



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Poland: Bribery & Corruption

This country-specific Q&A provides an overview to bribery & corruption law in Poland.

It will cover the definition of bribery, regulation, compliance, liability and enforcement as well as insight and opinion and any upcoming legal changes planned for their respective country.

This Q&A is part of the global guide. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/bribery-corruption/>

C L I F F O R D
C H A N C E

Country Author: Clifford Chance

The Legal 500



**Dr Marcin Ciemiński,
Partner**



**Monika Diehl, Senior
Associate**



**Paweł Pogorzelski, Senior
Associate**

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

Most of the crimes of corruption are penalised under the Criminal Code. They include: accepting and offering benefits in connection with performing public functions (also in a foreign State or an international organisation), influence peddling, exceeding of authority by a public official, and commercial bribery.

Additional corruption-related crimes are provided for e.g. in the Act on the Reimbursement of Medications, which prohibits accepting and offering benefits in exchange for activities influencing the level of sales of medications or medical devices subject to reimbursement from public funds, and also, the Act on Sports, which penalises bribery related to sports competitions.

Furthermore, legal entities are liable for corruption under the Act on the Criminal Liability of Collective Entities for Punishable Offences.

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

Crimes of corruption are investigated and prosecuted by public prosecutors, who are supervised by the General Public Prosecutor.

The Police also has the authority to conduct criminal investigations. The investigation of certain types of offences may also be conducted by public agencies, e.g. the Central Anti-corruption Bureau (CBA) and the Internal Security Agency (ABW). The CBA acts as a special service dedicated to combating corruption in public and economic life, particularly in public and local government institutions. It is responsible for identifying, preventing and detecting crimes and offences, prosecuting the perpetrators as well as control, analytical and preventive activities.

3. How is bribery defined?

Bribery can be either active or passive. Active bribery involves giving or promising to give a material or personal benefit to a person in relation to his/her holding a public office. Passive bribery, on the other hand, consists in accepting a material or personal benefit, or a promise thereof, in connection with performing a public function.

A bribe is a material or personal benefit. There is no minimal value set to determine when such benefit should be considered a bribe. Polish criminal law does not provide for a definition of a material or personal benefit and limits itself in this scope to the statement that a material or personal benefit is a benefit received for both oneself and for another person (not necessarily a relative). The most obvious form of giving financial benefits is the handing over of money (in cash). However, this might also refer to any increase in assets or decrease in liabilities. There are also views that winning a tender could be a material benefit.

Accepting or offering a bribe is punishable, provided that it is connected with holding a public office. There has to be a link between a bribe and the performance of the duties of a public official, for example,

payment in return for a favourable decision. Such connection can be established also if an official is rewarded for his/her previous conduct that was not related to the bribe. The recipient of a bribe does not have to be the person actually authorised to issue a decision or perform an action. It is sufficient if he/she can influence the decision in any way.

Bribery is a punishable offence regardless of the motivation of the perpetrator and the material value of the benefit.

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?

Yes, Polish law distinguishes between bribery of a public official and bribery of a private person.

Passive bribery in the private sector involves the acceptance of a benefit by a person, who either holds a managerial position or has significant influence on the decision-making process in an entity, in exchange for behaviour that could cause material damage to that entity, constitute an act of unfair competition or inadmissible preferential action. Active bribery in the private sector, on the other hand, consists in giving (or promising) a financial or personal benefit in the same cases.

For the purpose of the anti-corruption regulations, the Polish Criminal Code uses the term "a person performing a public function," which includes mainly persons holding public functions, such as:

1. "Public Officials" that is:
 1. the President of the Republic of Poland;
 2. a member of the lower or upper chamber of the Polish Parliament or of a local government agency;
 3. a Member of the European Parliament;
 4. a judge, lay judge, public prosecutor, an official of a financial authority responsible for conducting preparatory proceedings or of an agency superior to such financial authority, a notary, a court enforcement officer (bailiff), an official receiver, an insolvency administrator and/or trustee, a member of a disciplinary panel adjudicating on specific matters on the basis of a statute;
 5. an employee of a government agency, other state agency or local government agency, unless such person only performs auxiliary functions, as well as any other person to the extent he/she is authorised to issue decisions in the administrative

course of procedure;

6. an employee of a state or local government inspection authority, unless such person only performs auxiliary functions;
7. a holder of a managerial position in a different government institution;
8. an officer of an agency designated for the protection of public security or a prison officer;
9. a person doing active military service;
10. an employee of an international criminal court, unless such person only performs auxiliary functions.

