THE INTERNATIONAL INVESTIGATIONS REVIEW

Tenth Edition

Editor
Nicolas Bourtin

THE LAWREVIEWS

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TENTH EDITION

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PREFACE

In the United States, it continues to be a rare day when newspaper headlines do not announce criminal or regulatory investigations or prosecutions of major financial institutions and other corporations. Foreign corruption. Healthcare, consumer and environmental fraud. Tax evasion. Price fixing. Manipulation of benchmark interest rates and foreign exchange trading. Export controls and other trade sanctions. US and non-US corporations alike have faced increasing scrutiny by US authorities for more than a decade, and their conduct, when deemed to run afoul of the law, continues to be punished severely by ever-increasing, record-breaking fines and the prosecution of corporate employees. And while in the past many corporate criminal investigations were resolved through deferred or non-prosecution agreements, the US Department of Justice has increasingly sought and obtained guilty pleas from corporate defendants. While the Trump administration has announced various policy modifications incrementally to moderate the US approach to resolving corporate investigations, the trend towards more enforcement and harsher penalties has continued.

This trend has by no means been limited to the United States; while the US government continues to lead the movement to globalise the prosecution of corporations, a number of non-US authorities appear determined to adopt the US model. Parallel corporate investigations in several countries increasingly compound the problems for companies, as conflicting statutes, regulations and rules of procedure and evidence make the path to compliance a treacherous one. What is more, government authorities forge their own prosecutorial alliances and share evidence, further complicating a company's defence. These trends show no sign of abating.

As a result, corporate counsel around the world are increasingly called upon to advise their clients on the implications of criminal and regulatory investigations outside their own jurisdictions. This can be a daunting task, as the practice of criminal law – particularly corporate criminal law – is notorious for following unwritten rules and practices that cannot be gleaned from a simple review of a country's criminal code. And while nothing can replace the considered advice of an expert local practitioner, a comprehensive review of the corporate investigation practices around the world will find a wide and grateful readership.

The authors who have contributed to this volume are acknowledged experts in the field of corporate investigations and leaders of the bars of their respective countries. We have attempted to distil their wisdom, experience and insight around the most common questions and concerns that corporate counsel face in guiding their clients through criminal or regulatory investigations. Under what circumstances can the corporate entity itself be charged with a crime? What are the possible penalties? Under what circumstances should a corporation voluntarily self-report potential misconduct on the part of its employees? Is it a realistic option for a corporation to defend itself at trial against a government agency? And

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how does a corporation manage the delicate interactions with employees whose conduct is at issue? The International Investigations Review answers these questions and many more and will serve as an indispensable guide when your clients face criminal or regulatory scrutiny in a country other than your own. And while it will not qualify you to practise criminal law in a foreign country, it will highlight the major issues and critical characteristics of a given country's legal system and will serve as an invaluable aid in engaging, advising and directing local counsel in that jurisdiction. We are proud that, in its tenth edition, this publication covers 25 jurisdictions.

This volume is the product of exceptional collaboration. I wish to commend and thank our publisher and all the contributors for their extraordinary gifts of time and thought. The subject matter is broad and the issues raised are deep, and a concise synthesis of a country's legal framework and practice was challenging in each case.

Nicolas Bourtin
Sullivan & Cromwell LLP
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Chapter 18

POLAND

Tomasz Konopka[1]

I INTRODUCTION

Depending on the nature of the legal violation, the investigation or control proceedings may be conducted by law enforcement bodies or administrative bodies.

Criminal investigations are, as a matter of principle, carried out by a prosecutor's office, as it is the key obligation of each prosecutor's office to maintain law and order and prosecute crimes. In particular, the purpose of the investigation is to establish whether a crime has been committed, the identity of the perpetrator, and subsequently – if the evidence collected appears to prove fault and perpetration – to file an indictment. The prosecutor's office should also make sure that no indictment is filed against an innocent person; in such an event, the case should be annulled.

The prosecutor is obliged to launch an investigation where there is a justified suspicion of a crime having been committed. An investigation may be launched *ex officio* or at the initiative of the notifying or the aggrieved party, who must submit a formal (oral or written) notification. For the institution of proceedings with respect to certain crimes, the aggrieved party must file a motion for prosecution. After such a motion has been filed, the proceedings are conducted by enforcement bodies, but it is the aggrieved party that decides whether it wants the perpetrators of the crime to be prosecuted. A motion must be filed for the prosecution of certain business crimes, such as mismanagement (if the State Treasury is not the aggrieved party), or the use of someone else's business secrets in one's own business. If no such motion is filed, then no proceedings will take place.

