POLAND

Law and Practice

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Sołtysiński Kawecki & Szlęzak

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Sołtysiński Kawecki & Szlęzak is an independent Polish law firm with a team of over 180 lawyers, offering legal services to businesses in Poland and abroad. The firm's white-collar crime practice, covering defence work and investigations, has operated since 2008. The group is most noted for handling matters regarding corruption, fraud, tax fraud, actions to the detriment of companies and creditors, cybercrime, money laundering, construction, and labour law offences. This breadth and depth of experience enables the team to perform comprehensive analyses of relevant business crime issues and the mitigation/prevention of the risk of criminal liability. The firm manages major projects, involving both internal investigations and implementing comprehensive compliance systems. It co-operates with market-leading forensic firms, reliable detective agencies and security experts, and professional business partners to provide its clients with full support in crisis management situations.

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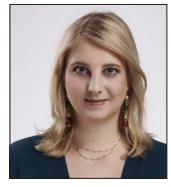

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1. Legal Framework for Offences

1.1 International Conventions

Poland has signed up to numerous international conventions related to anti-bribery and anti-corruption. Poland was admitted to the European Council on 26 November 1991 and is a party to the Criminal Law Convention on Corruption of 27 January 1999 (which 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.

The OECD 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 since 7 November 2000.

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

1.2 National Legislation

The main national legislation in the area of anti-bribery and anti-corruption is the Polish Criminal Code (CC), which provides for most offences relating to corruption. In particular, the CC's provisions regulate issues related to liability for official, international and business corruption. However, some offences related to bribery and corruption are laid down in separate regulations. For instance, liability for corruption in sport is provided for under the Act on Sport.

1.3 Guidelines for the Interpretation and Enforcement of National Legislation

There are no specific rules or guidelines addressed to judges or prosecutors regarding the interpretation and enforcement of national anti-bribery and anti-corruption legislation. General rules are applicable.

In other words, the same rules govern charging and filing an indictment in all kinds of matters, including corruption and bribery cases. A justified suspicion of an offence is sufficient to start proceedings and collect evidence. The prosecutors have discretionary powers to decide if the examination of evidence provides grounds to charge/indict. The indictment is then verified in two-instance court proceedings.

The court assesses the case at its own discretion, based on an examination of collected evidence. While imposing a penalty, the court also relies on its own discretion but always within the limits prescribed by law. The court is obliged to observe that the onerousness of a penalty does not exceed the degree of fault. When imposing the sentence, the court should take into account, in particular, such circumstances as the motivation or behaviour of the perpetrator, the degree of breach of the obligations imposed on the perpetrator, the nature and extent of the negative consequences of the offence, the characteristics and personal circumstances of the perpetrator, their way of life before committing the offence and their behaviour after committing the offence, in particular, efforts to make restitution or provide compensation.

1.4 Recent Key Amendments to National Legislation

An amendment to the CC came into force on 1 October 2023. This amendment introduced many fundamental changes to the CC, in particular, by increasing the penalties for certain offences. Some of the changes will only come into force in March 2024, but most of them are already in place.

The changes in the amendment include:

- increasing the penalty of 25 years of imprisonment to 30 years of imprisonment;
- introducing the confiscation of a motor vehicle (or its monetary equivalent) if the perpetrator commits a traffic safety offence under the influence of alcohol or drugs (this change will come into effect in March 2024);
- introducing a kind of leniency programme, ie, an impunity clause, for offences of hindering or obstructing a tender procedure or entering into an agreement to unduly influence the outcome of an ongoing or planned tender procedure (bid-rigging), in a situation where the perpetrator has notified the law enforcement authority or the competition authority of a member state of the European Union or the European Commission of the fact that the offence has been committed, and has disclosed all relevant circumstances of the offence before the law enforcement authority has become aware of them;
- increasing the penalties for certain types of offences; and
- extending the statute of limitations for murder to 40 years.

The changes also apply to bribery and corruption offences. For example, the act increases the penalty for corruption offences where the financial benefit exceeds PLN200,000 from up to 12 years' imprisonment to up to 15 years' imprisonment.

In addition, the new amendment also introduces new type of aggravated forms of corruption, that

is, if the financial benefit exceeds PLN1 million, the perpetrator is liable to between three and 20 years of imprisonment.