2. persons holding a position with a foreign government or a supra-national organisation;
3. members of local government administration bodies;
4. other persons whose competencies or duties concerning public activity are specified by Polish law (e.g. court-appointed experts, members of arbitral tribunals).

The term "a person performing a public function" also covers persons who are not public officials, but are employed by organisational units with public funds at their disposal (except when the person performs only service-type work) (e.g. members of tender committees in public procurement procedures).

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

If bribery has caused damage, there is a possibility to claim damages in separate civil proceedings or in the criminal proceedings concerning bribery. In the criminal proceedings the court may impose on the accused the obligation to redress the full damage inflicted by the act of bribery or to pay compensation of up to PLN 200,000 instead.

The issuance of a non-appealable guilty judgment in criminal proceedings is binding on a court in civil proceedings with respect to the accused, which facilitates seeking further compensation.

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

For individuals, the criminal consequences of bribery may include the following penalties: limitation of liberty for a period from one month to 2 years, deprivation of liberty for a period from 6 months to 12

years, and a fine of up to PLN 1,080,000.

Additionally, the court may also impose penal measures such as: deprivation of public rights, prohibition from occupying a specific professional position, practising a specific profession, operating a specific business activity, publication of the sentence in a particular manner if this is appropriate due to the social impact of the sentence.

While imposing a penalty, the court considers the circumstances as well as the type and the extent of consequences of the offence. The penalty will be higher if the bribe was of a substantial value or was accepted in exchange for unlawful behaviour.

For corporate entities, the criminal consequences of bribery may include a fine ranging from PLN 1,000 to PLN 5,000,000. The fine may not exceed 3% of the corporate entity's revenue earned in the financial year in which the offence was committed. The court may also order the forfeiture of any object or benefit which derived from the offence. The court may also prohibit the corporate entity from carrying out promotions and advertising, benefiting from grants, subsidies or assistance from international organisations or bidding for public contracts. The court may also decide to publicise the judgment. All the above-mentioned prohibitions may be imposed for a period from one to five years.

The proposed new draft Act on Criminal Liability of Collective Entities for Punishable Offences is intended to increase the possible sanctions for corporate entities, in particular the amount of the fine will be increased up to PLN 30,000,000 (see: answer to Question 18).

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

Prescribed limitations on the value of benefits (such as hospitality, travel and entertainment) that may be given to persons performing public functions are only included in the Polish Pharmaceutical Law, which allows giving or accepting items with a value under PLN 100 and relevant to the practice of medicine or pharmacy, bearing a mark advertising a given firm or medicinal product.

Other than that the above, there are no generally prescribed limitations on the value of benefits (such as hospitality, gifts, travel and entertainment) that may be given to public officials. However, according to legal scholars and case law in some situations custom may constitute a defence against criminal liability for the offence of corruption in the public sector. Therefore, small customary gifts for public officials may be considered permitted. Essentially, this may be the case when the giving of such gifts/hospitality is: (i) customary and socially accepted as a gesture of courtesy; (ii) of small value; and (iii) provided as an expression of gratitude, i.e. after a given service/transaction with a person holding a public office has been completed and assuming that such gift/entertainment was not promised, suggested or expected in relation

to the service/transaction in question.

At the same time, there is no clear boundary in the provisions of law, case law or views of legal scholars between a small socially acceptable gift and active bribery.

8. Are political contributions regulated?

Yes. The financing of political parties in Poland is regulated by the Act on Political Parties. The sources of financing of political parties are transparent and open to public scrutiny.

A political party may receive funds only from individuals, meaning that it cannot accept contributions from other entities, including corporate entities. Moreover, a political party can accept funds only from Polish citizens. There is also limit on contributions that can be made by one person. The total sum of the political contributions cannot exceed 15 times the minimum wage in a given year (in 2018 the minimum wage amounted to PLN 2,100).

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

Polish law does not regulate facilitation payments. There is no exemption in Poland for facilitation payments, and such payments are likely to fall under the statutory definition of an offence of bribery.

10. Are there any defences available?

In the case of individuals, in some situations custom may constitute a defence against criminal liability for bribery in the public sector (see: answer to Question 7). There is also a quasi-defence with respect to active bribery (offering a bribe), active corruption in the private sector and peddling influence in exchange for a benefit. The person offering a bribe will not be subject to criminal prosecution provided that (i) the bribe was accepted, (ii) it was reported to the authorities before they learned about it, and (iii) the offender disclosed all the relevant circumstances of the offence. The form in which the offender reports the offence to the authorities is of no importance.

