



# Chambers Global Practice Guides

Definitive global law guides offering  
comparative analysis from top-ranked lawyers

# Anti-Corruption 2022

Poland: Trends & Developments

Jarosław Majewski

DeBenedetti Majewski Szczęśniak Kancelaria Prawnicza Sp.k.

[practiceguides.chambers.com](https://practiceguides.chambers.com)

## Trends and Developments

*Contributed by:*

*Jarosław Majewski*

*DeBenedetti Majewski Szcześniak Kancelaria  
Prawnicza Sp.k. see p.6*

### The Government's Plans to Tighten up Criminal Liability for the Crime of Bribing a Public Officer

Corruption and bribery are multi-dimensional phenomena that penetrate various spheres of social life. These phenomena take various forms, making it very difficult to define them precisely. Polish law does not have one overall legal definition of “bribery” or “corruption” that would be binding within the entire legal regime. However, the statutory definition of “corruption” provided in Article 3a of the Act on the Central Anti-corruption Bureau of 9 June 2006 could be treated as a point of reference, since the Central Anti-Corruption Bureau is constituted of special intelligence forces established to fight corruption in public and economic life, in particular to identify, prevent and reveal corruption-related crimes in the areas of state institutions and local government bodies, economic trade, the organisation of elections and referendums, the financing of political parties, sporting competitions and the trade in medicines and medicinal products, as well as to investigate the perpetrators of such crimes. Pursuant to this definition, corruption is an act:

- involving any person, directly or indirectly, promising, offering or giving any unauthorised benefits to a public official in return for this person, or any other person, performing an act or omitting to perform an act in the functions they perform;
- involving a public official, directly or indirectly, demanding or accepting any unauthorised benefits for themselves or any other person, or accepting an offer or a promise of such benefits, in consideration for performing an

- act or omitting to perform an act in the functions they perform;
- undertaken in the course of business activities that involve performing certain obligations towards a public authority (institution) in connection with directly or indirectly promising, offering or giving any unauthorised benefits to a person leading a non-public finance unit, or working for any such unit in any capacity, or to any other person, in consideration for performing an act or omitting to perform an act, in breach of their obligations and constituting a reciprocity that would be detrimental to society;
- undertaken in the course of business activities that involves performing certain obligations towards a public authority (institution) in connection with a person leading a non-public finance unit, or working for any such unit in any capacity, demanding or accepting, directly or indirectly, any unauthorised benefits, or accepting an offer or promise of such benefits for themselves or for any other person, in consideration for performing an act or omitting to perform an act in breach of their obligations and which constitutes a reciprocity that would be detrimental to society.

In view of the high social harmfulness, various legal regimes fight back against corruption and bribery using various measures, including legal ones. As part of the legal solutions that, directly or indirectly, aim to counteract corruption and bribery or reduce the risk of corruptive phenomena, both systemic and specific, criminal law measures play a very important role. They include legal solutions setting out frameworks for identifying, detecting and investigating the

crimes of bribery and corruption, and then punishing the perpetrators of these crimes.

In Poland, as in many other countries, various types of bribery or corruption, characteristic for various spheres of public and economic life, have been criminalised – either in the Polish Criminal Code of 6 June 1997 (the CC) or in other acts. As far as bribery is concerned, the scope of criminalisation includes, in particular, the crime of bribing a public official (Articles 228, 229 § 1-5 of the CC), electoral bribery (Article 250a § 1-2 of the CC), bribery in business transactions (Article 296a § 1-4 of the CC), bribery in connection with insolvency proceedings or seeking to prevent bankruptcy (Article 302 § 2-3 of the CC), bribery in sports (Articles 46-48 of the Act on Sports of 25 June 2010) and bribery in the area of marketing medicines and medical devices (Article 54 of the Act on Refunding of Medicines, Special Dietary Product and Medical Devices of 12 May 2011). In all these instances, the substance of bribery is defined as accepting a material or personal benefit, or a promise of such a benefit from another person, or requesting such a benefit in exchange for a certain conduct, and granting or promising to another person a material or personal benefit in exchange for certain conduct.

Although all forms of criminalisation of bribery include various spheres of social life, the average Polish citizen would associate bribery as a basis of criminal liability, with bribery of public officials in the first place. This is reflected not only in the everyday language, but also in the language used by lawyers: in Polish, both in a common and legal sense, “bribery” is often used to mean such acts for which the perpetrator may face criminal liability under Articles 228 and 229 of the CC. Why? Because of the following two factors: i) undoubtedly, for the state and society, it is the most destructive, and hence the most shameful type of corruption; and ii) the criminali-

sation of bribery in this sector of public life has the longest history in Poland.