Moreover, Article 306b of the CC introduced aggravated forms of certain offences against business transactions and property interests in civil law transactions (eg, acting to the detriment of the company, money laundering). If the value of the property or the amount of damage exceeds PLN5 million, such crimes are punishable by three to 20 years of imprisonment. If the value of the property or the amount of the damage exceeds PLN10 million, such crimes are punishable by five to 25 years' imprisonment.

Parallel aggravated forms are provided for most offences against property (eg, theft, robbery, extortion, fraud, embezzlement and misappropriation). If the value of the property exceeds PLN5 million, such offences are punishable by three to 20 years' imprisonment. If the value of the property exceeds PLN10 million, the offence is punishable by five to 25 years' imprisonment.

2. Classification and Constituent Elements

2.1 Bribery

In all cases of corruption, a bribe is a material or personal benefit. Material and personal benefits include both benefits for the perpetrator and other people.

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, this may be an act that increases the assets or reduces the liabilities of the person accepting the bribe. Money and hospitality expenditures, gifts and promotional expenditures, or facilitation payments of considerable material value are always 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 in the workplace, making it possible to participate in an entertainment or sports event, or accepting a job. A personal benefit is assessed subjectively, that is, depending on the specific situation of the perpetrator.

Criminal Liability

The CC provides for the criminal liability of both the person accepting the bribe and the person offering it in all types of corruption crimes. Conduct that constitutes an offence 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.

Public Corruption

For the offence of "public corruption", the person accepting the bribe must be a person holding a public function (this is a notion broader than that of a "public official"). Under Article 115, Section 19 of the CC, a person holding a public function is a public official; a member of a local government; a person employed in an organisational entity utilising public funds, unless this person exclusively performs servicing duties; as well as any other person whose public powers and duties are established or recognised by a statute or an international agreement that is binding for the Republic of Poland.

Public officials are a broad category of people including, among others, the president, members of parliament, members of the European Parliament, senators, judges, prosecutors, notaries

public and bailiffs, as well as employees of the government administration, local government, state inspection bodies and services designated for public security, as well as persons performing active military service. Moreover, Polish criminal law envisages criminal liability for the corruption of persons holding public functions in foreign states. The mechanism of liability for this is the same as would be applied to Polish officials.

Business Corruption

Criminal law provisions also provide for criminal liability for corrupt conduct in business relationships. Similar to the corruption of officials, the objective of business corruption may be a material or personal benefit. Criminal conduct may consist of 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:

- abuse of the powers granted to them; or
- the non-performance of their duty;

which may cause:

- damage to that entity; or
- constitute an act of unfair competition or an inadmissible preferential act in favour of a buyer or recipient of goods, services or performance.

If, as a result of actions taken by a corrupt manager or employee, damage is caused that is in excess of PLN200,000, then the CC provides for a more severe penalty.

2.2 Influence-Peddling

Polish legal provisions also consider the following to be an offence – the actions of a person who plays the role of an intermediary in settling a matter in exchange for a material or personal benefit or its promise, by asserting that they have influence, inducing another person's belief in the existence of this influence, or by assuring another person of the existence of this influence in:

- a state institution;
- a local institution;
- an international organisation; or
- a domestic or foreign organisational entity utilising public funds.

Moreover, another offence under Polish law relates to providing or promising to provide a material or personal benefit in exchange for interceding in settling a matter before the aforementioned institutions, consisting in unlawfully influencing a decision or action, or the omission of an action, by a person performing a public function, in relation to performing this function.

2.3 Financial Record-Keeping

In the Polish jurisdiction, keeping inaccurate financial records constitutes an offence under fiscal criminal law. Inaccurate financial records are understood to be records containing false entries. With regards 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 their responsibilities. Such a board member is subject to criminal liability for fiscal crimes committed as part of the operations of the company they manage.

2.4 Public Officials

The CC provides for the offences of misappropriation and embezzlement. These regulations are applicable to both public and private funds. Hence, they are applicable, among others, to public officials. Public officials might also face criminal liability for unlawfully taking an interest in or favouritism based on general provisions of bribery, corruption, or influence-peddling offences (see **2.2 Influence-Peddling**).

