Globalisation has made the fight against corruption a transnational challenge and the international community must work together to fight it, according to speakers from yesterday’s panel on anti-corruption.

Drawing on the experiences of officials from Russia, India, China, Finland and Brazil, the overall message was that for too long, corruption and poor governance mechanisms have undermined social and economic progress.

And while preventative systems are in place across the world, there is still major progress to be made, said panellists from ‘Modern anti-corruption mechanisms and ways to improve them’.

Corruption takes various forms including bribery, fraud and money laundering. It affects all citizens, distorts competition and damages reputations, with poorer communities suffering most.

Oleg Plokhoy, head of the directorate for corruption prevention of the Russian Federation, who moderated the session, opened by explaining that corruption provides a breeding ground for further crime.

But the international community is already good – and getting better – at fighting it, with its prevention at the forefront of all governments’ priorities. However, there is no accurate measure of the level of corruption, he said, and this should be addressed.

Meanwhile the rapid proliferation of corporate governance is a sign of the private sector recognising the fiscal and reputational dangers posed by corruption.

Henglin Han, senior advisor to the Ministry of Justice of the People’s Republic of China said that to effectively combat corruption, action must start at the top.

Countries are only as strong as their legal systems, and in the absence of integrity, it is impossible for a state to be transparent or fair. Developing the punishment system and promoting an open government can help to achieve this.

To achieve a so-called open government, Aleksey Aleksandrov, first-vice chairman of the Federation Council Committee for Constitutional Legislation of the Russian Federation suggested a reform of state officials’ income declaration methods.

“You cannot sweep the floor if your broom is not clean”

To lead by example in the promotion of transparency, officials must declare not only their formal place of residence, but also all the assets in their possession. Agreeing that prevention must start from the top, he said: “You cannot sweep the floor if your broom is not clean.”

Aleksey Aleksandrov also suggested that the state adopt a policy whereby newly hired officials are told in explicit terms that regular and rigorous checks will take place to ensure no bribes have been either initiated or accepted.

Last year, 26,000 officials in China were prosecuted on charges of corruption, which suggests that methods of detecting such behaviour are improving. State officials were also given a guided tour of the prisons that house corruption offenders, which was deemed an effective preventative measure.

Aleksandrov said that attitudes to corruption in Russia had changed throughout the times. For example, he said, in the past if a father committed a crime it would be shielded from his children, making them less likely to view this as appropriate behaviour.

However this is no longer the case: as openness and communication becomes more prevalent within families, children are now far more aware of the wrongdoings that surround them. This can be countered by increased education from a young age of the implications of such conduct.

Devaragunda Venkappa Sadananda Gowda, minister of law and justice of the Republic of India, stressed the role of new anti-corruption mechanisms and ways to improve them.

• The criminal liability of legal persons
• The fight against corruption is a global challenge and nations must work together to make progress
• The criminal liability of legal persons and the reform of state officials’ income declaration processes were both highlighted as effective preventative measures
• It is vital that mechanisms are constantly updated to keep pace with economic changes. Utilising new technology can increase efficiency

One of these is an information-exchange arrangement with the US in order to detect and prevent tax avoidance schemes. He also explained that India had integrated the UN anti-corruption framework into its own legislation, having recognised the importance of a global standard.

Most panellists agreed though, that anti-corruption mechanisms are fighting a losing battle without cooperation from the global community.
**VOX POPS:**
What do you like about St. Petersburg?

**Dmitry Paramonov**
FBK Legal
Russia
This is a brilliant city with classic architecture. This trip I will mostly be attending official forum events but I recommend going on a river tour, especially at night.

**Pavel Antonov**
Accountor
Russia
The city is famous for art and museums. It’s very business-like but not too hectic. I am a resident here, and as a fan of Italian cuisine I love Caffe Italia.

**Sidok Seyad**
Stockholm University
Sweden
I am a veteran at the Forum! This is one of the most beautiful cities in the world. It is based around the water, like Stockholm and maintains a very European feel.

**Aleksy Gorodisskiy**
Gorodisskiy & Partners
Russia
The unofficial name of ‘the Venice of the north’ is very apt. All of the places in the tourist guides are must-see, but you need three to four days to see everything.

**Maria Appak**
Nike
Russia
The city has great historical and cultural heritage. It’s nice to walk around and get the feeling of the city. I was impressed by Gosti restaurant on Malaya Moskaya Street.

