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The Legal 500 Country Comparative Guides Poland **BRIBERY & CORRUPTION**

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This country-specific Q&A provides an overview of bribery & corruption laws and regulations applicable in Poland.

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POLAND

BRIBERY & CORRUPTION



1. What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?

The problem of bribery and corruption in the Polish jurisdiction is governed by: 1) international agreements binding Poland, 2) legal acts adopted by the relevant EU authorities and 3) the provisions of domestic laws.

A number of Polish legal acts governing many areas of life contain provisions that, directly or indirectly, aim to counteract corruption or reduce the risk of corruptive phenomena, both systemic and specific, or to identify, detect and investigate the crimes of bribery or corruption.

The Act on Limitations on Public Officials Conducting Business Activity of 21 August 1997, as well as the provisions of other acts obliging certain public officials to make statements on their property, or introducing a prohibition on them undertaking certain activities, as well as the Act on Public Tenders of 11 September 2019 are the provisions that play the most important role in preventing bribery and corruption in state institutions and local government bodies.

On the other hand, when it comes to identifying, detecting and investigating the crimes of bribery and corruption, the following acts should be listed:

- the Act on the Central Anti-Corruption Bureau of 9 June 2006,
- the Code of Criminal Procedure of 6 June 1997
- the provisions of the Criminal Code of 6 June 1997, along with other acts criminalising various types of bribery or corruption, such as:
 - Articles 228, 229 § 1-5, 230, 230a § 1-2, 231 § 2, 250a § 1-2, 271 § 3, 296a § 1-4, 302 § 2-3, and 305 § 1 of the Civil Code,
 - Articles 46-48 of the Act on Sports of 25 June 2010
 - Article 54 of the Act on Refunding of Medicines, Special Dietary Product and

Medical Devices of 12 May 2011.

2. Which authorities have jurisdiction to investigate and prosecute bribery in your jurisdiction?

As with other crimes, generally the prosecutor's office and the police are responsible for bribery investigations.

Among the other authorities that have the jurisdiction to investigate bribery, a special role is played by the Central Anti-Corruption Bureau (CBA). Established in 2006 to fight corruption in public and economic life, in particular in state and local government bodies, the CBA constitutes special intelligence forces that predominantly identify, prevent and reveal corruption-related crimes in the area of: state institutions and local government bodies, economic trade, the organisation of elections and referendums, the financing of political parties, sporting competition and the trade in medicines and medicinal products, and which investigate the perpetrators of such crimes.

The jurisdiction to investigate bribery is also vested in the Internal Safety Agency, the Border Guards, the Military Police and the State Tax Revenue Administration bodies.

To a certain extent, identifying, preventing and detecting bribery constitutes a task of the Military Counter-Intelligence, though this body is not authorised to investigate these offences.

According to statistics, the largest percentage of bribery and corruption cases are detected by the police.

In principle, it is the prosecutor that is authorised to file an indictment related to the offence of bribery.

3. How is bribery defined?

Informally, corruption in Poland is understood as an act of giving or accepting bribes. Less frequently, it may be associated with such behaviour as protection, nepotism

or 'backscratching'. Polish law does not have one overall legal definition of "bribery" or "corruption" that would be binding within the entire legal regime.

"Corruption" is defined in Article 3a of the Act on the Central Anti-corruption Bureau of 9 June 2006 as an act:

1. 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;
2. 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;
3. 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 which constitutes a reciprocity that would be detrimental to society;
4. undertaken in the course of business activities that involve 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.

"Bribery", on the other hand, does not have a statutory definition. In Polish, in common and legal language, this term is often used to mean all the acts for which the perpetrator may face criminal liability under Articles 228 and 229 of the Polish Criminal Code, i.e., acts that involve:

1. a public official accepting material or personal benefits, or a promise of such benefits, in

- relation to the function they perform, and
2. making a promise to grant material or personal benefits to a public official in relation to the function they perform.

4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined? Are there different definitions for bribery of a public official and bribery of a private person?

Polish law distinguishes between bribery of a public official and bribery in other situations.

