



Q&A IN RELATION TO BRIBERY OFFENCES IN POLAND

**Content Provided by DLA Piper
Published June 2019**

1 Q&A In Relation to bribery offences in Poland

1. Legal Framework

What is the legal framework governing bribery in Poland?

- the Act of June 6, 1997 – Criminal Code (as amended);
- the Act of June 6, 1997 – Code of Criminal Procedure (as amended);
- the Act of October 28, 2002 on the Liability of Collective Entities for Criminal Offences (as amended);
- the Act of June 9, 2006 on the Central Anti-Corruption Bureau (as amended);
- the Act of June 27, 1997 on Political Parties (as amended);
- the Act of August 21, 1997 on Limitation of Conducting Business Activity by Persons Performing Public Functions (as amended);
- the Act of March 1, 2018 on Combating Money Laundering and the Financing of Terrorism (with further amendments); and
- the Act of August 21, 1997 on the Limitation of Conducting Business Activity by Persons Holding Public Functions (with further amendments).

2. What Constitutes a Bribe?

What constitutes a bribe?

- Both offering and accepting bribes are a criminal offence.
- **To accept a bribe is to:**
 - accept a material or personal benefit, or a promise thereof, in connection with performing a public function;
 - accept a material or personal benefit, or a promise thereof, in connection with performing a public function, in return for unlawful conduct; or
 - make the performance of official duties dependent upon a material benefit, or a promise thereof, or to demand such a benefit, in connection with an official capacity.
- **To offer a bribe is to:**
 - give or promise to give a material or personal benefit to a person performing a public function; or
 - give a material or personal benefit to a person performing a public function in order to induce them to disregard their official duties, or to provide such a benefit for disregarding such duties.

What are the principal offences under this legal framework?

The principal offenses are:

- accepting bribes (art. 228 of the Criminal Code);
- offering bribes (art. 229 of the Criminal Code);
- peddling influence (art. 230 and 230a of the Criminal Code);
- exceeding authority in order to obtain a material or personal benefit (art. 231 § 2 of the Criminal Code);
- corruption of managers (art. 296a of the Criminal Code);
- corruption of creditors (art. 302 of the Criminal Code); and
- hindering a public tender (art. 305 of the Criminal Code).

3. Jurisdictional Reach

What is the jurisdictional reach of the legal framework?

- Polish criminal law applies to an offender who commits a prohibited act in the Republic of Poland, or on a Polish vessel or aircraft, unless the Republic of Poland is party to an international agreement stating otherwise.
- For an act committed abroad to be considered an offence, it must be considered an offence by the law in force where it was committed.
- If there are differences between Polish criminal law and the law in force where an offence is committed, when applying Polish law the court may take these differences into account in favor of the offender.
- Notwithstanding the provisions in force in the place where an offence is committed, Polish criminal law applies to a Polish national or a foreigner who commits:
 - an offence against the internal or external security of the Republic of Poland;
 - an offence against Polish offices or public officials;
 - an offence against Poland's material economic interests;
 - an offence of false testimony made before a Polish office; or
 - an offence from which a material benefit was gained, even if indirectly, in the Republic of Poland.
- Regardless of regulations in force in the place where the offence was committed, Polish criminal law applies to a Polish national, or to a foreigner for whom no decision on extradition has been taken, in respect of an offence committed abroad, which the Republic of Poland is obliged to prosecute under international agreements.

4. Who may be liable?

Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

People who may be liable for bribery include:

- public officials who accept bribes;
- any individual who offers bribes to public officials;
- individuals who meet the conditions of offences listed in the answer for question No. 3; or
- legal entities (e.g. legal persons, commercial companies, including those with the State Treasury's shares, units of local governments and their associations and other entities who are granted legal personality) in accordance with provisions of the Act on the Liability of Collective Entities for Criminal Offences.

Can a parent company be liable for its subsidiary's involvement in bribery?

- No. According to the Act on the Liability of Collective Entities for Criminal Offences, companies are liable for unlawful actions undertaken only by company representatives, other persons acting on behalf of a company, or individual entrepreneurs directly co-operating with the company, pursuant to art. 3 of the Act on the Liability of Collective Entities for Criminal Offences.

5. High Risk Areas

Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

- Yes.

Does the legal framework restrict political and charitable contributions?

- As for political parties, yes. According to the Act of June 27, 1997 on Political Parties (as amended), there are restrictions regarding financing of political parties. Political parties are not allowed to organize public fundraising. Also, the joint sum of contributions from a natural person (excluding membership fees) cannot exceed the sum of 15 times the minimum wage annually. There are certain criminal provisions in the Act on Political Parties. Breaches of provisions of the Act on Political Parties, including the provisions regarding financing, may constitute an offence.
- There is also Act of August 21, 1997 on Limitation of Conducting Business Activity by Persons Performing Public Functions. The Act establishes the so-called Benefit Register in which benefits acquired by persons performing public functions or their spouses are disclosed.
- As for charitable contributions, it is not prohibited to give donations to charitable institutions; however, particular caution is recommended to ensure that donations are not made in anticipation of any benefits in return. They should only be made in accordance with professional ethics and the culture of a given country or community, and be a part of responsible business policies. Donations should be related to legal business goals; the donated sums should not be significant and they should not raise doubts regarding their lawfulness. Internal corporate procedures regarding charitable contributions should be transparent and in accordance with regulations on anti-money laundering and anti-bribery measures.

Does the legal framework place restrictions on corporate hospitality?