**Alexey Sirenko**
Legal Office
Russia
For me it is the best city in Russia. It’s beautiful, convenient with great infrastructure. I like Goose Goose restaurant and the bars on Rubinstein Street.

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### The right of force

**Valery Zorkin**, chairman of the Constitutional Court of the Russian Federation, led yesterday’s lunchtime lecture on the subject of the power of law and the right to power.

During the session Zorkin voiced his view that law is the ultimate measure of freedom. Zorkin said that laws and legality are lagging behind globalisation and a constantly changing social landscape, largely due to the conservative nature of lawyers, which he acknowledged is a necessity of the trade.

**Unifying law and ethics**

“When we talk about constructing our future, we ought to conduct research into the formula of the social and cultural identity of the nation,” said Zorkin.

He insisted that although this is a time when citizens must respect and prioritise human rights, we cannot take this to the extreme. “We must maintain respect for laws and customs simultaneously.”

Tolerance is of course important, but it cannot overtake cultural traditions, he said. We must always bear in mind the standard set by socially acceptable norms. However the connection between law and ethics is a two-way street. As much as the legal system should consider the moral and ethical climate in which it operates, so should legal frameworks have bearing over the decisions of individuals.

**Sovereign vs international law**

In the context between international and sovereign law, the international ruling always presides, and Zorkin believes this must be addressed in order to preserve individual sovereignty.

He drew on various examples where jurisdictions differ drastically on the same matters, explaining that Russian citizens are in no position to comment on the decisions and laws in other nations, and vice-versa.

For this reason, he pointed out how universal organisations such as the European Convention for Human Rights are flawed. He added that the norms set by the Convention are too abstract and dismissive of basic constitutional principles.

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**Valery Zorkin**

Valery Zorkin began his career as a lecturer at Moscow University, later becoming professor at the Ministry of USSR Internal Affairs. He led the legal work on the Soviet Constitutional Committee, helping shape Russia into a presidential republic.

In 1991, after a period as a judge, he became the first and only Chairman of the Constitutional Court of the Russian Federation. Following a clash with then-President Boris Yeltsin he resigned in 1993, returning to his role as judge, but was re-elected to Chairman ten years later.

In 2011, he was awarded a second class Order of Merit for the Fatherland for his outstanding contribution to the consolidation of the constitutional foundations of Russian statehood.
Trademark infringements are a growing concern, and must be eradicated by focusing on youth rather than those currently practicing it, according to Louise van Greunen at the World Intellectual Property Organisation (WIPO). “The only way we can solve the problem is by approaching younger people. It’s too late when you get to our age,” she said.

Van Greunen, director of the building respect for IP division at the organisation, was speaking at yesterday’s session, ‘Trademarks: shield or sword? Current issues of legal practice’.

Speakers discussed the trend for trademark infringement and of particular note, the selling of goods at so-called unbelievable prices.

“Our members at WIPO are extremely concerned about unbelievable prices,” said van Greunen. “Whether that is because those [fake] goods can create health and safety issues or because they are counterfeiting luxury goods,” she added.

Van Greunen cited the example of websites promoting the ability to make copies of well-known cars, and more specifically the website fakegifts.com, whose owners Mark Dipadova and Teresa Gayle Ford were arrested in January 2001 after their site upset trademark owners by offering cheap imitations of products such as Cartier watches or Gucci handbags.

They were charged with three counts of trademark infringement, one count of conspiracy and one of making false statements to federal agents. The session was organised with the International Chamber of Commerce (ICC) and moderated by the ICC’s Eugene Arievich, chairman of its commission on IP for ICC Russia.

The panel also included insight on the Russian context from Ludmila Novosiolova, chairman of Russia’s IP Rights Court. Novosiolova cited recent cases in the country, and updates on Russia’s IP laws.

The country’s regime is certainly developing. As of October 2014, it is no longer necessary to produce the relevant agreement when registering an IP assignment or licence with Rospatent (the Russian IP office). Trademark disputes continue to cause concern globally. In May this year, an EU court upheld an earlier ruling by the bloc’s Office for the Harmonisation in Internal Market that had said Skype’s trademark was visually, phonetically and conceptually similar to that of the British pay-TV broadcaster Sky.

The court found that not only did the word Sky appear in the name Skype, but the cloud-shaped border around the Skype logo also created associations with the sky.

