THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

Sixth Edition

Editor
Mark F Mendelsohn

THE LAWREVIEWS

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SIXTH EDITION

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PREFACE

This sixth edition of *The Anti-Bribery and Anti-Corruption Review* presents the views and observations of leading anti-corruption practitioners in jurisdictions spanning every region of the globe, including new chapters covering Argentina, Canada, Jersey and Sweden. The worldwide scope of this volume reflects the reality that anti-corruption enforcement has become an increasingly global endeavour.

Over the past year, the ripple effects from several ongoing high-profile global corruption scandals have continued to dominate the foreign and domestic bribery landscape. Most notably, in Brazil, Operation Car Wash, the wide-ranging investigation that uncovered a colossal bribery and embezzlement ring at state-owned oil company Petróleo Brasileiro SA (Petrobras), has implicated many domestic and multinational firms across a range of industries, and touched a growing number of foreign countries, leading to cross-border cooperation by enforcement agencies and one of the largest foreign bribery settlements in history. In December 2016, Odebrecht SA, the largest construction company in Latin America, and its subsidiary Braskem SA, a Brazilian petrochemical company, entered coordinated settlement agreements to pay approximately US$3.5 billion in fines and penalties to authorities in Brazil, the United States and Switzerland for making improper payments to government officials, including officials at Petrobras, Brazilian politicians and officials, and political parties through Odebrecht's off-book accounts in exchange for improper business advantages, including contracts with Petrobras. Additionally, J&F Investimentos SA, the parent company of the world's largest meatpacker JBS SA, entered a leniency agreement with Brazil's Federal Prosecutor's Office, agreeing to pay US$3.2 billion for its role in corrupting more than a thousand politicians over the course of a decade. Over the past year, Brazilian enforcement authorities have increasingly utilised plea bargains and leniency agreements both to secure cooperating witnesses and encourage companies to pay fines that ultimately reduce the financial and reputational impact from harsh sanctions.

Likewise, there have been further developments in the worldwide investigations into the misappropriation of more than US$3.5 billion in funds by senior government officials from state-owned strategic development company 1Malaysia Development Berhad (1MDB). The Swiss Office of the Attorney General has been pursuing a money laundering investigation into 1MDB and two Swiss private banks with the help of Singapore, Luxembourg, and the US Department of Justice (DOJ). In June 2017, the DOJ filed additional civil forfeiture complaints seeking recovery of assets valued at approximately US$540 million. Combined with the DOJ's June 2016 civil forfeiture complaints to recover more than US$1 billion in assets, this remains the largest civil forfeiture action ever brought under the DOJ's Kleptocracy Asset Recovery Initiative. The DOJ has also turned its focus to a criminal investigation into

1MDB, particularly in relation to funds used to acquire real estate and other assets in the United States.

Judicial and legislative developments over the past year have further clarified the breadth and scope of anti-corruption investigations and enforcement. For instance, in December 2016, the French parliament passed the Sapin II law, a corporate anti-corruption law that, among other things, established the French Anti-Corruption Agency and required companies with 500 or more employees to establish a compliance programme by mid 2017. In May 2017, the UK High Court in *Director of the Serious Fraud Office v. Eurasian Natural Resources Corporation Ltd* reduced the scope of litigation privilege to communications created to obtain information when the litigation is in progress or reasonably imminent, is adversarial, and the communication's primary purpose is conducting the litigation. If upheld, this has an impact on how investigative internal investigations in the UK are structured so as to maintain legal privilege. Finally, in June 2017, the US Supreme Court held in a unanimous decision in *Kokesh v. SEC* that claims for disgorgement brought by the Securities and Exchange Commission (SEC) were subject to a five-year statute of limitations, thereby limiting the SEC's ability to seek monetary penalties for misconduct that occurred more than five years before the enforcement action.

