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Eighth Edition

Editor
Nicolas Bourtin

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THE

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Nicolas Bourtin

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PREFACE

In the United States, it is a rare day when newspaper headlines do not announce criminal or regulatory investigations or prosecutions of major financial institutions and other corporations. Foreign corruption. Healthcare, consumer and environmental fraud. Tax evasion. Price fixing. Manipulation of benchmark interest rates and foreign exchange trading. Export controls and other trade sanctions. US and non-US corporations alike have faced increasing scrutiny by US authorities for several years, and their conduct, when deemed to run afoul of the law, continues to be punished severely by ever-increasing, record-breaking fines and the prosecution of corporate employees. And while in the past many corporate criminal investigations were resolved through deferred or non-prosecution agreements, the US Department of Justice has increasingly sought and obtained guilty pleas from corporate defendants. While the new presidential administration in 2017 brought uncertainty about certain enforcement priorities, there have been few signs – even a year and a half into the new administration – of any significant departure from the trend towards more enforcement and harsher penalties.

This trend has by no means been limited to the United States; while the US government continues to lead the movement to globalise the prosecution of corporations, a number of non-US authorities appear determined to adopt the US model. Parallel corporate investigations in several countries increasingly compound the problems for companies, as conflicting statutes, regulations and rules of procedure and evidence make the path to compliance a treacherous one. What is more, government authorities forge their own prosecutorial alliances and share evidence, further complicating a company's defence. These trends show no sign of abating.

As a result, corporate counsel around the world are increasingly called upon to advise their clients on the implications of criminal and regulatory investigations outside their own jurisdictions. This can be a daunting task, as the practice of criminal law – particularly corporate criminal law – is notorious for following unwritten rules and practices that cannot be gleaned from a simple review of a country's criminal code. And while nothing can replace the considered advice of an expert local practitioner, a comprehensive review of the corporate investigation practices around the world will find a wide and grateful readership.

The authors who have contributed to this volume are acknowledged experts in the field of corporate investigations and leaders of the bars of their respective countries. We have attempted to distil their wisdom, experience and insight around the most common questions and concerns that corporate counsel face in guiding their clients through criminal or regulatory investigations. Under what circumstances can the corporate entity itself be charged with a crime? What are the possible penalties? Under what circumstances should a corporation voluntarily self-report potential misconduct on the part of its employees? Is it a

realistic option for a corporation to defend itself at trial against a government agency? And how does a corporation manage the delicate interactions with employees whose conduct is at issue? *The International Investigations Review* answers these questions and many more and will serve as an indispensable guide when your clients face criminal or regulatory scrutiny in a country other than your own. And while it will not qualify you to practise criminal law in a foreign country, it will highlight the major issues and critical characteristics of a given country's legal system and will serve as an invaluable aid in engaging, advising and directing local counsel in that jurisdiction. We are proud that, in its eighth edition, this publication covers 23 jurisdictions.

This volume is the product of exceptional collaboration. I wish to commend and thank our publisher and all the contributors for their extraordinary gift of time and thought. The subject matter is broad and the issues raised are deep, and a concise synthesis of a country's legal framework and practice was challenging in each case.

Nicolas Bourtin
Sullivan & Cromwell LLP
New York
July 2018

Chapter 19

POLAND

Tomasz Konopka[1]

I INTRODUCTION

Depending on the nature of the legal violation, the investigation or control proceedings may be conducted by law enforcement bodies or administrative bodies.

Criminal investigations are, as a matter of principle, carried out by a prosecutor's office, as it is the key obligation of each prosecutor's office to maintain law and order and to prosecute crimes. In particular, the purpose of the investigation is to establish whether a crime has been committed, the identity of the perpetrator, and subsequently – if the evidence collected appears to prove fault and perpetration – to file an indictment. The prosecutor's office should also make sure that no indictment is filed against an innocent person; in such an event, the case should be annulled.

The prosecutor is obliged to launch an investigation at every instance in which there is a justified suspicion of a crime having been committed. An investigation may be launched *ex officio* or at the initiative of the notifying or the aggrieved party, who must submit a formal (oral or written) notification. For the institution of proceedings with respect to certain crimes, the aggrieved party must file a motion for prosecution. After such a motion has been filed, the proceedings are conducted by enforcement bodies, but it is the aggrieved party that decides whether it wants the perpetrators of the crime to be prosecuted. A motion must be filed for the prosecution of certain business crimes, such as mismanagement (if the State Treasury is not the aggrieved party), or the use of someone else's business secrets in one's own business. If no such motion is filed then no proceedings will take place.