Since 2016, the prosecutors' offices have operated under new organisational rules. The separation that had previously existed between the position of the Minister of Justice and the Attorney General's Office has been removed. The tasks of the Attorney General's Office have been taken over by the National Prosecutor's Office, headed by the Deputy of the Attorney General's Office – the National Prosecutor. The place of the appeal prosecutors' offices has been taken by the regional prosecutors' offices, which will deal with organised business crime and tax crimes.

An exception has been introduced in the regulation that provided for the independence of individual prosecutors, which provides that a prosecutor is obliged to comply with the directives, instructions and orders of the superior prosecutor (who could be the regional or national prosecutor). Orders may concern the content of the tasks carried out in a specific case.

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Crimes are also identified and prosecuted by the police, who have powers to institute preparatory proceedings for less serious crimes; investigations carried out by the police are supervised by a prosecutor. In addition to the police, the power to prosecute crimes is also enjoyed by the Internal Security Agency, the Central Anti-corruption Bureau, the Central Investigation Bureau, the Border Guard and bodies authorised to conduct preparatory proceedings in cases for fiscal offences (within the framework of the National Tax Administration – tax offices, tax administration chambers, tax and customs offices). The other enforcement authorities, as a rule, enjoy the same rights and are bound by the same obligations as the police in criminal proceedings. Nonetheless, particularly risky operations (such as dawn raids) are usually performed either by specialised police units or one of the above agencies.

The Code of Criminal Procedure states that business entities must assist law enforcement bodies upon request. Over the course of an investigation, a law enforcement body may request that a business entity voluntarily provides documents that could represent evidence in the case. If the release of the documents is denied, they are most frequently secured through a search, but law enforcement bodies are not able, for example, to impose a fine for lack of cooperation. An alternative approach may be adopted if criminal proceedings are being obstructed by the perpetrator of a crime being helped to avoid criminal liability. Concealing or destroying evidence that supports the suspicion of a crime constitutes a separate criminal offence and the perpetrator is subject to a penalty of imprisonment for between three months and five years. The same penalty is imposed for any obstruction of criminal proceedings with an intent to assist a perpetrator and help him or her avoid criminal liability. Therefore, one should distinguish between instances of limited cooperation during which account is taken of company interests (for example, by demanding that the bodies respect company secrets) and the aforementioned crime.

Whether an adversarial stance towards the enforcement authorities is a real possibility depends on the specific circumstances of each case and the kind of offence being prosecuted.

II CONDUCT

i Self-reporting

Polish law does not provide for the obligation to self-report in relation to committing crimes. Significantly, this lack of obligation to self-incriminate is one of the key principles of criminal proceedings. Given that criminal liability may only be incurred by individuals, this principle is not directly applicable to business entities.

The obligation to report that an offence has been committed only applies to situations in which crimes have been committed by other parties, and this relates to serious crimes prosecuted under the Criminal Code or those that will harm national security. As regards any other types of crimes, the criminal procedure provisions do not provide for a sanction for failure to report them; in particular, Polish law does not provide for a general obligation to report internal irregularities in business entities to the authorities.

With respect to fiscal crimes, it is only possible for the person responsible for committing the act to avoid criminal fiscal liability by making a 'voluntary disclosure' or adjustment to a tax return. The Penal Fiscal Code stipulates a number of specific requirements for acts of 'repentance' that need to be met for any actions to avoid liability to be effective.

Although not exactly a self-reporting obligation, there is an obligation to report to the General Inspector of Financial Information any transactions that may represent acts of money

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laundering. As regards leniency measures in competition law, the competition authority might reduce the amount of the administrative penalty or even decide not to impose such a penalty on an entity that entered into a competition-limiting agreement if that entity submitted an appropriate petition and fully disclosed all important facts regarding said agreement. Full and immediate disclosure and full compliance are required. The disclosing entity is also obliged not to disclose the fact that the petition has been submitted, in particular to the other parties to the agreement in question.

ii Internal investigations

Polish law does not directly provide for the obligation to carry out internal investigations once managers receive information about irregularities within an enterprise, nor is there any obligation to report the results thereof. It is assumed, however, that conducting an internal investigation represents fulfilment of the obligation to take care of the interests of the enterprise under management. Failure to verify signs of irregularity may represent grounds for liability for damages and, in extreme cases, for criminal liability for mismanagement. Internal investigations are conducted not only when the provisions of law have been violated to obtain benefits for the enterprise but also when, as a result of the law being violated, the enterprise has been harmed.

