s countries around the world increase their efforts to crack-down on bribery, speakers at one of yesterday’s sessions debated which tools are best to tackle corruption in business.

One of the key questions in the session, titled ‘Anti-corruption initiatives in business: legal control, organization and compensation’, was whether companies should be held liable for corruption under criminal or civil law.

“In my opinion, you cannot solve the corruption problem by simply focusing on compliance,” said Edward Davis, the founding shareholder of Astigarraga Davis Mullins & Grossman, a vocal proponent of the civil model. “You have to take the money out of the process and take the assets away from those who are engaging in corrupt practices.”

Davis argued that the current model doesn’t work, using data from the World Bank to back up his point.

Recent figures from the World Bank revealed that approximately $20 trillion has been lost globally as a result of corruption over the past 20 years. In contrast, about $3 billion of assets have been recovered globally over the same time period.

To account for inaccuracies in the figures, Davis took a conservative approach, dividing the $20 trillion by half to make it $10 trillion. He also factored in an under-measurement of the World Bank’s recovery data, calling it $10 billion.

“That means you have a .001% recovery rate,” he said. “So whatever we’ve been doing for the past 20 years doesn’t work – objectively.”

“It means that you have a 99.9999% chance of keeping everything you steal,” added Davis. “What else can you do in your life that has a 99.9999% chance of succeeding?”

Davis called for a civil asset recovery paradigm, with teams of lawyers, forensic accountants and investigators that work for governments to bring the assets home.

In getting value back to clients in corruption cases, he also advocated suing those who assisted in the wrongdoing. “You can sue the banks, the lawyers, the accountants and others who facilitated the fraud,” said Davis.

The Paulo Maluf litigation
Stephen Baker, a partner with Baker & Partners in Jersey, agreed with Davis, saying that, in his experience, the civil process using private lawyers is the best course.

One of the key reasons for Baker’s conclusion was that, if the state acts, it has to prove the case beyond reasonable doubt. In contrast, in civil proceedings the burden of proof is lower, namely the balance of probabilities.

Baker referred to the Federal Republic of Brazil v Duran International Corporation litigation, in which substantial assets were recovered.

The case involved Paulo Maluf, the former mayor of Sao Paolo, who stole public money during the construction of a motorway in the region during a period of four weeks.

The Jersey-based partner referred back to Davis’s point, saying that Brazil opted to sue two British Virgin Island companies for being knowingly concerned in the theft.

“We didn’t sue Maluf for the money - there would have been great problems in doing that,” he said. “Instead we sued the two offshore companies which they had used to steal the money.”

Key takeaways
• Speakers at yesterday’s session debated whether companies should be held liable for corruption under criminal or civil law;

• Some called for an asset recovery programme under the civil law, with teams of lawyers, forensic accountants and investigators working for governments;

• However, a leading Russian expert on counter corruption made a case for holding companies criminally liable for corruption.

The case for criminal proceedings
In contrast, Aleksandr Fedorov, the vice-chairman of the investigative committee of the Russian Federation and one of Russia’s leading experts on counter corruption, made a case for holding companies criminally liable for corruption.

“The administrative process is intended to consider cases that are much less dangerous than criminal acts,” said Fedorov. “The question is how qualified is a justice of the peace to assess the liability of a business entity.”

Fedorov also pointed out that in administrative cases, there is no operative investigation, which reduces the efficiency of the process.

Thirdly, Fedorov noted that the breach of law by the legal entities usually comes to light in a criminal investigation. The process would be much more efficient if the two were streamlined, he argued.

“Practice shows that when the liability of physical persons and legal entities for interconnected actions are regulated by different branches of the law, too many cooks spoil the broth,” he told delegates at yesterday’s session.

But one of the most important points for Fedorov was that it seems illogical for foreign agencies to be able to start criminal proceedings against Russian institutions, while Russia itself can only start civil proceedings.

The Russian expert concluded by noting that criminal liability for legal entities has been introduced in a range of other countries, such as Azerbaijan. “It seems that the Russian Federation should not be aloof to the other processes that are in the world,” he told delegates.
The chairman of the Supreme Commercial Court has urged Russia’s government to streamline the patchwork of administrative procedures used by its various bodies. This, he said, would help increase inbound investment.