Acts related to bribery of public officials are criminalised in the provisions of Article 228 and Article 229 § 1-5 of the Polish Criminal Code (the "PCC"). 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 requesting such a benefit or making the performance of a professional duty dependent on receiving such a benefit, 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 PCC, a public official is anyone performing a public function, a member a self-government body, a person employed in an organisational unit with public funds, unless they only perform service-related activities, as well as any other person 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, object or service, as well as distinction, honourable title, etc.), whereby it is generally 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 for someone else. The provisions of Articles 228-229 of the PCC apply both to the bribery of Polish public officials and the bribery of public officials of foreign countries or international organisations.

Legal provisions criminalising bribery in other situations, i.e. the bribery of anyone other than a public official (such as electoral bribery, bribery in business transactions, bribery in connection with insolvency

proceedings or seeking to prevent bankruptcy, bribery in sports, bribery in the area of marketing medicines and medical devices) define the substance of bribery 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 certain conduct, and granting or promising to another person a material or personal benefit in exchange for certain conduct.

5. What are the civil consequences of bribery in your jurisdiction?

Under Polish civil law, an act constituting any type of offence of bribery should be classified as tort. If an offender has caused damage to another person by that act, the person may, on general principles, demand it be redressed by the offender.

As regards the civil consequences of bribery in the Polish jurisdiction, two other selected aspects should be noted:

1. Pursuant to the Act on Combatting Unfair Competition ("CUC Act"), the bribery of a public official within the meaning of Article 229 of the Polish Criminal Code is an act of unfair competition if that act is committed by an individual being an undertaking, or a person acting on behalf of such an undertaking, with the power to represent them or make decisions on their behalf, or exercise control over them, or a person acting for such an undertaking with their consent. If the tort infringes or threatens the interests of another undertaking, that undertaking may resort to the remedies provided for in the CUC Act against the undertaking that committed the offence of bribery (alone or through anyone acting in his interest). That undertaking may require, among other things, the removal of the effects of unlawful activities, the submission of a single or repeated statement of a relevant content and in an appropriate form, the repair of the damage caused (on general principles) and the surrender of any unfairly obtained benefits (on general principles).
2. Committing an offence of bribery also produces important consequences in public procurement. Pursuant to the Public Procurement Law, a natural person who has been finally convicted of bribery of a public official, electoral bribery, bribery in business transactions, bribery in connection with insolvency proceedings or seeking to prevent bankruptcy or bribery in sports, on the basis

of relevant Polish criminal law provisions or provisions of a foreign law - may not apply for a public contract for a certain period of time, as the legislation excludes them from the procedure for the award of such a contract. The same prohibition applies to a legal person if a serving member of its management or supervisory body, a partner in a general or professional partnership, or a general partner in a limited partnership or a limited partnership with a share capital or a proxy has been finally convicted for the offence in question.

6. What are the criminal consequences of bribery in your jurisdiction?

The criminal consequences of bribery in Poland depend on the type of bribery offence.

The bribery of a public official is punishable by imprisonment from six months to eight years, which applies both to a public official who accepts a bribe and anyone who grants a bribe to that person. Where the object of the bribe is a "benefit of substantial value", the most severe penalties can be imposed, from two to twelve years in prison. The term "benefit of substantial value" is not defined in the PCC, but the prevailing view in the literature on the subject is that it should be the same criterion as Article 115 § 6 of the Polish Criminal Code (the "PCC") provides for "property of substantial value", i.e. PLN 200 000 (approximately EUR 45 000).

Bribery in the area of marketing medicines and medical devices and in sports are also punishable by imprisonment from six months to eight years. Bribery in business and electoral bribery are punishable by imprisonment from three months to five years, while bribery in connection with insolvency proceedings or seeking to prevent bankruptcy leads to imprisonment from one month to three years.

In the event of a conviction for those offences, the court is obliged, irrespective 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 of holding a specific post, on pursuing a particular profession or economic activity, the publication of the judgement 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).

7. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials?

The Polish domestic law does not contain provisions setting precise limits on hospitality, travel and entertainment expenses in general, or in relation to such expenses for foreign public officials. The basic limit is set by the provisions of criminal law criminalising the offences of bribery and corruption. The scope of application of those provisions also covers bribery of public officials of foreign countries or international organisations.

It may be added that some Polish companies, especially larger ones, set limits on hospitality, travel and entertainment expenses for their own purposes – in order to ensure greater transparency of their activities.

8. Are political contributions regulated?

Political contributions are regulated in two dimensions – financing of election campaigns and financing the operation of political parties.