Notwithstanding the above, specific entities (e.g., banks, investment funds, entities managing alternative investment companies, insurance companies, reinsurance companies, as well as entities conducting brokerage activities and fiduciary banks) are obliged on the basis of special provisions to maintain tight compliance control or an internal audit system. These systems have a similar function to internal investigations and are, at times, subject to compulsory reporting. Failure to properly maintain the aforementioned systems may result in one or more of many administrative sanctions being imposed on the entity. Moreover, the Act on Money Laundering and Prevention of Financing Terrorism puts an obligation on entities such as banks, other financial institutions and even law firms to introduce internal procedures to prevent money laundering and the financing of terrorism.

As internal investigations are not regulated, the course of an investigation in either of the situations described above will not differ considerably; however, substantial differences appear when law enforcement bodies institute official investigations or a company decides to report existing irregularities. The enterprise may obtain the status of aggrieved party and enjoy the attributable rights within preparatory proceedings and, at a later stage, court proceedings, if an indictment is filed. These rights include inspecting the case files, participating in the investigation (i.e., participation in witness hearings), and appealing disadvantageous decisions made during the proceedings (such as a decision to discontinue the proceedings). At the court stage, an aggrieved party may act as auxiliary prosecutor to, inter alia, demand compensation of damages or a particular penalty.

In recent years, the number of internal investigations regarding irregularities in the private sector has increased noticeably. In many instances, this is owing to the operation in Poland of companies regulated by the strict rules of the US Foreign Corrupt Practices Act, the UK Bribery Act or French SAPIN II. Moreover, many Polish companies that operate in Germany will have to comply with German law. Germany is likely to adopt strict anti-corruption legislation in 2020 and may became one of the leading European countries in the fight against foreign corruption.

Commonly, an internal investigation will encompass a review of business email correspondence and electronic files, meetings with employees, and of the company's financial

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and contractual documents. As regards confidentiality and secrecy, no specific regulations exist and, therefore, use of any information within an internal investigation must comply with generally applicable provisions (especially the EU General Data Protection Regulation). Processing of personal data (except sensitive data) is generally permitted within an internal investigation. However, obtaining the necessary consent from the person to whom the data relates is recommended.

iii Whistle-blowers

As it stands, Polish law does not impose a sufficiently general regulation on whistle-blowing. However, employees who disclose irregularities or other undesirable circumstances within an organisation do enjoy protection from any resulting discriminatory treatment by employers and managers, although this does not guarantee that a whistle-blower will not suffer negative consequences.

The provisions of the Labour Code do not provide any special protection for people who, in their capacity as employees, have been involved in illegal activities. The employment contract of a whistle-blower who has been involved in criminal activities may be terminated under ordinary procedures or even under dismissal procedures, depending on the circumstances of the case, even though that person reported the irregularities, as long as the treatment of the employee is not discriminatory. Therefore, it should be considered that regulations protecting whistle-blowers are missing from the Labour Code, and thus, in many situations, potential whistle-blowers will not have any incentive to disclose irregularities. Nonetheless, numerous firms have adopted measures to allow anonymous reporting of irregularities noticed within firms. Sometimes, anonymous hotlines or email boxes are made available through which employees can point out violations of law or ethical standards. Despite these efforts, the number of confirmed whistle-blowers in Poland has so far not been significant.

Notwithstanding the above, the whistle-blowing issue is at the stage of appearing under Polish legislation. Pursuant to the Act on Money Laundering and Prevention of Financing Terrorism, some specific institutions are obliged to create an anonymous whistle-blowing procedure of reporting irregularities in the scope of money laundering by employees.

Banks in Poland are obliged to adopt formal whistle-blowing procedures, including an indication of the management board member responsible for handling matters related to whistle-blowing. A bank's whistle-blowing policy is subject to periodic internal assessment.

In November 2019, an amendment was passed to the Act on Public Offering, the Conditions Governing the Introduction of Financial Instruments to Organised Trade, and on Public Companies. It provides an obligation on any legal entity that issues or proposes to issue securities to have procedures for anonymous employee reports to a designated member of the management board, and in special cases, to the supervisory board, of violations of the law, in particular of the provisions of Regulation 2017/1129 of the European Parliament and of the Council of 14 June 2017, procedures and ethical standards.