Continuing a recent trend, the enforcement actions this year reflect cooperation between authorities all over the globe to investigate and charge companies involved in corruption scandals. For example, the successful investigation into Odebrecht SA and Braskem SA was a result of cooperation between the DOJ, the Brazilian Federal Prosecutor's Office and the Swiss Office of the Attorney General. Likewise, in January 2017, the DOJ, the UK's Serious Fraud Office and the Brazilian Federal Prosecutor's Office reached an US$800 million coordinated settlement agreement with Rolls-Royce Plc, a UK-based multinational engineering company that manufactures, designs and distributes power systems, for its role in a bribery scheme involving payments to foreign officials around the globe in exchange for government contracts. And recently in September 2017, in the only corporate Foreign Corrupt Practices Act (FCPA) enforcement action under the Trump administration to date, Swedish international telecommunications company Telia Company AB and its subsidiary entered coordinated settlement agreements with the DOJ, SEC and the Public Prosecution Service of the Netherlands, agreeing to pay US$965 million in fines and penalties for making bribe payments of over US$331 million to an Uzbek official in exchange for expansion into the Uzbek telecommunications market. This is the second settlement arising from the expansive collaborative investigation into bribe payments made to an Uzbek government official; Amsterdam-based telecommunications company VimpelCom Limited and its subsidiary entered a US$795 million global settlement last year to resolve similar allegations as a result of cooperation between enforcement agencies in, among others, Belgium, Bermuda, the British Virgin Islands, the Cayman Islands, Estonia, France, Ireland, the Netherlands, Norway, Spain, Sweden and Switzerland.

In the United States, the DOJ has continued to emphasise the importance of an effective compliance programme and self-reporting. In February 2017, the DOJ Fraud Section released a guidance document, 'Evaluation of Corporate Compliance Programs', identifying a list of 119 common questions that the Fraud Section may ask in evaluating corporate compliance programmes in the context of a criminal investigation. Relatedly, April 2017 marked the one-year anniversary of the DOJ's Pilot Program, aimed at providing greater transparency on how business organisations can obtain full mitigation credit in connection with FCPA prosecutions through voluntary self-disclosures, cooperation with DOJ investigations, and

remediation of internal controls and compliance programmes. The Pilot Program remains in effect under the current administration, but its future remains uncertain as the DOJ continues to assess its utility and efficacy. To date, the DOJ has issued seven declinations to companies that self-reported and disgorged profits under the Pilot Program, with no monitorship requirements.

I wish to thank all of the contributors for their support in producing this volume. I appreciate that they have taken time from their practices to prepare chapters that will assist practitioners and their clients in navigating the corruption minefield that exists when conducting foreign and transnational business.

Mark F Mendelsohn
Paul, Weiss, Rifkind, Wharton & Garrison LLP
Washington, DC
November 2017

Chapter 20

POLAND

Tomasz Konopka[1]

I INTRODUCTION

Combating corruption is a key priority in the policy of Polish prosecuting authorities. Over the past 20 years, a range of legal acts have been introduced aimed at targeting corruption both in the public and economic spheres.

In the Corruption Perceptions Index survey carried out by Transparency International in 2016, Poland was ranked 29th out of 176 countries.[2]

The most recent data considering official corruption and bribery can be found in the Statistical Yearbook of the Republic of Poland issued by the Central Statistical Office in December 2016. In 2005, 361 people with public functions were sentenced for acts of official corruption with final verdicts. In 2010, this figure reached 364; in 2014 it was 256; and in 2015, it was only 219. With regard to bribery, in 2005, 1,364 people were sentenced with final verdicts. In 2010, this figure reached 2,009; in 2014 it was 1,434; and in 2015, it was 1,213. These figures demonstrate that the number of people sentenced with final verdicts for acts of corruption and bribery is steadily declining.[3]

II DOMESTIC BRIBERY: LEGAL FRAMEWORK

The Polish Criminal Code (CC) provides for criminal liability both for the person accepting a bribe and for the person offering it in all types of corruption crimes provided for by legal provisions. Separate provisions regulate issues related to liability for official, international and business corruption.

1 Tomasz Konopka is a partner at Sołtysiński Kawecki & Szlęzak.

2 www.transparency.org/cpi2016#results-table.

3 http://stat.gov.pl/obszary-tematyczne/roczniki-statystyczne/roczniki-statystyczne/rocznik-statystyczny-rzeczypospolitej-polskiej-2016,2,16.html.

Criminal liability for handing or promising a bribe may be imposed on each individual.[4] However, liability is varied depending on the function performed by the person accepting the bribe.[5]

i Person holding a public function

In the case of a crime of 'official corruption', the person accepting the bribe is a person holding a public function (this is a notion broader than that of a public official). Pursuant to Article 115, Section 19 of the CC, a person holding public functions (including a member of a local government body, employee of an organisational unit having public funds – e.g., school director, hospital director or a person managing these organisations) is a public official if their rights or duties in the scope of public activity have been defined by legal provisions. A public official is a broad category of persons covering, *inter alia*, the president, members of Parliament, members of the European Parliament and senators, judges, prosecutors, notaries