The judges argued that the logos had not existed side-by-side for long enough to rule out the likelihood of confusion. Skype applied to register its name for identical goods and services in 2004 and 2005. The UK-based broadcasting giant, owned by media tycoon Rupert Murdoch, subsequently complained to the UK’s (OHIM) trademark watchdog.

How to change global trademark practice

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LEGAL SUPPORT FOR YOUR PROJECTS IN RUSSIA AND ABROAD

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Regulators from Russia and South Africa have warned that they are looking closely at public interest to determine their next steps – and they’re scrutinising business activities that have social consequences. That may have implications for intellectual property rights.

Igor Artemiev, head of the Federal Antimonopoly Service of the Russian Federation, and Bukhosiakhe Majenge, chief legal counsel of the Competition Commission of South Africa, delivered two speeches and answered audience questions in a packed morning session yesterday.

The panel, ‘Antimonopoly law enforcement in the modern economic conditions,’ was moderated by Sergey Puzyrskiy, head of the legal department of the Federal Antimonopoly Service of the Russian Federation.

We want to catch big fish and won’t be fretting over the small stuff

Artemiev and Majenge, who kicked off the discussions, both outlined their approach to cartels going forward, as well as their views on large corporates and what their activities may mean for social interests.

Fourth antimonopoly package

Artemiev discussed recent legislative changes, including the fourth antimonopoly package – a revision of Russian antimonopoly legislation. “We will be oriented towards big trespassers and big wrongdoers who inflict serious damage to the national economy,” he said.

He also noted that the regulator is now warning parties in advance of sanctions following the sugges-
tions of lawyers. He said that since the regulator began issuing warnings, 80% of companies comply while 20% will bring the matter to court.

The only exceptions are the use of someone else’s trademark or a very high monopoly price; in those cases warnings don’t make sense because the regulator must respond rapidly.

There is also new immunity for small and medium enterprises (SMEs) with a turnover of no more than RUB 400 million ($7.6 million). These companies won’t be seen by the regulator even if they’re abusing their dominant position – but they won’t be able to join cartels.

“We want to catch big fish and won’t be fretting over the small stuff,” said Artemiev, a tacit warning to several of Russia’s biggest corporations.

Cartels

Both regulators agreed that cartels are one of the most dangerous threats to market economies. Russia has recently amended its Criminal Code, establishing criminal liabilities for cartels that prevent, restrict or eliminate competition. While no one has been sent to prison yet, some have received suspended sentences under Article 178 of the code, Artemiev said.

The regulator is working with several international and regional organisations such as the OECD and hopefully soon the Eurasian Economic Union (EEU). It is focussed on the setting of oil and commodities prices, roaming charges across the CIS region and medication prices.

South Africa’s Majenge faces different issues. Many industries in South Africa, including the cement market, had been previously monopolies under the apartheid regime. After 1994, they continued to dominate, and the regulator has needed to change how the market operates.

He explained that even though those previously state-sanctioned cartels had been disbanded, the market did not know how to function independently and competitively.

Even after the demise of the legal cartels, they saw recartelisation by certain industries including agricultural production and cement production.

That one of the biggest problems we as competition authorities in South Africa are facing is the tendency to recartelise the market because that how the market has been functioning for many many years,” said Majenge.

In South Africa sanctions for cartels take the form of fines. However, Majenge noted that the regulator is looking towards criminalisation, but only on a progressive basis.

Public interest

Both regulators made it clear that they have a laser focus on public interests. Artemiev noted that the relationship between intellectual property and antimonopoly was not addressed in the fourth antimonopoly package, but the regulator is likely to make another, sanctions-related change soon.

The Federal Antimonopoly Service is now preparing a proposal to transport goods protected by IP without the IP owner’s permission as some IP owners have stopped supplying vital goods to Russia.

He observed that other BRICS countries, including Brazil and India, have addressed those issues with national law. He said that Russia would consider introducing additional norms in its civil code that would allow parties to go to court against patent holders for the forced provision of a simple non-exclusive license.

However, when answering audience questions, he said that there will be some specificity on this point: the list will be very limited, and they will consult with judges to ensure that the language is narrow.

Majenge also emphasised the regulator’s social priorities, noting that South Africa suffers from structural inequality. “Although our system is based on, or borrows from, international best practices, it has been moulded in such a way that it should be able to respond to the local dynamics in South Africa,” he said. “That’s why there is a huge public interest component in our competition law legislation.”