Judge Anton Ivanov made the call in yesterday’s session titled ‘Non-jurisdictional means of foreign investment protected,' he added, noting that administrative law is a higher ranking is a likely by-product of legislative changes, and technological developments. “These two areas are the backbone of the Russian state,” said Andrey Lisitsyn-Svetlanov, a director at the Institute of State and Law of the Russian Academy of Sciences.

The changes would go some way to achieving that. Any changes must, however, focus on creating practical improvements for investors rather than lifting Russia’s (low) position in the World Bank’s ease of doing business rankings. While a higher ranking is a likely by-product of legislative changes, panelists agreed that such benchmarks must be taken with a grain of salt.

“Rankings may not be a clear guide to the situation on the ground,” said Vladimir Pligin, chairman of the Committee on the Constitutional Legislation and State Construction, the State Duma of the Russian Federation.
How to grow Russian IP

The president of Russia’s Intellectual Property Court (IPR) has called for help from non-legal experts to widen the knowledge base of the country’s nascent institution. Lyudmila Novoselova, who has led the court since its creation in July 2013, believes specialisation is essential for the court to thrive.

“I hope that non-lawyers will listen to our requests and participate in our court,” she said during yesterday’s roundtable session, ‘The future of global IP: predicting trends’. Novoselova has previously argued for a specialised court and the experiences of other jurisdictions with similar courts were studied when the IPR was being planned, with the German Federal Patent Court serving as a model.

It’s clear why the IPR needs a wider pool of participants to examine cases: in the six months since the court was established, more than 2,000 cases have been filed. That number, particularly more than 2,000 cases have been examined, is essential for the court to thrive.

“I speak only one case is held in St. Petersburg. It is a great opportunity to welcome the world for very important judicial discussions. It is also a chance for me to meet old university friends from many years ago.”

Irina Ochirova
Association of European Business
Russia

The organisation has been really good. Yesterday’s cultural programme was great – I’ve been to St. Petersburg many times but I’ve never been to the Mariinsky Theatre. The high level of seniority of attendees helps networking and it is very rare to get this level of people together in one place.

Konstantin Olefir
Okritie Holdings
Russia

I enjoyed the timely session on intentional bankruptcy as it is relevant to my current work. This year the high level discussions have been more specific and practical with less politics. Fifty percent of my focus at the forum is on socialising and the network opportunities have been good.

Oleg Kukhly
Streletchny Alyans
Russia

There are two members of our firm here and we have found it very useful. The discussion yesterday was very practical and will help us make better-informed decisions in the future. And the theatre last night was spectacular.

IGOR DROZDOV

“Experts believe there is no chance they can make money on patents”

IP, patent applications are notoriously low. Last year only 1,000 applications were made, “That’s a miserably small figure,” said Igor Drozdov, chief legal counsel at the Skolkovo Foundation, a scientific and technological centre that develops advanced technologies. Drozdov believes this is down to the perception of patents in the country.

“There’s mistrust among some academics about the commercialisation of inventions,” he said. “Experts believe there is no chance they can make money on patents.”

Another factor is the speed at which patents are processed. It often takes over a year to obtain an expert examination report which is integral to the approval of patents.

Hostig sports events pushes legal progress

Host nations’ legal frameworks benefit from hosting major sporting events, with national governments pushing legislative changes that otherwise would be neglected.

As Russia prepares to host the World Cup in 2018, and having recently held the Sochi Winter Olympics, the country is feeling the benefits in its rulemaking.

Natalya Parshikova, Russia’s deputy minister of sport, outlined how in the lead up to the Sochi games, the country passed laws regarding the safety of fans and the protection of the organisers’ IP rights, as well as labour and tax laws – changes which would not have been pushed for in the absence of games. “Hosting events entitles us to regulate matters which were problematic beforehand,” she said.

Speakers in the session, ‘Features of legislative regulation in preparation and holding of major sporting events’ explained how laws governing the behaviour of football fans were passed to cope with crowd trouble ahead of the 2018 World Cup. Such oversight is needed in the country, which has a history of crowd trouble. In May, St. Petersburg police opened a criminal case against a local football fan, who punched a player of a winning Moscow team playing Zenit St. Petersburg.