4 Act of 6 June 1997: Criminal Code (Journal of Laws No. 1997.88.553). Article 229:
- *a* Section 1. Anyone who gives or promises to give a material or personal benefit to a person holding a public function is liable to imprisonment for between six months and eight years.
- *b* Section 2. If the act is of less significance, the offender is liable to a fine, the restriction of liberty or imprisonment for up to two years.
- *c* Section 3. Anyone who gives a material or personal benefit to a person holding a public function to induce him to disregard his official duties, or provides such a benefit for disregarding such duties is liable to imprisonment for between one and 10 years.
- *d* Section 4. Anyone who gives or promises to give a material benefit of significant value to a person holding a public function is liable to imprisonment for between two and 12 years.
- *e* Section 5. The penalties specified in Sections 1 to 4 also apply to anyone who gives or promises to give a material benefit to a person holding a public function in a foreign state or international organisation in connection with such duties.
- *f* Section 6. The offender is not liable for the offences specified in Sections 1 to 5, where the personal or material benefit, or the promise, was accepted by a person holding a public function, and the offender reported this to the body responsible for prosecution, disclosing all the relevant circumstances of the offence before this authority learned about it.

5 Article 228:
- *a* Section 1. Anyone who, in connection with holding a public function, accepts a material or personal benefit, or a promise thereof, is liable to imprisonment for between six months and eight years.
- *b* Section 2. In cases of less significance, the offender is liable to a fine, the restriction of liberty or imprisonment for up to two years.
- *c* Section 3. Anyone who, in connection with holding a public function, accepts a material or personal benefit, or a promise thereof, in return for unlawful conduct liable to imprisonment for between one and 10 years.
- *d* Section 4. Anyone who, in connection with his or her official capacity, makes the performance of official duties dependent upon receiving a material benefit, or a promise thereof, or who demands such a benefit, is liable to the same penalty as specified in Section 3.
- *e* Section 5. Anyone who, in connection with holding a public function, accepts a material benefit of considerable value, or a promise thereof, is liable to imprisonment for between two and 12 years.
- *f* Section 6. The penalties specified in Sections 1 to 5 also apply to anyone who, in connection with his or her public function in a foreign state or international organisation, accepts a material or personal benefit, or a promise thereof, or who demands such a benefit, or makes the performance of official duties dependent upon receiving a material benefit.

public, bailiffs, employees of government administration, employees of local government, employees of state inspection bodies, services designated for public security, as well as persons performing active military service.

ii Bribes

In all cases of corruption, a bribe is a material or personal benefit. Polish law does not define the minimum value of a material benefit, which is considered to be the profit gained by the person who accepts the bribe, therefore it may be an act leading to an increase in assets or a lessening of liabilities of the accepting person. Money and presents of considerable material value will always be classified as material benefits.

A personal benefit is understood to be a particular outcome desired by the person accepting the bribe, but not necessarily one that involves material gain. For example, a promotion at the workplace, making it possible to participate in an entertainment or sports event or acceptance of a job.

iii Acceptance of, giving or promising a benefit

Conduct that constitutes a crime is not only the giving and accepting of a material or personal benefit, but also the promise of giving such a benefit or demanding it. In cases where a person holding a public function's performance of his or her duties is made dependent upon the giving of a benefit, the CC provides more severe liability. This also applies in situations where a person holding public functions accepts a material benefit, or promise of such a benefit, which has a value in excess of 200,000 zlotys. The crime of corruption of persons holding public functions carries a penalty of imprisonment for six months to eight years or, if more severe, 12 years.

It is important to note that what constitutes the crime is the giving of a material benefit to someone that holds a public function because of the position that they hold; the benefit itself does not necessarily have to relate directly to that person.

The CC makes it possible for a person who has given a material benefit (which has been accepted) to avoid criminal liability if he or she inform the relevant authorities of his or her actions, before the authorities become aware of the crime.

iv Influence peddling

Polish legal provisions also consider the following to be a crime: actions consisting in invoking influence in a state, local government institution or a domestic or foreign organisation that has public funds, when handling a matter in exchange for material or personal benefit or the promise of such a benefit. Similarly, giving a benefit in such a situation is a crime.[6]

v Corruption in business

Provisions of criminal law also provide for criminal liability in the case of corrupt conduct in business relations.[7]

6 Article 230, Sections 1 and 2 of the Criminal Code (Journal of Laws No. 1997.88.553).

7 Article 296a, Sections 1 to 5 of the Criminal Code (Journal of Laws No. 1997.88.553).

Similar to the corruption of officials, the subject of business corruption may be material or personal benefit. Criminal conduct may consist in giving, accepting, demanding or making a promise of benefits. Both the giver and the receiver of the bribe are subject to criminal liability.

