

Poland

I. Brief Introduction to the Legal System of Poland

The Republic of Poland is a unitary state divided into 16 provinces (voivodships). Its legal system follows the civil law tradition. Legislative power is vested in the Parliament consisting of two houses; executive power is vested in the President of Poland and the Council of Ministers. The judiciary consists of courts and tribunals.

The sources of Polish law are divided into two categories: universally binding law and internal law. The latest Constitution of April 2, 1997, defines the sources of universally binding laws as the Constitution itself as the supreme law of the land, statutes, ratified international agreements, and decrees. The 16 provinces have their own local laws, which must be consistent with the universally binding laws of Poland. Local organs may enact local laws such as councils of the provinces and local parliaments. All these acts constitute a part of internal law.

Poland has a three-tier judicial system: (i) district courts and regional court as the courts of first instance; (ii) regional courts and appellate courts as the courts of appeal; and (iii) the Supreme Court. The regional courts are empowered to hear appeals of district courts. Appellate courts are competent to hear appeals from judicial decisions issued by regional courts as trial courts. The Supreme Court has ultimate appellate jurisdiction and is established to exercise supervision over all common and military courts. The Supreme Court is the court of last resort to appeals from the lower courts. It may also issue resolutions to clarify specific legal provisions or revealed discrepancies and resolve disputable questions in specific cases.

The Polish legal system also encompasses two tribunals, the Constitutional Tribunal and the State Tribunal. The former resolves constitutional disputes among state institutions, rules on constitutional complaints, and supervises compliance of the statutory law with the Constitution. The latter adjudicates the constitutional liability of high government officials instead of an impeachment process.

II. Poland's Anticorruption Law

Bribery

Poland is a signatory to the OECD Convention but has not adopted a specific law criminalizing the bribery of foreign officials. The laws on bribery are contained in the Polish Penal Code. Bribery is defined there as as material or personal advantage that is offered or

promised to and accepted by a public officer relating to the performance of his or her official duty. Polish penal law prohibits payments to a government official, defined as, *inter alia*, employees of government and local government administration bodies, as well as controlling bodies, for the purpose of gaining an improper advantage or getting business. Acceptance of payment or acceptance or promise of any personal advantage, such as an attractive job offer, by a government official is prohibited. The bribery law applies both to the payer of the bribe and the recipient of the bribe.

Bribery of foreign officials

The Polish legal regulation of bribery described above regulates the bribery of foreign officials as well. In 2000 Poland adopted OECD Convention. After its ratification by the President of Poland, it became a part of the Polish legal system. Thus in case of a transaction where a Polish entity would be a party and where a foreign official would be bribed, such bribery would be subject to sanctions provided for by the Convention and by the Polish Penal Code.

Facilitation payments

A gift to a government official of token value for proper and lawful performance of his or her duties is not prohibited.

State-owned enterprises

The bribery offense applies not only to public officers but also to any person performing public functions, for example public officers and persons who have Polish public funds at their disposal, including officers of state-owned enterprises.

Sanctions

Corruption is sanctioned by fines or imprisonment for up to 10 years but gross corruption (in case of payment of over PLN 200,000) is sanctioned with imprisonment for up to 12 years.

Enforcement

In 2006 the Polish parliament enacted the Central Anticorruption Bureau Bill, which established the Central Anticorruption Bureau ("CBA"). CBA is a special government administration office charged to combat corruption in public and economic life, particularly in public and local government institutions, as well as to fight against activities detrimental to the State's economic interests. CBA's tasks comprise recognition, prevention, and detection of offenses against the activity of public institutions and local government, the administration of justice, financing of political parties, tax obligations, donations, and subvention settlement. In criminal investigations, the CBA officers are entitled to use police power, which may be supported by special measures such as operational control such as wiretapping, undercover operations, and technical surveillance.

III. Assessment

The OECD Working Group completed its Phase 3 evaluation of Poland's compliance with the OECD Convention in June of 2013. In its summary, the Working Group said it "regrets that Poland has not successfully prosecuted a foreign bribery case in the twelve and a half years since its foreign bribery offence came into force. Poland is currently prosecuting one case of bribery of foreign public officials. Two investigations of allegations of foreign bribery were terminated; both involved allegations of bribery of foreign public procurement authorities by SOEs in sensitive sectors. A third allegation of bribery of a foreign public procurement authority in a sensitive sector has not been investigated."¹ The Working Group reported that many of its earlier recommendations had not been adopted. These include the immunity provision in Poland's foreign bribery offense, the effectiveness of the liability of legal persons, and the tax treatment of bribe payments. The Working Group criticized Poland for reducing the level of fines for violation of the bribery law.

Prior to this evaluation, Poland had taken measures to enhance the institutional framework for the enforcement of the foreign bribery offense. The police, prosecutors, and the judiciary received extensive training on the Convention, on Poland's foreign bribery legislation, and on liability of legal persons. Poland also created positions of criminal analysts in appellate and regional prosecution offices. The police and prosecutors were reminded of the importance of actively looking into the range of possible sources of detection of foreign bribery. However, they have not yet taken measures to ensure that all credible allegations are proactively and conscientiously investigated; they appear to have a reactive approach rather than a proactive one.

The Working Group had earlier acknowledged the serious efforts made by Poland to raise the level of awareness of the administration on the foreign bribery offense. Most offices that could play a role in the prevention and detection of foreign bribery took initiatives to raise awareness of the offense, the related reporting obligation, and the procedures to follow. The Ministry for Foreign Affairs and the Ministry of Finance have been particularly active. Notably, the Polish export credit agency (KUKE) took action to implement the OECD Council Recommendation on Bribery and Officially Supported Export Credits of 18 December 2006. It therefore strengthened measures for deterring foreign bribery in respect of international business transactions benefiting from its support, including measures related to the use of agents .

¹ Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Poland, June 2012, at 5.

Poland is a signatory to the UN Convention and is a member of GRECO. It has not signed on to the IACA. Transparency International ranks Poland 41 on its 2012 Corruption Perceptions Index.

IV. Texts

- A. Polish Penal Code of 1997 ((J.L. dated 1997, No. 88, Item 553, as amended)
https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf

- B. Central Anticorruption Bureau Bill, ((J.L. dated 2006, No. 104, Item 708, as amended)
http://www.cba.gov.pl/ftp/filmy/ACT_on_the_CBA_updated_13_06_2011.pdf

- C. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (J. L. dated 2001 No 23, Item 264)