Aside from antimonopoly enforcement, the South Africa regulator also looks at public interest issues in its merger control regime, considering whether mergers will result in job losses, especially important due to the country’s high unemployment rate.

Art’s biggest threat

Art loans across borders allow a new audience to enjoy the work, and it can deepen ties between institutions. But the act of lending valuable cultural objects is fraught with legal risk, according to speakers on yester-
day’s panel.

Previously museums were more likely to focus on the practical issues such as how a work would be transported and exhibited. But a number of international inci-
dents have turned museums’ atten-
tion towards the legal mechanisms that protect their works on loan from seizure through a court order, an arbitral order or otherwise.

Yesterday’s panel, titled ‘Legal barriers to access to the world cultural heritage: is there a solution?’, featured noted academics from the State Hermitage Museum to discuss the legal mechanisms that ensure the safe return of works on loan.

Noga’s legacy

Anna O’Connell, lecturer at the London School of Economics and Political Science, noted the 2005 Noga incident, in which a Swiss businessman received a court order to seize paintings loaned to a Swiss museum by the Pushkin State Museum of Fine Arts in order to repay debt owed by the Russian state since 1991.

The works were insured for more than $1 billion, and included paintings by Gauguin, van Gogh, Renoir and Manet. While the works were recovered, they heightened the necessity of legal protections.

Since then 15 countries, including the UK, have also introduced laws that introduce the concept of immunity from seizure for cultural objects on loan.

But there are very few laws applicable in this area in both European and international law, noted Jean-Christophe Barbato, professor of public law at the University of Nantes. He said that there is no single piece of legislation devoted to this issue in the area of European law, and the existing conventions are seldom used and few countries are party to them.

However that doesn’t mean that museums are able to turn a blind eye to these issues; it’s necessary to recognise a custom of exchange of cultural items between states.
Pursuing the banks

Regulators are becoming increasingly suspicious of the lack of transparency in the financial world. Governments from jurisdictions as diverse as Russia to India are looking to unravel complicated trust structures and figure out what their citizens actually own – and to potentially prevent money laundering and financial crimes taking place across borders. More broadly, regulators are also focussed on banks’ anti-money laundering measures, both because of compliance failings and broader national security concerns.

This panel, titled ‘Global Recession and Prosecution for Financial Crimes’ will address issues encountered during recessions and what that means for financial crime. It will focus on how businesses try to maintain profitability – or even stay solvent – in times of recession, and how they may contravene local or international standards in order to do so.

Behaviour before and during recession has been a theme in global regulation in the past few years, as banks have been forced to pay huge fines to regulators – particularly those in the US – for violating standards either before the global financial crisis or in its immediate aftermath.

Rulemakers have been looking closely at global financial institutions since the financial crisis. That may have been prompted by a public outcry; people largely believe that banks – and the people that work at them – went unpunished for their role in causing the financial crisis.

In March of this year the New York Department of Financial Services has issued a number of fines for violating anti-money laundering regulations, most notably a $1.45 billion penalty to Commerzbank for compliance failings.

The German bank had conducted transactions from at least 2002 to 2008, as banks have been forced to pay huge fines to regulators – particularly those in the US – for violating standards either before the global financial crisis or in its immediate aftermath.

Emerging markets

While US regulators have been most active in this space so far, it’s unlikely that they will be the only ones for long. Financial centres around the world – including those in emerging markets – are keen to bolster their standards to maintain market integrity. It’s also to benefit their own institutions; by adhering to global regulations, businesses in their jurisdictions have more credibility as they expand elsewhere. Regulators also want to maximise their resources: banks touch thousands of customers, while regulators may be able to go after only one or two bad actors.

And Financial Action Task Force (Fatf), an inter-governmental organisation that sets standards and promotes implementation of regulations that combat money laundering and terrorist financing and other activities that threaten market integrity, has focussed on anti-money laundering and transparency as a national security issue in light of recent concerns related to terror financing.

In Asia, regulators in Hong Kong and Singapore are tightening their anti-money laundering and counter-terrorism financing laws. The Monetary Authority of Singapore announced changes to its rules in April, while the Hong Kong Monetary Authority has also released a guidance paper that will require banks to change their standard money-laundering checks so that they also look into tax reporting irregularities. The HKMA’s 2014 annual report also mentioned plans to dedicate more resources to anti-money laundering and terrorist financing initiatives. Other jurisdictions with financial centre ambitions, such as Thailand, are following suit by strengthening their own anti-money laundering programmes.