2.5 Intermediaries

In Poland, an offence may also be committed through an intermediary.

Under the CC, the following may also be subject to criminal liability:

- co-operators who act jointly and upon a mutual agreement with another person; and
- a person who directs the commission of a prohibited act by another person or orders another person to commit such an act by exploiting this person's dependence on him or her.

Furthermore, a person who wants another person to commit a prohibited act and persuades this person to do so is liable for incitement. In addition, whoever intends another person to commit a prohibited act, facilitates such by their conduct, especially by providing an instrument, conveyance, counsel or information, is liable for assisting a crime.

3. Scope

3.1 Limitation Period

Polish law provides a statute of limitations. The limitation period varies depending on the type of offence. Under the CC, as a general rule, the offences described in **2.1 Bribery**, **2.2 Influence-Peddling**; **2.3 Financial Record-Keeping**, **2.4 Public Officials** and **2.5 Intermediaries**, cease to be punishable after the lapse of 15, ten or five years from the moment they take place. The period depends on whether the offence is subject to the penalty of deprivation of liberty exceeding three or five years. Notwithstanding the above, if the investigation was initiated within the period, the offence ceases to be punishable after ten further years.

As regards keeping inaccurate financial records (see **2.3 Financial Record-Keeping**), fiscal (tax) regulations are applicable. In this case, the limitation period is one year. However, if proceedings were instituted within this period, the offence ceases to be punishable after the lapse of a further two years.

Notwithstanding the above, in June 2021, an act which modified the special provisions regarding the COVID-19 situation came into force. This act introduced, among other things, a suspension of the statute of limitations for offences or tax offences from 14 March 2020. Since 1 October 2023, this regulation is no longer applicable, which means that currently suspended limitation periods (for offences committed before 14 March 2020) will resume and limitation periods for offences committed since 14 March 2020 will start to run from 1 October 2023.

3.2 Geographical Reach of Applicable Legislation

In principle, Polish criminal law provides for criminal liability for acts that were committed in Polish territory, or the effect of which occurred 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, the act must be deemed a crime under the laws and regulations in force in the place where it was committed. However, the foregoing limitation does not apply to a crime directed against the operation of Polish public offices or the economic interests of the state.

Therefore, it is possible for foreigners to be held liable under Polish criminal law for the corruption of Polish officials despite the crime not being committed in Poland.

3.3 Corporate Liability

The Act on the Liability of Collective Entities for Acts Prohibited Under Penalty ("ALCE")

The current Act on the Liability of Collective Entities for Acts Prohibited Under Penalty ("ALCE") regulates issues regarding the quasi-criminal liability of commercial companies.

The ALCE is applicable if a person acting in the name of a company has committed one of the offences specified in the statute and the company has gained, or could have gained, any benefit from this act, whether financial or not. Hence, in those situations, the same offence might be subject to the liability of both individuals and companies. 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 commence 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.

Committing any of the following offences may lead to criminal proceedings:

- mismanagement;
- public corruption;
- corruption in business;
- credit and subsidy fraud;
- money laundering;
- crimes related to making repayment of creditors impossible and reducing their satisfaction;
- failure to file a bankruptcy petition on time; and
- insider trading.

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

A legally binding and final guilty verdict is required

A condition for commencing proceedings against a company is that a legally binding and final guilty verdict against a person acting in the name of the company has been established. There are two other instances where 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 even though the crime has been committed, the perpetrator cannot be punished.

Criminal personal liability is always ahead of quasi-criminal corporate liability.

Liability under the ALCE

Liability under the ALCE may be imposed if one of the following can be proved:

- 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 an offence; or
- defective organisation of the company, which did not ensure the avoidance of an offence being committed when it could have been prevented if the body or representative of the collective entity had applied the required due diligence.

It should be noted 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 transformation to prevent a company from avoiding liability in this way.

In addition, under Article 24 of the Fiscal Criminal Code (FCC), a legal entity, such as a company, should be liable in whole or in part for a fine imposed on the perpetrator of a fiscal offence if the perpetrator is a substitute for that entity conducting its affairs as a proxy, manager, employee, or acting in any other capacity, if the entity obtained or could have obtained any financial benefit from the committed fiscal offence.