Pursuant to the textbook of Best Practice of the Warsaw Stock Exchange, it is recommended that companies should organise appropriate systems for reporting irregularities. Poland is also obliged to implement Directive 2019/1937 of the European Parliament and of the Council on the protection of persons reporting on breaches of EU law by 17 December 2021. Pursuant to the provisions of the Directive, internal reporting channels and procedures should meet the minimum standards; in particular, guaranteeing the confidentiality of the identity of the reporting person, which is a cornerstone of whistle-blower protection. The Directive also requires that the person or department competent to receive the report diligently follows it

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up and informs the reporting person within a reasonable time frame about such follow up. Moreover, the entities having in place internal reporting procedures are required to provide easily understandable and widely accessible information on these procedures as well as on procedures to report externally to relevant competent authorities.

When it comes to criminal liability, a person disclosing information to law enforcement bodies regarding crimes and the circumstances of the perpetration thereof may expect extraordinary mitigation of punishment. If a perpetrator discloses to law enforcement bodies previously unknown circumstances relating to a crime that carries a penalty of more than five years' imprisonment, he or she may submit a motion for extraordinary mitigation of punishment or even a conditional suspension thereof. Furthermore, in the event of corruption in business and in the public sector, a perpetrator of 'active' corruption is not subject to penalty if, after the fact of the corruption, that person notifies law enforcement bodies and discloses all significant circumstances of the deed, and all this takes place before law enforcement bodies have become aware of the facts.

III ENFORCEMENT

i Corporate liability

The current Act on Liability of Collective Entities for Acts Prohibited under Penalty, which regulates issues of quasi-criminal liability of commercial companies, has been in force since 28 November 2003. The Act is applicable if a person acting in the name of a company has committed one of the crimes specified in the Act and the company gained, or could have gained, any benefit from this act, whether financial or not.

The list of crimes, the commission of which may cause the commencement of criminal proceedings, includes:

a mismanagement;
b corruption in business;
c credit and subsidy fraud;
d money laundering;
e crimes linked to making repayment of creditors impossible and reducing their satisfaction;
f failure to file a bankruptcy petition on time;
g insider trading; and
h public corruption.

Numerous other crimes are specified in other pieces of legislation that regulate specific areas of economic activity.

A condition for commencing proceedings against a company is that it has been established by a legally final guilty verdict that a crime has been committed by a person acting in the name of a company. There are two other instances when proceedings against a company may be commenced: a verdict that conditionally discontinues criminal proceedings against such an individual, or a verdict that discontinues criminal proceedings by stating that despite the crime having been committed, the perpetrator cannot be punished. Corporate quasi-criminal liability always stems from criminal personal liability.

Liability on the basis of the above-mentioned Act may be imposed in the event that one of the following is proven: (1) at least a lack of due diligence in the choice of the person representing the entity, who is also the perpetrator of an offence; or (2) poor organisation of

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the company, which did not ensure the avoidance of the commitment of an offence, which could have been prevented if the body or representative of the collective entity had applied the required due diligence.

The liability arising under this Act is non-transferable; that is, in the case of a merger, division or restructuring of the relevant company, the liability expires. However, the court might impose an interim prohibition on such transformations at a company to prevent it from avoiding.

It follows from practice to date that the law enforcement bodies do not commence proceedings in every case in which such a possibility arises. The Ministry of Justice statistics show that only a couple of dozen proceedings of this type are commenced each year. This figure is very low, especially taking into account the fact that more than 10,000 people are sentenced each year for committing business crimes.

As regards criminal proceedings, although in the strict sense a company cannot be the accused, during the course of proceedings it is nonetheless possible to hand down a judgment ordering a company to reinstate any benefits gained as the result of a crime committed by an individual. In this case, the company becomes a quasi-party and may defend itself against liability by availing itself of certain rights to which the accused is usually entitled. An entity obliged to return benefits has the right to study the case files of the proceedings, may take part in the hearing before the court, file motions to admit evidence, put questions to the witnesses, and appeal unfavourable decisions and verdicts.

In turn, in such proceedings the company may face auxiliary liability. An entity that is liable on an auxiliary basis is liable for a fine imposed on the perpetrator of a fiscal crime if, when committing the crime, the perpetrator acted in the name of the company, and the company gained or could have gained financial benefit.