In the case of corporate entities, an effective compliance system may constitute a mitigating factor that the court could take into account (see: answer to Question 11).

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

Although Polish law does not expressly provide for a compliance defence, such defence may be inferred from the corporate criminal liability regulations (including liability for bribery). The liability based on the current Act on Criminal Liability of Collective Entities for Punishable Offences is dependent on fault, which is either fault in selection or organisational fault. In practice, the having an effective anti-bribery compliance program in place may enable the corporate entity to argue that organisational fault cannot be attributed to it. In such a case, the criminal liability of the corporate entity would be excluded. However, the use of this potential compliance defence remains largely untested.

Based on the proposed new draft Act on Criminal Liability of Collective Entities for Punishable Offences (see: answer to Question 18), a corporate entity may be able to avoid criminal liability for corruption committed by the individuals and bodies authorised to act on its behalf if it proves that it acted with due care and diligence in the relevant circumstances. The corporate entity will also have to prove that it has mechanisms in place to ensure compliance of its activities with the law. It can be expected that, for this purpose, the corporate entity will be able to rely on having a compliance program, including anti-corruption policies, in place.

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

Polish law provides for liability of both individuals and corporate entities involved in criminal conduct.

The liability of corporate entities for criminal offences is regulated by the Act on Criminal Liability of Collective Entities for Punishable Offences. In general, under the Act, a corporate entity may be liable if an offence mentioned in the Act is committed by a specific person and his/her conduct has resulted or may have resulted in a benefit for the corporate entity.

A corporate entity may be held liable for the conduct of a person acting on behalf or in the interest of the entity within the scope of his/her power or duty to represent it, make decisions on its behalf or exercise internal control, or exceeding his/her power or failing to perform his/her duty, or a person being "an entrepreneur" (a sole trader) who is involved in a business relationship with the corporate entity. However, the liability of the corporate entity is secondary to the liability of the person who committed the offence, i.e. the entity can be held criminally liable only after the person who committed the offence has been found guilty and sentenced by a court of law.

The corporate entity will face liability for the actions of the above-mentioned persons only if its bodies or representatives failed to exercise due diligence in preventing the commission of an offence or it has failed to exercise due diligence in hiring or supervising a person given permission to represent it. The lack of criminal liability of a corporate entity does not exclude the possibility of the corporate entity's incurring civil liability for the damage caused or the administrative liability of the entity.

The current Act on the Liability of Collective Entities for Punishable Acts is commonly recognised as inefficient and is very rarely applied in practice. For this reason the Polish Government is working on a new draft Act on Criminal Liability of Collective Entities for Punishable Offences, which is to make the procedure of bringing corporate entities to account more efficient (see: answer to Question 18).

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?

The CBA regularly publishes Anti-Corruption Guidelines for entrepreneurs, which provide suggestions on how to effectively manage the risk of bribery. These guidelines are, however, of a very general nature and are not binding.

Based on the CBA's most recent guidelines (published in December 2015), a corporate entity should have a code of ethics in place and make sure that its employees are acquainted with it. Furthermore, companies are recommended to implement policies on giving or receiving any gifts, conflicts of interests, lobbying, sponsoring, and political contributions. Corporate entities should also train their employees and provide them with the possibility to report all irregularities, while whistle-blowers should be protected against negative consequences of having reported irregularities. The guidelines also state that specific persons should be designated within the organisation to monitor the enforcement of the compliance mechanisms.

The draft Act on Transparency in the Public Sphere has, however, been recently published. This law, if implemented, will specifically require companies to apply internal anti-corruption procedures. Such anti-corruption compliance program is to consist of, among other things, the following:

- a code of ethics (to be signed by all employees, consultants and all entities acting for the company);
- internal procedures and guidelines on gifts and other benefits received by employees;
- procedures for reporting corruption allegations to the entity's bodies and procedures for dealing with such reports;
- mechanisms to prevent the costs of giving economic and personal benefits from being

- financed by the entity;
- the use of anti-corruption clauses in agreements;
- training for employees on criminal liability for corruption offences.

The work on the draft Act on Transparency in the Public Sphere is at an early stage, but it is expected that its provisions regarding anti-corruption compliance will come into force in 2018 (see: answer to Question 18).

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

Currently there are no statutory measures which provide for protection for whistle-blowers. However, the draft Act on Transparency in the Public Sphere and the new draft Act on Criminal Liability of Collective Entities for Punishable Offences aim to change this.