4. Defences and Exceptions

4.1 Defences

A well-functioning compliance programme might be a solid defence against the above offences (especially those described in **2.1 Bribery** and **2.2 Influence-Peddling**). A compliance system is helpful in cases of actions contrary to the law that harm the interests of public offices (the State Treasury) or collective entities. A frequent problem that arises in criminal proceedings 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.

At present, legal provisions do not impose an obligation on business entities to implement compliance programmes. Nevertheless, many private companies implement such programmes and this is a defence against the above offences. Compliance programmes are particularly common in companies with foreign capital and in the financial sector. In the absence of a general regulation on compliance programmes, it is difficult to establish any specific recommended elements for such programmes. As a rule, it would be advisable for their scope to cover all the units of a public office, or branches and subsidiaries of a given entity, and ensure regular reviews of their activity. Shortcomings in this area usually have a very strong negative effect on the efficiency of compliance programmes. The preferred course of action tends to involve accounting and auditing experts.

4.2 Exceptions

Since there is no specific legislation on compliance programmes in Poland, it is difficult to say what would be an exception to a defence based on internal regulations introduced in a public office or private company.

4.3 De Minimis Exceptions

Polish criminal law provides for some exceptions in bearing criminal liability, depending on the circumstances of a given case.

First of all, whoever acts with the purpose of performing an economic experiment that is expected to yield results of a significant cognitive or economic value – and whose expectation of achieving them, purposefulness and method of performing the experiment are well founded

in the light of contemporary knowledge – is not committing a crime.

Secondly, whoever acts with the purpose of averting immediate danger to any legally protected interest, if the danger cannot be otherwise avoided, and the sacrificed interest represents a lower value than the interest that is being salvaged, is not committing a crime.

Moreover, if the perpetrator of an offence has voluntarily redressed the full damage, the court may apply an extraordinary mitigation of the penalty or even waive its imposition.

As regards fiscal offences, a mechanism of "active repentance" is in place. A perpetrator who notifies enforcement authorities of the relevant circumstances concerning the offence (particularly the persons assisting in the offence committed) before the authorities have knowledge of the offence is not subject to a fiscal crime or fiscal petty offence. This rule is applicable only if the public debt has been fully paid.

4.4 Exempt Sectors/Industries

There are no sectors or industries that are exempt from the above offences.

4.5 Safe Harbour or Amnesty Programme

In general, no special "credit" is granted for the voluntary disclosure of any offence or adequate compliance procedures. However, for some offences, such as active bribery or bid-rigging (see **1.4 Recent Key Amendments to National Legislation**), the disclosure of all the substantive circumstances of an offence can result in a lack of punishment. As described in **1.3 Guidelines for the Interpretation and Enforcement of National Legislation** and **4.3 De Minimis Exceptions**, the court should take into account the perpetrator's remediation efforts when imposing a penalty.

With respect to fiscal crimes, it is only possible for the person responsible for committing the act to avoid criminal fiscal liability by presenting the "active repentance" described above or adjusting a tax return. The FCC stipulates a number of specific requirements for acts of "repentance" that need to be met in order to avoid liability.

5. Penalties

5.1 Penalties on Conviction

Bribery and Corruption

Currently, the offences of bribery and corruption are penalised by deprivation of liberty for between six months and eight years. However, in a case of lesser gravity, the perpetrator is subject to a fine, the penalty of limitation of liberty, or the penalty of deprivation of liberty for up to two years. On the other hand, if the bribery or corruption relates to an activity constituting a violation of a legal provision, the penalty is deprivation of liberty for between one and ten years. In a case where the bribe is of substantial value (ie, exceeding PLN200,000), the penalty is the deprivation of liberty for between two and 12 years. Moreover, according to the above-mentioned new amendment to the CC (see **1.4 Recent Key Amendments to National Legislation**), the most severe penalty is imprisonment from three to 20 years – if the bribe exceeds PLN1 million.

Influence-Peddling

The offences related to influence-peddling are penalised in Poland by deprivation of liberty for between six months and eight years. Similarly, as above, in a case of lesser gravity, the perpetrator is subject to a fine, the penalty of limitation

of liberty, or the penalty of deprivation of liberty for up to two years.