More laws are due to follow. Sergey Shkray (pictured), head of Russia’s Olympic committee legal department and recognised as the man responsible for pushing much of the new legislation announced that further rule-making was required ahead of the World Cup in 2018. “We should have a clear-cut procedure for visa-free entry, or at least the easing of obtaining them,” he said.
A heated debate on the best way to increase optionality in Russian contract law dominated yesterday’s session, ‘Freedom of contract - boundaries of optionality in the modern private law’.

Panellists were united in criticising the prevalence of imperative contract clauses, and the Civil Code’s failure to distinguish between these and optional clauses. But opinion was sharply divided on how to differentiate between the two, and whether it is a task for the courts or legislature.

“We are at a crossroad, and the only solutions are difficult ones,” said Artem Karapetov of M-Logos Legal Institute. One option is to reform the Civil Code by clearly marking which norms are imperative and which are optional. Another is to move towards the approach seen in western Europe where a clause that is not clearly imperative will be construed by a court as optional.

“We are so used to this idea that the purpose of regulation is to establish strict rules which can’t be bypassed,” Karapetov said. “There is only optionality if the legislature writes so directly in the law.” He told the packed room that this was a time for change. “The current system is predictable, but if we don’t take some risks we will never move forward.”

But Aleksandr Makovskiy, first vice-chairman of Private Law Research Centre Council of the President of the Russian Federation, warned against idealising other systems. “I don’t think you can paint all western countries with the same brush,” he said, noting the mix of common and civil law jurisdictions.

Acknowledging that “no one really tried to give dispositivity [optionality] to contract law”, he said the best way to improve the situation is to build on the Supreme Court of Arbitration’s recent resolution on the matter. This divided norms into three groups: imperative, those which can be departed from if the parties agree, and those where it is not clear if they are imperative or optional. Regarding this last category, the court set out criteria to help judges classify the clause.

Shifting the burden of these decisions onto the courts is problematic, Makovskiy said. Not only because of the legislature’s likely pushback, but also because courts could further limit freedoms to contract. But he said the solution offered by the resolution is the most detailed proposal for change, and is an improvement on some of the other “crude” solutions that have been proposed. “What the Arbitration court has offered is surgery, rather than using an axe.”

In any event, change will be some time away. A second round of reforms to the Civil Code is not likely any time soon, and Karapetov said it would take up to 20 years before the judicial practice would change in such a way that crystallises any reforms. Makovskiy said that even two decades was an optimistic timeframe.

Key takeaways
- Russia’s Civil Code does not clearly distinguish between imperative and optional clauses;
- This has created fears over the decay of freedom of contract, but opinion is divided on the best way to address this;
- Some have urged reforms that enhance the role of courts in construing these clauses, rather than leaving decisions up to the legislature.

“What the Arbitration court has offered is surgery, rather than using an axe.”

ALEKSANDR MAKOVSKIY

Patriklos Pavlou & Associates LLC is a top-tier, multi-award winning law firm based in Cyprus with considerable expertise in the international legal market. The Firm implements a truly international culture: it is a member in several professional international associations, it has built a distinguished network of overseas associates, strong relationships with reputable global law firms and diverse clientele from around the world. Having recently celebrated the completion of 50 years of dynamic presence, the law Firm assures that it will continue to provide high quality legal services with diligence, integrity and professionalism.

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Brick Court Chambers specialises in international litigation and arbitration. Our barristers provide advice and advocacy in all major fields of practice and all major international tribunals.
Education is the key

Tomorrow will see Natalya Tretyak (picted), the first vice minister of education of the Russian Federation, moderate a discussion between public officials and scholars on issues surrounding legal education for children and young people.

The discussion will take place as part of the second Congress of Law Professors. The Congress will focus on the issue of forming a citizen and patriot through law education and awareness training, issues of crime prevention as well as the task of establishing a law professors association.

Among the 300 people that are set to attend the Congress will be well-known government officers and legal scholars. Experts from various regions will share the best practices, technologies and methods of teaching law.

The schedule

The first part of the event includes welcome speeches to the Congress delegates from Vladimir Putin, the President of the Russian Federation, Valentina Matvienko, the chairman of the Federation Council of the Federal Assembly of the Russian Federation, and Sergey Naryshkin, the chairman of the state Duma of the Federal Assembly of the Russian Federation.