At the beginning of 2016, the structure of prosecutors' offices underwent key reforms. The separation that had previously existed between the position of the Minister of Justice and the Attorney General's Office has been removed. The tasks of the Attorney General's Office have been taken over by the National Prosecutor's Office, headed by the Deputy of the Attorney General's Office – the National Prosecutor. The place of the appeal prosecutors' offices has been taken by the regional prosecutors' offices, which are to deal with organised business crime and tax crimes.

An exception has been introduced in the regulation that provided for the independence of individual prosecutors, which provides that a prosecutor is obligated to comply with the directives, instructions and orders of the superior prosecutor (who could be the regional or national prosecutor). Orders may concern the content of tasks carried out in a specific case.

Crimes are also identified and prosecuted by the police, who have powers to institute preparatory proceedings for less serious crimes; investigations carried out by the police

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

are supervised by a prosecutor. In addition to the police, the power to prosecute crimes is also enjoyed by the Internal Security Agency, the Central Anti-corruption Bureau, the Central Investigation Bureau, the Border Guard and bodies authorised to conduct preparatory proceedings in cases for fiscal offences (within the framework of the National Tax Administration – tax offices, tax administration chambers, tax and customs offices). The other enforcement authorities, as a rule, enjoy the same rights and are bound by the same obligations as the police in criminal proceedings. Nonetheless, particularly risky operations (such as dawn raids) are usually performed either by specialised police units or one of the above agencies.

The Code of Criminal Procedure states that business entities must assist law enforcement bodies upon request. During the course of an investigation, a law enforcement body may request that a business entity voluntarily provides documents that could represent evidence in a case. If release of the documents is denied, they are most frequently secured through a search, but law enforcement bodies are not able, for example, to impose a financial penalty for lack of cooperation. An alternative approach may be adopted if criminal proceedings are being obstructed by the perpetrator of a crime being helped to avoid criminal liability. Concealing or destroying evidence that supports suspicion of a crime constitutes a separate criminal offence and the perpetrator is subject to the penalty of imprisonment for between three months and five years. The same penalty is imposed for any obstruction of criminal proceedings with an intent to assist a perpetrator and help him or her avoid criminal liability. Therefore, one should distinguish between instances of limited cooperation during which account is taken of company interests (for example, by demanding that the bodies respect company secrets) and the aforementioned crime.

Whether an adversarial stance towards the enforcement authorities is a real possibility depends on the specific circumstances of each case and the kind of offence being prosecuted.

II CONDUCT

i Self-reporting

Polish law does not provide for the obligation to self-report in relation to committing crimes. Significantly, this lack of obligation to self-incriminate is one of the key principles of criminal proceedings. Given that criminal liability may only be incurred by individuals, this principle is not directly applicable to business entities.

The obligation to report that an offence has been committed only applies to situations in which crimes have been committed by other parties, and this relates to serious crimes prosecuted under the Criminal Code or those that will harm national security. As regards any other types of crimes, the criminal procedure provisions do not provide for a sanction for failure to report them; in particular, Polish law does not provide for a general obligation to report internal irregularities in business entities.

With respect to fiscal crimes, it is only possible for the person responsible for committing the act to avoid criminal fiscal liability by making an 'unprompted voluntary disclosure' or adjustment to a tax return. The Penal Fiscal Code stipulates a number of specific requirements for acts of 'repentance' that need to be met for any actions to avoid responsibility to be effective.

Although not exactly a self-reporting obligation, there is an obligation to report to the General Inspector of Financial Information any transactions that may represent acts of money laundering. As regards leniency measures in competition law, the competition authority might

reduce the amount of the administrative penalty or even decide not to impose such a penalty on an entity that entered into a competition-limiting agreement, if that entity submitted an appropriate petition and fully disclosed all important facts regarding said agreement. Full and immediate disclosure and full compliance are required. The disclosing entity is also obliged not to disclose the fact that the petition has been submitted, in particular to the other parties to the agreement in question.