As regards representation, the original perpetrator and the corporate entity may be represented by the same attorney or counsel, even though its role would be slightly different in each of these proceedings.

ii Penalties

The Act on Liability of Collective Entities for Acts Prohibited under Penalty provides for the possibility of a judgment with regard to a company, imposing a fine of between 1,000 zlotys and 5 million zlotys (but that cannot exceed 3 per cent of the revenue gained in the year in which the crime that forms the basis for liability was committed). The court will mandatorily order the forfeit of any financial benefits gained from the crime, even indirectly.

In addition, the following punishments are possible with regard to collective entities:

a a ban on promotion and advertising;
b a ban on availing of public aid;
c a ban on availing of aid from international organisations;
d a ban on applying for public tenders; and
e making public any information about the judgment handed down.

In the event of auxiliary liability for a tax crime, the scope of liability is determined by the amount of the fine imposed on the accused. Essentially, fines for a fiscal crime range to 24,960,960 zlotys; these amounts change each year in line with the increase in the minimum wage. In ruling practice, however, it is very unusual for fines to exceed 100,000 zlotys.

As regards administrative liability, the amount of fines and the spectrum of other sanctions (revocation of licences or concessions) significantly varies depending on the

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relevant duties and legal bases for their imposition. Administrative fines might be very severe, capped at 10 million zlotys (much more than the maximum possible criminal fine) or up to 10 per cent of yearly revenue in the most extreme cases. There is no uniform regulation of administrative sanctions in the Polish legal system.

iii Compliance programmes

At present, legal provisions do not impose the obligation on business entities to implement compliance programmes; however, many firms operate such programmes. They are particularly common in companies with foreign capital and in the financial sector.

The Act on Money Laundering and Terrorism Financing Prevention obliges only specific entities to appoint a compliance officer who will be responsible for supervising the appropriate application of the Act.

Pursuant to the textbook of Best Practice of the Warsaw Stock Exchange, creating and supervising a compliance system is part of the duties of the company's management board and supervisory board.

A functioning compliance programme is helpful in cases of actions contrary to the law that harm the interests of enterprises. A frequent problem that arises in criminal proceedings involving crimes harming enterprises is the lack of internal regulations clearly laying down the procedures and scope of duties, as a result of which it is difficult to show the actions or omissions of the guilty party.

In the absence of a general regulation of compliance, it would be difficult to establish any specific recommended elements of compliance programmes. As a rule, it would be advisable for the scope of such programmes to cover all branches and subsidiaries of a given entity and ensure regular reviews of their activity. Shortcomings to that extent usually have a very strong negative effect on the efficiency of compliance programmes. The preferred course of action tends to be to involve accounting and auditing experts.

iv Prosecution of individuals

As has already been mentioned, the position of a company in proceedings conducted by law enforcement bodies against an individual depends to a large extent on whether the company gained any benefit from the crime or whether it was harmed by the crime.

At present, the Code of Criminal Procedure provides that an aggrieved party is an entity whose interests have been directly harmed or threatened by a crime. Not every crime that results in an enterprise suffering damage will allow it to exercise its rights as an aggrieved party in criminal proceedings.

On the other hand, provisions of the Code of Criminal Procedure grant a firm the right to appeal a decision by the prosecutor to discontinue an investigation if the firm notified the prosecutor about a crime that harmed its interests, even if only indirectly. To date, only a directly aggrieved party has had the right to file a complaint against decisions on discontinuing an investigation, whereas a person indirectly aggrieved has not had the right to any control over the court. The new regulation should be viewed positively as it grants greater litigation guarantees and may lead to more effective crime prevention.

If proceedings against an individual involve a breach of law that may lead to a company being held liable, a question arises as to the legitimacy of cooperation between the accused and the firm. In the vast majority of cases, a judgment that is favourable to the accused rules out the risk of sanctions for the firm. There are no prohibitions whatsoever on joint defences, so cooperation within the proceedings is admissible. However, situations may arise when the

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accused's line of defence will not be consistent with the interests of the firm. This may be the case, for example, when the accused bases his or her defence on implicating another company employee or manager who is indeed guilty of committing a crime.

The basic duty of the lawyer towards a client in criminal proceedings is to act exclusively for his or her benefit. Pursuant to the position of the judiciary and doctrine that has dominated for years, a defence lawyer must disclose all circumstances that are favourable to the client, even if the client does not consent to this himself or herself.

