Conduct.

## 6. Accounting and internal control

### **Observation:**

There is no procurement and payment policies in place. Lack of comprehensive procurement and payment policies increases the compliance risk.

### **Recommendation:**

- Develop, approve and implement procurement policy and the policy for review and approval of payments to make sure proper segregation of duties and control over selection, approval, acceptance and payment processes;
- Enhance controls over timely collection of full set of supporting documents evidencing the delivery of services/goods.

## 7. Sponsorship and representative expenses

### **Observation:**

The RAC does not have a sponsorship policy which would determine the purposes of sponsorship and donations, and would clearly set responsibilities for approval, monitoring and control of actual use of funds. This may lead to compliance risks.

### **Recommendation:**

Develop and introduce a transparent and explicit sponsorship policy which determines the purposes of sponsorship and donations, and clearly sets responsibilities for approval, monitoring and control of actual use of funds.

## Appendix - Our scope and approach

Our work comprised the following key steps, covering the period ended 31 December 2019:

- a) Analysis of RAC business processes to identify potential corruption risks;
- b) Analysis of existing anti-corruption controls and their integration in processes with high level of corruption risk in particular;
- c) Assessment of sufficiency of existing controls;
- d) Development of recommendations in regard to compliance framework.

For the purposes of this work, we selected the following processes for review:

- Process of arbitrators selection, appointment and refusal;
- Due diligence process of potential arbitrators, suppliers and other counterparties, including employees;
- Process of suppliers selection and tendering;
- Operations with high compliance risk: sponsorships, charity, operations with government and business expenses;
- Identification and control of conflict of interest of employees, arbitrators and clients.

During our risk assessment, we performed the following procedures:

- Interviews with key executives and “owners” of anti-corruption controls, as well as selected external parties;
- Review of existing policies and procedures which were in effect in the RAC as at 31 March 2020;
- Analysis of accounting records and, on a sample basis, the RAC’s primary supporting documents for the period in order to understand whether the policies and procedures are followed, as well as to identify potential gaps in internal controls. For that purpose, we selected 20 transactions from compliance sensitive areas.

We used the following framework for development of practical recommendations (“good practice of anti-bribery tools”):

- Foreign Corrupt Practices Act (FCPA);
- FCPA: A Resource Guide to the U.S. Foreign Corrupt Practices Act;
- Guidance document of the U.S. Department of Justice: Evaluation of Corporate Compliance Programs;
- The Bribery Act 2010 (UK BA);
- The Bribery Act 2010: Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing.

.