In September 2021, the Polish Ministry of Justice announced a bill introducing material modifications to the Criminal Code (NCC Draft). The NCC Draft is currently at the inter-departmental consultations stage (works pending within the government). One of many modifications that are planned to be introduced constitutes the tightening of criminal liability when the bribery of public officials concerns material benefits with a value exceeding PLN200,000 (approximately EUR43,500).

Acts related to the bribery of public officials are currently criminalised in the provisions of Article 228 and Article 229 § 1-5 of the CC. The scope of criminalisation includes the acts of a public official in relation to the function they perform, consisting in: accepting a material or personal benefit, or a promise of such a benefit, or demanding such a benefit, or making the performance of a professional duty dependent on receiving such a benefit, or its promise, and acts consisting in granting or promising to grant a material or personal benefit to a public official in relation to the function they perform. The concept of a person performing a public function is quite broad. According to the statutory definition contained in Article 115 §19 of the CC, the people performing a public function include public officials, members of a local self-governing authority, anyone employed in an organisational unit with public funds, unless they perform only service-related activities, as well as anyone else whose rights and obligations with respect to public activities are defined or recognised by law or an international agreement binding on the Republic of Poland. The concepts of material and personal benefit are also broadly defined. A benefit is anything that can satisfy human needs (money, objects or services, as well as distinction, honourable title, etc), whereby it is gener-

ally reserved that it concerns a benefit that is “fraudulent”, “undue”, “unlawful”, etc. It does not matter whether it concerns a benefit for the offender himself or herself, or for someone else. The provisions of Articles 228-229 of the CC apply both to the bribery of Polish public officials and the bribery of public officials of foreign countries or international organisations.

The criminal consequences of bribing a public officer in Poland depend on the type of bribery.

The basic types of this offence include acts consisting in a public official accepting a material or personal benefit, or a promise thereof, in relation to performing their function, and acts consisting in granting or promising to grant a material or personal benefit to a public official in relation to performing their function. Anyone who grants a bribe to a public official (Article 229 § 1 of the CC), along with any public official who accepts a bribe (Article 228 § 1 of the CC) commits an offence punishable by imprisonment from six months to eight years.

In cases of lesser gravity, when the social harmfulness of the act is not so material (for instance, where the subject of the bribe constitutes a material benefit of a minor value), the perpetrators are treated in a less severe way – they are punished with a fine, the restriction of liberty or imprisonment from one month to two years (Article 228 § 2 of the CC and Article 229 § 2 of the CC respectively). However, if a public official accepts a bribe or a promise of a bribe in consideration for a conduct in breach of the law, or makes the performance of a professional duty conditional upon receipt of a bribe or a promise of a bribe, or demands a bribe, then these actions are subject to more severe liability, namely, imprisonment from one to ten years (Article 228 § 3 and 4 of the CC). An equally severe punishment is imposed on individuals who grant a bribe, or promise to grant a bribe,

in order to persuade a public official to breach the provisions of law, as well as on individuals granting or promising a bribe to a public official for the breaching thereof (Article 229 § 3 of the CC). Finally, where the object of the bribe is a “benefit of substantial value”, the penalty is the most severe and may be from two to twelve years imprisonment, which applies both to a public official who accepts a bribe (Article 228 § 5 of the CC) and anyone who grants a bribe to that person (Article 229 § 4 of the CC). While “benefit of substantial value” is not defined in the CC, the prevailing view in the literature on the subject is that it should be the same criterion as Article 115 § 6 of the CC provides for “property of substantial value”, ie, PLN200,000 (approximately EUR43,500).

Similar principles apply to the bribery of public officials of foreign countries or international organisations (Article 228 § 6 of the CC and Article 229 § 5 of the CC respectively).

In the event of a conviction for those offences, the court is obliged, regardless of the penalty, to order the forfeiture of the subject-matter of the bribe, or its equivalent, and may also order certain punitive measures against the offender (including a prohibition on holding a specific post, on pursuing a particular profession or economic activity, the publication of the judgment and the award of a cash sum for a particular social purpose), as well as the forfeiture of any items directly derived from the offence and benefits (or their equivalent).