Parliament is currently working on the Bill on Transparency in Public Life (which may enter into force before the end of 2018). The draft Bill provides for several examples of self-reporting obligations on many entities, especially those in the finance sector or entities in which the State Treasury has shares. One of the many new obligations is a duty to publicly disclose details of contractual relations with other contracting parities, if the value of the contract exceeds 2,000 zlotys.

ii Internal investigations

Polish law does not directly provide for the obligation to carry out internal investigations once managers receive information about irregularities within an enterprise, nor is there any obligation to report the results thereof. It is assumed, however, that conducting an internal investigation represents fulfilment of the obligation to take care of the interests of the enterprise under management. Failure to verify signs of irregularity may represent grounds for liability for damages and, in extreme cases, for criminal liability for mismanagement. Internal investigations are not only conducted when the provisions of law have been violated to obtain benefits for the enterprise but also when, as a result of the law being violated, the enterprise has been harmed.

Notwithstanding the above, specific entities (such as banks or investment firms) are obligated to maintain tight compliance control or an internal audit system. These systems have a similar function to internal investigations and are, at times, subject to compulsory reporting. Failure to properly maintain the aforementioned systems may result in one or more of many administrative sanctions being imposed on the entity.

As internal investigations are not regulated, the course of an investigation in either of the situations described above will not differ considerably; however, substantial differences appear when law enforcement bodies institute official investigations or a company decides to report existing irregularities. The enterprise may obtain the status of aggrieved party and enjoy the attributable rights within preparatory proceedings and, at a later stage, court proceedings, if an indictment is filed. These rights include inspecting the case files, participating in the investigation (i.e., participation in witness hearings) and appealing disadvantageous decisions made during the proceedings (such as a decision to discontinue the proceedings). At the court stage, an aggrieved party may act as auxiliary prosecutor to, *inter alia*, demand compensation of damages or a particular penalty.

In recent years, the number of internal investigations regarding irregularities in the private sector has increased noticeably. In many instances, this is due to the operation in Poland of companies regulated by the strict rules of the US Foreign Corrupt Practices Act or the UK Bribery Act.

Commonly, an internal investigation will encompass a review of business email correspondence and electronic files, meetings with employees, and of the company's financial and contractual documents. As regards confidentiality and secrecy, no specific regulations exist and, therefore, use of any information within an internal investigation must comply with generally applicable provisions (especially the General Data Protection Regulation).

Processing of personal data (except sensitive data) is generally permitted within an internal investigation. However, it is recommended to obtain the necessary consent from the person to whom the data relates.

The above-mentioned draft Bill on Transparency in Public Life also provides for an obligation to introduce internal anti-corruption procedures. This duty is addressed to at least medium-sized entrepreneurs and public sector entities as a countermeasure to bribery offences described in Polish Penal Code. Failure to fulfil such a duty is an offence punishable by a fine of between 10,000 and 10 million zlotys.

iii Whistle-blowers

As it stands, Polish law does not impose sufficient regulation on whistle-blowing. However, employees who disclose irregularities or other undesirable circumstances within an organisation do enjoy protection from any resulting discriminatory treatment by employers and managers, although this does not guarantee that a whistle-blower will not suffer negative consequences. The draft Bill contains regulations for protecting whistle-blowers. Namely, if the status of whistle-blower is granted by the prosecution, that person's employment contract cannot be terminated or changed to less favourable terms without the prosecutor's permission.

The provisions of the Labour Code do not provide any special protection for people who, in their capacity as employees, have been involved in illegal activities. The employment contract of a whistle-blower who has been involved in criminal activities may be terminated under ordinary procedures or even under dismissal procedures, depending on the circumstances of the case, even though that person reported the irregularities, as long as the treatment of the employee is not discriminatory. Therefore, it should be considered that regulations protecting whistle-blowers are missing from the Labour Code, and thus, in many situations, potential whistle-blowers will not have any incentive to disclose irregularities. Nonetheless, numerous firms have adopted measures to allow anonymous reporting of irregularities noticed within firms. Sometimes, anonymous hotlines or email boxes are made available through which employees can point out violations of law or ethical standards. Despite these efforts, the number of confirmed whistle-blowers in Poland has never been significant.