There will also be plenary reports of representatives of the President of the Russian Federation, federal assembly of the Russian Federation, constitutional court of the ministry of education and science of the Russian Federation, ministry of justice of the Russian Federation, administration of the City of St Petersburg, as well as leaders of top law schools and additional professional education institutions and academics.

Speeches will be delivered by: Elena Borisenko, Russia’s vice minister of justice; Mikhail Krotkov, the commissioner for the President of the Russian Federation in the constitutional court; Sabir Kekhlerov, the vice prosecutor general of the Russian Federation; Vladislav Grub, the deputy secretary of the civic chamber of the Russian Federation; Denis Panshin, a member of the central election commission of the Russian Federation; and Aleksandr Fedorov, the chairman of the coordination council of young lawyers of Russia and vice chairman of the Russian Federation investigative committee.

The second part of the Congress will include reports on best practices, technologies, and teaching methods from law professors of various entities of the Russian Federation.

After the participants have heard the reports, and guided by the challenge of law education among school children, they will adopt the resolution of the second All-Russian Congress of law professors.
The man who made a forum

Alexander Konovalov is the Minister of Justice in President Dmitry Medvedev’s cabinet but also the man who created the St. Petersburg International Legal Forum in 2011. Here he tells Amy Carlse what the forum means to him and his priorities for Russia’s legal system.

How did you come up with the idea for the St. Petersburg International Legal Forum in 2011?

At the Ministry of Justice we have always focused on maintaining close cooperation with the international legal community. We have been working in different formats such as discussion boards, task forces and working groups in various aspects of law reform, law practice and spheres of the Ministry’s activity. But at the same time we noticed the need for something more global, something that will allow us to gather and look at our developments with a broader and more holistic approach.

The format of the St. Petersburg International Legal Forum is unique to the Russian legal environment. There are certain events targeted at different representatives of the legal profession, but what distinguishes us and what actually became a good tradition of the forum, is that the event became a truly international platform where all professional opinions are able to co-exist and to multiply.

St. Petersburg International Legal Forum is devoted not to some limited fractions of the legal community, but to all legal professionals to advocates, in-house lawyers and consultants, to prosecutors and judges, to government officials and academics, to specialists from different areas in our country and abroad. Such a diversified audience creates a unique atmosphere at the forum and ensures an intense multiplication of opinions.

Has it surpassed your original expectations?

What exceeded my expectations was the highest level of interest in the forum, not only from Russia & CIS region but also foreign lawyers from all parts of the world. The event is already huge, with more and more professionals interested, so we decided to expand it and to create a guest format of it, when the forum travels to other countries which have strong ties with Russia.

Last year five guest conferences of St. Petersburg International Legal Forum were held in London, The Hague, Rome, Paris and Budapest to discuss a wide range of legal issues. The purpose was to use the bilateral format to present Russian law as a regulator of international economic relations and increase its attractiveness to foreign investors and members of the legal profession, as well as exchange legal experience with our key foreign partners. All participants of these five conferences expressed an interest in continuing these discussions at the main forum in June.

Why do you think the forum has proved so popular?

The main feature of the forum is its practicality. In our discussions we are not floating across abstract irrelevant topics. Instead, we focus on areas of legal practice and spheres of law, sometimes very specific, such as natural resources, energy, protection of cultural heritage, mediation, sport and many others. Even at the first forum in 2011 there were already around 20 specific roundtables. Now we have around 50. The first and second days of the forum this year are full-fledged working days. All roundtables are focused and specialised on various areas of law. This ensures a truly practical discussion among professionals.

We make participation in the forum comfortable for everyone – participants can choose to be present during all days and be engaged in multiple sessions and satellite activities or they can join the forum to attend only a certain session of their interest and to get the up-to-date information that affects their daily responsibilities and interests. To summarise in one sentence: our aim is to create a comfortable atmosphere for truly practical discussions.

How do you think the Russian legal system fits into the global legal arena, particularly with regard to the recent merger of the Supreme Commercial Court and Supreme Court?

Historically our legal system is a product of the multiplicity of approaches and frameworks mixing and merging, creating new formats. The Russian legal system is also a product of this multiplication, a symbiosis of practices evolved internally and with the external influence. We are actively looking for ways to improve our system, and the same approach is peculiar to all legal systems around the world. So the differences of particular national legal systems become less evident and systems become more unified and efficient.

