



Poland's new compliance regulations

Significant changes in the law regarding compliance are just around the corner. New regulations will influence not only entrepreneurs but also the whole Polish market, without division into individual trades and economic sectors

The scope of the Act, in both objective and subjective terms, arouses, primarily, great interest among Polish entrepreneurs but also significant concerns in the context of the practical impact on their situation. The changes that force the introduction of strong and effective anti-corruption mechanisms, together with regulations concerning the legal protection of whistleblowers will be of particular importance to business trading. The Act on transparency in public life is in line with the global compliance trends: business responsibility for the actions of employees and spreading compliance awareness in organizations.

The application of internal anti-corruption procedures in Poland has, until now, been widely used in enterprises related to foreign capital, mainly US, German and British companies. Anti-corruption procedures have also been employed by the largest Polish enterprises and capital groups. The application of internal anti-corruption procedures improving transparency in public life in other countries has been a common practice for years now. The UK Bribery Act 2010, Foreign Corrupt Practices Act (FCPA), Foreign Account Tax compliance Act (FATCA), or the EU's regulations including AML Directives are the best known foreign regulations regarding compliance in Poland.

SHUTTERSTOCK

EXTENT OF THE APPLICATION OF THE ACT – POSSIBLE SANCTIONS

In accordance with the Act on transparency in public life, whose entry into force is planned for the upcoming months, entrepreneurs and public finance sector entities will be obliged to implement effective, internal anti-corruption procedures in order to feasibly counteract corruption.

Corruption or quasi-corruption activities may involve both the private and public sector, therefore the regulations will pertain not only to entrepreneurs but also the public sector. Entrepreneurs who do not implement an effective compliance system and anti-corruption procedures in their organization will be, by virtue of the decision of the President of the Office for Competition and Consumer Protection (UOKiK) issued on the request of the head of the Central Anticorruption Bureau (CBA), subject to financial penalty of between PLN 10,000 and PLN 10 million. A supplementary sanction will concern the exclusion of the right to apply for public contracts for a period of five years. The abovementioned sanctions and penalties will be applied for the lack of implementing anti-corruption procedures or if the implemented procedures turned out to be apparent or ineffective and a person related to the entrepreneur would be charged by a prosecutor for corruption offenses. The Decision of the President of UOKiK may be appealed to the Court.

POSSIBLE PREVENTIVE SOLUTIONS

To avoid financial penalties and the supplementary sanction of exclusion of the right to apply for public contracts, the Act imposes additional obligations on medium-sized and large enterprises, consisting of implementing or improving effective anti-corruption procedures by means of the development of an entrepreneur's ethical code, which will be adopted by all employees and co-workers, periodic training for employees concerning criminal liability for corruption offenses, development of internal, clear and understandable procedures of both preventive and restrictive nature. The verification of the application of anti-corruption procedures in an organization will be initiated whenever the prosecutor raises allegations of corruption offenses to a person who acted for and on behalf of the entrepreneur or was executing the provisions of the contract concluded with the entrepreneur.

NEW WHISTLEBLOWER REGIME

While the whistleblower regime operates in many legal regulations worldwide, in particular in American and British legislation, in Poland until now the whistleblower regime has not received statutory regulation. Introducing the whistleblower regime and ensuring proper legal protection, including, for example, protection in terms of the employment/cooperation relationship, is definitely a step in the right direction. Nevertheless, the question is whether it is enough. The person informing the law enforcement authorities about detected irregularities, to become a whistleblower, must provide reliable information and be an employee of the entrepreneur to whom the information relates or be related to the entrepreneur by any contract.

Information provided by whistleblowers must relate to corruption crimes, paid protection, bribery, fraud, money laundering, participation in a criminal group, levelling business records or disrupting a tender. Certainly, it is necessary to extend the scope of crimes and offenses, commission of which may be prosecuted by using the information obtained by the law enforcement authorities from the whistleblower. Thus far, the group of offenses specified in the Act concerns selected types of offenses indicated in the Penal Code, but it should also include other illegal activities like actions to the detriment of employees or the natural environment.

NEW OBLIGATIONS ALSO FOR PUBLIC ADMINISTRATION BODIES

Ways of avoiding conflicts of interests by persons performing public functions have been regulated in accordance with the Act on transparency in public life. A person performing a public function, while performing this function, will be obliged to avoid conflicts of interests connected with the performed function. The Act also introduces limitations concerning taking up and running a business by persons performing public functions. Introducing a three-year ban on employment in the company for a person performing public function, who while performing his or her public duties made decisions in relation to the company, also strengthens the anti-corruption regulations. For infringement of the prohibitions, it will be possible to impose a financial penalty on both the entrepreneur who employs a



In Poland until now the whistleblower regime has not received statutory regulation.



person performing a public function and a person performing public duties. The Act also introduces the obligation to create and maintain a register of benefits and a register of contracts, and what is more, the obligation to submit the statement of assets by a much wider group of persons from public administration than before.

NEW ACT, OLD DOUBTS...

The introduction and application of effective anti-corruption procedures is one of a desirable good practice, which should be expected from entrepreneurs operating under free market conditions in a democratic state of law. Nevertheless, doubts regarding proposed statutory solutions concern not only statutory regulations, but also significant possibilities of potentially discretionary actions of the state bodies to assess the effectiveness of anti-corruption procedures applied in the organization under the compliance system.

How can organizations manage risk effectively and reduce the possibility of irregularities? It seems that only the effective implementation of a compliance system can help to eliminate the gaps in the functioning of the procedures in an organization and as a consequence significantly reduce risks on the company's side. However, complete elimination of perils in the light of proposed legal solutions does not seem possible. ●



Konrad Orlik
*Partner, Head of
Litigation Practice
Kochański, Zięba
& Partners*