Russia is another jurisdiction focussing on achieving greater financial transparency. It has tightened its reporting requirements under its Deoffshoreisation Law, which involved amendments to the Russian Tax Code and came into force on January 1 of this year. Individuals and companies now must submit a foreign ownership notification form to disclose all non-Russian companies if they hold a more than 10% stake. They must also disclose unincorporated trusts, including trusts, for which they are settlor, beneficial owner or a controlling person. The first deadline under the new law is June 15 of this year.

What to expect

Natalya Shatikhina, managing partner of CLC Law Firm and associate professor in the Saint Petersburg State University’s criminal law department, is moderating this panel. According to her, there has been very strict diligence of financial transactions under the recommendations Fatf in relation to transparency and anti-money laundering.

“As markets become closer and companies operate in many jurisdictions, this has become an issue globally – in Russia as well as in Asia, and eastern and western Europe,” she adds.

The panel will address several topics related to financial crimes and transparency. It will examine the dynamics of financial crimes at the moment, as well as the parties globally that have the most influence over formation of compliance standards. On a higher level, it will also discuss how banks and financial institutions should minimise risk. Aside from focussing on the role of institutions, it will look to the role of states in this area. For example the panel plans to discuss how states can take steps to maintain a balance between business interests and fiscal interests, as well as how these government can attract more investment to their economies while also adopting international transparency standards.

Highlighting increasing international integration in the anti-money laundering and financial transparency space, the panel also will discuss the role of states in financial crime prevention, and whether they are partners or competitors.

And Shatikhina has assembled a formidable group of speakers for this session. “To discuss the issue of financial crimes and transparency, I’ve invited some of the greatest financial officials in Russia as well as abroad,” she says. “I was very involved with the speakers I wanted to have on this panel.”

Her speakers include Dado Iacono, general director of LexisNexis Russia and Eastern Europe, and Jonathan Kelly, partner at Cleary Gottlieb Steen & Hamilton in London.

A number of government officials will also be speaking, such as Pavel Livadny, state secretary and deputy director of Russia’s Federal Financial Monitoring Service (Rosfinmonitoring), which was created in 2001 to fight money laundering. Vasily Podyushkov, deputy chairman of the Bank of Russia who oversees bank regulation and supervision, is also participating in the discussion.

Looking further afield, Ardik Tengebayev, vice-minister of the Republic of Kazakhstan, will discuss Kazakhstan’s experiences. Kazakhstan, like Russia, is a member of the Eurasian Group, a Fatf-style body that encourages its members to adopt global standards to prevent money laundering and terrorist financing. However, according to a June 2013 release by the Committee of Financial Monitoring of Kazakhstan’s Ministry of Finance, Kazakhstan was also chosen as one of 12 states to undergo detailed analysis to become a full member of Fatf, which would give it the ability to participate in setting global standards in money laundering and terrorist financing.

Shatikhina emphasises that this discussion is not specific to a certain jurisdiction; instead the session is meant to address global concerns around financial crime and transparency, and will appeal to a broad audience. “This is very interesting for a wide range of companies both in Russia and worldwide because we are going to discuss financial transparency,” she says. “That’s not a question of any one jurisdiction.”
In-house go digital

Today’s session on the role of the legal department in the digital age, will be hosted from 12.30 pm – 2.30 pm today. Moderated by Alexandra Nesterenko, president of the Russian Corporate Counsel Association, panelists will discuss exactly how legal aspects of business procedures can be improved upon with the use of modern technologies, and what role IT solutions can play.

The central focus will of course be on what approaches and tools are currently used in the so-called digital era, and how the use of modern technologies are applied by lawyers in particular, both in Russia and elsewhere, as well as how this may change in the future.

“When you read the panel topic ‘The legal department in the digital age’, you might think that the discussion will be limited to describing technological innovations used by in-house lawyers,” said Nesterenko, who is moderating the session.

“But in fact, general counsel at some of the biggest Russian multinational corporations will disclose their secrets: how they managed to become business partners in the 21st century, and how key performance indicators of the legal function have changed in the digital age. I am sure that attendees will be amazed by the growth of responsibilities and challenges now faced by in-house lawyers, and will discover best practices from leading legal departments.”