The rules for financing election campaigns in Poland are defined in the Election Code Act of 5 January 2011. Election campaign financing is public, and the expenses incurred by election committees in connection with any elections that have been called must be met from their own resources. Election committees are prohibited from providing any material benefits to another election committee. They are also not allowed to engage in public fundraising. The financial resources of a political party's election committee may be derived solely from that party's electoral fund, whereas the financial resources of an election committee of an organisation or of voters may come exclusively from contributions by individuals who are Polish citizens and reside permanently in Poland, as well as from bank loans taken out only for election-related purposes. The sum of contributions from an individual to an election committee may not exceed 15 times the statutory minimum salary. From January 2021, the statutory minimum salary in Poland is PLN 2800 (gross), i.e. about EUR 630. Election committees cannot accept any non-cash material benefits, with certain exceptions, such as for instance the free-of-charge distribution by individuals of election posters and leaflets. Any material benefits accepted by an election committee in breach of law are subject to being forfeited to the State Treasury in accordance with the rules laid down in Article 149 of the Election Code.

According to the Act on Political Parties, the sources of funding for political parties are public, and their assets can come from membership fees, donations, legacies and bequests, income from its own property, as well as discretionary subsidies and entity grants specified by law. A political party is not allowed to engage in public fundraising, but may take out bank loans for purposes consistent with its statute. Only Polish citizens who permanently reside in Poland can contribute funds to political parties. The limit of contributions from an individual is the same as for the contributions to an election committee. This amount does not include membership fees, which cannot exceed annually the statutory minimum salary. The rules and limits apply accordingly to non-cash contributions to political parties.

The financing of political parties' participation in elections is regulated separately under the Act on Political Parties. After the commencement of an electoral campaign, all expenses incurred by the political party for this purpose must be made only through the election fund. The funds accumulated in the election fund may come only from deposits made by the political party itself, as well as from donations, legacies and bequests.

9. Are facilitation payments regulated? If not, what is the general approach to such payments?

Polish law does not include any separate regulation of facilitation payments. In terms of such payments, the scope of a "material or personal benefit" used in the provisions criminalising bribery is assumed not to encompass all benefits, but only those that are "fraudulent", "undue" or "unlawful" ("having no legal basis"). Consequently, the following are generally not considered to constitute a "bribe":

1. any benefit that can be accepted on specific legal grounds, to which the entity concerned is "legally entitled" (e.g. it is due to the agent or another person under a legal relationship then existing);
2. any benefit for which there is no legal basis, but which is not fraudulent; this is the case in particular of typical benefits of moderate value, not violating the law but rather representing an expression of gratitude (e.g. flowers, small gifts) or hospitality (e.g. light refreshments), or is simply considered appropriate behaviour (e.g. a tip).

10. Are there any defences available?

Polish law does not provide for any special defences in

relation to the offence of bribery. All general defences provided for in the Polish Criminal Code are available.

As regards most of the variants of the offence of bribery and the offence of influence peddling, the legislation provides that the person who gave the bribe is not subject to a penalty if the material or personal benefit, or the promise thereof, has been accepted by the bribed person, and the perpetrator has reported this to a law enforcement authority responsible for prosecuting crimes, disclosing all substantive circumstances of the offence before this authority has learned about it.

11. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?

The fact whether or not a compliance programme has been implemented in a company does not materially affect the liability for bribery offences of individuals. However, the fact that a properly designed compliance programme was in place in a company may help that firm to successfully defend itself against, or to mitigate, liability under the Act on the Criminal Liability of Collective Entities for Punishable Offences of 28 October 2002.

12. Who may be held liable for bribery? Only individuals, or also corporate entities?

The Polish legal system ascribes criminal liability *sensu stricto* only to individuals. Yet, there are circumstances when legal entities and other collective entities may be exposed to the risk of repressive liability (*sensu largo* criminal liability) in the event that an individual associated with them perpetrates a criminal offence or a criminal fiscal offence.

The liability of legal entities and other organisational units for prohibited acts under a threat of a penalty (offences or fiscal offences) was introduced in Poland almost 20 years ago by the Act on the Criminal Liability of Collective Entities for Punishable Offences of 28 October 2002 ("CLCE"). The liability provided for under the CLCE is not criminal liability *sensu stricto*. Nevertheless, it constitutes a repressive type of liability and hence constitutes criminal liability within the meaning of Article 42 sec. 1 of the Polish Constitution (*sensu largo* criminal liability).