It is a crime to corrupt a person holding a managerial function in a business entity or an employee of a business entity in exchange for an abuse of the powers granted to him or her or for the non-performance of his or her duty, which may cause material damage to that entity or that may constitute an act of unfair competition or an inadmissible preferential act in favour of a buyer or recipient of goods, services or performances. If, as a result of actions taken by a corrupt manager or employee, damage is caused that is in excess of 200,000 zlotys, then the Act provides for a more severe penalty.

vi Anti-corruption Act

Corrupt conduct may be prevented by restrictions imposed on persons holding public functions linked to participation in business activity. Pursuant to the provisions of the Act of 21 August 1997,[8] persons holding public functions may not be members of governing bodies in commercial law companies, or work or undertake actions on behalf of business entities if the objectivity of their role is called into question. Persons holding public functions also cannot hold more than 10 per cent of the shares in commercial companies or conduct their own business activity. In addition, they are obligated to submit asset declarations, including those that are part of marital joint ownership.

vii Financing of political parties

The financing of political parties in Poland is based mainly on obtaining subsidies from the state budget, as well as support from individuals. The provisions of the Act on Political Parties[9] ban political parties from obtaining financing from commercial law companies, as well as from other business entities. The Act also bans the obtaining of financial support from foreigners, as well as from individuals who do not reside in Poland, unless they are Polish citizens. Furthermore, annual support granted to a political party by an individual cannot exceed a specific amount representing 15 times the minimum wage.

viii Liability of collective entities

Since 28 November 2003, the Act on Liability of Collective Entities for Acts Prohibited under Penalty has been in force, which regulates issues of quasi-criminal liability of commercial companies. This Act is applicable if a person acting in the name of a company committed one of the crimes specified in the Act, and the company gained or could have gained benefit from this act, even if this gain was non-financial.

A condition for commencing proceedings against a company is a final verdict that (1) establishes that a crime has been committed, (2) conditionally discontinues criminal proceedings, or (3) discontinues criminal proceedings by stating that despite the fact that a crime has been committed, the perpetrator cannot be punished.

8 Act of 21 August 1997 on Limiting the Conduct of Business Activity by Persons Holding Public Functions (Journal of Laws of 2006.216.1584 consolidated text).

9 Act of 27 June 1997 on Political Parties (Journal of Laws No. 2011.155.924 consolidated text).

Administrative corruption, corruption in business and money laundering are included in the catalogue of crimes that may cause the commencement of proceedings.

With regard to criminal proceedings, although in the strictest sense a company cannot be the accused during the course of such proceedings, it is nonetheless possible to hand down a judgment ordering a company to reinstate any benefits that were gained from a crime committed by an individual. In this case, the company becomes a quasi-party and may defend itself against liability by availing itself of certain rights to which the accused is usually entitled. An entity obligated to return benefits has the right to study the case files of the proceedings, take part in the hearing before the court, file motions to admit evidence, put questions to the witnesses, and appeal unfavourable decisions and verdicts.

The Act on Liability of Collective Entities for Acts Prohibited under Penalty provides for the possibility of a judgment imposing a fine on a company of between 1,000 and 5 million zlotys (which cannot exceed 3 per cent of the revenue gained in the year in which the crime that forms the basis for liability was committed). The court will mandatorily order the forfeit of any financial benefits gained from the crime, even indirectly.

In addition, the following punishments are possible with regard to collective entities: a ban on applying for public tenders, and making information about the judgment handed down public. The collective entity might also be subject to a preventive measure in form of a ban on mergers, divisions and transformations.

It should be emphasised that following from practice, law enforcement bodies do not always commence proceedings in a case where there is the option of imposing a fine on a company, but the latest press releases by prosecutors of the national public prosecution office suggest a tightening up of the policy in this regard. The statistics of the Ministry of Justice show that each year only two dozen proceedings of this type are commenced. This figure is very low, especially taking into account the fact that each year over 10,000 people are sentenced for committing business crimes.

III ENFORCEMENT: DOMESTIC BRIBERY

Criminal proceedings in Poland in corruption cases are conducted in the form of an investigation, which means that the public prosecutor's office conducts them. Tasks as part of the investigation may be entrusted to the police or other services appointed to combat crime.