The approach works well for the Russian legal system. We maintain local specifics of frameworks and structures that best suit our historical developments, cultural aspects and economic conditions, but our system becomes more and more integrated in the global order. We can see for example the experience of the English judicial system reforming different judicial institutions, which had existed for centuries before they have been integrated into the new Supreme Court.

Particularly, the merger of the Supreme Court and the Supreme Commercial Court follows the same trend of unification of practices and increases of the effectiveness of law enforcement. Questions about the necessity of a unified judicial system have been discussed among academics and practitioners for some time, but in general we should agree that the existing two independent, unrelated structures weakens judicial power which is acknowledged to be a stabilising factor in the state and a guarantee of the rights and freedoms of its citizens and promoting business development.

Ensuring uniform interpretation and application of law by all courts is one of the main aims of judicial reform. Our goal is to make certain that all modernisation are done with respect to the constitutional principles and that the thoughtful post-merger integration will help to enhance the synergies and promote the further development of the Russian judicial system. The merger of the courts will not hamper the fit of the Russian legal system into the global legal arena, and moreover will ensure the consistency of approach and stability of practice.

You must also always keep in mind that Russia is the largest country in the world, with thousands of federal and regional courts from Kalingrad on the West to Anadyr in Chukotka on the East. The sole Supreme Court should ensure that our legal system develops in the right direction, that approaches to interpretation of laws are the same in all courts. It is the basis for the equality of legal rights throughout a huge territory.

2014 is an important year for the Russian legal system, with the 150th anniversary of Great Judicial Reform of the Emperor Alexander II. Those reforms aimed to “elevate the
judiciary, to give it a proper independence and inoculate the people with the respect for the law. How far do you feel Russia has achieved these aims?

The work of the Ministry of Justice and other governing authorities is a complex ongoing process that can hardly be divided into periods. We are continuously working on improvements, so in talking about achievements at any stage, we should also notice the potential areas that we still have to focus on.

As in all countries people are not always eager to follow the law everywhere, in any situation. To improve this state is a complex task with multiple areas of focus. On the one hand, this is a task for our educational system to shift the mindset of citizens toward greater respect to the law. On the other hand, there are certain areas where the government and specifically the Ministry of Justice, initiates and leads activities aimed at building the credibility of citizens in the law making and law enforcing authorities and procedures.

Such an area is taking practical measures to develop the court system. In the last 15-20 years Russian courts made huge progress. They changed a lot, they have developed competitiveness, innovation and progressive approaches. Today they resemble the European courts. We have also achieved a lot by bringing transparency to the court practice. Not many countries have the same level of openness and access to hearings, databases and court decisions. It’s all online. All is easily accessible to civic control. The full-scale results of this cannot be seen overnight, but these measures will continuously increase public trust in the Russian judicial system. The most important thing is that effective court system, professional and truly independent judges became the driving force for the whole legal profession, promoting the highest professional standards between advocates and other lawyers involved in the court proceeding.

Another recent advancement in diminishing legal nihilism is our continuous effort in bringing the most professional people to the legal profession. These practitioners – judges, prosecutors, advocates – should lead others by example, by day-to-day implementation of the highest standards of legal ethics and professionalism. Our legal education is constantly improving. Law schools plant the seeds of the values that we want to see in people whom we trust to maintain the legal system. Improvements in the quality of legal education guarantee the progress toward a better future state. In addition, the professional community has started to regulate itself as well. Professional peer ranking helps to build a highly credible community exhibiting principles and behaviours that constitute the core of the legal profession.

To summarise, I am confident that we have already achieved a lot with our reforms. And personally, I believe that we should never stop, we should always critically look at what we already have and how we can be better. We may still have a very long way to go, but we know what to work on, we have tools and instruments. We are on the right track.

What do you think have been your main achievements as Minister of Justice?

First of all, I should say that any of the achievements are the result of continuous efforts of the whole team that I lead and professional legal community in general. Our results are the results of collab-oration with other governmental agencies, federal council and state Duma, Presidential administration and supreme courts and with the professional community. We are always open to dialogue and are happy to see how supportive the members of the legal profession are.

With active participation of the legal community we were able to analyse and introduce the best practices to the modernisation of the civil legislation, the introduction of the new law on the notary, develop the standards of the legal profession, reform of commercial arbitration and improve the penitentiary system. I believe that one of the most significant innovations was the introduction of law enforcement monitoring activity, which helps to identify gaps in the application of laws and provide the government and President with the suggestions on further amendments.