- Yes. Criminal law regulations thereof can be found in the Chapter XXXVI of the Criminal Code, Offences against Economic Circulation.
- Corporate hospitality must also meet the requirements set out by anti-bribery, anti-money laundering and commercial law regulations.
- It is not prohibited to undertake actions which fall within the notion of corporate hospitality; however, all actions must comply with binding law. Corporate hospitality must remain in accordance with professional ethics, the culture of a given country or community, and be a part of responsible business policies. Those actions should not raise doubts regarding their lawfulness and all the internal procedures thereof must be transparent.
- In order for corporate hospitality not to constitute a bribe, it must comply with the Criminal Code provisions. Corporate hospitality must also comply with the AML regulations – EU regulations and the Polish Act on Combating Money Laundering and the Financing of Terrorism.
- The most important and general criteria of lawfulness of corporate hospitality are that:
 - corporate hospitality must not be performed in anticipation of any benefits in return;
 - corporate hospitality must not be performed in return for unlawful conduct; and
 - corporate hospitality must not facilitate any official proceedings, e.g. administrative proceedings aimed at the acquisition of certain permits etc.
- Business relations should be monitored by companies on a regular basis and business partners should be verified. Depending on the value of transactions, appropriate security measures must be applied. The business purpose of undertaken activities must be verified. In particular, Chapter 5 of the Act on Combating Money Laundering and the Financing of Terrorism establishes and describes financial security measures to be undertaken by companies.

- There are also some specific limitations and requirements established in the Act on the Limitation of Conducting Business Activity by Persons Holding Public Functions. This Act lists people who are limited in their business activity (e.g. employees of public offices, the president and employees of the Supreme Chamber of Control, members of local governments, members the National Bank of Poland's Management Board). Those persons cannot:
 - be members of management boards, supervisory boards and review panels of commercial law companies;
 - be receivers or vice-receivers in bankruptcy proceedings or supervisors or administrators in restructuring proceedings;
 - be employed in the commercial law companies or hold other functions therein which could raise doubts as of their partiality and self-interest;
 - be members of management boards, supervisory boards or review panels of cooperatives, except for the Panel Boards of housing cooperatives;
 - be members of management boards in foundations conducting business activity;
 - hold more than 10% stock or shares of more than 10% share capital in the commercial law companies (in each of those companies); or
 - conduct individual business activity or together with other persons, as well as manage such a business activity or be a representative or a proxy in such a business activity (with certain exceptions).
- Also, periods after the completion of holding a public function are regulated in the Act on the Limitation of Conducting Business Activity by Persons Holding Public Functions. People who are holders of public functions shall also submit a declaration regarding their spouse's business activity. Additionally, they should submit an asset declaration on the personal assets and the joint property of spouses.
- There is also a benefit register in which benefits obtained by persons holding public functions or their spouses are disclosed. The register includes the following information:
 - any positions and functions performed both in the public administration and in private institutions which are the basis for remuneration, and on professional work performed on their own account;
 - any cases of material support of the public activity conducted by the person notifying thereof;
 - donations obtained from domestic and foreign entities if their value exceeds 50% of the minimum wage;
 - domestic and international trips not related to the performed public function if the cost was not covered by the notifying person or their spouse, or institutions which hire them, or political parties, associations or foundations of which the notifying person or their spouse are members;
 - other benefits exceeding the value of 50% of the minimum wage; and
 - membership in managing bodies of foundations, companies or cooperatives – even if it is not associated with remuneration.
- The benefit register is public. All changes in the register shall be notified within 30 days from the moment they arise

6. Legal Defences

Are there any defenses for bribery offences?

- There are no statutory defenses available; however, where the facts permit, it may be possible to argue, for example, that any benefit given was only a gift which did not present real value and was given in circumstances where it is common practice to give such gifts. However, every case should be analyzed based on the merits of the particular case.

7. Regulatory and Enforcement Bodies

What are the key regulatory or enforcement bodies with regard to bribery?

- Central Anti-Corruption Bureau
- Agency of Internal Security
- State Fiscal Administration
- The Supreme Chamber of Control
- Ministry of Defence
- Police
- Prosecutor's Offices
- Border Guard

8. Legal Consequences

What are the legal consequences of being found guilty of bribery offences?

- Depending on the offence, it may be:
 - restriction of liberty;
 - imprisonment up to 12 years;
 - fines (according to the Act on Political Parties);
 - towards collective entities;
 - financial penalties;
 - forfeiture of goods;
 - ban on advertising;
 - ban on application for subsidies and other public financial help;
 - ban on applying for help from international organizations;
 - ban on participation in public tenders; or
 - public disclosure of the judgment.

9. Deferred Prosecution Agreements

Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

- General principles of the criminal procedure apply.
- Depending on the circumstances of the case, the following measures might be applicable:
 - voluntary submission to criminal responsibility;
 - motion to sentence the accused and impose a penalty without holding a trial;
 - motion for discontinuation of proceedings; or
 - conditional suspension of a penalty.

Disclaimer

Every effort has been made to verify the accuracy of the information contained herein. All information was believed to be correct as of June 2019. Nevertheless, Transparency International UK (TI-UK) cannot accept responsibility for the consequences of its use for other purposes or in other contexts. Policy recommendations and best practice guidance reflect TI-UK's opinion. They should not be taken to represent the views of any of those quoted or interviewed nor those of the companies or individuals that provided input or members of the Expert Advisory Committee or DLA Piper. Neither TI-UK nor DLA Piper assumes any liability for the information contained herein, its interpretation or for any reliance on it. The document should not be construed as a recommendation, endorsement, opinion or approval of any kind. This Guidance has been produced for information only and should not be relied on for legal purposes. Professional advice should always be sought before taking action based on the information provided.

Transparency International UK

10 Queen Street Place,
London,
EC4R 1BE

www.transparency.org.uk
twitter.com/transparencyuk

Content Correct as of June 2019.

Cover Image: Transparency International Corruptions Perception Index 2018