In 2006, a special service was appointed, the Central Anti-Corruption Bureau (CBA), whose priority was to detect and prevent corruption in the public domain. The CBA conducts secret operations aimed at detecting crimes, and carries out tasks as part of criminal trials under the supervision of the prosecutor's office. Just like other special services, the CBA has the right to carry out operations, for example, conduct observations, use bugging devices and even entrapment (controlled giving of bribes).[10]

Recently, significant proceedings have been carried out by the CBA involving a corruption scandal. Five employees of the Court of Appeal in Cracow heard allegations concerning, *inter alia*, participation in organised crime, property gain and money laundering in connection with the investigation of the misappropriation of millions of zlotys to the detriment of this court.[11]

10 Act of 9 June 2006 on the Central Anti-Corruption Bureau.

11 http://wiadomosci.radiozet.pl/Polska/Krakow-Korupcja-w-Sadzie-Apelacyjnym-Zarzuty-dla-5-osob.

In addition to the CBA, the powers to pursue crimes of corruption are held by the police, as well as the Internal Security Agency (ABW).[12] The tasks of the ABW related to combating corruption include monitoring public procurement contracts that have been carried out, as well as privatisation processes, and conducting investigations on the basis of materials obtained in the court of operations or entrusted by the prosecutor's office in cases of high importance for the economic security of the state.

There are also special police units in operation, created to combat economic crime and corruption. An example of this is the recent investigation conducted by the Department for Fighting Corruption of the Provincial Police Headquarters in Szczecin. Six people connected with PKN Orlen were accused of accepting bribes, damage to business and falsification of documentation. An investigation was initiated after notification from the Security Department Director of PKN Orlen in Płock. Bribes were demanded in exchange for preferential treatment from fuel station operators.[13]

IV FOREIGN BRIBERY: LEGAL FRAMEWORK

In principle, Polish criminal law provides for criminal liability for acts that were committed in Polish territory or the effect of which took place in Poland. Criminal liability is also envisaged for crimes committed abroad by a Polish citizen. A foreigner may be held liable if the crime committed was against the interests of Poland, a Polish citizen or a Polish legal person. For a perpetrator to be held liable for a crime committed abroad, their act must be deemed a crime under the laws and regulations in force at the place where it was committed. The foregoing limitation shall not apply, however, to a crime directed against the operation of Polish public offices or economic interests of the state.

It is, therefore, possible for foreigners to be held liable under Polish criminal law for the corruption of Polish officials in spite of the fact that the crime in question was not committed in Poland.

On the other hand, Polish criminal law envisages criminal liability for the corruption of persons holding public functions in a foreign state.[14] The mechanism of liability for this is the same as would be applied to Polish officials.

When sentencing a crime that consists in the corruption of a person holding public functions in a foreign state, it is possible to apply regulations on liability of collective entities according to the same rules that are applied in cases involving officials in Poland.

V ASSOCIATED OFFENCES: FINANCIAL RECORD-KEEPING AND MONEY LAUNDERING

In cases of corruption, especially business-related corruption, the crime committed is often accompanied by other crimes. Most often these are money laundering, acting to the detriment of the company, appropriation, falsifying documents, keeping inaccurate (usually financial) records and filing inaccurate tax returns regarding corporate income tax and VAT.

12 Act of 24 May 2002 on the Internal Security Agency, and on the Intelligence Agency (Journal of Laws No. 2015.1929 consolidated text).

13 http://biznes.onet.pl/wiadomosci/kraj/zarzuty-lapownictwa-w-pkn-orlen/b4f260.

14 Article 228, Section 5 of the Criminal Code and Article 229, Section 5 of the Criminal Code (Journal of Laws No. 1997.88.553).

i Obligation to report a crime

Polish law provisions do not impose a legal obligation to report a crime, apart from the most serious crimes such as murder or those committed against the security of the state.[15] The possession of information concerning less serious crimes does not entail an obligation to report it to the relevant authorities under the sanction of criminal liability. In some cases, however, the management board members may be held liable (both compensation liability and criminal liability) if, in spite of becoming aware of a crime that harms the entity they manage, they failed to take suitable measures (e.g., to file a notification on suspected commission of a crime). Such conduct may be deemed a crime of acting to the detriment of the company through failure to fulfil key obligations.

ii Financial record-keeping laws

Business entities are obligated to keep financial records and, in the case of commercial law companies, their financial records and statements are subject to mandatory examination by an independent certified auditor.

