

**Hughes
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**Anti-Corruption: International
Norms and Practical Advice
for both Governments and
Business**

February 15, 2023

Warsaw, Poland

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Why is Anti-Corruption Important?

Strategic Corruption used by Russia and China



FOREIGN AFFAIRS

The Rise of Strategic Corruption

How States Weaponize Graft

BY PHILIP ZELIKOW, ERIC EDELMAN, KRISTOFER HARRISON, AND CELESTE WARD GVENTER July/August 2020

The fate of the *Moskva*



The fate of the *Moskva*



Another round of missile upgrade work issued in 2014, worth 1 billion Roubles, also saw Electropribor emerge as a significant winner. Captain Supranovich allegedly received 16 million Roubles for his role in awarding the contracts.

Now Russian media claims some 692 million Roubles have gone missing – leaving much of the upgrade work undone. Old components have been discovered not to have been replaced. New elements are not up to specification. Propellants may have been unstable.

Anti-Corruption: Basic Elements

U.S. FCPA Standard:

1. Payment, offer or promise of
2. Anything of value
3. To a “public official”
4. With “corrupt intent”
5. For the purpose of
6. Assisting in obtaining or retaining business

OECD Standard:

1. Intentionally to
2. Offer, promise, or give
3. Any undue or other pecuniary advantage
4. To a foreign public official
5. In order to
6. Obtain or retain business or other improper advantage

Practical Impact on Business

- **Due diligence** on third-party relationships
 - What are we doing? Why are we doing it?
 - Is there a “high probability” of corruption?
 - Then a mere payment to third party is a separate crime, unless
 - You perform due diligence sufficient to know there is not corruption
- KYC (and sanctions) screening on second-party relationships
- Designing and implementing internal controls **protects employees and the company**
- Potential counterparties—including municipalities—can anticipate expectations to facilitate contracts and business responsibly

Key Principles

- Substance over form
 - Western (particularly U.S.) prosecutors are not impressed by formalities
- Always focus on the underlying economic realities
- You cannot do indirectly what you do not want to do directly

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