NEWSLETTER 12/2017

Project of a new act on transparency of public life

On 23rd October 2017, draft of the new act on transparency of the public life was presented. The new act shall regulate access to public information, filing financial standing declarations, professional lobbying and also a status of a whistle-blower and companies’ obligations in respect of anti - corruption practices. Particularly the last two regulations shall have impact on companies.

Information presented below are based on the draft of the new act and may be subject to amendments during legislative process in the Sejm and Senate.

Whistle-blower

The projected act assumes possibility for the prosecutor to grant the special “whistle-blower status” to a person filing reliable information about suspected crimes such as bribery (both offering and accepting), abuse of power by a public officer, participation in organized criminal group, money laundering. Such person must be an employee of the employer whom information concerns or an entrepreneur having contractual relation with such entity or person.

What is important, is that the whistle-blower may be an employee, as well as an entrepreneur running own business cooperating with the entity on the basis of a civil contract. Status of the whistle-blower may be granted if filing relevant and reliable information may adversely influence living, working or material situation of such person.

The status is notified to an employer of the whistle-blower or to an entity, regarding which the information are submitted.

The whistle-blower shall obtain return of costs of legal representation from the State Treasury. The whistle-blower shall be also protected against termination of employment contract or deterioration of its terms due to submission of information. The same applies, accordingly, to a person having contractual relation with the entity subject to submitted information. In case of termination of the contract or employment contract with the whistle-blower without the prosecutor’s consent, the whistle-blower shall be entitled to a compensation.

Anti - corruption practices

Second regulation important for private companies is the chapter regarding anti - corruption practices.

Obligations in this regard will be imposed on entrepreneurs being at least “medium-sized entrepreneur” in accordance with Freedom of Economic Activity Act, this is an entrepreneur who in at least one of the two recent financial years:

1. had an average annual employment of less than 250 and showed an annual net turnover from sales of goods, products and services and from financial operations of no more than a zloty equivalent of 50 million euro, or a balance-sheet assets total, as at the end of either of these two years, of no more than a zloty equivalent of 43 million euro.

Such entrepreneur will be obliged to apply internal procedures in order to counteract against cases of committing corruption offences by persons acting on behalf of or in favour of the entrepreneur. The entrepreneur shall undertake organizational, human resources and technical means to counteract against creating environment favourable for committing such offences.

These means include especially:

1. not allowing to create mechanisms of financing costs of granting personal or financial benefits with use of entrepreneur’s assets,
2. acquainting employees with rules of a criminal liability for corruption offences,
3. including in the contracts special clauses stating that any part of remuneration may not be used to finance personal or financial benefit,
4. preparation of ethical code declaring denial of corruption that shall be undersigned by each employee, co-worker and contractor,
5. design of internal procedures and guidelines regarding obtaining gifts and other bonuses by the employees,
6. not undertaking any decisions on the basis of corruption actions,
7. preparation of procedures of informing proper authorities of the entrepreneur about receipt of corruption proposals.

The entrepreneur not applying internal anti-corruption procedures or in case that such procedures were illusory or ineffective and a person acting on behalf of or in favour of the entrepreneur was charged of corruption offence, is subject to fine in the amount between 10.000,00 to 10.000.000,00 PLN. In case of filing charges against such person, Central Anti-corruption Office shall initiate control procedures of the entrepreneur. This fine may be withdrawn if the entrepreneur submitted information regarding the person accused of corruption offence.

Autor:
Malwina Makowska - radca prawny, CWW Kancelaria Prawnicza sp.k.

Data: 2017-12-15