The NCC Draft provides for two material modifications in the provisions of the Criminal Code, criminalising bribery of both Polish public officials and public officials of foreign countries or international organisations. First of all, the NCC Draft would increase the upper limit of imprisonment provided for in Article 228 § 5 and Article 229 § 4 of the CC, applicable when the object of

the bribe is a “benefit of substantial value” – from the current 12 years to 15 years. The second, and more significant change is that the NCC Draft plans to exclude the situations when the object of the bribe is a “benefit of great value” from the application of Article 228 § 5 and Article 229 § 4 of the CC, and to make them subject to newly introduced provisions of law that would be added to the Criminal Code as its Article 228 § 5a and Article 229 § 4a respectively. This modification aims materially to tighten up the criminal liability. The planned provisions of Article 228 § 5a and Article 229 § 4a of the CC provide for a sentence of imprisonment from three to 20 years. If these provisions of law enter into force, the penalty that the perpetrators face for the offence would be almost twice as high as it is currently. The rather loosely specified term, “benefit of great value”, has not yet been defined in the CC, and the NCC Draft does not introduce a statutory definition of this term. From the official justification of the NCC Draft, it can be inferred that the drafters assume that a “benefit of great value” mentioned in the planned provisions would be understood similarly to a “property of great value” as defined in Article 115 § 7 of the CC, ie, that the material benefit of great value will be interpreted as a benefit valued in excess of PLN1,000,000 (approximately EUR217,500).

The idea behind introducing these changes was justified by their authors in a very general and succinct way. They argue that new types of the offence of bribery, provided for in planned Article 228 § 5a and Article 229 § 4a of the CC, are to be introduced due to the need to rationalise the criminal liability for the bribery of public officials, while at the same time they emphasise that the existing solutions lack internal coherence and do not properly reflect the great difference in the level of social harmfulness between bribery concerning a material benefit of slightly more than PLN200,000 (EUR43,500) and bribery concerning a material benefit counted in millions of PLN.

The authors of the bill do not really try to explain why criminal liability would also be tightened up for acts concerning material benefits with a value exceeding PLN200,000 (ie, such acts that, pursuant to the NCC Draft, would be, as before, covered by the provisions of Article 228 § 5 and Article 229 § 4 of the CC), explaining it away as being merely an adjustment modification.

Upon analysing the NCC Draft, it seems clear that the main purpose of the modifications provided for in the bill would be materially to tighten up criminal liability for many types of the offence. The planned modification to Articles 228 and 229 of the CC nicely illustrates this attempt. The changes to be introduced to the criminal law by the Ministry of Justice seem to be taking Poland in the wrong direction. No significant arguments have been raised to justify the general tightening-up of criminal liability, especially given that Polish criminal law is already quite strict.

Contributed by: *Jarosław Majewski, DeBenedetti Majewski Szczęśniak Kancelaria Prawnicza Sp.k.*

**DeBenedetti Majewski Szczęśniak Kancelaria Prawnicza Sp.k.** (DMS) is a transactional-litigation boutique firm with 21 lawyers in Warsaw, Poland. The firm specialises in corporate law, private equity, M&A, bankruptcy/restructuring, litigation and mediation, as well as in criminal law. The firm's experience in drafting complicated transactions, tailored to the needs of very demanding clients, means that it is the go-to

firm for any difficult commercial situations, both in Poland and abroad. DMS acts as sub-contractor for many international law firms without a Warsaw office, assisting with cross-border M&A transactions, advising on local aspects of FCPA/Bribery Act claims, and amending contracts in order to reflect aspects of Polish law and business.

## AUTHOR



**Jarosław Majewski** is an advocate and a partner and is a renowned authority, in particular in the sphere of criminal law and banking. Prior to forming the firm, Prof. dr hab. Jarosław

Majewski chaired legal departments of Polish major financial institutions. This experience enables him to find optimum solutions for clients, not only from the point of view of the nature of a legal problem, but also the internal regulations in force in the organisation. What clients value most are his legal knowledge, professional experience, expertise and quality of legal assistance, as well as his care in their interests. He combines legal practice with academic work. He is the author and co-author of over 170 publications.

---

## DeBenedetti Majewski Szczęśniak Kancelaria Prawnicza Sp.k.

Saski Crescent  
ul. Królewska 16  
00-103  
Warsaw  
Poland

Tel: +48 22 339 54 00  
Fax: +48 22 339 54 01  
Email: [office@dms-legal.com](mailto:office@dms-legal.com)  
Web: [www.dms-legal.com](http://www.dms-legal.com)

**DMS** | DeBenedetti  
Majewski  
Szczęśniak