Under the Act on Certified Auditors, a certified auditor who, in connection with a financial audit, has learnt that a public official accepted a financial or personal benefit is obligated to notify the law enforcement bodies about this fact.[16] This obligation shall also apply to the act of corruption of public officials of foreign states and the European Union. It should be noted that the foregoing obligation shall apply to acts of corruption of public officials rather than persons holding public functions. Hence, the obligation of certified auditors shall not apply to each act of corruption in the public sphere that constitutes a crime. In the case of corruption of persons holding public functions who are not public officials, a certified auditor is not obligated to notify the law enforcement bodies, but is authorised to submit such a notification. The situation is similar for corruption in business.

Keeping inaccurate financial records constitutes a crime under fiscal criminal law.[17] Inaccurate financial records are understood as records containing false entries. With regard to criminal liability, under fiscal criminal law it is possible to hold a management board member liable even if financial record-keeping was not included in his or her responsibilities. Such a board member shall be subject to criminal liability for fiscal crimes committed as part of operations of the company he or she manages. Importantly, a management board member may even be subject to liability under fiscal criminal law for crimes committed at a time when he or she did not hold this position.[18]

iii Tax deductibility of domestic or foreign bribes

It is often the case in business-related corruption that bribe funds are siphoned from the company under a fictitious (ostensible) agreement, which entails specific consequences regarding the company's accounting system, as well as VAT and corporate income tax (CIT) settlements. Expenses transferred from a company on the basis of a fictitious agreement,

15 Article 240, Section 1 of the Criminal Code (Journal of Laws No. 1997.88.553).

16 Article 58 of the Act of 7 May 2009 on Certified Auditors and their Government, Entities Authorised to Examine Financial Statements and on Public Supervision (Journal of Laws 2016.1000 consolidated text).

17 Article 61 of the Act of 10 September 1999 – Fiscal Criminal Code (Journal of Laws No. 2013.186 consolidated text).

18 Article 9, Section 1 of the Act of 10 September 1999 – Fiscal Criminal Code (Journal of Laws No. 2013.186 consolidated text).

partially fictitious agreement or one that does not reflect the business reality may not be taken into consideration in CIT and VAT settlements. Hence, in the case where an act of corruption using funds that represent the company's resources is detected, a need often arises to make corrections in CIT and VAT settlements and to pay the missing tax amount. If a person avails him or herself of the possibility of voluntary rectification of the irregularities in tax settlements, the risk of criminal liability may, under certain circumstances, be avoided.

It should be noted that the fiscal authorities may carry out tax inspections at their own initiative or upon receipt of information from the law enforcement bodies conducting corruption-related proceedings. Tax obligations and liability under fiscal criminal law are barred by the statute of limitations after expiry of five years counting from the end of the year in which the incorrect settlement took place.

iv Tax fraud

In connection with the fact that it is prohibited to settle the material benefits given to a beneficiary in the submitted tax returns, in some cases tax fraud is committed[19] along with falsification of documents. As in the case of inaccurate financial records, a management board member of the company that can be connected with the tax return that contains false information may be held liable.

v Money laundering

A crime of corruption is very often accompanied by money laundering, both at the stage after the money was siphoned from the company and before the benefit was given to the beneficiary, and at the stage after the benefit was given to the beneficiary. Money laundering consists of taking actions aimed at concealing the criminal origin of funds.[20] In cases where money is laundered by the beneficiary of the bribe, the basic crime consists in the corruption. However, money laundering is often aimed at concealing the siphoning of the money from the company, which can constitute an appropriation of the company's funds[21] or acting to the detriment of the company.[22]

To prevent money laundering, a suitable act was adopted[23] that established the office of the General Inspector for Financial Information (GIIF), whose main responsibility is to detect crimes of money laundering and to take preventative measures. The Money Laundering Prevention Act imposes on a number of entities, including banks and other financial institutions, an obligation to register transactions and convey information on transactions that are suspected to part of money laundering. If the GIIF comes to the conclusion that a given transaction is suspicious, it may demand that the institution withhold the transaction, and notify the prosecutor's office. Bank accounts may be blocked for three months by virtue of the prosecutor's decision.

The Money Laundering Prevention Act provisions do not envisage the possibility of extending the bank account blocking period. However, in the course of their practice, the law enforcement bodies have developed mechanisms that make it possible, when necessary,

19 Article 56 of the Act of 10 September 1999 – Fiscal Criminal Code (2013.186 consolidated text).

20 Article 299 of the Criminal Code (Journal of Laws No. 1997.88.553).

21 Article 284, Section 2 of the Criminal Code (Journal of Laws No. 1997.88.553).

22 Article 296, Sections 1 to 5 of the Criminal Code (Journal of Laws No. 1997.88.553).

23 The Money Laundering and Terrorism Financing Prevention Act of 16 November 2000 (Journal of Laws No. 2016.299 consolidated text).

to safeguard funds for a longer period to conduct criminal proceedings and then return the funds to the authorised person. In many cases, the prosecutor's office accepts the funds deposited in the bank account as important evidence for the resolution of the case and, having clarified any doubts it may have, returns them to the authorised person. The courts view such conduct in different ways, but in most cases allow such a solution.