When it comes to criminal liability, a person disclosing information to law enforcement bodies regarding crimes and the circumstances of the perpetration thereof may expect extraordinary mitigation of punishment. If a perpetrator discloses to law enforcement bodies new, previously unknown, circumstances relating to a crime that carries a penalty of more than five years' imprisonment, he or she may submit a motion for extraordinary mitigation of punishment or even a conditional suspension thereof. Furthermore, in the event of corruption in business and in the public sector, a perpetrator of 'active' corruption is not subject to penalty if, after the fact of the corruption, that person notifies law enforcement bodies and discloses all significant circumstances of the deed, and all this takes place before law enforcement bodies have become aware of the facts.

As of 1 May 2017, banks in Poland are obligated to adopt formal whistle-blowing procedures, including an indication of the management board member responsible for handling matters related to whistle-blowing. A bank's whistle-blowing policy is subject to periodic internal assessment.

III ENFORCEMENT

i Corporate liability

The Act on Liability of Collective Entities for Acts Prohibited under Penalty, which regulates issues of quasi-criminal liability of commercial companies, has been in force since 28 November 2003. The Act is applicable if a person acting in the name of a company has committed one of the crimes specified in the Act and the company gained, or could have gained, any benefit from this act, whether financial or not.

The list of crimes, the commission of which may cause the commencement of criminal proceedings, includes:

a mismanagement;
b corruption in business;
c credit and subsidy fraud;
d money laundering;
e crimes linked to making repayment of creditors impossible and reducing their satisfaction;
f failure to file a bankruptcy petition on time;
g insider trading; and
h administrative corruption.

Numerous other crimes are specified in other pieces of legislation that regulate specific areas of economic activity.

A condition for commencing proceedings against a company is that it has been established by a legally final guilty verdict that a crime has been committed by a person acting in the name of a company. There are two other instances when proceedings against a company may be commenced: a verdict that conditionally discontinues criminal proceedings against such an individual, or a verdict that discontinues criminal proceedings by stating that despite the crime having been committed, the perpetrator cannot be punished.

Liability on the basis of the above-mentioned Act may be imposed in the event that one of the following is proven: at least a lack of due diligence in the choice of the person representing the entity, who is at the same time the perpetrator of a crime, or the defective organisation of the company, which did not ensure the avoidance of the commission of the crime, and this would not have occurred had due diligence been observed in its organisation. Note that the liability arising under this Act is non-transferable, that is, in the case of a merger, division or restructuring of the relevant company, the liability expires. However, the court might impose an interim prohibition of such transformations at a company to prevent it from avoiding liability.

It should be emphasised that it follows from practice to date that the law enforcement bodies do not commence proceedings in every case in which such a possibility arises. Ministry of Justice statistics show that only a couple of dozen proceedings of this type are commenced each year. This figure is very low, especially taking into account the fact that more than 10,000 people are sentenced each year for committing business crimes.

As regards criminal proceedings, although in the strict sense a company cannot be the accused, during the course of proceedings it is nonetheless possible to hand down a judgment ordering a company to reinstate any benefits gained as the result of 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, may take part in the hearing before the court, file motions to admit evidence, put questions to the witnesses, and appeal unfavourable decisions and verdicts.

In turn, in such proceedings the company may face auxiliary liability. An entity that is liable on an auxiliary basis is liable for a fine imposed on the perpetrator of a fiscal crime if, when committing the crime, the perpetrator acted in the name of the company, and the company gained or could have gained financial benefit.

As regards representation, the original perpetrator and the corporate entity may be represented by the same attorney or counsel, even though its role would be slightly different in each of these proceedings.

ii Penalties

The Act on Liability of Collective Entities for Acts Prohibited under Penalty provides for the possibility of a judgment with regard to a company, imposing a fine of between 1,000 and 5 million zlotys (but 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 a ban on promotion and advertising;
b a ban on availing of public aid;
c a ban on availing of aid form international organisations;
d a ban on applying for public tenders; and
e making public any information about the judgment handed down.

In the event of auxiliary liability for a tax crime, the scope of liability is determined by the amount of the fine imposed on the accused. Essentially, fines for a fiscal crime range from 560 zlotys to more than 16 million zlotys; these amounts change each year in line with the increase in the minimum wage. In ruling practice, however, it is very unusual for fines to exceed 100,000 zlotys.