Misappropriation and Embezzlement

The penalty for misappropriation is the penalty of deprivation of liberty for up to three years. Embezzlement is penalised by deprivation of liberty for between three months and five years. In a case of lesser gravity, the perpetrator is subject to a fine, the penalty of limitation of liberty, or the penalty of deprivation of liberty for up to one year. However, if an offence is committed with regard to a property of substantial value (ie, exceeding PLN200,000), the perpetrator is subject to the penalty of deprivation of liberty for between one and 10 years.

Fraud

As regards keeping inaccurate financial records, whoever, despite an obligation, does not keep books or keeps books inaccurately is subject to the penalty of a fine of up to 240 daily rates. (In Poland, a fine is imposed in daily rates by specifying the number of daily rates and the value of one daily rate. The value of one daily rate may not be less than PLN10 and more than PLN2,000.)

5.2 Guidelines Applicable to the Assessment of Penalties

As described in **5.1 Penalties on Conviction**, the court imposes the punishment according to its own discretion but within the limits prescribed by law. The minimum and maximum penalties are provided under law.

Repeat or Regular Offences

Repeat offences are more severely punished. If a perpetrator previously sentenced to the penalty of deprivation of liberty for an intentional crime commits another intentional crime similar to the one for which they were sentenced, within a period of five years of serving at least six months of the penalty, the court may impose a penalty exceeding by half the upper limit of the statutory penalty provided for the crime attributed to the perpetrator.

The provisions regarding a penalty being imposed also apply to perpetrators who commit crimes as a regular source of income. Furthermore, under the CC, two or more actions performed in a short time interval, pursuant to a premeditated intent, are deemed to constitute a single prohibited act. In practice, such situation might result in one or more severe sanctions.

Motivation and Manner of Conduct

The CC provides for general guidelines (also applied in bribery and corruption cases) which state that, while imposing a penalty, the court pays particular attention to the perpetrator's motivation and manner of conduct, such as:

- the type and degree of violation of the perpetrator's duties;
- the type and extent of the negative consequences of the crime;
- the characteristics and personal conditions of the perpetrator;
- the perpetrator's way of life prior to committing the crime; and
- the perpetrator's behaviour after committing the crime.

The court should also take into account the perpetrator's efforts to redress the damage or to satisfy the public sense of justice in any other form.

Conduct of the Harmed Party

The court should also bear in mind the harmed party's conduct.

The court also takes into consideration the positive results of mediation between the harmed party and the perpetrator, or a settlement they have reached during proceedings held before a court or public prosecutor.

Mitigating and Aggravating Circumstances

The recent amendment to the CC introduced a catalogue of examples of behaviours that may constitute mitigating and aggravating circumstances that the court should take into consideration when imposing a sentence. A mitigating circumstance is, for example, compensation for the damage caused, reconciliation with the victim, or voluntary disclosure of a committed crime to law enforcement authorities by an offender. On the other hand, an aggravating circumstance is, for example, taking advantage of a victim's helplessness, disability, illness or old age, acting with particular cruelty, or committing a crime while under the influence of alcohol or intoxicants.

6. Compliance and Disclosure

6.1 National Legislation and Duties to Prevent Corruption

The law does not impose a general obligation to prevent corruption by setting up a compliance programme. The failure to prevent bribery is not an offence itself. Under the CC, only a person with a specific legal duty to prevent the consequence of an offence from happening is subject to criminal liability for the consequence that results from the offence being committed by omission. In addition, whoever by their conduct facilitates the commission of a prohibited act by another person, but only in defiance of a legal, special duty not to allow such prohibited act to be committed, may be liable for assistance.

Notwithstanding the above, specific entities (eg, banks, investment funds, entities managing alternative investment companies, insurance companies and reinsurance companies, as well as entities conducting brokerage activities and fiduciary banks) are obliged, under special provisions, to maintain tight compliance controls 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.

6.2 Regulation of Lobbying Activities

In Poland, lobbying activities are regulated in the Act on Lobbying in the Legislative Process of 7 July 2005. This act specifies the principles of transparency of lobbying activities in the legislative process, the principles of conducting professional lobbying activities, the forms of control of professional lobbying activities, and the principles of maintaining a register of entities conducting professional lobbying activities.