Protection would be granted to whistle-blowers providing credible information on specific suspected offences (including offences of corruption and fraud) to the public prosecutor. The public prosecutor would then decide whether or not to grant the whistle-blower status. Whistle-blowers would be protected primarily against termination of their employment or similar measures. In particular, a court would be able to reinstate the employment of that person at his/her request or award compensation.

Additional regulations will be introduced by the new draft Act on Criminal Liability of Collective Entities for Punishable Offences, which currently provides that an employee of a corporate entity, a member of its governing bodies, as well as a person acting on behalf or in the interest of the corporate entity based on a contract, reporting irregularities will be considered whistle-blowers. If the whistleblower's employee rights are infringed or the employment of, or the contract with, the whistleblower is terminated for reasons relating to the reporting of irregularities, a court will be able to reinstate the employment of that person at his/her request or award compensation.

Corporate entities will also be obliged to conduct an internal investigation in cases where the information reported by the whistle-blower may be of significance to the criminal liability of the corporate entity. If the corporate entity fails to conduct such internal investigation and to remedy any irregularities discovered during the investigation, it will be possible for the fine to be increased up to PLN 60,000,000 in the criminal proceedings against the corporate entity.

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

According to the most recent statistics (for 2016), bribery is one of most common types of crimes of

corruption. In 2016, there were 4,496 registered instances of a bribe being accepted and 1,951 cases of bribes being offered. A substantial increase of passive bribery was recorded in comparison to 2015 while the number of active bribery cases pursued by the authorities dropped insignificantly (by 10%).

The vast majority of these investigations have been initiated by the Police. The CBA opened investigations into 115 bribery cases.

16. What are the recent trends in investigations and enforcement in your jurisdiction?

Enforcement of corruption-related offences remains high. At the same time, in December 2017, the Polish government published its Anti-Corruption Strategy 2018-2020. The main objective of the Strategy is to considerably reduce corruption and to promote social awareness in respect of counteracting corrupt practices. The specific priorities to achieve this overall objective are:

- strengthening educational and preventive activities;
- improving monitoring mechanisms regarding corruption-prone issues and monitoring the application of the anti-corruption regulations; and
- improving cooperation and coordination between the law enforcement authorities, including international cooperation.

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

Courts adjudicate on all offences, including corruption. Apart from this, there is a process of judicial review in the course of preparatory proceedings conducted by the public prosecutor. In particular, the courts take decisions relating to temporary detention, surveillance and recording of the content of telephone conversations or issuing safe conduct to the accused. On the other hand, the courts control and supervise the public prosecutors. This includes the judicial review of decisions concerning (among other things) a search, seizure of objects, decisions on precautionary measures or establishing security on assets.

18. Are there any planned developments or reforms of bribery and

anti-corruption laws in your jurisdiction?

Significant changes to the anti-corruption legislation are about to be introduced by means of two draft Acts currently at the stage of being finalised. The date of entry into force of both Acts has not yet been determined, but they are expected to be enacted within a few months and enter into force during 2018.

The Polish Ministry of Justice has prepared the new draft Act on Criminal Liability of Collective Entities for Punishable Offences intended to replace the existing regulations, which have proven to be ineffective.

The purpose of the new draft Act on Criminal Liability of Collective Entities for Punishable Offences is, first of all, to introduce the liability of corporate entities for any criminal offence or treasury offence (to date, liability has been limited to the offences expressly mentioned in the Act currently in force). It will be possible to conduct criminal proceedings against a corporate entity, irrespective of criminal proceedings pending against an individual, and the conviction of an individual will not be a criterion for instituting criminal proceedings against a corporate entity (which is the case at present). The new draft Act on Criminal Liability of Collective Entities for Punishable Offences also considerably increases the maximum penalty for criminal liability of corporate entities to PLN 30,000,000 (currently the maximum fine is PLN 5,000,000).