As regards employee issues, the commission of a crime undoubtedly entitles an employer to terminate the employment contract under a disciplinary procedure. What is important is that the reasons for termination of the contract should be precisely indicated in the written termination of the employment contract, and these reasons can be verified by the court if the employee appeals to the Labour Court. If the reasons given in the termination of the contract prove groundless, the employee may be reinstated by the court or may be entitled to a compensation claim, or both.

As regards payment of legal fees, there are no specific regulations that would prohibit any company from covering the costs of legal services rendered to its employee or a member of its body.

IV INTERNATIONAL

i Extraterritorial jurisdiction

The provisions of criminal law essentially provide for liability for crimes committed in Poland. Pursuant to the provisions of the Criminal Code, a crime is deemed to have been committed at the place the perpetrator acted or omitted to perform an act he or she was obliged to perform, or where the effects of the crime were felt or were intended to occur.

With regard to crimes committed abroad, the rule of the 'double criminality' of an act applies. This means that law enforcement bodies may conduct criminal proceedings only with respect to acts that constitute a crime both in Poland and in the country in which they were committed. Polish citizens are liable for crimes committed abroad in all instances where an act constitutes an offence under Polish law and at the place it was committed. As regards foreigners' liability for acts committed abroad, Polish criminal law may be applied if a crime harms the interests of Poland, a Polish citizen or a Polish company, and at the same time the requirement of double criminality is satisfied.

The requirement of the double criminality of an act does not apply to, inter alia, a situation in which a crime harms the national security of Poland or its material economic interests, or is aimed against Polish offices or officials, nor does it apply to a situation in which financial gain (even indirectly) was derived in Poland.

ii International cooperation

Polish law enforcement bodies cooperate with the authorities of other countries. The rules and scope of cooperation vary, however, in view of the fact that in some cases of cooperation, bilateral international agreements, multilateral conventions or international organisation regulations (including primarily European Union law and its implementations, for example, regarding the Directive 2014/41/EU of the European Parliament and the Council of 3 April 2014 or Council Framework Decision 2009/948/JHA of November 2009) will apply with some countries. In the absence of an international agreement, the provisions of the Code of Criminal Procedure will apply.

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The possibility of handing over a Polish citizen as part of an extradition procedure is, in principle, excluded. By way of an exception, the court may decide to extradite a Polish citizen if such a possibility follows from an international agreement ratified by Poland. An additional condition is that the crime with which the subject of the extradition procedure is charged must have been committed outside Poland, and that the act that the person is charged with must constitute a crime under Polish law, both at the time the court decision is made and at the time the crime was committed.

Polish enforcement authorities routinely cooperate with the authorities of a significant number of countries, including Germany and the United Kingdom, mainly as a result of the large Polish populations in those countries.

iii Local law considerations

Enforcement authorities apply the relevant Polish standards in all kinds of proceedings conducted in Poland. The personal data protection regime and the bank secrecy regime are relatively strict and involvement of a foreign element in a given case does not lead to the relevant requirements being loosened in any manner.

V YEAR IN REVIEW

The current government continues its relatively radical efforts to eradicate widespread value added tax (VAT) fraud and other kinds of business crime. One of the revisions introduced a 'split payment' system to separate net payments from VAT payments in business-to-business transactions. In November 2019, the Polish government provided a new provision under the Polish Penal Fiscal Code which sets out that a taxpayer who pays the total of an invoiced amount without the split payment mechanism, in contrast to their obligation, commits a fiscal offence.

In accordance with the guidelines of the Minister of Justice, prosecutors conducting investigations regarding VAT fraud should always consider extended confiscation and forfeiture of an enterprise. In cases involving extortion of more than 1 million zlotys, the Minister demands severe punishments of imprisonment.

When it comes to criminal liability for fiscal delinquency and crimes, at the end of 2019, the penalty for fiscal delinquency increased to between 260 and 52,000 zlotys. The maximum fine for fiscal crime increased to 24,960,960 zlotys.

In November 2019, the new amendment of the Act on Money Laundering and the Prevention of Financing Terrorism came into force. The revision was to implement the provisions of Directive 2015/849 of the European Parliament and of the Council. One of the most important changes put the obligation on beneficial owners or partners (including shareholders) of institutions obliged to report on specific transactions to have no criminal record of an intentional criminal offence or an intentional fiscal offence. Moreover, if it is found that an obliged institution has infringed particular obligations referred to under the Act, the legal authorities may impose financial penalties also on the members of the management body or other individuals responsible for the infringement.