Participants will consider exactly what a ‘contract constructor’ is, and its value: is it an effective solution, or a complete waste of time? The discussion will then lead to participants demonstrating exactly what a healthy collaboration between a bank’s legal department and IT should entail.

The system currently in place to optimise the workflow of corporate lawyers will be considered in detail, examining the legal portal for customised contracts, the standard contracts constructor in SAP, and the role of the Law Academy in business.

James Turner, manager of legal knowledge at Philip Morris International, will then take to the stage to discuss how to utilise technology in learning; for example, the use of videos and Wikis.

He will also discuss how this can be applied to communication, with the use of blog communities and online chat services, and efficiency – the idea that monotonous work can be reduced by equipping online services with answers to repeated queries. Turner believes that as we are surrounded by constantly evolving electronic resources, the function of knowledge management is simply to create a platform for cooperation.

Other speakers include Michael Buckner, director of legal affairs at General Electric Russia and CIS, and Tatiana Odabashian, director of legal affairs and compliance at United Breweries Heineken.

Ruslan Ibragimov, vice-president of corporate and legal affairs at Mobile Telesystems, will demonstrate the example his company has set in utilising the various digital tools available in the current day. He will also consider how management expectations are reflected in assessment, and specifically what factors are taken into consideration when doing so.

While the session is of course most specific to in-house counsel, the innovative tools and techniques the panelists will discuss are relevant to all.
Picks of the day

The final full day of sessions sees panels on technology, Asian developments and arbitration – as well as a spectacular closing party

Today is the last day of the St Petersburg International Legal Forum, but there are plenty of sessions and activities to keep delegates busy.

Kick off the day at Ivanov & Partners and commercial crime services ICC FraudNet’s business breakfast ‘Recovery of assets abroad: case studies’. The breakfast, which will take place from 8.30 am to 10.00 am will discuss opportunities for asset tracing, freezing those assets and eventual recovery for creditors. It will do so through practical examples from cases globally.

Vasily Torkanskovsky of Ivanov & Partners will moderate the panel, which will feature a number of lawyers from around the world, including participants from France, Jersey, Australia, the UK and the US.

Asia highlights
Starting at 10.00 am, there are a number of sessions focused on Asia that are certain to attract attendees. One is titled ‘Russian – Chinese Cooperation: from words to action’, and will focus on China’s rising influence in the global economic landscape. Moderated by Ekaterina Trofimova, first vice-president and member of the board of Gazprombank, the discussion will cover a variety of topics ranging from the rise of local currency transactions, development of financial products and, more broadly, the liberalisation of China’s financial system.

Another morning panel will highlight the region’s potential in international arbitration. In ‘Is international arbitration stagnating? Would Asian arbitration centers pour fresh blood in dispute resolution procedures?’, Renadu Soiriel, secretary of the United Nations Commission on International Trade Law (Unictral) will lead a session on the features of leading Asian arbitration centres.

Asian jurisdictions will be well-represented, with panelists including Akira Kawamura, president of the Japan Association of Arbitrators and former International Bar Association president, as well as representatives from the Singapore International Arbitration Centre, the Hong Kong International Arbitration Centre and the Kuala Lumpur Regional Centre for Arbitration.

Those interested in Japanese investment will enjoy an afternoon session taking place from 12.30 pm to 2.30 pm. ‘Development of Japanese – Russian investment projects: practical issues’ explores Japan’s role as one of Russia’s most important trade partners. Vasily Rudomino, senior partner of law firm Alrud, will lead the discussion, which will feature lawyers from Japan’s leading law firms as well as representatives from the Internet Corporation for Assigned Names and Numbers (ICANN) and Microsoft Russia. It will highlight the complexities of providing adequate personal data protection, as well as new Russian legislation in the area.

Another panel will explain how legal departments should contend with new technology. In ‘Legal department in the digital age’, the roundtable discussion will focus on how to improve legal aspects of business processes using modern technologies. Led by Alexandra Nesterenko, president of the Russian Corporate Counsel Association, speakers will include in-house counsel from leading companies.

Until next year
Forum organisers have also planned a number of highlights to close out the conference. From 12.30 pm to 2.30 pm, Vladimir Medinsky, minister of culture of the Russian Federation, and Georgy Poltavchenko, governor of the St. Petersburg International Cultural Forum. Attendees looking for a party will be able to attend the gala dinner, which is scheduled from 7.30 pm to 11.30 pm at the St. Petersburg Arsenal Plant, a spectacular old industrial site at 30, Mineralnaya St.

