

ANTI-CORRUPTION COMPLIANCE IN POLAND - NEW OBLIGATIONS AND SANCTIONS

The Polish Government is working on the draft Act on Transparency in the Public Sphere (the "Draft Act"), which is to introduce a requirement that companies apply internal anti-corruption procedures. The penalty for failing to comply with this new requirement may be a fine of up to PLN 10,000,000 and a five-year ban on participating in public tenders.

The Draft Act is also to introduce legal protection for whistleblowers who have provided the authorities with information on possible offences (in particular corruption).

The work on the Draft Act is at a very early stage, but it is expected that the Draft Act will come into force in 2018.

ANTI-CORRUPTION COMPLIANCE OBLIGATION

The requirement to introduce internal anti-corruption procedures is to apply to entities that have 50 or more employees and whose net annual turnover or sum of assets on their balance sheet is EUR 10,000,000 or more.

Anti-corruption compliance is to consist in, among other things, the following:

- introducing a code of ethics (that would also have to be accepted by an entity's counterparties);
- determining internal procedures and guidelines on gifts and other benefits received by employees;
- introducing procedures for informing the entity's bodies of corruption allegations;
- preventing the creation of mechanisms that would allow the costs of giving economic and personal benefits to be financed;
- using anti-corruption clauses in agreements;
- training employees on criminal liability for corruption offences.

If the public prosecutor's office brings corruption charges against a person acting for or on behalf of the entity, the Central Anti-corruption Bureau (the "CBA") will be obliged to inspect whether that entity introduced anti-corruption compliance procedures.

Key issues

- Anti-corruption compliance obligation
- Protection of whistleblowers

If during the inspection it turns out that internal anti-corruption procedures were not applied or were ineffective or only superficial, the entity will be liable to a fine of up to PLN 10,000,000.

The entity will have 30 days to voluntarily pay the fine that is initially set by the CBA. If it does so, the CBA will not apply to the President of the Office of Competition and Consumer Protection (the "OCCP") for the imposition of a fine. Otherwise, proceedings to impose a fine will be instituted before the President of the OCCP. The President of the OCCP's decision to impose a fine will be subject to an appeal. However, if the decision becomes final, then in addition to being fined, the entity will also be banned from taking part in public tenders for five years. Therefore, the active involvement of the entity might be important at the stage of the CBA inspection, as the CBA might take into account mitigating circumstances when setting the initial amount of the fine.

In the course of the proceedings to impose a fine, the President of the OCCP may waive a fine if:

- the entity itself notified the law enforcement authorities of its justified suspicion that a corruption offence had been committed by a person acting for or on behalf of the entity;
- the violation of internal anti-corruption procedures by that entity was minor or had no impact on the commission of the corruption offence.

The Draft Act will most likely contribute to the development of compliance systems in Poland. To date (except for the banking and insurance sectors) there has been no legislation requiring the introduction of a compliance system and the decision to implement one was more a business practice.

If the Draft Act comes into force, an entity which introduced effective anti-corruption compliance procedures will have the possibility of defending itself against allegations of criminal liability under the Draft Act by way of the so-called compliance defence.

Currently the compliance defence can be found in the Act on Liability of Collective Entities for Prohibited Acts Subject to a Penalty (including liability for corruption). The liability of an entity requires fault, which may arise from, for example, the lack of a compliance system. The existence of an effective compliance system may in practice mean that an entity does not bear liability under the Act on Liability of Collective Entities.

The Draft Act also requires public finance sector entities to introduce anti-corruption compliance procedures.

PROTECTION OF WHISTLEBLOWERS

The Draft Act is also to introduce rules and measures for protecting whistleblowers. Currently the Polish legal system does not provide for protection such as that available under, for example, the Dodd-Frank Act in the United States.

Protection would be granted to whistleblowers providing credible information on specific suspected offences (including corruption offences and fraud).

The public prosecutor would decide whether to grant someone whistleblower status. The whistleblower would be protected primarily against termination of his/her employment or similar measures.

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