The government is currently working on a new act on anti-money laundering and terrorist financing aimed at adapting Polish legislation to EU regulation and implementing recommendations of the Financial Action Task Force (FATF). The project envisages creating the Central Register of Real Beneficiaries, managed by the Minister of Finance, where information will be gathered to identify real beneficiaries (i.e., individuals who actually benefit from the business of the entity that owns or controls them). The registry will be public. The project also introduces stricter penalties, new rules for suspending transactions and locking accounts, and extends the catalogue of institutions obliged to report to the GIIF on specific transactions.[24]

VI ENFORCEMENT: FOREIGN BRIBERY AND ASSOCIATED OFFENCES

According to statistics presented by the Ministry of Justice, in the period from 2001 to 2014, only 16 people were convicted by a legally final judgment for bribery of a foreign public official.[25]

Recently, there has been no significant foreign bribery-related proceedings. The last known bribery-related proceeding involving a scandal connected with public procurement procedures for IT equipment delivered to government offices took place in Poland and the corrupting party was the Polish subsidiary of Hewlett-Packard. There are over 30 people suspected or accused in the case, and in June 2015 an indictment was filed against the leading suspect. On 16 February 2016, the suspect received a suspended sentence of four and a half years' imprisonment and a fine as a result of his motion to be sentenced without a trial having been accepted by the court.

An investigation concerning the bribery offence was carried out in close collaboration with US services. Consequently, Hewlett-Packard entered with the United States Securities and Exchange Commission into a settlement agreement whereby they pleaded guilty to bribing Polish public officials and undertook to pay a penalty of US$108 million.

VII INTERNATIONAL ORGANISATIONS AND AGREEMENTS

Poland is a member of numerous international organisations whose task is to combat bribery. The country was admitted to the European Council on 26 November 1991 and is party to the Criminal Law Convention on Corruption of 27 January 1999 (this Convention started to apply on 1 April 2003). Since 1 August 2014, Poland has also been subject to the Additional Protocol to the Criminal Law Convention on Corruption.

In addition, Poland ratified the United Nations Convention against Corruption on 15 September 2006.

24 https://legislacja.rcl.gov.pl/projekt/12298001.

25 isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/.

Since 7 November 2000, the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, drawn up in Paris on 17 December 1997, has been in force in Poland.

As a member of the European Union, the country has also implemented a range of EU legal acts on combating corruption.

VIII LEGISLATIVE DEVELOPMENTS

Recent changes to criminal procedure include removing a ban on using illegally seized evidence. In proceedings instigated from 15 April 2016 onwards, illegally seized evidence shall not be automatically disqualified and may be used in proceedings, unless it has been obtained in circumstances related to murder, intentional occasioning of bodily harm or deprivation of liberty committed by a public official. Rules regarding phone tapping or bugging have also been relaxed, and evidence seized within the course of such activities can now be freely (at the prosecutor's discretion) used in all criminal proceedings for the purposes of which said evidence was seized.

Another novelty introduced to criminal procedure is that the enforcement of a judgment may be secured through the appointment of a compulsory manager. The manager ensures the continuity of the work of the secured undertaking and provides the court or prosecutor with information relevant to the proceedings in progress. The manager draws up an inventory of the assets and property rights of the company and passes it on to the prosecutor or court.

A recent amendment to the Polish Penal Code broadened the scope of the assets obtained by means of criminal activity that can be confiscated. Such extended confiscation covers not only all criminally obtained benefits, but also direct and indirect returns on these benefits. In case of sentencing for the crime from which the perpetrator gained a benefit of substantial value, confiscation may be imposed on property held by the perpetrator or to which the perpetrator has obtained any title within five years prior to committing the crime. This rule also applies if the perpetrator gained a material benefit from committing a crime punishable by the penalty of deprivation of liberty with upper limit no less than five years and crimes committed in an organised group or in an association whose purpose is to commit offences. The recent amendment to the Penal Code also introduces the possibility of enterprise forfeiture if the perpetrator has committed a serious offence.