As regards administrative liability, the amount of fines and the spectrum of other sanctions (revocation of licences or concessions) significantly varies depending on the relevant duties and legal bases for their imposition. Administrative fines might be very severe, capped at 10 million zlotys (much more than the maximum possible criminal fine) or up to 10 per cent of yearly revenue in the most extreme cases. There is no uniform regulation of administrative sanctions in the Polish legal system.

iii Compliance programmes

Now legal provisions do not impose the obligation on business entities to implement compliance programmes; however, many firms operate such programmes. They are particularly common in companies with foreign capital and in the financial sector. Note, however, that the draft Bill foresees such an obligation being introduced.

In reality, the existence of a compliance programme and ensuring its existence may significantly limit the risk of liability under the Act on Liability of Collective Entities for Acts Prohibited under Penalty, even if the commission of a crime resulted from inappropriate organisation.

A functioning compliance programme is helpful in cases of actions contrary to the law that harm the interests of enterprises. A frequent problem that arises in criminal proceedings

involving crimes harming enterprises is the lack of internal regulations clearly laying down the procedures and scope of duties, as a result of which it is difficult to show the actions or omissions of the guilty party.

In the absence of a general regulation of compliance, it would be difficult to establish any specific recommended elements of compliance programmes. As a rule, it would be advisable for the scope of such programmes to cover all branches and subsidiaries of a given entity and ensure regular reviews of their activity. Shortcomings to that extent usually have a very strong negative effect on the efficiency of compliance programmes. The preferred course of action tends to be to involve accounting and auditing experts.

iv Prosecution of individuals

As has already been mentioned, the position of a company in proceedings conducted by law enforcement bodies against an individual depends to a large extent on whether the company gained any benefit from the crime or whether it was harmed by the crime.

At present, the Code of Criminal Procedure provides that an aggrieved party is an entity whose interests have been directly harmed or threatened by a crime. Not every crime that results in an enterprise suffering damage will allow it to exercise its rights as an aggrieved party in criminal proceedings.

On the other hand, newly amended provisions of the Code of Criminal Procedure grant a firm the right to appeal a decision by the prosecutor to discontinue an investigation if the firm notified the prosecutor about a crime that harmed its interests, even if only indirectly. To date, only a directly aggrieved party has had the right to file a complaint against decisions on discontinuing an investigation, whereas a person indirectly aggrieved has not had the right to any control over the court. The new regulation should be viewed positively as it grants greater litigation guarantees and may lead to more effective crime prevention.

If proceedings against an individual involve a breach of law that may lead to a company being held liable, a question arises as to the legitimacy of cooperation between the accused and the firm. In the vast majority of cases, a judgment that is favourable to the accused rules out the risk of sanctions for the firm. There are no prohibitions whatsoever on joint defences, so cooperation within the proceedings is admissible. However, situations may arise when the accused's line of defence will not be consistent with the interests of the firm. This may be the case, for example, when the accused bases his or her defence on implicating another company employee or manager who is indeed guilty of committing a crime.

The basic duty of the lawyer towards a client in criminal proceedings is to act exclusively for his or her benefit. Pursuant to the position of the judiciary and doctrine that has dominated for years, a defence lawyer must disclose all circumstances that are favourable to the client, even if the client does not consent to this himself or herself.

As regards employee issues, commission of a crime undoubtedly entitles an employer to terminate the employment contract under a disciplinary procedure. What is important is that the reasons for termination of the contract should be precisely indicated in a written termination of the employment contract, and these reasons can be verified by the court if the employee appeals to the Labour Court. In the event that the reasons given in the termination of the contract prove groundless, the employee may be reinstated by the court or may be entitled to a compensation claim, or both.

As regards payment of legal fees, there are no specific regulations that would prohibit any company from covering the costs of legal services rendered to its employee or a member of its body.

The Ministry of Justice is working on amendments to the Act on Liability of Collective Entities for Acts Prohibited under Penalty; however, the amendment Bill has not been announced yet. From press reports and statements by ministry officials, it follows that the previous requirement of final conviction of a natural person as a condition of the collective entity's responsibility will be eliminated. Among the expected changes are removal of the list of crimes for which a collective entity could be held responsible. This means that the responsibility of a collective entity will *not* be restricted to the prohibited acts indicated by the legislator, but the list of crimes will be open. The amount of the fine will be raised to between 30,000 zlotys and 30 million zlotys. Moreover, a collective entity will have to implement compliance procedures to run a company not only in accordance with the law, but also in accordance with ethical standards, risk management rules and other internal standards. The planned date of entry into force of these amendments is not yet known.