According to Article 3 and Article 16 of the CLCE, a collective entity is held liable for a punishable prohibited act involving the conduct of an individual:

1) acting for or on behalf of the collective entity under

their right or obligation to represent the entity, make decisions on behalf of the entity or perform internal audits, or violating that right or obligation,

2) enabled to act because of a violation by the person referred to in point 1 above of his rights or obligations,

3) acting for or on behalf of the collective entity with the consent or acquiescence of the person referred to in point 1 above,

3a) being an entrepreneur directly collaborating with the collective entity to achieve a legal purpose,

- if the collective entity benefitted or could have benefitted from that conduct, even if not financially, and if that conduct constitutes one of the offences or fiscal offences listed in Article 16 of the CLCE. The offences listed in Article 16 of the CLCE also cover most of the offences involving bribery; namely the bribery of a public official, electoral bribery, bribery in business transactions and bribery in sports.

13. Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective corporate compliance program?

There is no such guidance thus far.

In September 2020, the Central Anti-Corruption Bureau published guidelines on establishing and implementing effective compliance programmes in public sector entities, which were drawn up in connection with the implementation of the Government Programme for Counteracting Corruption for 2018–2020. This document sets out the components that should be included in compliance programmes: management engagement, the integration of compliance with the organisation's mission, the powers and duties of compliance officers, compliance monitoring and assessments, training, the key competences, risk assessment, effective self-assessment, and sanctions. The guidelines are intended to serve as a model and help in the process of establishing and implementing effective compliance programmes in the public sector, but can also be used by private sector entities.

14. Does the law provide protection to whistle-blowers?

Polish domestic law does not yet include any provisions

that would regulate this issue comprehensively. However, this is likely to change soon, since the government is working on a draft domestic provisions implementing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of the EU law.

15. How common are government authority investigations into allegations of bribery?

According to data from the Central Anti-Corruption Bureau, in 2019 there were 1366 investigatory proceedings conducted in cases concerning corruption offences, of which bribes were accepted by representatives of public sector entities in about 70% of cases. The number of cases involving corruption in the law enforcement and justice system was 329, with 231 cases relating to corruption in customs and revenue administration, and 216 cases concerning corruption in other public administration sectors.

16. What are the recent and emerging trends in investigations and enforcement in your jurisdiction? Has the Covid-19 pandemic had any impact and, if so, what?

Generally speaking, the Covid-19 pandemic caused a slowdown in the operations of law enforcement agencies and the courts. This was particularly evident during the initial months of the pandemic.

As regards the prevention and combating of corruption, it should be mentioned that the Central Anti-Corruption Bureau ("CBA") looked closely at government activities and programmes, including financial aid programmes to mitigate the impact of the COVID-19 pandemic. The CBA focused on monitoring the distribution of financial support and identifying irregularities in the verification of aid applications. According to the information on the results of CBA activities, in 2020 a particularly high level of corruption risk was identified in the area of investments in photovoltaic devices being carried out by local government administrations. Various types of irregularities took place in this area, with the aim of ensuring that funding was directed to specific undertakings.

17. Is there a process of judicial review for challenging government authority action and decisions?

In the Polish legal order, final decisions and other acts of central and local government administration authorities

are subject, in principle, to judicial review. A separate and specialised branch of the judiciary (administrative courts) is tasked with scrutinising public administration activities. Judicial review is based on the principle of two-instance procedure. At the first instance, complaints against administrative decisions and other acts of administrative authorities are heard by regional (voivodeship) administrative courts, and at the second instance – by the Supreme Administrative Court. Judicial review may concern only the lawfulness of such activities (formal criterion).

18. Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?

Draft legislation containing provisions implementing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of the Union law can be expected to be prepared and enacted in the coming months.

According to publicly available information, the Ministry of Justice has been working on reforming the provisions on the criminal liability of collective entities for punishable offences, including liability for bribery and corruption offences. One of the aims of this reform is to strengthen that liability.

