

ANTI-CORRUPTION LEGISLATION

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New legislation in Ukraine is set to take effect soon. The laws greatly expand anti-corruption provisions and enforcement mechanisms, but their effectiveness remains to be seen.

On June 11, 2009 the Verkhovna Rada of Ukraine adopted the following anti-corruption laws:

- Law of Ukraine “On the principles of preventing and combating corruption”;
- Law of Ukraine “On liability of legal entities for committing corrupt offenses;
- Law of Ukraine “On amendments to some laws of Ukraine on liability for corrupt offenses.”

The Law “On the principles of preventing and combating corruption” determines basic principles of preventing and combating corruption in public and private spheres of social relations, damages due to committing corrupt offenses, recovery of violated rights, freedoms and interests of individuals, rights or interests of legal entities, and state interests.

The Law of Ukraine “On liability of legal entities for committing corrupt offenses” defines the liability of legal entities for committing corrupt offenses by their authorized persons, and also determines the procedure for holding them liable for it. This Law shall not apply to legal entities of public law and international organizations.

Thus, the legal entity will be responsible for such crimes as giving bribes, receiving bribes, misuse of power or official authority, abuse of power or position and some others conducted on behalf and in interest of the legal entity by its head, founder, member or other authorized person individually or in complicity.

The proceedings against legal entities will be initiated if there is an accusatory court sentence entered into force, which convicts the natural person in committing such criminal offences.

Trials will be held in local general courts which can decide legal entities should be fined from one thousand to fifteen thousand citizens’ untaxed minimum incomes. Also, the court may prohibit a legal entity to be engaged in any of the activities identified in its statutory documents for a period of three months to three years, or seize its assets. In case of committing severe or especially severe crime by the authorized persons the court may decide to liquidate the legal entity.

The Law of Ukraine “On amendments to certain laws of Ukraine on liability for corruption offenses” amended the Code of Administrative Offenses (“the CAO” hereinafter) and the Criminal and Criminal Procedural Codes of Ukraine. To the CAO the Chapter 15-B on administrative corruption was entered. In the Criminal Code the concept of an official was determined, and the Chapter «Crime in official activity of private legal entities and professional activity related to the provision of public services» articles of which include the liability for committing corruption crimes, was added.

The laws enter into force from the day they are published and are put into effect on January 1, 2010.

The enactment of the specified laws can be considered a positive step towards the formation by Ukraine of a civilized and democratic state.

What is most notable is that due to the Law of Ukraine “On principles of preventing and combating corruption” at a legislative level the notions of corruption and corrupt offences have been defined, and a list of persons subjects to liability for the commitment of corrupt offenses has been enlarged. A positive moment here is that the list now includes besides state officials, assistant deputies, and officials of legal entities of public law, auditors, notaries, insolvency administrators, appraisers, arbitrators, foreign officials, and other persons, which are not state officials pursuant to the legislation. Legal entities shall be also liable for corrupt offenses in cases provided for by the legislation. The law also introduces restrictions concerning employment of relatives and provides for a list of measures for preventing corruption.

However the law does not envisage any formation of special state bodies on combating corruption. Measures on preventing and combating corruption shall be undertaken by the President, the Verkhovna Rada, the Cabinet of Ministers of Ukraine, Public Prosecutor’s Office of Ukraine, and state authorities. Special task forces on organized crime of the Ministry of Internal Affairs, tax police, Security Service, and Military Law Enforcement Services at the Armed Forces of Ukraine are deemed specially charged anti-corruption bodies.

Pursuant to the law “officials of state authorities, legal entities, and their subdivisions in case of revealing a corrupt offence or having obtain information on commitment of a corrupt offence by employees of the respective state authorities or legal entities shall be obliged within the limits of their authority to take measures on the cessation of such offence and immediately inform in writing a specially charged anti-corruption official thereof”.

The criminal, administrative, civil, and disciplinary liability is envisaged for the commitment of corrupt offences.

The law becomes effective as of January 1, 2010, and the Law of Ukraine “On Combating Corruption” No. 356/95-BP dd. October 5, 1995 shall lose its legal force as of this date.

How effective will prove the established anticorruption policy envisaging that such policy shall be implemented by internal subdivisions which are corrupt themselves to a significant extent, and how active the community will appear in this fight, time will tell. We can only hope that the law will not prove just a usual declaration.