IV INTERNATIONAL

i Extraterritorial jurisdiction

The provisions of criminal law essentially provide for liability for crimes committed in Poland. Pursuant to the provisions of the Criminal Code, a crime is deemed to have been committed at the place the perpetrator acted or omitted to perform an act he or she was obligated to perform, or where the effects of the crime were felt or were intended to occur.

With regard to crimes committed abroad, the rule of the 'double criminality' of an act applies. This means that law enforcement bodies may conduct criminal proceedings only with respect to acts that constitute a crime both in Poland and in the country in which they were committed. Polish citizens are liable for crimes committed abroad in all instances where an act constitutes an offence under Polish law and at the place it was committed. As regards foreigners' liability for acts committed abroad, Polish criminal law may be applied if a crime harms the interests of Poland, a Polish citizen or a Polish company, and at the same time the requirement of double criminality is satisfied.

The requirement of the double criminality of an act does not apply to, *inter alia*, a situation in which a crime harms the national security of Poland or its material economic interests, or is aimed against Polish offices or officials, nor does it apply to a situation in which financial gain (even an indirectly) was derived in Poland.

ii International cooperation

Polish law enforcement bodies cooperate with the authorities of other countries. The rules and scope of cooperation vary, however, in view of the fact that in some cases of cooperation, bilateral international agreements, multilateral conventions or international organisation regulations (including primarily European Union law) will apply with some countries. In the absence of an international agreement, the provisions of the Code of Criminal Procedure will apply.

The possibility of handing over a Polish citizen as part of an extradition procedure is excluded in principle. By way of exception, the court may decide to extradite a Polish citizen if such a possibility follows from an international agreement ratified by Poland. An additional condition is that the crime with which the subject of the extradition procedure is charged must have been committed outside Poland, and that the act that the person is charged with must constitute a crime under Polish law, both at the time the court decision is made and at the time the crime was committed.

Polish enforcement authorities routinely cooperate with authorities of a significant number of countries, including Germany and the United Kingdom, mainly as a result of the large Polish populations in those countries.

iii Local law considerations

Enforcement authorities apply the relevant Polish standards in all kinds of proceedings conducted in Poland. The personal data protection regime and the bank secrecy regime are relatively strict and involvement of a foreign element in a given case does not lead to the relevant requirements being loosened in any manner.

V YEAR IN REVIEW

The current government continues its relatively radical efforts to eradicate widespread VAT fraud and other kinds of business crime. One of the amendments to the Criminal Code introduced more severe treatment for producing or handling fake or otherwise unsound invoices, which usually constitute one element of a wider VAT fraud. The government prepared an amendment, which introduces a 'split payment' system to separate net payments from VAT payments in business-to-business transactions. The president signed an amendment, which will come into force on 1 July 2018. The government is also planning to introduce an automated system of data-collection scanning and aggregating information about bank accounts. This system will also automatically assess the risk of a given undertaking being involved in tax fraud, money laundering and other business crime.

In accordance with the guidelines of the Minister of Justice, prosecutors conducting investigations regarding VAT fraud should always consider extended confiscation and forfeiture of an enterprise. In cases involving extortion of more than 1 million zlotys, the Minister demands severe punishments of imprisonment.

Under the newly introduced Articles 270a and 277a of the Criminal Code, forgery of or tampering with an invoice in relation to circumstances influencing the amount of tax (or other public obligation) or its refund, in order to use that invoice as an authentic one, or using a fake invoice constitutes a separate offence. The perpetrator is liable to imprisonment for between six months and eight years. If the perpetrator forged or used invoices documenting transactions of which the value exceeds 10 million zlotys or made forgeries or used fake invoices as a source of their permanent income, the offence is considered to be a felony. A perpetrator in this case is liable to imprisonment for between five and 25 years.