Another important amendment is the revision of the Code of Criminal Procedure in October 2019. The main purpose of the revision is to speed up and simplify criminal proceedings at the judicial stage. However, the amendments undermine some procedural guarantees of the accused. For instance, the revision provides for the statute of repose to limit the time within which the parties are entitled to report the evidence. Other crucial changes

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include the possibility of conviction by the court of appeal after a conditional discontinuance of proceedings in the first instance or the possibility for the court of appeal to make the sentence more severe by imposing a life imprisonment sentence. On the other hand, in a case in which no public prosecution counsel participates, the failure of the subsidiary prosecutor and their attorney to appear at the main trial without justification shall be deemed to be withdrawal of the charge.

These amendments lead to the conclusion that parties to criminal proceedings will be forced to involve a professional attorney in any case.

In January 2019, the Polish government published the last Draft of the Act on Liability of Collective Entities for Acts Prohibited under Penalty. The key purpose of the new Act was to enhance the effectiveness of preventing and fighting serious economic and tax crime, including corruption. The effective tools included, inter alia, more extensive liability, new obligations imposed on collective entities (such as the obligations regarding whistle-blowers, compliance and internal issues) and stricter sanctions. The most important changes included were: (1) no closed list of criminal offences the liability for which may be incurred by collective entities; and (2) the possibility to hold a collective entity liable without the natural person having been previously convicted by a valid court judgment.

This amendment was to introduce severe penalties and other sanctions. The proposed penalties were a fine of 30,000 zlotys to 30 million zlotys (in special cases, 60 million zlotys); and the dissolution or liquidation of the collective entity. The works on the Draft of the Act on Liability of Collective Entities for Acts Prohibited under Penalty were stopped in November 2019 at the end of the parliament's previous term.

Another legislative tendency that occurred in 2019 relates to the matter of whistle-blowing. As was already mentioned, Poland has provided an obligation on any legal entity that issues or proposes to issue securities to have procedures for anonymous employee reporting. What is more, Poland must implement Directive 2019/1937 of the European Parliament and of the Council on the protection of persons reporting on breaches of EU law by 17 December 2021, which includes plenty of requirements regarding whistle-blowers. The new rules are going to be applied very widely. Pursuant to the provisions of the Directive, all enterprises having 50 or more workers should be subject to the obligation to establish internal reporting channels, irrespective of the nature of their activities.

VI CONCLUSIONS AND OUTLOOK

The general outlook is that the government is ready to increase the effectiveness of preventing and combating serious economic and fiscal crimes, including corruption offences. This objective is to be achieved through increasing the scope of liability, imposing new obligations, introducing more severe sanctions and speeding up criminal procedures. For instance, the Ministry of Justice announced in May 2020 that it is working on new provisions on a preventive confiscation. The new law is supposed to consist of the possibility of taking over the assets (real estate, cars, money, etc.) which have belonged to a suspect accused of acting in an organised criminal group for the last five years. The Council for Entrepreneurship in Poland has opposed the idea of a preventive confiscation because of excessive interference with private property rights.

Notwithstanding the above, the year 2020 is going be different from any other year before because of the restrictions and limitations imposed by the Polish government to fight the covid-19 pandemic. In March 2020, the Polish courts limited the number of cases under

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their review by cancelling the vast majority of public hearings during the pandemic. At the same time, law enforcement have also limited the actions they have taken. Hence, there is no doubt that the pandemic situation is going to have a big impact on the course of criminal investigations in 2020.

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Appendix 1

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Tomasz Konopka joined Sołtysiński Kawecki & Szlęzak in 2002. Since 2013, as a partner in the business crime and investigation team, he has led a team of lawyers (which he created in 2008) dealing with business crime cases. Before joining SK&S, he was an attorney for a number of years and sat on the boards of a range of firms, including those listed on the Warsaw Stock Exchange. He advises and represents clients in cases involving criminal liability risk. He advises entities that have incurred damage as a result of business crimes. He has extensive experience in conducting internal clarification proceedings, covering abuses such as corruption, fraud, money laundering, acting to the detriment of business entities, forgery and other crisis situations. He advises clients in planning and implementing comprehensive compliance projects, as well as solutions that improve business security, including cybersecurity. He represents Polish and foreign clients before courts and prosecution authorities in Poland and abroad.

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