19. To which international anti-corruption conventions is your country party?

Poland is a party to the following international anti-corruption conventions, among others:

- the Civil Law Convention on Corruption, executed in Strasbourg on 4 November 1999,
- the Criminal Law Convention on Corruption, executed in Strasbourg on 27 January 1999, and the Additional Protocol to that Convention, executed in Strasbourg on 15 May 2003,
- the United Nations against Corruption, adopted by the General Assembly of the United Nations on 31 October 2003 (Journal of Laws of 2007, item 563),
- the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, executed in Paris on 17 December 1997,
- Convention against corruption involving officials of the European Communities or officials of Member States of the European

Union, dated 26 May 1997.

20. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection.

In Polish law, there are no separate regulations governing lawyer-led investigations. However, advocates and legal advisors are bound in principle by legal privilege.

Advocates' and legal advisors' legal privilege is not limited in time and encompasses everything they have become privy to while providing legal assistance, but the duty to preserve professional secrets does not apply to any information made available pursuant to the regulations on counteracting money laundering and terrorist financing, or provided on the basis of tax regulations - within the scope specified in these regulations. Anyone subject to an obligation of confidentiality under such legal privilege can be questioned with regard to the facts covered by that privilege in criminal proceedings, though only in exceptional circumstances when necessary in the interest of the administration of justice, and where the facts at issue cannot be established on the basis of any other evidence. In this scope the court can, at its discretion, lift the obligation of confidentiality. However, an advocate or a legal advisor cannot, under any circumstances, be questioned as a witness with regard to the facts they became aware of while providing legal advice or conducting the case as a defence attorney.

21. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and corruption compares on an international scale?

Generally, the Polish government authorities treat bribery and corruption seriously. In 2006, the Central Anticorruption Bureau (CBA) was established as a special intelligence unit responsible for fighting corruption in public and economic life, in particular in state and local-government institutions. The fundamental tasks of the CBA include identifying, preventing and detecting bribery and corruption.

Moreover, long-term government programmes of counteracting corruption are being implemented. They constitute a tool guaranteeing flexible planning and

managing of the legislative, preventive and educational actions undertaken by the intelligence forces and state authorities in the area of counteracting corruption-related crimes.

Quite recently, a Government Programme for Counteracting Corruption for 2018-2020 was in force, which implemented the international obligations imposed on Poland to undertake systemic anti-corruption activities.

In addition, government anti-corruption programmes are implemented, ethical codes are drafted, the contacts of the officials with lobbyists and businessmen are governed by various principles, and trainings concerning corruption-related threats are organised for state administration employees. Certain administrative units implement their own anticorruption policies, or quality management and corruption preventing systems.

22. Generally how serious are organisations in your country about preventing bribery and corruption?

It is difficult to give a general answer to this question. The approach of specific organisations to the problem of preventing bribery and corruption in Poland depends on a number of factors. Some of them devote a great deal of time to this problem, in particular by implementing appropriate compliance programmes and continuing to improve them, while other do not pay special attention to this problem or do not implement any protective measures.

23. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?

Corruption is a multi-dimensional phenomenon, and as such it is often difficult to tackle. Nevertheless, Poland is by no means unique here. This phenomenon is global. Hence, the major challenges that the Polish enforcement agencies/regulators face are similar to those faced by their counterparts in other countries, in particular in Western Europe. A specific problem faced in Poland, which has a certain historical background, is still the relatively low acceptance of a civic attitude when someone reports irregularities to the law enforcement authorities or other bodies.

24. What are the biggest challenges businesses face when investigating bribery and corruption issues?

Businesses face all the same challenges that the enforcement agencies/regulators face when investigating and prosecuting bribery and corruption. What is a problem here is the fact that the level of social acceptance for civic courage to inform the employers or competent bodies of irregularities is still low, partly for historical reasons

25. What do you consider will be the most significant corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?

The most significant corruption-related challenges posed to businesses that we can predict are those related to the introduction of provisions providing for complex protection for whistleblowers. Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law is to be implemented in a couple

of months.

A major challenge is also likely to be a potential amendment to the provisions on the criminal liability of collective entities for punishable offences, including bribery and corruption offences, which the Ministry of Justice announced several months.

26. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?

In my opinion, two things would have the greatest “potential” in this respect:

1. introducing special legal protection for whistle-blowers and intensifying actions that are necessary to continue to transform the social perception of the importance of reporting irregularities, and
2. obliging every large organisational unit to create and implement a compliance programme, meeting with minimum requirements in this respect.

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