Under the Act of 23 March 2017 on the amendment of the Criminal Code and certain other acts, there is a new institution in criminal law called 'extended confiscation'. According to this regulation, all the assets acquired by the perpetrator during the five years prior to committing an offence would be considered a benefit thereof, unless the perpetrator or the other interested party can submit evidence in rebuttal. This applies in the case of sentencing for:

a an offence resulting in direct or indirect benefit of a substantial value;

b an offence subject to a penalty of five years or more than five years' imprisonment resulting in – even potential – direct or indirect benefit; or

c an offence committed in an organised criminal group.

The Act on Trading in Financial Instruments and certain other acts have been amended to bring the Polish legal system in line with EU market abuse regulations, which significantly

altered national regulation of securities frauds, insider trading and other offences related to financial instruments and public companies. An entirely new institutional framework was implemented, effective from 1 January 2017, to detect tax fraud and process internal revenue matters, namely the National Tax Administration. The new framework resembles the old one in some respects but is much more integrated and centralised, which is supposed to improve its efficiency. Additionally, the simultaneously amended regulatory framework of tax proceedings was designed to hamper tax optimisation and refuse more requests for individual interpretations of tax law, which, in practice, reduced the clarity and integrity of the tax law.

The new Act on Counteracting Money Laundering and Financing Terrorism was enacted on 1 March 2018 and will enter into force later this year. The purpose of this Act is to increase the effectiveness of the national system of counteracting money laundering and the financing of terrorism. The main changes concern the creation of the Central Registry of Real Beneficiaries and the establishment of the Financial Security Committee. Moreover, the Act introduces new rules for interrupting transactions and blocking accounts. It also expands the list of institutions obliged to report on specific transactions and defines mechanisms for preparing a national assessment of the risks associated with money laundering and financing terrorism. Included in the definition of 'obligated institutions' are attorneys-at-law and legal advisers providing specified services to clients, such as the purchase or sale of real estate, enterprise, cash management of clients, making contributions to a capital company or increasing share capital of companies. Obligated institutions will have a duty to apply financial security measures to their clients, which are designed to recognise the risk of money laundering and financing terrorism and, if necessary, to keep the documentation. Financial security measures include customer identification, verification of identity or assessment of economic relations, and will be use, for example, when establishing business relationships or making an occasional transaction equivalent to €15,000 (if it seems to be related, it does not matter if it is one or several), which includes a transfer of money in excess of the equivalent of €1,000.

VI CONCLUSIONS AND OUTLOOK

The government is still doing extensive work on the Bill on Transparency in Public Act, which aims to increase social control over people exercising public functions. It is expected to enter into force later in 2018. The most important provisions are the obligation to introduce internal anti-corruption procedures, granting a special status of whistle-blower for people who give reliable information about corruption offences, and records of civil law agreements are kept by public finance sector entities.

The general outlook is that the government is ready to ensure better crime detection as well as the sure and harsh punishment of criminals. The National Prosecutor has issued new instructions on the scale of penalties demanded in the case of economic crimes. Investigators should demand not less than 10 years' imprisonment for damages that exceed 10 million zlotys in value, seven years for damages exceeding 5 million zlotys, five years for more than 1 million zlotys and three years if damages exceed 200,000 zlotys.

After the reimposition of the 'inquisitive' model of proceedings, prosecution offices seem to be working more effectively, especially given the reduced scope of assigned tasks. However, the recent restructuring of the entire prosecution system is the subject of serious doubts.

Appendix 1

ABOUT THE AUTHORS

TOMASZ KONOPKA

Sołtysiński Kawecki & Szlęzak

Tomasz Konopka joined Sołtysiński Kawecki & Szlęzak in 2002, and has been a partner since January 2013. Tomasz specialises in business-related criminal cases, including white-collar crime, investigations, representation of clients related to custom seizures of counterfeit products, cybercrimes and court litigation. He represents Polish and foreign clients before the courts and law enforcement authorities. He currently leads the criminal law department. Prior to joining Sołtysiński Kawecki & Szlęzak, Tomasz was a lawyer in a number of companies, including those listed on the Warsaw Stock Exchange. He is also a member of the Association of Certified Fraud Examiners.

SOŁTYSIŃSKI KAWECKI & SZLĘZAK

ul. Jasna 26
00-054 Warsaw
Poland
Tel: +48 22 608 70 00
Fax: +48 22 608 70 70
tomasz.konopka@skslegal.pl
www.skslegal.pl

Law
Business
Research

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