And those planning to stay for the weekend may enjoy the lawyers’ charity marathon Legal Run, taking place on May 31 at Sosnovka Park to benefit the charity Gift of Life, which supports children with cancer and other life-threatening illnesses, as well as their families. Participants must register by today.

Growing arbitration

Technology focus
Delegates will certainly be interested in a number of technology-related panels throughout the day. Reflecting a huge concern of counsel around the world, there will be a 10.00 am session on personal data regulation titled ‘Protection of personal data: the legal response to the challenges of global information progress’.

Moderated by Alevtina Kamelkova, member of the board of the Russian Corporate Counsel Association and Alcatel-Lucent and general counsel for Russia and CIS, it will feature private practice lawyers and in-house counsel, as well as representatives from the Internet Corporation for Assigned Names and Numbers (ICANN) and Microsoft Russia. It will highlight the complexities of providing adequate personal data protection, as well as new Russian legislation in the area.

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Growing arbitration

Technology focus
Delegates will certainly be interested in a number of technology-related panels throughout the day. Reflecting a huge concern of counsel around the world, there will be a 10.00 am session on personal data regulation titled ‘Protection of personal data: the legal response to the challenges of global information progress’.

Moderated by Alevtina Kamelkova, member of the board of the Russian Corporate Counsel Association and Alcatel-Lucent and general counsel for Russia and CIS, it will feature private practice lawyers and in-house counsel, as well as representatives from the Internet Corporation for Assigned Names and Numbers (ICANN) and Microsoft Russia. It will highlight the complexities of providing adequate personal data protection, as well as new Russian legislation in the area.

Another panel will explain how legal departments should contend with new technology. In ‘Legal department in the digital age’, the roundtable discussion will focus on how to improve legal aspects of business processes using modern technologies. Led by Alexandra Nesterenko, president of the Russian Corporate Counsel Association, speakers will include in-house counsel from leading companies.

Until next year
Forum organisers have also planned a number of highlights to close out the conference. From 12.30 pm to 2.30 pm, Vladimir Medinsky, minister of culture of the Russian Federation, and Georgy Poltavchenko, governor of the St. Petersburg International Cultural Forum. Attendees looking for a party will be able to attend the gala dinner, which is scheduled from 7.30 pm to 11.30 pm at the St. Petersburg Arsenal Plant, a spectacular old industrial site at 30, Mineralnaya St.

And those planning to stay for the weekend may enjoy the lawyers’ charity marathon Legal Run, taking place on May 31 at Sosnovka Park to benefit the charity Gift of Life, which supports children with cancer and other life-threatening illnesses, as well as their families. Participants must register by today.
Transactions, Disputes, Advice

Homburger provides high quality legal advice and representation both domestically and internationally in significant transactions, disputes and complex legal matters to businesses and entrepreneurs.
A recent poll conducted by legal magazine International Financial Law Review reveals the unrelenting momentum of shareholder activism. One hundred percent of US market participants agree that the number one thing boards of public companies should be doing in the lead-up to proxy season is improving their engagement of—and dialogue with—shareholders. The rise of activism has sparked a growing need for companies and their boards to understand the demands of their owners, and make sure long-term investors feel heard.

The past year has seen an exponential rise in activism and growing support for this type of action from institutional investors. To avoid being outmanoeuvred, experts suggest boards should be speaking with their shareholders, especially the large long-term ones, year-round. They should also actively consider recommendations that wouldn’t be harmful to the company’s business plan.

Open dialogue was favoured by all advisors because it offers boards the easiest way to defend against attacks. It is something most can do at any time, even with little time left before companies file their proxy statements. “What most well advised companies believe is you are less vulnerable if the shareholders have a better understanding of where the business is going,” says Gibson Dunn & Crutcher partner John Olson. “They should keep a dialogue with their larger shareholders going throughout the year, even if no one is currently attacking them. This makes them less vulnerable when an activist attacks.”

Other priorities
The poll’s other voting options were: say-on-pay disclosure; director and officer questionnaires; and appointing more independent directors. Respondents agree these are all areas that boards should continue to focus on, even though they are not the top priority. This close to proxy season, it may be too late to significantly change these, but boards could still discuss them with shareholders. “Engagement with shareholders gives you an opportunity to establish a framework for consideration,” says Marc Trevino, partner at Sullivan & Cromwell. “Sometimes board decisions aren’t transparent and this is an opportunity to address that, particularly if you have had a rough year or two.”