The Bill on Openness of Public Life was introduced in October 2017 and aims to increase social control over people exercising public functions. Once passed, it is expected to enter into force in 2018. The most important provision is the obligation to introduce internal anti-corruption procedures, which will also apply to medium-sized entrepreneurs and public sector entities. Failure to fulfil carry out this duty is punishable by a fine of up to 10 million zlotys. The Bill also extends the list of people obliged to publish a personal finance and income assets statement.

Moreover, the Bill introduces a new provision for whistle-blowing. People who give reliable information about the possibility of a corruption offence being committed (as defined in the Penal Code) will be given special protection by the prosecution. Whistle-blowers will also be permitted to recover legal costs. An additional benefit is that a whistle-blower's work contract cannot be terminated without the prosecution's permission.

IX OTHER LAWS AFFECTING THE RESPONSE TO CORRUPTION

Other matters that could be relevant when dealing with bribery and corruption are, for example, whistle-blowing and data protection.

In Polish law, there is no general regulation concerning whistle-blowing and how to proceed with information obtained in this manner. The reaction of an entity to the relevant information from a whistle-blower depends entirely on its internal policy. It seems to be important that a whistle-blower, as an employee, is subject to protection against retaliatory discrimination (e.g., dismissing the employee from the company). Moreover, whistle-blowers (pursuant to general rules from internal legal frameworks) are subject to the protection of Article 10 of the European Human Rights Convention, pursuant to the Strasbourg standards set out in the *Heinisch v. Germany* case. These standards provide for the need to weigh up the interests of a given entity (e.g., protection of a company's good name) with the public interest, and the protection against sanctions afforded to a whistle-blower depends upon his or her motives, as well as the alternative means available to him or her of achieving the assumed goal of disclosing information.

When it comes to data protection in Polish law, the legal norms contained in the regulations on personal data protection and protection of privacy are found, *inter alia*, in the Personal Data Protection Act and in the Criminal Code. The general rule is that the processing of data shall be permitted only when the person to whom the data belongs has given his or her consent, with the exception of the removal of data concerning the person (Article 23, Section 1 of the Personal Data Protection Act). Poland is currently preparing for the entry into force of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the General Data Protection Regulation), which will apply from 25 May 2018.

X COMPLIANCE

The law does not impose the obligation of having compliance programmes on business entities. However, the introduction of internal regulations is deemed to be a duty of the managers, since it is an element of ensuring legal security for the entity they manage. Additionally, the introduction of compliance programmes may be grounds for withdrawal from proceedings based on the Act on Liability of Collective Entities. Internal regulations governing employees' obligations are also of significance when taking appropriate measures against employees under labour law.

XI OUTLOOK AND CONCLUSIONS

The current criminal procedure regime can be described as oriented towards prompt and inquisitorial proceedings, especially in more serious cases.

In the most recent Guidelines of the General Prosecutor, prosecutors have been formally advised to always consider the principle of concurrent crimes (i.e., when an offender has committed two or more offences and the court sets one cumulative penalty for all offences, which is usually more severe than the penalty that would be given for each separate offence). From the initial stage of the proceedings, their actions should be aimed at identifying the leading perpetrators of criminal conduct. In addition, whenever possible, prosecutors should consider imposing an obligation to refrain from pursuing and exercising the relevant business

activity or other preventative measures. All cases of VAT fraud should be conducted by prosecutors specialising in combating such crimes. From the initial stage of the proceedings, prosecutors and the police should determine the financial status of suspects and their property rights that may be subject to forfeiture. If the perpetrator has committed a crime under specified terms, property arrangements should take into account assets acquired by the perpetrator both during and after the offence, as well as five years prior to the crime. Property transferred at that time by the perpetrator to third parties could also be covered by forfeiture. Prosecutors should always consider the need for enterprise forfeiture. In cases where the value of the depleted or expropriated receivables exceeds 1 million zlotys and the damage has not been repaired, prosecutors should apply for the penalty of absolute deprivation of liberty.[26]

The recent Bill on Openness of Public Life provides new provisions and regulations, such as the obligation to introduce internal anti-corruption procedures and protection for whistle-blowers.

26 Guidelines of Prosecutor General dated 10 August 2017 on rules governing the conduct of preparatory proceedings in cases of VAT fraud: http://pk.gov.pl/aktualnosci-prokuratury-krajowej/wytyczne-prokuratora-generalnego-dotyczace-postepowan-o-wyludzanie-nienaleznego-zwrotu-podatku-vat.html#.Wa5YXOSQyUm, Guideline No. 5.

Appendix 1

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