There have been concerns over the dual nature of the Russian legal system and the obstacles it creates when maintaining professional standards. What, in your opinion, are the other main challenges faced by the Russian legal system?

The modern Russian legal system is rather young, so the main challenges are its so-called growing pains. Most of the laws which are in force now have been enacted after 1993, the year of adoption of the new Russian Constitution. In many spheres enacted laws are not always comprehensive and often they contradict each other. However, it is lawyers’ mission to make sure that legal instruments are at any time qualitative enough for the effective modern regulatory framework. It means that the overall systematisation of the civil legislation, which is now in process, is just the first step in the law improvement efforts.

Merging courts: change will come

Yuri Vorobyev, head of dispute resolution & mediation practice, Pepeliaev Group

Friday, 20th June 2014 7

www.iflr.com Interview: Alexander Konovalov

Preserving practice

Needless to say, anti-monopoly disputes will be among those affected. The greatest challenge will be to preserve the uniform practice that the Supreme Commercial (Arbitration) Court has endorsed.

Otherwise, similar disputes will result in different judicial decisions, which will result in business entities taking decisions against a backdrop of increasingly ambiguous economic and legal conditions. Such consequences cannot be avoided but it remains unclear how long this uncertainty will last.

The procedure for considering cases is also likely to change. A judicial body that has for decades resolved disputes between individuals (may the judges of the Supreme Court forgive me for making their powers sound so inconsequential) will not be able to adopt immediately a business perspective for considering legal disputes. The Russian Supreme Court has always assessed the consequences of its decisions for the specific individual who is the litigating party.

For this reason the new court is likely to focus more on individuals’ interests when interpreting many legal regulations. Thus, in anti-monopoly cases, the judges will not see before them an entrepreneur litigating with a state body but an entrepreneur whose actions affect the interests of a large social group.

If this happens, the new Russian Supreme Court will take into account the interests of much larger social groups when taking decisions as compared to individual judicial acts of the former Russian Supreme Court and the Russian Supreme Commercial (Arbitration) Court.

We do not have long to wait until the new Russian judicial system will develop. But change will come.
Best Legal Departments of Russia
One of today’s biggest events at the forum will be the award for the Best Legal Departments of Russia. The competition, organised by Legal Insight magazine, is in its ninth year. The event’s timing is symbolic too: awarding the best Russian legal departments during such a high-profile international event as the forum emphasises the role Russian in-house lawyers are increasingly playing within their companies, as well as in the legal community.

We asked Legal Insight’s editor-in-chief Margarita Gaskarova – organiser of the award – to explain more.

What are the objectives of the award?
The goal of the award always has been – and remains – the public recognition of the success of corporate lawyers in general, and of specific representatives in particular, as well as raising the overall significance and the status of the legal profession socially. The competition’s objective is not only finding the best practices of managing the corporate legal function, but also building a platform for professionals to communicate.

How do you determine the winners?
Our award is a team effort. We determine not simply the best in-house lawyer, but the most effective team, which, of course, takes into account the role of the team leader. The best legal department is picked by an expert council, consisting of heads of legal departments – winners of previous years’ competition – and partners of leading law firms.

The achievements of a legal department are judged based on a questionnaire the department submits, which has been constantly improved over the years. The winners are picked in 18 nominations, based on industries. The points awarded by the experts are counted by international auditor Deloitte.

About the ceremony
The award ceremony takes place in the ballroom of the Corinthia hotel in St. Petersburg. Over 200 representatives of Russia’s legal community will take part. The ceremony will be opened by the Russian deputy minister of justice, Elena Borisenko. The keynote address will be delivered by the managing partner of the general partner of the competition Pepeliaev Group, Sergey Pepeliaev.

The ceremony will feature musical breaks, a quiz, other surprises and, of course, the announcement of the all-important winner. The event has also benefited from support of Deloitte, Pepeliaev Group, Andrey Gorodissky & Partners, Borenus, Branar Legal, Dentons, KIAP, Yukov & Partners, DS Law, Lidings, Bobrov Tolstov & Partners, Nektorov Saveliev & Partners, the Russian Corporate Counsel Association and the Yurist legal research system.

