
INTERNAL ANTI-CORRUPTION PROCEDURES SOON IN EVERY MAJOR COMPANY

Please be kindly informed that in the next few months the works on the Act on Transparency of Public Life are going to be finalized in Poland. Said Act will regulate anti-corruption duties addressed to both public finance sector units as well as private entrepreneurs. The same kind of regulations are already included in USA in Foreign Corrupt Practices Act, or in Germany in Gesetz zur Bekämpfung der Korruption, as well as in the United Kingdom, where Bribery Act applies and in the French Sapin II Act. Considering a very wide scope of coming amendments, companies and their managers should already start the process of preparing their organizations to meet newly set requirements. And there are going to be lot of them. Below we present some of them.

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1. Anticorruption policy

According to the draft of the Act, **every entity which at least in one of the last two financial years have met one of the following conditions:**

- **employed, on average annually, not less than 50 persons and reached annual net turnover from sales of goods, products and services, and from financial transactions of the last two financial years, exceeding equivalent in PLN of 10 000 000 euro,**
- **employed, on average annually, no less than 50 persons and the sum of assets of its balance sheet made at the end of one of these years amounted in PLN more than 10 000 000 euro,**

is required to apply internal anticorruption procedures.

The purpose of applying these procedures is to prevent situations in which persons acting in the name, or on the behalf of entrepreneur, commit corruption crimes. The process of applying internal anticorruption procedures shall mean, according to the Act, undertaking organizational, human and technical measures, aimed at preventing creation of an environment conducive to commit criminal offenses. The Act indicates only examples of measures, which can be applied by obliged entrepreneurs, in order to create a system of internal anticorruption procedures. These include, among others:

- including in contracts a special type of clause, which state that no part of the remuneration payable for the completion of contract, will be used to cover the costs of providing property and personal benefits,
- developing enterprise's code of ethics as a declaration rejecting corruption, signed by every employee, associate and contractor of the company,
- defining the internal procedure and guidelines, regarding gifts and other benefits, received by employers,
- developing procedures meant for regulate the process of informing competent authorities on corruption proposals.

Importantly, the procedures indicated in the Act are only listed in it as examples of possible actions. This means, that the decisions on what exactly measures will be taken is imposed on every obligated entrepreneur.

Some of the guidelines, especially on the subject on **what the code of ethics should**

contain, can be found in the ISO 37001: 2016 *Anti-bribery management systems – Requirements with guidance for use*, which indicates measures that every organization may apply in order to prevent, detect and fight corruption. Earlier, similar guidelines were included in BS 10500 Anti Bribery Management System and “addition” to ISO 9001. Obviously, in a specific case, if a Polish company belongs to a group of companies with international reach, there are no obstacles for the Polish company preparing its own documents, to apply properly adjusted solutions that have already been incorporated in the group.

2. Whistleblowers in the company

In the light of amendments, a legal protection should be provided for so-called whistleblowers. For a person to achieve such status, it will be necessary to inform law enforcement authorities about the possibility of committing a crime by an entity, with which said person is bound by the contract of employment or other kind of legal relationship. It is anticipated, that employer will not be able to e.g. terminate the contract of employment with the whistleblower, or change its terms for less beneficial for the whistleblower, in particular in terms of place and time of performing work or the terms of remuneration.

3. Penalties

According to the draft of the Act, an entrepreneur who will not apply to internal anticorruption procedures or the procedures that it applies will be acknowledged as apparent or ineffective, will have to take into account the possibility of imposing a fine on him in amount of 10 000 to 10 000 000 PLN. Sadly, those are not the only negative results. The Act provides that in some cases on an entrepreneur may be imposed a five-year prohibition on applying for a public procurement contract.

Of course, members of the Management Board of the companies, that will be punished, have to take into account the attempt to “recover” from them, using already existing provisions, amounts paid under the aforementioned penalties.

Reccomendations

Each organization have to approach individually to the task of developing necessary procedures and documents, taking into account many factors, including the scope and way of running the business. Therefore the problem requires tailor-made solution. The process of preparing such implementation should begin with the inventory of previously applied procedures and applicable documents. Only the results of thorough and serious check will indicate what should be changed and what should be created from the scratch.

Should you have further questions, we remain at your disposal.