The main assumptions of the proposed Act are as follows:

- The liability of a corporate entity is to be independent of any previous conviction of an individual (the direct perpetrator) and it will be possible to hold a corporate entity liable for an offence committed in connection with the activity of the corporate entity, even without establishing who the direct perpetrator was.
- A corporate entity may be liable for any criminal offence or treasury offence (at present corporate entities may be held liable only for the offences listed in the Act currently in effect).
- It will be possible to conduct preparatory proceedings against a corporate entity in parallel to proceedings being conducted against an individual (the direct perpetrator) or even before proceedings against the direct perpetrator have been instituted – this is to reverse the current rule.
- A fine of up to PLN 30,000,000 could be imposed on a corporate entity (currently the fine is up to PLN 5,000,000) and its amount will not depend on the amount of revenue generated (at present, the fine may not be higher than 3% of the corporate entity's revenue generated in the year in which the offence was committed).
- Measures will be introduced to protect whistle-blowers, along with an obligation for the corporate entity to conduct internal investigations in order to verify the irregularities reported by whistle-blowers. Failure to conduct an internal investigation could result in the fine being increased up to PLN 60,000,000.

- Corporate entities will be subject to criminal liability notwithstanding any merger, demerger or transformation of the corporate entity.
- It will be possible for a corporate entity to voluntarily admit liability in order to avoid a trial and to agree a more lenient fine with the public prosecutor (this could be a similar institution to the UK/US deferred prosecution agreements).

The new regulations will apply not only to all corporate entities having their registered offices in Poland, but also to foreign entities whenever their actions which constitute a factual basis for liability are committed in Poland or their result was directed against Polish interests.

The scope of liability of a corporate entity is to be expanded. The corporate entity will be liable:

- as it is now, for a prohibited act committed by an individual if the corporate entity receives an economic gain, even indirectly, in a situation of either a lack of due diligence in the selection of, or supervision over, the individual, and if the act is committed as a result of a method of business organisation that does not prevent material risks leading to the commission of a prohibited act;
- for a prohibited act relating to the activities carried out, caused by an act or omission by its governing body or a member of such body, and which has been committed as a result of a wilful action or failure to exercise caution;
- for prohibited acts committed directly in connection with the operations of the business or establishment of the corporate entity as a result of failure to comply with the rules of caution, even if the identity of the individual perpetrator of the act is not established.

Consequently, it will be possible to institute and conduct criminal proceedings against corporate entities separately or jointly with criminal proceedings relating to a prohibited act committed by individuals for whom the corporate entity may be liable.

In the course of the proceedings against a corporate entity, the entity will be able to voluntarily admit its liability in order to avoid a trial and agree a more lenient fine with the public prosecutor. In such a case, the public prosecutor will be able to file with the court, instead of an indictment, a motion for the authorisation of voluntary submission to liability of the corporate entity, provided that:

- the circumstances of the criminal offence are beyond doubt;
- the corporate entity has disclosed to the authorities information on the criminal conduct of an individual acting for or on behalf of the corporate entity or directly collaborating with the entity, including substantial information regarding the committed offence;
- the corporate entity has paid the equivalent of the damage caused by the offence;
- the corporate entity has paid the equivalent of the lowest financial penalty for the offence

in question, but not more than PLN 3,000,000;

- the corporate entity has consented to forfeiture of the benefit obtained (or, where the material profit cannot be returned, has paid the equivalent amount).

The public prosecutor's motion for voluntary submission to liability will be subject to the court's approval which, if granted, will be in the form of a judgment.

The benefit for the corporate entity, arising from this specific type of settlement concluded with the law enforcement authorities, is that the final judgment issued according to this procedure would not have to be recorded in the National Criminal Register.

The conditions of voluntary submission to liability will be favourable in comparison with the possible liability under the new draft Act on Criminal Liability of Collective Entities for Punishable Offences, which provides for fines of up to PLN 30,000,000, whereas in the case of the voluntary submission to liability the maximum penalty is PLN 3,000,000.

Apart from the new draft Act on Criminal Liability of Collective Entities for Punishable Offences, another proposed act currently being proceeded by the Polish legislator with respect to the fight against corruption is the draft Act on Transparency in the Public Sphere.

Under the draft Act on Transparency in the Public Sphere, the requirement to introduce internal anti-corruption procedures is to apply to entities that have 50 or more employees and whose net annual turnover or sum of assets on their balance sheet is EUR 10,000,000 or more.

Anti-corruption compliance is to consist in, among other things, the following:

- the introduction of a code of ethics (which is to be signed by all employees, consultants as well as all entities acting for the entity);
- the putting in place of internal procedures and guidelines on gifts and other benefits received by employees;
- the introduction of procedures for reporting corruption allegations to the entity's bodies and the introduction of procedures on dealing with such reporting;
- the prevention of mechanisms that would allow the costs of giving economic and personal benefits to be financed by the entity;
- the use of anti-corruption clauses in agreements;
- the training of employees on criminal liability for corruption offences.