“Awards
ST. PETERSBURG
8 International Legal Forum Daily News
Celebrating the best
Two awards will today recognise the achievements of some of the brightest talents in the profession. Legal integration in Eurasia and Russia’s best in-house department will both be celebrated in separate ceremonies

“We determine not simply the best in-house lawyer, but the most effective team”
Award for Contribution to the Development of Legal Integration in the Eurasian Space

In 2014, the Organising Committee launched the St. Petersburg International Legal Forum Award, establishing a new tradition. Every year the award will be given to eminent professionals, recognised for having made a considerable impact on legal developments and promotion of the values of the global legal community. The first nomination, announced this year, is “Contribution to the Development of Legal Integration in the Eurasian Space”. More nominations are planned next year.

The award will be presented in June 2014, straight after the plenary session of the forum. It will take place less than one month after the Presidents of Russia, Kazakhstan and Belarus signed the Agreement on Eurasian Economic Union. The deal inaugurated a new era of legal integration in the post-Soviet space. Until now, economic policy has led to new supranational legal institutions and unified legal systems forming in different countries. Today, the integration requires new approaches from practitioners, experts and every member of the legal community. The award aims to promote legal integration as well as maintaining international legal cooperation in the Eurasian Space.

Applications sent by nominees through the forum’s website were carefully assessed to decide the ultimate winner. The latter was determined by the reputable independent Expert Council featuring deputy ministers of Justice of the Russian Federation, Kazakhstan and Belarus, representatives of the Eurasian Economic Commission agencies, top officials, leading experts in law and international relations.

The new award is intended to become a major contribution to the St. Petersburg International Legal Forum to the development of international legal collaboration and a stimulus for lawyers to be actively involved in the integration process in the Eurasian space.

How do previous winners feel about the awards?

“...The professional jury of the award doesn’t assess me personally or the team of lawyers I head. But the whole complex of conditions and processes that we introduced at our company, including our efforts to improve the status quo. All this together develops the profession and improves the market for legal services. After the victory I experienced a feeling of deep satisfaction from the recognition of our efforts.”

Valery Sidnev, head of the legal department at EuroChem

“An awards competition is always a challenge. Taking part in Legal Insight’s awards for the best legal departments of Russia is also a path to development. The format of the award competition allows you to evaluate your achievements and to determine the prospects of development, to understand to what extent the legal department is able to support solving the business tasks, being up-to-date with contemporary tendencies and requirements, to determine the necessity to change something. And the recognition by the professional community is an additional incentive on the way to victory.”

Olga Voitovich, director of the legal department at Interros

“It is extremely important for our employees to realise that they are a real team. I was happy when we received the award. Admittedly, I have won many so-called individual races during my career, but here I experienced a special feeling of team spirit and pride for my colleagues.”

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How do previous winners feel about the awards?

“...The professional jury of the award doesn’t assess me personally or the team of lawyers I head. But the whole complex of conditions and processes that we introduced at our company, including our efforts to improve the status quo. All this together develops the profession and improves the market for legal services. After the victory I experienced a feeling of deep satisfaction from the recognition of our efforts.”

Valery Sidnev, head of the legal department at EuroChem

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A global survey of 200 asset managers revealed their priorities when choosing European fund domiciles, with some surprising results.

The Economist Intelligence Unit survey, commissioned by Matheson, confirms previous reports that Ireland is Europe’s fund domicile of choice. Other findings, however, challenge the traditional perceptions of the funds industry.

It reveals asset management to be a mobile industry in which firms are willing to set up fund ranges in new locations. But it also shows that firms place great emphasis on a market’s establishment and reputation, as well as investors’ perception of the host jurisdiction.

“This does pose a challenge for new funds domiciles to establish themselves,” said Matheson partner Elizabeth Grace, at the report’s launch. “The value placed on longevity makes it hard for new markets to increase their market share.”

Of the six financial and business factors to be considered when choosing a jurisdiction, existing fund ranges or business relationships was ranked as the least important. These findings suggest that the fluidity of business will move between the region’s most popular domiciles which, after Ireland, include: Luxembourg, Germany, the UK and the Netherlands. It means that none of these leading jurisdictions can rest on their laurels, noted Grace.