The above-mentioned lobbying activities are legal and public. The act concerns legislative processes that can be influenced by professional lobbying entities. According to the provisions of this act, there is a register of entities that carry out such activities, and only entry in such a register allows legal lobbying. An entity carrying out lobbying activities without being registered will be subject to a fine of between PLN3,000 and 50,000, which may be imposed repeatedly if the entity fails to take steps to be entered in the register and continues to lobby illegally.

6.3 Disclosure of Violations of Anti-bribery and Anti-corruption Provisions

Polish law does not impose a legal obligation to report a crime, apart from the most serious

crimes, such as murder or crimes committed against the security of the state. 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. However, in some cases, management board members may be held liable (both liability concerning compensation and criminal liability) if, in spite of becoming aware of a crime that harms the entity they manage, they fail to take suitable measures (eg, by filing a notification on the suspected crime being committed). This may be deemed to be acting to the detriment of the company through failing to fulfil key obligations and is, therefore, a crime.

However, specific regulations provide for the obligation to report certain serious crimes. For instance, under banking law, if there is a reasonable suspicion that a bank's activities are being used to conceal criminal activity, the bank is obliged to notify the enforcement authority with the competence to conduct criminal proceedings.

However, as already mentioned, a perpetrator of active bribery might not be subject to a penalty if the material or personal benefit, or its promise, has been accepted by the person performing a public function and the perpetrator has reported this to a law enforcement authority responsible for prosecuting crimes. In such a scenario, the perpetrator should disclose all the substantive circumstances of the offence (eg, time, place, people involved, value, and the form of the bribe) before the authority has learnt of it.

6.4 Protection Afforded to Whistle-Blowers

In the Polish legal system, there is no general regulation concerning the issue of whistle-blowing. At the moment, the reaction of an entity that receives information from a whistle-blower depends entirely on its internal policies and procedures.

In recent years, the process of creating legal norms concerning whistle-blowing in Polish law has begun. For instance, under the Polish Anti-money Laundering Act, banks or other financial entities are obliged to create an anonymous whistle-blowing procedure to report irregularities concerning money laundering. More significant and complex provisions for whistle-blowing are expected to appear in the Polish legal system in the near future.

Poland was obliged to implement Directive (EU) 2019/1937 of the European Parliament and the Council on the protection of persons reporting breaches of EU law by 17 December 2021, but the relevant Polish act has still not been adopted.

Taking into account the recent elections in Poland and the fact that a new term of parliament will start soon, the work on the Polish law will have to be carried out from the beginning again (according to the principle of discontinuation of the work of parliament).

Last Polish Draft Act Implementing Directive 2019/1937

The previous Polish government was working on a bill to implement this directive before the parliamentary elections. The latest draft of the act, intended to implement the Directive, was published in July 2023. The act was intended to provide protection for whistle-blowers (ie, persons who disclose information or the reasonable suspicion of a breach of the law). Whistle-blowers should be protected regardless of the basis and form of co-operation. Whistle-blower status should be granted to a person who has made a relevant report in accordance with the

principles set out in the act (ie, in compliance with the statutory procedure; the person making the report should also have reasonable grounds to believe that the information reported is true). The whistle-blower should be able to monitor whether an appropriate response has been made to the report.

Reporting will be done through:

- internal reporting channels established by private and public entities;
- external reporting channels to relevant state authorities; or
- public disclosure.

Mandatory Internal Reporting Procedures

The establishment of internal reporting procedures will be mandatory for entities with at least 50 employees. Additionally, entities operating in the financial sector (eg, banks and insurance companies) will be required to establish internal whistle-blower channels regardless of whether they operate in the public or private sector and regardless of the number of employees. For other entities, establishing internal channels for reporting will be optional.

6.5 Incentives for Whistle-Blowers

The latest bill does not provide special incentives for reporting bribery or corruption – see the general remarks under **6.4 Protection Afforded to Whistle-Blowers**. The draft act provides only general conditions for the protection of whistle-blowers – no retaliatory actions may be taken against whistle-blowers, such as mobbing, discrimination or refusal of employment.

6.6 Location of Relevant Provisions Regarding Whistle-Blowing

As mentioned in **6.4 Protection Afforded to Whistle-Blowers**, there is no special regulation on whistle-blowing in the Polish legal system, as Directive (EU) 2019/1937 of the European Parliament and the Council has not yet been implemented.