Say-on-pay has caught press headlines, but its main effect has been on how proxy advisory firms recommend voting. Director and officer questionnaires are a way for boards to assess management and the company’s progress. Making the findings transparent for investors is one important way to ensure they understand the trajectory of the business.

Most companies already have several independent board directors. There is a long-running debate about whether having independence is truly helpful and how long they can serve before they are no longer independent. Discussing this with shareholders can help improve director nominations and offset support for an activist’s nominations.

Who to engage
Shareholder engagement does not have to mean appeasement. Boards shouldn’t feel the need to speak with, or take note of every demand from, all shareholders. Companies clearly need to focus on engaging with those that are willing to invest in company for the long-term.

“The appeal of the activists even to mainstream institutional investors is logical,” says David Bernstein, partner with K&L Gates. “The institutional investors primarily seek increases in share price, even if they are only short-term. Companies and their boards have to market themselves as offering something that is more important than short term stock price increases, and that requires prior shareholder engagement.”

Board diversity and risk management are both areas in which companies and their investors are keen to see improvements. They are also areas where companies can distinguish themselves from competitors, and prove to shareholders they are listening to their concerns. Boards could, for example, make a case to shareholders that by prioritising cyber security and improving customer data protection, above others in their industry, the company presents long-term value beyond the short-term benefits offered by activists.
Bankruptcy’s changing landscape

Bankruptcy is an increasingly important area of law, especially given the globalization of the international economy. It’s unclear what the applicability of cross-border laws and regulations are between jurisdictions. While efforts such as the United National Commission on International Trade Law (Uncitral) Model Law on Cross-Border Insolvency are influential, they have not been adopted by many countries; although a business may be global, its bankruptcy could be a local affair.

And a more basic – and more prevalent – conflict in bankruptcy is a balance between creditors and debtors. That is often about allowing the company to continue doing business; while debtors prioritise recovering their funds, businesses are trying to continue operating. That’s especially difficult because procedures such as winding-up and external management often limit powers of the debtor’s management and focus instead on creditor returns.

All of those questions are likely to be tested around the world more frequently. As falling commodity prices and a rising dollar challenge emerging markets companies – especially those with currency mismatches – more of them could find it increasingly difficult to pay their debt. And a potential interest rate increase from the US Federal Reserve could also exacerbate issues by potentially raising the cost of funding around the world.

Against this backdrop, the panel ‘Business protection in case of bankruptcy’ is especially important. It is part of Track Four of the conference, which is focussed on litigation and arbitration. Panellists will discuss several questions, including finding a compromise between debtors’ and creditors’ interests.

Moderator Alexandra Nesterenko, president of the Russian Corporate Counsel Association, believes the topic is crucial for attendees, including general counsel and in-house lawyers of multinational and Russian companies who advise businesses on how to survive in difficult economic situations.

Recent changes to the bankruptcy law are favourable for banks and other debtors by providing more rights to banks as creditors towards companies-debtors. That has caused questions to arise between the balance of creditors and debtors. “Therefore business needs to protect its interests during bankruptcy proceedings and minimise management liabilities,” Nesterenko adds.

Nesterenko will be joined by five private practice lawyers on today’s session. Four are from Russia, while the fifth is a member of the international committee of the Japan Federation of Bar Associations.

In particular this panel will focus on reaching a balance between the interests of the company’s management and owners, or those of the debtors, and those of the creditors while also saving the business.

During the discussion, Nesterenko says, she looks forward to finding mechanisms for saving businesses and finding efficient solutions against creditor pressure.

The roundtable discussion will include topics such as the degree to which legislation considers debtors’ interests during bankruptcy proceedings; debtors’ available means of impeding creditors’ and trustees’ pressure during bankruptcy proceedings; minimising the risks of bringing the management and participants or shareholders to different types of liabilities; how to save debtors’ contracts as well as possible bankruptcy exit mechanisms.

Alexandra Nesterenko

Key takeaways
• As globalisation continues, bankruptcy regimes’ differences are more crucial than ever
• Panellists will discuss Russian changes to the law, which are favourable for banks and other debtors
• The discussion will also tackle issues such as debtors’ interests, bankruptcy exit mechanisms and more
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