“A regulator that understands the product is more important than their accessibility and responsiveness”

A sophisticated regulator
Another key finding suggests the industry has moved away from any desire for light touch regulation.

A sophisticated regime and market overseer is one of the two most important regulatory factors when choosing a domicile. Respondents ranked this equal first with the local approach to implementation of the Alternative Investment Fund Managers Directive (AIFMD).

“A regulator that understands the product is more important than their accessibility and responsiveness, which was somewhat of a surprise,” said Michael Jackson, head of Matheson’s asset management practice.

The survey results indicate managers are not interested in a light touch approach, said fellow Matheson partner Tara Doyle. “They understand it will be heavy touch.”

AIFMD
The survey dedicated a section to how firms are responding to the application of AIFMD, which is approaching its July 2014 compliance deadline for EU-managed funds.

Notably 62.5% of respondents expect their firms to adopt a wait-and-see approach, taking subsequent action based on investors’ response to the changes. This high figure is partially explained by the fact that 64% of those surveyed were based outside of Europe, so aren’t directly impacted by the Directive. But Grace noted that it also indicates that the sector’s decisions are increasingly led by investor preferences. This is consistent with a separate finding that investor perception of the jurisdiction is the second most important market factor when choosing a fund domicile.

In another surprising AIFMD finding, only 3.5% of managers expect their firm to distribute offshore alternative investment funds via national private placement regimes until non-EU firms’ grace period finishes in 2018. This conflicts with comments made by IFLR sources last year, which expected non-EU managers to choose this route for as long as they can under the transitional period. Doyle was surprised by the small figure.

The survey was released in March this year.

What makes an asset manager’s dream destination?

A recent survey has challenged traditional perceptions of the funds industry. By Danielle Myles
A well-established partnership

The Hague Conference on Private International Law has a well-established history of participating in the St Petersburg International Legal Forum, with speakers from the organisation taking part in panels for each of the four years that the forum has taken place.

And this year is no different. Notably, Christophe Bernasconi, the secretary general of the Hague Conference on Private International Law, will be speaking at today’s concluding plenary session, looking at the concept of the rule of law in legal systems.

Ahead of his appearance on the plenary session, Bernasconi outlines why the forum is a particularly significant event for the Hague Conference.

“A variety of topics included in this year’s programme for the St. Petersburg International Legal Forum relate to the growing diversity and frequency of cross-border civil and commercial relationships and transactions,” said Bernasconi.

“As such, the event offers the Hague Conference on Private International Law an opportunity to reach interested stakeholders, including practitioners and government officials from countries all over the world, to promote and elaborate on several issues included as part of the organisation’s current work programme for 2014-2015,” he continued.

This year, the Hague Conference’s contribution to the forum programme focused on mediation in cross-border family disputes, and cyber-law developments in response to advances in global communication and increasingly sophisticated and diverse international markets.

Besides those panels at which Hague Conference representatives are speaking, the forum covers several other areas of law that also feature in the organisation’s current activities.

Forum topics such as principles and model rules of modern private law, inheritance without borders and freedom of contract provide ample opportunity for participants to become familiar with our work through sessions which cover the application of many fundamental concepts in this area, said Bernasconi.

A unique opportunity

The June 17 seminar featured a programme that highlighted new principles on the choice of law in international commercial contracts, choice of court clauses in such agreements which are subject to the Hague Convention of June 30 2005 on choice of court agreements and in the draft principles of choice of law in international commercial contracts, as well as new efforts to develop a multilateral convention on the recognition and enforcement of foreign judgments.

Other issues that are relevant to the Hague Conference are those resulting from cross-border inheritance situations.

“Laws concerning inheritance are deeply cultural and nation-specific, and therefore there is a need for finding internationally-agreed approaches to issues such as jurisdiction of the courts, applicable law and recognition and enforcement of judgments in a wide range of areas,” said Bernasconi.

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Key takeaways

- Ahead of his appearance in the plenary session, the secretary general of the Hague Conference outlines the issues raised at the forum that are particularly important for his organisation;
- The Hague Conference’s contribution to the forum programme focused on mediation in cross-border family disputes, and cyber-law developments in response to advances in global communication and increasingly sophisticated international markets;
- Forum topics such as principles and model rules of modern private law, inheritance without borders, and freedom of contract provide ample opportunity for participants to become familiar with the Hague Conference’s work.

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