However, provisions on whistle-blowers are included in the Polish Banking Law and the AML law. According to the Banking Law, a bank should have a management system that includes procedures for anonymous reporting of violations of the law to the designated member of the bank's management board – and, in certain cases, to the bank's supervisory board – as well as procedures and ethical standards applicable in the bank. Under the Anti-money Laundering Act, obliged institutions are required to develop and implement an internal procedure for the anonymous reporting of any actual or potential breaches of anti-money laundering and anti-terrorist financing regulations by employees or other persons acting on behalf of a particular obliged institution.

In practice, many companies in Poland also develop their own policies containing provisions for the protection of whistle-blowers, or set up their own internal reporting systems.

7. Enforcement

7.1 Enforcement of Anti-bribery and Anti-corruption Laws

In the Polish jurisdiction, there is criminal enforcement of anti-bribery and anti-corruption laws.

7.2 Enforcement Body

In corruption cases in Poland, criminal proceedings are conducted in the form of investigations. This means that they are undertaken by the public prosecutor's office. Tasks that are 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 is to detect and prevent corruption in the public domain. The CBA conducts secret operations aiming to detect crimes and carry out tasks as part of criminal trials under the supervision of the prosecutor's office. Similar to other special services, the CBA has the right to carry out operations, such as, conduct observations, use bugging devices, and even engage in entrapment (the controlled giving of bribes).

7.3 Process of Application for Documentation

Enforcement agencies have wide powers to gather any type of information or documentation. Under criminal procedure provisions, any legal person/organisational unit/individual is obliged to assist the authorities conducting criminal proceedings by providing the requested information/documentation.

Public prosecutors may demand the production of documents or any other evidence (including seizing electronic devices). Refusing to provide the requested information may result in a dawn raid.

Documentation that may serve as evidence should be surrendered at the request of the court, the public prosecutor, or, in urgent cases, the police or another authorised agency. If the seizure is conducted by the police or another authorised agency acting at its own behest, the person surrendering the documentation may immediately request that the decision approving the seizure be drawn up by the court or the public prosecutor. A person surrendering an object should be advised of that right.

IT Data

As regards telecommunication data, offices, institutions, and entities carrying out telecommunications activities or supplying electronic services, and providers of digital services are under an obligation to immediately secure, upon the demand of a court or public prosecutor contained in a decision, for a specific period of time not longer than 90 days, IT data stored on devices containing such data on a carrier or in an IT system.

Moreover, electronic service providers are obliged to disclose internet data referred to state authorities, for example, the court or prosecutor, for the proceedings (investigation) they conduct.

Enforcement authorities undertaking criminal proceedings are also entitled to summon any person, among others, an employee, officer, or director of a company, to testify. A person who has been formally summoned as a witness is obliged to appear at the place indicated by the authority, and to testify. The interrogations generally take place at the premises of the summoning authority; however, questioning in a different place (eg, a company's seat) is not excluded.

7.4 Discretion for Mitigation

As already mentioned, the prosecution has discretionary power to decide if the examination of evidence provides grounds to charge/indict. The court also imposes punishments according to its own discretion but within the limits prescribed by law.

There are no deferred prosecution agreements under Polish law. However, there are some mechanisms that allow a penalty to be mitigated and a criminal investigation to be resolved without a trial. In cases referred to under Article 335 of the Code of Criminal Procedure, the prosecu-

tor may move to convict the accused without a trial. This requires the following conditions to be met:

- the confession of the accused;
- an explanation of all the circumstances of the case, which do not contradict the conclusions based on other gathered evidence; and
- the attitude of the accused, indicating that the purpose of the proceedings will be achieved without a trial.

The court must verify whether the circumstances of the offence that has been committed give rise to doubts and whether the attitude of the accused indicates that the purpose of the proceedings has been achieved.

Upon the public prosecutor's motion, the court may apply an extraordinary mitigation of the penalty and may even conditionally suspend its enforcement. Such a situation may occur regarding a perpetrator who, apart from giving explanations in their own case, has disclosed a crime subject to the penalty of deprivation of liberty for five years and presented its substantive circumstances to a law enforcement authority that had no prior knowledge of these facts.