If the public prosecutor's office brings corruption charges against a person acting for or on behalf of the entity, the CBA will be obliged to inspect whether that entity has implemented anti-corruption compliance

procedures.

If during the inspection it turns out that internal anti-corruption procedures were not applied or were ineffective or only superficial, the entity will be liable to a fine of up to PLN 10,000,000 and, in some cases, a five-year ban on participating in public tenders.

The draft Act on Transparency in the Public Sphere is also to introduce legal protection for whistle-blowers, who have provided the authorities with information on possible offences (in particular corruption).

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

- The United Nations Convention against Corruption, adopted by General Assembly Resolution 58/4 of 31 October 2003, signed by Poland on 10 December 2003;
- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which entered into force on 7 November 2000;
- The Council of Europe Civil Law Convention on corruption adopted on 4 November 1999, which entered into force on 1 November 2003;
- The Council of Europe Criminal Law Convention on corruption adopted on 27 January 1999, which entered into force on 1 April 2003.

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.

Legal privilege in Poland originates from a lawyer's duty to keep the client's affairs confidential. The duty of confidentiality of lawyers is legally protected by their right to remain silent if examined as a witness. This also covers documents related to legal advice and communications between lawyers and their clients related to legal advice. Documents generated in a lawyer-led investigation may therefore be covered by legal privilege.

If in criminal investigations an attempt is made by government authorities to seize privileged documents, they should be placed in opaque, sealed bags or envelopes and referred to the public prosecutor or the court. The court may waive the legal privilege only if such documents are the only possible avenue of obtaining the relevant information. Such waiver is not possible with respect to documents protected by privilege related to white collar defence.

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?

The legislative measures currently being proposed in Poland indicate that the Polish Government is putting increasing emphasis on improving the anti-corruption legislation. As announced in the Anti-Corruption Strategy 2018-2020, there is an intention to use and coordinate all available instruments in order to achieve the optimal effect.

Meanwhile, in the Transparency International Corruption Perceptions Index 2017 Poland has dropped by 2 positions in comparison to 2016.

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

The perception of corruption both in business-to-business relations as well as in cooperation with the public authorities is in decline (which is reflected in opinion polls). There is also a steadily growing compliance culture in Poland and awareness of corruptive behaviour in the private sector is much higher than even a few years ago.

The Warsaw Stock Exchange promotes compliance in its best practices for listed companies, and good practices are implemented in companies that are not publicly traded.

The draft Act on Transparency in the Public Sphere and the new draft Act on Criminal Liability of Collective Entities for Punishable Offences will be a further incentive to develop compliance systems in Poland. It will be no longer a best practice, but for a majority of entities their statutory obligation. The effectiveness of such compliance systems combined with cooperation with the law enforcement agencies could limit the liability of corporate entities.

23. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting

cases of bribery and corruption in your jurisdiction?

One of the biggest challenges for the law enforcement agencies is to effectively conduct large-scale investigations. Sometimes the lack of sufficient resources and proper forensic support makes it challenging to efficiently collect and analyse big volumes of seized data. Transnational corruption is another area where the law enforcement agencies face challenges, as mutual assistance in criminal matters is often time-consuming.

The law enforcement agencies also encounter difficulties in gathering evidence. To date, the law does not create favourable conditions for companies to step forward and provide the authorities with documentation in exchange for leniency. Consequently, there are no sufficient grounds for cooperation (e.g. private investigations) aimed at developing better solutions for internal compliance.

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

If the proposed regulations with respect to corporate criminal liability and anti-corruption compliance obligations are passed in their current form, they will present challenges to businesses. In particular, businesses will have to adapt to new legal requirements and either revise or implement internal anti-corruption compliance mechanisms. Furthermore, businesses will face the obligation to conduct internal investigations in order to verify the irregularities reported by the whistle-blowers. Also, as the new laws will provide for a possibility of a settlement with the law enforcement authorities, businesses will have a bigger incentive to conduct internal investigations (see: answer to Question 18 for details).

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

The work on both draft Acts (see: answer to Question 18) are at an early stage and they may still be subject to significant changes, but the regulations proposed constitute a step in the right direction towards creating an effective procedure of liability while taking account of compliance measures in place.

It would, however, be better to introduce more incentives for businesses to cooperate with the law enforcement agencies and to give companies an opportunity to cooperate in return for lower sanctions. If companies were allowed to make efforts in good faith in order to deal with corruption, a shift in the approach would follow, enabling the authorities to punish offenders more effectively.