As already described, under the CC, an active briber will not be subject to a penalty if the benefit or its promise has been accepted by the receiver of the bribe, and the perpetrator has reported this to a law enforcement authority. An active briber must disclose all the substantive circumstances of the crime before the authority learns about them.

7.5 Jurisdictional Reach of the Body/Bodies

The jurisdictional reach of the enforcement bodies and the court is referred to in **3.2 Geographical Reach of Applicable Legislation**. Taking this into account, the jurisdiction of Polish bodies mainly covers acts committed in Polish territory, or the effect of which occurred in Poland.

However, Polish law enforcement bodies co-operate with other countries' authorities. The rules and scope of co-operation are various. Co-operation with particular countries is prescribed under bilateral international agreements, multilateral conventions, or international organisation regulations (including, primarily, EU law and its implementations).

7.6 Recent Landmark Investigations or Decisions Involving Bribery or Corruption

There have been many significant cases of bribery and corruption in Poland.

One of the biggest corruption cases is being conducted by the Circuit Prosecution Office in Warsaw. The investigation concerns a Polish citizen (a former minister of transport in Poland) for acts committed while he was the head of the State Automobile Road Services in Ukraine. The suspect is accused of accepting material benefits amounting to several million zlotys (PLN) in exchange for supporting a specific company in the award and execution of public procurement procedures for the construction and maintenance of roads in Ukraine. The Prosecution Office in Warsaw conducted the investigation in co-operation with Ukrainian authorities. The prosecutor has filed an indictment and the case is currently being considered by the district court in Warsaw. As the accused is the former minister of transport and a well-known former politician, the case has received a lot of media attention and remains of public interest.

In another well-known corruption case, the former minister of the treasury and the former

deputy minister of the treasury are suspected of accepting bribes in connection with contracts with the Municipal Sanitation Enterprise in Warsaw, worth approximately PLN6 million. The former minister of the treasury is accused of accepting a bribe of almost PLN5 million and the former deputy minister is accused of, among other things, leading a criminal organisation and money laundering. The investigation is currently being conducted by the prosecutor's office in Katowice and one of the suspects is in custody.

7.7 Level of Sanctions Imposed

The proceedings described in **7.6 Recent Landmark Investigations or Decisions Involving Bribery or Corruption** are still underway. Currently, no criminal sanctions have been imposed on the individuals or legal entities for the offences allegedly committed.

8. Review

8.1 Assessment of the Applicable Enforced Legislation

Polish anti-corruption legislation has been officially evaluated by the OECD several times. The OECD published its latest report on Poland's implementation of the OECD Anti-Bribery Convention in 2022. The report focused on developments since Poland was reviewed in 2013 and 2015.

According to the latest report, Poland had fully implemented ten Phase 3 recommendations, had partially implemented five, and had not implemented another five.

The Working Group is concerned that Poland has not implemented previous key recommendations that are fundamental to fighting foreign bribery. Corporate fines for this crime remain insufficient. There is also no comprehensive legislation to protect whistle-blowers. Since 2007, the Working Group has warned that these deficiencies render Poland in non-compliance with the Convention. Equally concerning is Poland's poor record of enforcing its foreign bribery laws. Judicial and prosecutorial independence is a further enforcement-related concern. On the positive side, the OECD noted that the Central Anti-Corruption Bureau is an active and well-known institution in fighting corruption. It can play an important role in fighting foreign bribery if its remit is specifically extended. The General Inspector of Financial Information, the financial intelligence unit, has good working relations with its stakeholders.

8.2 Likely Changes to the Applicable Legislation of the Enforcement Body

Poland held parliamentary elections in October 2023 and a new government is being formed. Significantly, the parliamentary majority will now be held by opposition parties.

It is therefore likely that the new government will work on new laws in a short period of time. Perhaps one of the first laws to be introduced will be a law on whistle-blowers, as Poland has failed to implement the OECD Anti-Bribery Convention for almost two years. The law on the criminal liability of collective entities may also change. So far there have been drafts of amendments, but no fundamental changes have been made.

The new government, once in power, will introduce into the legislative process other laws related to improving the protection of the rule of law in Poland and the independence of the courts.